

INTERIM URGENCY ORDINANCE NO. U-600-23

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MURRIETA, CALIFORNIA, ESTABLISHING A 45-DAY TEMPORARY MORATORIUM ON THE ESTABLISHMENT OR EXPANSION OF MEDICAL MARIJUANA DISPENSARIES OR FACILITIES, AND MOBILE MEDICAL MARIJUANA DISPENSARIES WITHIN CITY LIMITS, DECLARING THE URGENCY THEREOF AND FINDING AN EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Summary: This ordinance establishes, for 45 days, the City's ban on the establishment or expansion of medical marijuana dispensaries, facilities, and mobile medical marijuana dispensaries within Murrieta.

WHEREAS, the City of Murrieta ("City") has the authority under its police power, to enact regulations for the public peace, morals, and welfare of the City; and

WHEREAS, the City currently regulates marijuana dispensaries and distribution facilities, the for-profit cultivation of marijuana, and the indoor personal cultivation of marijuana within the City under Section 16.44.250 of the Murrieta Municipal Code ("MMC"); and

WHEREAS, under MMC Section 16.44.250, marijuana cultivation is not a permitted use and is prohibited in all zones throughout the City, except for indoor personal cultivation of marijuana; and

WHEREAS, under MMC Section 16.44.250, any violation of marijuana regulations shall constitute a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment; and

WHEREAS, under MMC Section 16.44.250, the operation of any mobile marijuana dispensary and marijuana delivery within the City is a public nuisance, and may be abated by the City, including through declaratory relief and civil injunction. Failure to abate a public nuisance constitutes a misdemeanor punishable by a fine not to exceed one thousand dollars or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment; and

WHEREAS, under Senate Bill No. 1186 ("SB 1186"), signed into law by Governor Newsom on September 18, 2022, and effective January 1, 2024, a local jurisdiction shall not adopt or enforce any regulation that prohibits the retail sale by delivery within the local jurisdiction of medicinal marijuana to medicinal marijuana patients or their primary caregivers, or that otherwise has the effect of prohibiting the retail sale by delivery within the local jurisdiction of medicinal marijuana to medicinal marijuana patients or their primary caregivers by licensed medicinal marijuana businesses in a timely and readily accessible manner, and in types and quantities that are sufficient to meet demand from medicinal marijuana patients within the local jurisdiction; and

WHEREAS, the City desires to amend its existing regulations governing the sale and delivery of medical marijuana in order to bring the MMC sufficiently into compliance with SB 1186. City staff intends to study, within a reasonable time, land use regulations related to the sale

and delivery of medical marijuana so that it may consider modifications to the MMC and potential local regulations for such uses; and

WHEREAS, medical marijuana facilities and medical marijuana delivery services present challenges and impacts to the health, safety, and welfare of City residents due to secondary impacts and effects associated with marijuana and related activities, including but not limited to, sales of marijuana to minors, drug sales, robbery, burglaries, assaults, and other violent crimes, fraud in obtaining or using medical marijuana identification cards, and increased demands on police and other valuable and scarce city administrative, financial, or personnel resources; and

WHEREAS, the City anticipates that medical marijuana facility operators and mobile medical marijuana dispensaries may seek to establish facilities and delivery services, or desire to expand existing facilities and delivery services into the City, before a non-urgency ordinance amending the MMC to enact such regulations would become effective; and

WHEREAS, California Government Code Sections 36934, 36937, and 65858 expressly authorize the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety and to prohibit a use that is in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission, or the planning department is considering or studying or intends to study within a reasonable time; and

WHEREAS, an initial period of 45 days will permit City staff to undertake an initial investigation of these matters and recommend a course of action to the City Council, while avoiding the potential adverse impacts of medical marijuana facilities and mobile medical marijuana dispensaries and related activities that may arise as the City develops permanent regulations; and

WHEREAS, pursuant to the above-described express statutory authority and its police power, the City Council desires, on an urgency basis, to enact a temporary prohibition on the establishment or expansion of medical marijuana facilities and mobile medical marijuana dispensaries within the City; and

WHEREAS, the City Council, after notice duly given as required by law, held a public hearing on December 19, 2023, at 6:00 p.m., in the City Hall council chamber to consider this proposed Interim Urgency Ordinance, and heard all arguments for and against this proposal.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MURRIETA, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are true and accurate and are adopted herein by reference.

SECTION 2. Findings

A. The City Council desires to provide for the public safety, health and welfare of the residents and visitors to the City by exercising its police power authority under Section 7 of Article XI of the California Constitution. Based on the findings and evidence set forth below, the City Council finds that the establishment and expansion of medical marijuana facilities and mobile medical marijuana dispensaries presents a current and immediate threat to the public welfare within the City. At this time, existing regulations within the MMC governing the development and use of medical marijuana facilities and mobile medical marijuana dispensaries are not sufficient to address the adverse effects of the establishment and expansion of such uses.

B. The MMC currently prohibits medical marijuana facilities and mobile medical marijuana dispensaries as uses within the City. Pursuant to SB 1186, the City would not be permitted to enforce its existing regulations related to medical marijuana facilities and mobile medical marijuana dispensaries as of January 1, 2024, to the extent that they conflict with state law. The City Council finds that failure to adopt such an urgency moratorium would impair the orderly and effective implementation of contemplated amendments to the MMC that would regulate medical marijuana facilities and mobile medical marijuana dispensaries while complying with SB 1186, and without such implementation, the City's public health, safety, and welfare would be threatened as proper zoning and regulations protecting the public health, safety and welfare would be lacking.

C. The City Council additionally finds that the public welfare will be threatened if any medical marijuana facilities and delivery service uses are approved within the City without first studying and evaluating the fiscal, community, and public welfare impacts associated with medical marijuana facilities and mobile medical marijuana dispensary, including but not limited to, public welfare concerns related to crime and health and safety impacts of the sale of marijuana; increased demands on police and other valuable and scarce city administrative, financial, or personnel resources; compatible zoning regulations appropriate for medical marijuana facilities; and existing City policies and goals set forth in the General Plan and MMC applicable to these uses. Based on this evidence, the City Council finds that the adoption of this Interim Ordinance is necessary for the immediate preservation of the public safety, health and welfare.

D. The City Council finds that this moratorium is a matter of local and Citywide importance and is not directed towards any particular person or entity that seeks to operate medical marijuana facilities and mobile medical marijuana dispensaries.

SECTION 3. CEQA Findings

The City Council finds that this Interim Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (activity that will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15061(c)(3) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15378 (the activity is not a project under CEQA) of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly. This is because the moratorium adopted by this Interim Ordinance merely prohibits uses that have significant impacts on public health, safety and welfare, and does not permit any development that could result in a significant change to the environment. Furthermore, the moratorium established by this Interim Ordinance is temporary pending further study and investigation. In addition, the Interim Ordinance is categorically exempt from CEQA pursuant to Section 15308 of the CEQA Guidelines, because this ordinance is a regulatory action taken by the City in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending further review of the potential impacts of medical marijuana facilities and mobile medical marijuana dispensaries in the City and potential modifications to the MMC.

SECTION 4. Declaration of Moratorium

A. In accordance with Government Code section 65858, and pursuant to the findings stated above, the City Council hereby: (1) finds that there exists a current and immediate threat to the public safety, health and welfare requiring this Interim Ordinance; (2) finds that this Interim Ordinance is necessary for the immediate preservation of the public peace, health, and safety; and

(3) declares and imposes a temporary moratorium for the immediate preservation of the public safety, health and welfare as set below in this Section 4.

B. For a period of 45 days from the date of the adoption of this ordinance, applications for medical marijuana facilities and mobile medical marijuana dispensaries will not be accepted and no permit, license, approval, or entitlement for medical marijuana facilities or mobile medical marijuana dispensaries within the City limits will be issued after this Interim Ordinance becomes effective.

C. For purposes of this ordinance, “medical marijuana” means medicinal cannabis/marijuana and medicinal cannabis/marijuana products, intended to be sold or donated for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found in Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation, or in compliance with any compassionate use, equity, or other similar program administered by a local jurisdiction.

D. For purposes of this ordinance, “medical marijuana facility” means any for profit or not-for-profit cooperative, collective, facility, operator, establishment, provider, association or similar entity that cultivates, distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away medical marijuana in the City for any purpose, whether for medical, personal, or any other use.

E. For purposes of this ordinance, “mobile medical marijuana dispensary” means any person, clinic, cooperative, club, business, group or other entity which transports or delivers, or arranges the transportation or delivery, of medical marijuana to a person.

SECTION 5. Penalty

A violation of any provision of this Interim Ordinance shall constitute a violation of the Municipal Code and is subject to all applicable penalties, fines, and remedies described in Title 1 of the MMC. Each and every day a violation of this Interim Ordinance exists shall constitute a separate and distinct violation of the Municipal Code.

SECTION 6. Investigation and Report During Term of Moratorium

During the term of this Interim Ordinance, the Development Services Director is directed to study appropriate modifications to the MMC to mitigate the conditions outlined in Section 2 above that may arise out of developing, maintaining, and expanding medical marijuana facilities and mobile medical marijuana dispensaries. The study shall include but not be limited to the prohibition and/or regulation of all such uses. The Development Services Director is further directed to report back to the City Council with his findings at least 10 days prior to the expiration of this Interim Ordinance.

SECTION 7. Effective Date; Findings of Urgency; and Duration

A. This Interim Ordinance is adopted as an urgency ordinance pursuant to the provisions of Government Code Sections 65858, 36934 and 36937, and shall take effect immediately upon its adoption. Based upon the findings set forth in the recitals and Section 2 above, the City Council finds and determines that the adoption of this Interim Ordinance is an urgency ordinance authorized by Government Code Section 65858, and is necessary for the immediate preservation of the public health, safety, and welfare.

B. Pursuant to Government Code Section 65858(a), this Interim Ordinance shall be adopted by not less than a four-fifths vote of the City Council and shall be in effect for 45 days. Upon notice and public hearing, the City Council may further extend the Interim Ordinance by an additional 10 months and 15 days, and subsequently extend the Interim Ordinance by an additional year, if necessary. Not later than ten (10) days prior to the expiration of this Interim Urgency Ordinance, the City Council shall issue a written report as required by applicable state law.


SECTION 8. Severability

If any section, subsection, sentence, clause, or phrase of this Interim Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this Interim Ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the Interim Ordinance would be subsequently declared invalid or unconstitutional.


SECTION 9. Publication

Within fifteen (15) days after the adoption of the ordinance, the City Clerk shall publish a summary of the ordinance with the names of the council members voting for and against the ordinance.

ADOPTED by the City Council this 19th day of December, 2023.

 _____
DON EDWARDS, Mayor

ATTEST:

 _____
CHRISTA RODRIGUEZ, City Clerk



APPROVED AS TO FORM:

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TIFFANY S. ISRAEL, City Attorney

I, Cristal McDonald, City Clerk of the City of Murrieta, California, hereby certify under penalty of perjury that the foregoing Interim Urgency Ordinance No. U-600-23 was duly and regularly adopted at a meeting of the City Council on the 19th day of December, 2023 by the following vote, to-wit:

AYES: DeForest, Levell, Holliday, Warren, Stone
NOES: None
ABSENT: None
ABSTAIN: None


Cristal McDonald, City Clerk

I, Cristal McDonald, City Clerk of the City of Murrieta, California further certify that Ordinance No. U-600-23 was duly published according to law and the order of the City Council of said City and the same was so published in Press Enterprise, a newspaper of general circulation on the following date(s): January 5, 2024

In witness whereof, I have hereunto subscribed my name this 22 day of January, 2024


Cristal McDonald, City Clerk