

ORDINANCE NO. 5774

AN INTERIM EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA EXTENDING ORDINANCE NO. 5763 TO PROHIBIT NON-MEDICAL MARIJUANA BUSINESSES FOR 22 MONTHS AND 15 DAYS OR UNTIL SEPTEMBER 5, 2018

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings and Determinations.

A. The Adult Use of Marijuana Act ("AUMA") is a statewide initiative which will be considered for approval by the People of the State of California on November 8, 2016 as Proposition 64. If approved by the voters, the AUMA would legalize the cultivation, processing, manufacture, distribution, testing, sale, and use by adults over the age of 21 of non-medical marijuana.

B. Santa Barbara Municipal Code section 28.10.030 A. provides as follows:

"No building or structure shall be erected, moved, altered, added to or enlarged, nor shall any land, building, structure or premises be used, designed, or intended to be used, for any purpose or in any manner other than is permitted in the zones in which such land, building, structure or premises are located."

C. The City Council finds that SBMC 28.10.030 A. establishes "permissive" zoning which does not permit any land use, including non-medical and medical marijuana uses, unless such use is expressly identified, enumerated, and authorized in the Zoning Ordinance.

D. The City Council wishes to assure that non-medical marijuana businesses are not permitted, licensed, opened, or operated in Santa Barbara until such time as the Community Development, Finance, Fire, Police and other City departments have had a reasonable opportunity to study the ramifications of non-medical marijuana businesses, and report their findings to the Planning Commission and City Council so that appropriate land use decisions can be made to regulate the locations, activities and operating parameters for such businesses.

E. The establishment of non-medical marijuana businesses before appropriate procedures and regulations are enacted, and the preparation of potential non-medical marijuana businesses preparing to do business through generating capital and purchasing and leasing property, will cause adverse impacts to surrounding residential and non-residential neighborhoods and unacceptable risks to the public health, safety and welfare of the City's residents and the general public and it is, therefore, urgent that the City have the opportunity to consider whether such facilities should be allowed or prohibited in the City and, if so allowed, to develop regulations governing the location and operation of non-medical marijuana businesses to prevent the adverse impacts to the public health, safety and welfare that could result from the unregulated placement and operation of such uses.

F. Furthermore, the AUMA will give priority to the issuance of retail sale licenses for non-medical marijuana to medical marijuana dispensaries that were operating prior to January 1, 2018, and those medical marijuana dispensaries will be allowed to convert to non-medical marijuana retail dispensaries unless otherwise regulated or prohibited by a local agency.

G. Because the City has approved two applications for operation of medical marijuana dispensaries in compliance with Santa Barbara Municipal Code Chapter 28.80, and a third application is under review, it is therefore necessary for the City to prohibit the conversion of its permitted medical marijuana dispensaries to non-medical marijuana retail businesses until such time as it has had the opportunity to consider the effects of the possible conversion, and whether or not non-medical marijuana retail businesses should be allowed; and if allowed, to develop regulations governing location and operation to prevent adverse impacts to public health, safety, and welfare that could result from the unregulated operation of retail marijuana businesses.

H. Given the time required to undertake the necessary study and planning, the City Council finds that it is necessary that this interim Ordinance be immediately enacted to ensure that no non-medical marijuana businesses that may be in conflict with any state or federal law, or the City's general plan, zoning, and/or development policies are permitted in the interim.

I. Based upon the foregoing, on September 6, 2016, the City Council determined that there was an immediate need to protect the public health, safety and welfare as a result of unregulated development (including capitalization, and purchasing and leasing property) and operation of non-medical marijuana businesses so that an interim ordinance pursuant to Government Code section 65858, and an emergency ordinance pursuant to City Charter section 511, needed to be adopted to take effect immediately.

J. Ordinance No. 5763, adopted on September 6, 2016 by a unanimous vote of the City Council as an interim emergency ordinance, will expire on October 21, 2016 unless otherwise extended for up to an additional 22 months and 15 days by a four-fifths vote of the City Council, as authorized under Government Code section 65858.

K. The City Council finds and determines that based upon the foregoing, there remains a current and immediate need to protect the public health, safety, and welfare which requires that interim Ordinance No. 5763, incorporated by reference, be extended for 22 months and 15 days as authorized under Government Code section 65858, and that the ordinance must take effect immediately upon adoption, and the urgency is hereby declared.

L. The City intends to undertake within a reasonable time during this 22 months and 15 days, a study of whether non-medical marijuana businesses must or should be permitted or prohibited, and if permitted, the appropriate regulations for such uses.

M. The City Council has held a duly noticed public hearing in connection with consideration and adoption of this Ordinance.

N. The City Council now desires to adopt this Ordinance extending Ordinance No. 5763, as an emergency ordinance, effective immediately, and thereby prohibit the establishment of non-medical marijuana businesses in any zone of the City pursuant to the authority set forth in California Government Code section 65858.

O. The City Council finds that this Ordinance should be read in full and adopted on an emergency basis pursuant to the authority in Charter section 511.

SECTION 2. Interim Zoning Adopted.

A. The findings and determinations in Section 1 are true and correct.

B. In accordance with the authority granted to the City Council under Government Code section 65858 and City Charter section 511, upon the effective date of this Ordinance, Ordinance No. 5763 is extended, and incorporated herein by this reference, for a period of 22 months and 15 days, or until September 5, 2018, so that no use permit, variance, building permit, business license, or other applicable entitlement for use of any kind whatsoever shall be approved or issued for the establishment or operation of a non-medical marijuana business, nor shall any non-medical marijuana business be allowed to open, operate, or seek permits to open or operate, and during that period any such activity shall be unlawful.

C. For the purposes of this Ordinance, the definitions set forth in Ordinance No. 5763 shall apply.

D. This Ordinance is an interim emergency ordinance adopted pursuant to the authority granted to the City Council by Government Code Section 65858 and City Charter section 511. It is necessary for the immediate preservation of the public health, safety and welfare. The facts constituting the emergency and urgency, as stated in Section 1 of this Ordinance, are incorporated herein by this reference.

E. The City Administrator, acting by and through such City departments as he or she may deem appropriate, is directed to study the applicable legal and land use issues related to operation of non-medical marijuana businesses and develop appropriate zoning and licensing guidelines or regulations governing such uses, and/or a possible prohibition on such uses if authorized by law and desired by the City Council.

F. The violation of any of the provisions of this Ordinance shall be a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. Any violation is also subject to the penalties established by Santa Barbara Municipal Code Chapter 1.28 and the administrative code enforcement procedures established by Santa Barbara Municipal Code Chapter 1.25.

G. In addition to the penalties and other methods of enforcement provided herein, any condition caused or permitted to exist in violation of any provision of this Ordinance shall be deemed a public nuisance and may be, by this City, summarily abated as such. The City Attorney is authorized to commence actions and proceedings for abatement, removal or enjoinder thereof in the manner provided by law, and shall take such other steps as necessary and shall apply to any court as may have jurisdiction to grant relief for such abatement, removal or enjoinder. Each day that such condition continues shall be regarded as a new and separate offense.

H. The City Attorney is hereby authorized to commence any legal and administrative actions and proceedings for the abatement, removal or enjoinder of non-medical marijuana businesses, and shall take such other legal actions and steps as he or she may deem necessary, and shall apply to any court as may have jurisdiction to grant relief for abatement, removal or enjoinder of non-medical marijuana businesses which are prohibited by this Ordinance.

SECTION 3. Severability and Interpretation.

A. Severability. If any provision of this interim emergency Ordinance or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this interim emergency Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this interim emergency Ordinance are hereby declared to be severable.

B. Interpretation. This interim emergency Ordinance shall be construed to confer upon the City the maximum power and authority allowed by state and federal law. In the event state or federal law is found to conflict with and preempt any provision of this Ordinance, or in the event state or federal law changes to conflict with and preempt any provision of this Ordinance, the remaining and non-conflicting provisions of this Ordinance shall be interpreted and construed to give maximum effect to the remaining and non-conflicting provisions so as to effectuate to the greatest extent possible the purposes and restrictions expressed herein.

SECTION 4. Effective Date.

This interim emergency Ordinance shall become effective immediately upon adoption and shall be in effect for twenty-two months and fifteen days from expiration of Ordinance No. 5763, or until September 5, 2018. The City Council may repeal or modify this Ordinance at any time.

SECTION 5. CEQA Findings.

The City Council on the basis of the whole record and exercising its independent judgment finds that this interim emergency Ordinance is not subject to environmental review pursuant to the State Guidelines for Implementation of the California Environmental Quality Act sections 15060(c)(2) and 15060(c)(3), pertaining to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a project under Section 15378. This Ordinance has no potential for resulting in physical change to the environment directly or indirectly in that it prevents change to the environment pending the completion of the contemplated research and studies.

ORDINANCE NO. 5774

STATE OF CALIFORNIA)
)
COUNTY OF SANTA BARBARA) ss.
)
CITY OF SANTA BARBARA)

I HEREBY CERTIFY that the foregoing ordinance was originally adopted on September 6, 2016, as Ordinance No. 5763 and whose extension was adopted by the Council of the City of Santa Barbara at a meeting held on October 18, 2016, by the following roll call vote:

- AYES: Councilmembers Jason Dominguez, Gregg Hart, Frank Hotchkiss, Cathy Murillo, Randy Rowse, Bendy White; Mayor Helene Schneider

- NOES: None

- ABSENT: None

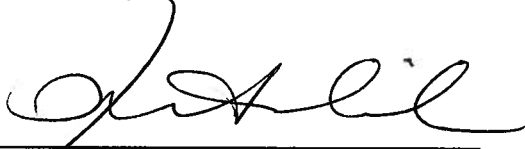
- ABSTENTIONS: None

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on October 19, 2016.



Sarah P. Gorman, CMC
City Clerk Services Manager

I HEREBY APPROVE the foregoing ordinance on October 19, 2016.



Helene Schneider
Mayor