ORDINANCE NO. 5763

AN INTERIM EMERGENCY ZONING ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA PROHIBITING NON-MEDICAL MARIJUANA BUSINESSES

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. The AUMA would also give medical marijuana dispensaries operating lawfully before September 1, 2016 a priority in obtaining a non-medical marijuana license.

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 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. 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.

G. Based upon the foregoing, the City Council finds that there is a current and immediate threat to the public health, safety and welfare presented by the unregulated development and operation of non-medical marijuana businesses.

H. The City Council finds and determines that the current and immediate preservation of the public health, safety and welfare requires that this interim Ordinance be enacted as an interim zoning ordinance pursuant to Government Code section 65858 and as an emergency ordinance pursuant to City Charter section 511 and take effect immediately upon adoption, and its urgency is hereby declared.

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

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

K. The City Council now desires to adopt this interim ordinance as an emergency ordinance, effective immediately, and prohibit the establishment of non-medical marijuana businesses, as defined hereafter, in any zone of the City pursuant to the authority set forth in California Government Code section 65858.

L. 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, from and after the date of this interim zoning Ordinance, 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, for a period of forty-five (45) days, and during that period, any such activity shall be unlawful.

C. For the purposes of this ordinance, the following definitions shall apply:

1. "Marijuana" shall have the same meaning as "cannabis" under Business and Professions Code section 19300.5(f), as enacted by Chapter 32 of the Statutes of 2016.

2. "Non-Medical Marijuana" shall mean any marijuana or marijuana product of any kind whatsoever that is not expressly permitted by: 1) the City of Santa Barbara for medical use pursuant to Santa Barbara Municipal Code chapter 28.80 or Santa Barbara Municipal Code section 28.87.300; or, 2) the State of California for medical use pursuant to the Compassionate Use Act of 1996, Health and Safety Code section 11362.5, *et seq.*

3. "Non-Medical Marijuana Business" shall mean a non-medical marijuana business of any kind whatsoever, whether licensed under state law or not and whether operated for profit or not, including but not limited to:

(a) A commercial (as defined by Santa Barbara Municipal Code section 28.04.180) non-medical marijuana activity or enterprise;

(b) any business (as defined by Santa Barbara Municipal Code section 5.04.010(2)) involving or related to non-medical marijuana operating in any manner within the City of Santa Barbara;

(c) cultivation activities, including but not limited to, the planting, growing, harvesting, drying, curing, grading, or trimming of non-medical marijuana;

(d) delivery of non-medical marijuana, including but not limited to, commercial transfer of marijuana or marijuana products to a customer;

(e) distribution activities, including but not limited to, procurement, sale, and local transport of non-medical marijuana, and sale of marijuana between non-medical marijuana businesses;

(f) manufacturing activities, including but not limited to, compounding, blending, extracting, infusing, testing or otherwise making or preparing a non-medical marijuana product;

(g) storage of non-medical marijuana;

(h) transportation of non-medical marijuana from locations outside of the City of Santa Barbara to locations inside the City of Santa Barbara.

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 City Administrator, acting on behalf of the City Council, is directed to issue a written report not later than ten (10) days before expiration of this Ordinance describing the measures taken to alleviate the conditions which led to the adoption of this Ordinance.

G. 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.

H. 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 enjoinment 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 enjoinment. Each day that such condition continues shall be regarded as a new and separate offense.

I. The City Attorney is hereby authorized to commence any legal and administrative actions and proceedings for the abatement, removal or enjoinment 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 enjoinment on 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 forty-five (45) days from the date of adoption, and may be extended by the City Council as provided in Government Code section 65858(a).

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. 5763

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

I HEREBY CERTIFY that the foregoing ordinance was introduced on September 6, 2016, and was adopted by the Council of the City of Santa Barbara at a meeting held on September 6, 2016, by the following roll call vote:

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

NOES: None

ABSENT: Mayor Pro Tem Bendy White

ABSTENTIONS: None

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on September 7, 2016.

Sarah P. Gorman, CMC
City Clerk Services Manager

I HEREBY APPROVE the foregoing ordinance on September 7, 2016.

Helene Schneider
Mayor