

INTERIM ORDINANCE NO. 1464

AN URGENCY MEASURE OF THE CITY COUNCIL OF THE CITY OF ARCATA ADOPTED AS AN INTERIM ORDINANCE IMPOSING A TEMPORARY SUSPENSION OF SECTION 9.42.105.F OF THE LAND USE CODE—MEDICAL MARIJUANA CULTIVATION FOR COOPERATIVE OR COLLECTIVE—FOR AN INITIAL 45 DAYS WITH AN OPTION TO EXTEND THE SUSPENSION FOR AN ADDITIONAL 22 MONTHS, 15 DAYS

The City Council of the City of Arcata does hereby ordain as follows:

Section 1. Findings.

The City Council hereby makes the following findings:

- A. In 1996, the Compassionate Use Act (CUA) was adopted in California by voter initiative providing a criminal defense for the medical use of marijuana by the seriously ill with a doctor's recommendation.
- B. Pursuant to the CUA, on November 19, 2008, the City Council of the City of Arcata adopted medical marijuana zoning standards and regulations by adopting Ordinance No. 1382 amending the Land Use Code (LUC), codified in the Arcata Municipal Code at Title IX, by adding Section 9.42.105, *Medical Marijuana: Cultivation and Dispensing* as a new standard for specific land use; revising LUC *Allowable Land Uses and Permit Requirements Tables 2-1, 2-4, and 2-10*; adding associated definitions to LUC Article 10, *Glossary*; and revising the text of LUC Section 9.42.040, *Accessory Uses* and Section 9.42.090, *Home Occupations*. Ordinance No. 1382 became effective December 19, 2008.
- C. Also on November 19, 2008, the City Council adopted Resolution No. 089-37 adopting Local Coastal Plan amendments to add Chapter III, Article 9—*Medical Marijuana: Cultivation and Dispensing* as a new land use standard for the areas within the City of Arcata's Coastal Zone boundary.
- D. The City's medical marijuana zoning standards and regulations distinguish between three types of medical marijuana uses:
 1. Section 9.42.105. D. Medical Marijuana for Personal Use personal cultivation by qualified patients and their care givers in residential zones (use permits are not required, however zoning standards apply),
 2. Section 9.42.105. E. Medical Marijuana Cooperatives or Collectives Allows the dispensing of medical marijuana as well as up to 1,500 sqft of onsite cultivation, (use permits required).
 3. Section 9.42.105. F. Medical Marijuana Cultivation for Cooperative or Collective Allows cultivation and processing facilities if associated

with a permitted cooperative or collective either in Arcata or another jurisdiction, (use permits required).

- E. At the time the City adopted its medical marijuana zoning standards and regulations in 2008 (Ordinance 1382 and Resolution No. 089-37), the City was aware of four (4) medical marijuana dispensaries and/or uses that operated within the City, which variously included growing and processing components as well as interactions with the public for the dispensing of the medical marijuana, which would require permits under the City's medical marijuana zoning standards.
- F. Since adoption in 2008, the City's medical marijuana zoning standards established in Section 9.42.105.D, *Medical Marijuana for Personal Use*, have been effective in allowing individual qualified patients to cultivate medical marijuana within his/her residence while shutting down illegal non medical marijuana "grow houses".
- G. Sub-Section 9.42.105.E of the City's medical marijuana standards and regulations required the four (4) preexisting dispensaries to come into full compliance with Ordinance 1382 and resolution No. 089-37 within one (1) year after the effective date of Ordinance 1382.
- H. Pursuant to the City's medical marijuana zoning standards and regulations, the four (4) pre-existing dispensaries applied for and the City diligently processed five (5) total Conditional Use Permit applications: four (4) applications for Medical Marijuana Cooperatives or Collectives (sub-Section 9.42.105.E), and one (1) application for Medical Marijuana Cultivation for Cooperative or Collective (sub-Section 9.42.105.F).
- I. Of the applications processed, three (3) Conditional Use Permits for dispensaries were approved (Permit Nos. 089-038-UP, 090-032-UP and 090-031-UP); one (1) dispensary permit was denied (Permit No. 090-024-UP). The one off site cultivation permit was withdrawn (Permit No. 090-033-UP).
- J. At this time, two (2) dispensary permits remain in effect and no new dispensary permits may be issued as per Section 9.42.105.E.1.a. No permits have been approved or denied to cultivate and/or process offsite as authorized through Section 9.42.105.F and therefore a total of four (4) permits may be approved.
- K. On May 20, 2015, the City Council received a report and heard testimony about how the marijuana industry continues to expand in Humboldt County and how the marijuana industry is preparing for voter approval of recreational marijuana in November of 2016. The report and testimony further indicated that legalization will very likely result in the dramatic expansion of the

marijuana industry in Humboldt County, and that businesses are strategically preparing for this expansion now.

- L. The City's existing land use regulations were designed to address grow houses and dispensaries. The City did not envision marijuana warehouse distribution centers or large scale growing and processing facilities. Arcata's zoning regulations are strictly applicable to medical marijuana uses and Arcata effectively has no regulations concerning recreational marijuana.
- M. The City has concerns that existing land use regulations could be abused and allow for a haphazard and rapid growth of marijuana related industries and businesses that may be inconsistent with the City's General Plan: 2020 as well as the City's environmental laws, regulations and policies, and could support illicit activity in violation of current medical marijuana law, all of which would be detrimental to the public health, safety and welfare of the City.
- N. In an effort to properly prepare for the rapidly expanding industry, while at the same time allowing for the medical marijuana industry to continue to operate in a safe and legal environment, the Council directed staff to: 1) initiate a Land Use Code amendment to create a new Medical Marijuana Innovation Overlay Zone on the adjoining properties identified by APN's 507-081-043, 507-121-013, and 507-081-050 located on West End Road, and 2) schedule a public hearing to consider adopting an ordinance imposing a suspension on the establishment of medical marijuana cultivation and processing facilities as currently authorized under Land Use Code Section 9.42.106.F. except within the Medical Marijuana Innovation Overlay Zone.
- O. The United States Department of Justice (DOJ) in its most recent Guidance Regarding Marijuana Enforcement memorandum dated August 29, 2013, has stated that it will continue to rely on local law enforcement to address marijuana activity through enforcement of its own narcotics laws, and that it expects local governments to have enacted strong and effective regulatory enforcement systems that will address the threat that medical marijuana use as permitted by state laws could pose to public safety, public health, and other law enforcement interests. The creation of an Innovation Overlay Zone in one geographic area situated on the three adjacent parcels identified above, as opposed to multiple separated locations, better enables the City to comply with the DOJ memorandum.
- P. Government Code section 65858 allows a City, without following the procedures otherwise required prior to the adoption of a zoning ordinance, to protect the public safety, health and welfare through adoption as an urgency measure of an interim ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal that the City Council, Planning Commission or Planning Department is considering or studying or intends to study within a reasonable time.

- Q. On June 6th the City noticed its intention to conduct a public hearing on June 17, 2015 to consider introducing an interim ordinance to suspend only Section 9.42.105.F or the Land Use code – Medical Marijuana Cultivation For Cooperative or Collective – for an initial 45 days with an option to extend the suspension for an additional 22 months, 15 days.

Section 2. Suspension Established.

- A. A suspension of Section 9.42.105.F, *Medical Marijuana Cultivation for Cooperative or Collective*, of the City of Arcata Land Use Code (LUC) is hereby imposed throughout the City, including the Coastal Zone, except within the Medical Marijuana Innovation Overlay Zone on those specific parcels identified by APNs 507-081-043, 507-121-013, and 507-081-050 located on West End Road and other overlay zones as established by the LUC and approved by the City Council. Notwithstanding the LUC Section 9.42.105, *Medical Marijuana: Cultivation and Dispensing*, LUC Allowed Land Uses and Permit Requirements Tables 2-1, 2-4, and 2-10, or any other provisions of the Land Use Code, Local Coastal Program, Arcata Municipal Code or any other regulations of the City of Arcata, no offsite medical marijuana growing, cultivation and processing facilities shall be established in the City, and no permits, licenses, or other applicable entitlements for use, which has as its result the final approval or allowance within the City of Arcata, shall be granted or approved by any employee, department or commission of the City for a period of forty-five (45) days immediately succeeding the effective date of this ordinance, unless extended by a later enacted ordinance.
- B. This suspension shall not apply to Section 9.42.105.D, *Medical Marijuana for Personal Use* as this Section has been effective in allowing individual qualified patients to cultivate medical marijuana within his/her residence as well as shutting down illegal non-medical marijuana “grow houses”.
- C. This suspension shall also not apply to Section 9.42.105.E., *Permit Requirements for Medical Marijuana Cooperatives or Collectives*, as there are two (2) active Use Permits that effectively regulate their activities and no additional permits are allowed under this section.
- D. This ordinance and the suspension established herein applies to any site, facility, location, use, cooperative or business that distributes, dispenses, stores, sells, exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to qualified patients, or converts or causes the conversion of residential uses into illegal medical marijuana growing, processing, and/or dispensing uses.

Section 3. Urgency.

This ordinance is declared to be an interim ordinance of the City of Arcata for preserving the public safety, health, and welfare. The reasons for the interim ordinance in connection with this ordinance are herein set forth and incorporated by reference in the findings contained and set forth in Section 1 above.

Section 4. Extension.

This interim urgency ordinance shall by operation of law be of no further force and effect forty-five (45) days from and after the date of this adoption on June 17, 2015, provided, however, that after notice of public hearing the City Council Members may by a four-fifths (4/5) vote of the City Council Members extend this interim ordinance for an additional twenty-two (22) months and fifteen (15) days.

Section 5. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 6. Penalties.

Violation of any provision of this ordinance shall constitute an infraction. In addition, any violation of this ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

Section 7. Effective Date.

This ordinance is hereby declared to be an urgency measure and shall be enforced and be in effect immediately upon its adoption.

Section 8. Publication.

Within fifteen (15) days after adoption, this ordinance shall be circulated with the names of the members voting for and against the same at least once in a newspaper of general circulation in the City of Arcata, and posted in public places within the City.

DATE: June 17, 2015

ATTEST:

APPROVED:

/s/ Bridget Dory
City Clerk, City of Arcata

/s/ Michael Winkler
Mayor, City of Arcata

Clerk's Certificate

I hereby certify that the foregoing is a true and correct copy of **Ordinance No. 1464**, passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, State of California, held on the 17th day of June, 2015, by the following vote:

AYES: WINKLER, PITINO, ORNELAS, PEREIRA, WHEETLEY

NOES: NONE

ABSENT: NONE

ABSTENTIONS: NONE

/s/ Bridget Dory
City Clerk, City of Arcata