INTERIM ORDINANCE NO. 1413

AN URGENCY MEASURE OF THE CITY COUNCIL OF THE CITY OF ARCATA ADOPTED AS AN INTERIM ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES, GROWING AND PROCESSING OPERATIONS

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 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 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 two types of medical marijuana uses: 1) personal cultivation by qualified patients and their care givers in residential zones (use permits are not required, however zoning standards apply), and 2) cultivation, processing and dispensing activities by medical marijuana cooperatives and collectives (all of which require use permits).

E. At the time the City adopted its medical marijuana zoning standards and regulations, the California case law had concluded that the CUA is not in conflict with the federal Controlled Substances Act (CSA), which does not recognize a medical use for marijuana and lists marijuana as a controlled substance (see *City of Garden Grove v. Superior Court (Khu)* (2007) 157 Cal.App.4th 355, 371-373, 381-382; *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 825-828). The City had additionally

been informed that the United States Department of Justice (DOJ) did not intend to use its limited federal resources to enforce the CSA against seriously ill individuals using marijuana for medical purposes in accordance with the state's CUA. This position of the DOJ was formalized in a written guidance memorandum distributed to its federal prosecutors in October 2009 (the "Ogden Memo").

F. Beginning in February 2011, the DOJ and the regional U. S. Attorneys indicated a change in their position concerning enforcement of the marijuana provisions in the CSA. The DOJ issued a second guidance memorandum to its federal prosecutors in June 2011 stating a core priority of the DOJ to be prosecution efforts against those who are in the business of cultivating, selling or distributing marijuana and those who knowingly facilitate such activities (the "Cole Memo"). The federal prosecutors through the regional U.S. Attorneys' offices began in February 2011 sending letters to local governments advising that local government regulatory programs that permit industrial marijuana cultivation and manufacturing adopted pursuant to the state CUA violate the federal CSA, and that public officials adopting, implementing or enforcing such programs could be found to be illegally facilitating marijuana cultivation, and could be subject to federal prosecution.

G. In August 2011, the Arcata Police Chief and City Attorney met with the U.S. Attorney for the Northern District of California and were advised that the City's medical marijuana zoning regulations requiring use permits for the cultivation, manufacturing and processing of medical marijuana by collectives, cooperatives and/or dispensaries (LUC sub-Sections 9.42.105.E and F) violate the federal CSA, and that the City could be subject to enforcement including injunctive relief to prohibit the City from further implementation of the zoning regulations, as well as civil and criminal prosecution. The U.S. Attorney also reiterated that limited federal resources would most likely not be used against the seriously ill who use and grow marijuana for their own use.

H. The four regional U.S. Attorneys for California began a coordinated prosecution effort beginning in October 2011 against marijuana dispensaries.

I. 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.

J. Sub-Section 9.42.105.E of the City's medical marijuana standards and regulations requires 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.

K. 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).

L. Of the applications processed, one (1) Conditional Use Permit was approved (permit No. 089-038); one (1) was denied (permit No. 090-024). At this time, three (3) permit applications arising from two dispensaries remain pending under Sub-Section 9.42.105.E of the City's medical marijuana standards and regulations

M. On October 5, 2011, because of the apparent change in enforcement policy of the DOJ since adoption of the City's medical marijuana zoning standards and regulations, the City Council temporarily suspended the further issuance of use permits for medical marijuana cooperatives or collectives until the City was no longer under threat for implementing sub-sections 9.42.105.E and F of its medical marijuana zoning regulations..

N. In October 2011, a California appellate Court issued a ruling declaring that the federal CSA preempts local governments from adopting, implementing and enforcing local regulations such as those found in the City's medical marijuana zoning regulations pertaining to medical marijuana collectives and cooperatives at sub-Sections 9.42.105.E and F. (*Pack v. City of Long Beach*, 10/4/11, 2nd Appellate Division, Case No. B228781). This ruling does not impact the City's medical marijuana personal use standards found at sub-Section 9.42.105.D of the LUC.

O. The California Supreme Court has agreed to review the *Pack* decision, as well as three other appellate level cases issuing conflicting decisions under the CUA pertaining to the authority of a City to ban dispensaries and standing to sue a local government over a local medical marijuana dispensary ban.

P. On December 21, 2011, the California Attorney General sent a letter to the California State legislature stating that the current state of medical marijuana regulation in California "is far more complicated than was the case in 2008," when the first AG Medical Marijuana Guidelines were issued, and that, "the state law itself needs to be reformed, simplified, and improved to better explain how, when, and where individuals may cultivate and obtain physician-recommended marijuana, and to provide law enforcement officers with guidelines for enforcement."

Q. Based on the recent developments stated above, the City's medical marijuana zoning standards and regulations found in LUC sub-sections 9.42.105.E and F. appear to conflict with federal law. Amendments to these standards are therefore required, however it is impossible to know what the permissible scope of the amendments to the City's provisions should be until the Supreme Court issues an opinion on the medical marijuana cases presently pending before it, the California Legislature takes action to clarify the CUA, or the federal government adopts a new enforcement policy for the CSA affirmatively recognizing the authority of local governments to regulate medical uses of marijuana.

R. Since their 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".

S. Sub-section 9.42.105.D of the City's medical marijuana zoning standards has been utilized fifty-eight (58) times since 2008 and is an indispensible tool in the City's multi-pronged strategy to curtail illegal "grow houses" in the City.

T. The City's land use based marijuana standards have been utilized as a model for other communities in Humboldt County and throughout the State.

U. 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.

Section 2. <u>Moratorium Established.</u>

A moratorium is hereby imposed on the establishment of medical marijuana dispensary, growing, and processing operations in the City of Arcata. Notwithstanding the City of Arcata Land Use Code (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 medical marijuana dispensary, growing or processing operation 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 of medical marijuana collective, cooperative or dispensary, growing, or processing operations 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.

This moratorium shall not apply to Section 9.42.105.D Medical Marijuana for Personal use, as this section is not in conflict with *Pack v. City of Long Beach* or the Department of Justice Ogden and Cole memos. Section 9.42.105.D has also been effective in allowing individual qualified patients to cultivate medical marijuana within his/her residence as well as an effective regulation to shut down illegal non medical marijuana "grow houses".

This ordinance and the moratorium 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. Existing Dispensaries.

The City Council makes no determination under City laws and regulations in existence at the effective date of this ordinance as to the lawfulness of the two existing medical marijuana dispensaries for which three Conditional Use Permit applications are suspended and their present methods of operation and activities. The three pending permits are as follows:

A. HPRC 980 6th Street, 090-032-UP, APN 021-168-006
B. HPRC Alder Grove, 090-033-UP, APN 507-461-073
C. The Humboldt California Assoc., 601 "I" Street, 090-031-UP2, APN 0210163-006

All such dispensaries will be expected to comply with future City laws and standards adopted as a result of City planning efforts initiated during the period of this ordinance.

Section 4. 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 5. 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 March 7, 2012; provided, however, that after notice of public hearing the City Council Members may by a four-fifths (4/5) of the City Council Members extend this interim ordinance for an additional twenty-two (22) months and fifteen (15) days.

Section 6. 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 7. 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 8. 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 9. 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: March 21, 2012

ATTEST: **APPROVED:**

/s/ Randal J. Mendosa
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. 1413**, passed and adopted at a regular meeting of the City Council of the City of Arcata, Humboldt County, California on the 21st day of March, 2012, by the following vote:

AYES: **WINKLER, ORNELAS, STILLMAN, WHEETLEY**

NOES: **BRINTON**

ABSENT: **NONE**

ABSTENTIONS: **NONE**

/s/ Randal J. Mendosa
City Clerk, City of Arcata