

EXTENDED INTERIM ORDINANCE NO. 1393

AN EXTENSION TO THE URGENCY MEASURE OF THE CITY COUNCIL OF THE CITY OF ARCATA ADOPTED AS INTERIM ORDINANCE NO. 1376 AND EXTENDED INTERIM ORDINANCE NO. 1378 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. On May 7, 2008, the City Council for the City of Arcata adopted Interim Ordinance No. 1376, based *inter alia* on the following statement of facts:

- (1) On December 7, 1994, the City Council of the City of Arcata adopted its zoning ordinance, the Land Use and Development Guide, or LUDG, as Title IX of the Arcata Municipal Code.
- (2) There are no zoning standards or other provisions in the LUDG specific to medical marijuana dispensary, growing or processing type uses.
- (3) On February 26, 2008, the City of Arcata Planning Commission delivered a Code Interpretation of the LUDG on several topics related to Medical Marijuana Dispensaries as follows:
 1. Is the “Dispensing” of processed medical marijuana a “Medical Office” type “Use” as the term is utilized by LUDG? – YES; VOTE = 7–Yes; 0–No.

The Planning Commission determined “Dispensing” of processed medical marijuana is a “Medical Office” type “Use.” Based on such determination, staff requested the following determinations:

- a. Is the commercial scale “Growing” of medical marijuana, as proposed by the applicant, allowable in a “Medical Office” type “Use” as the term is utilized by LUDG?
NO; VOTE = 0–Yes; 5–No; 2–Abstain.
- b. Is the commercial scale “processing” of medical marijuana, as proposed by the applicant, allowable in a “Medical Office” type “Use” as the term is utilized by LUDG?
NO; VOTE = 0–Yes; 5–No; 2–Abstain.

- c. Is the commercial scale “growing” of medical marijuana, as proposed by the applicant, an allowable “Accessory Use” in a “Medical Office” as the term “Accessory Use” is defined by LUDG? – NO; VOTE = 1–Yes; 4–No; 2–Abstain.
 - d. Is the commercial scale “processing” of medical marijuana, as proposed by the applicant, an allowable “Accessory Use” in a “Medical Office” as the term “Accessory Use” is defined by LUDG? NO; VOTE = 2–Yes; 4–No; 1–Abstain.
2. Is the “Growing” of medical marijuana at the scale proposed by the applicant an “Agriculture” type “Use” as the term is defined by LUDG? – YES; VOTE = 6–Yes; 1–No.

The Planning Commission determined “Growing” of medical marijuana at the proposed scale is an “Agriculture” type “Use.” Based on such determination Staff requested the following determinations:

- a. Is the “Processing” of medical marijuana an allowable “Accessory Use” of an “Agriculture” operation that “Grows” medical marijuana on-site? – YES, when located in an agricultural zoning district. VOTE = 6–Yes; 1–No.
 - b. Is the “Dispensing” of processed medical marijuana an allowable “Accessory Use” of an “Agriculture” operation that “Grows” medical marijuana on-site? – NO; VOTE = 1–Yes; 6–No.
- (4) On April 2, 2008, acting on appeals of said Planning Commission Code Interpretation, the City Council affirmed the Planning Commission’s February 26, 2008, determinations in all aspects.
 - (5) On April 22, 2008, the City Council held a study session and directed staff to begin the process of developing comprehensive land use standards to regulate medical marijuana dispensary, growing and processing operations including the conversion of residential uses into illegal medical marijuana growing and processing operations within the City of Arcata.
 - (6) At present, the City is aware of four medical marijuana dispensaries and/or uses that operate within the City, which variously include growing and processing components as well as interactions with the public for the dispensing of the medical marijuana. These operations are set out in Exhibit A, attached hereto and incorporated herein.
 - (7) Based on building plans submitted by three of said medical marijuana dispensaries, approximately 5500 square feet of space is dedicated to growing medical marijuana in the City’s Central Business District.

- (8) During the last year, the City has seen an increase in the number and interest in siting more medical marijuana facilities.
 - (9) In other cities, issues and concerns have occurred related to the establishment of medical marijuana dispensaries in close proximity to residential properties, schools and daycares. Furthermore, other cities have reported increases in loitering around medical marijuana dispensaries, armed burglaries within dispensaries, increased pedestrian and vehicular traffic, noise and parking traffic violations.
 - (10) The City has additional concerns that the existing medical marijuana dispensary, growing and processing operations may not be in compliance with the City's environmental laws, regulations and policies including without limitation stormwater pollution prevention, solid waste diversion, greenhouse gas reduction and energy efficiency.
 - (11) Based on these concerns, the City needs time to determine which zoning districts may be best suited for medical marijuana dispensary, growing and processing operations and under what conditions consistent with the City of Arcata General Plan 2020, the City's zoning provisions and the City's environmental laws, regulations and policies.
 - (12) The continued establishment of medical marijuana dispensary, growing and processing operations in the absence of formally adopted zoning standards and provisions would be detrimental to the public health, safety and welfare of the City.
 - (13) 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.
- B. After adopting Interim Ordinance No. 1376, the City made significant progress toward developing appropriate standards to alleviate the condition which led to the adoption of Interim Ordinance No. 1376. However, additional time was required for the City to complete this process and finalize land use standards which led to the adoption of Extended Interim Ordinance No. 1378 extending the urgency measure and extending the temporary moratorium through May 6, 2009.
- C. Since adopting Extended Interim Ordinance No. 1378, the City conducted extensive public hearings at Planning Commission and City Council meetings culminating in the adoption of Medical Marijuana standards for the non-coastal areas of the City on November 19, 2008 (Ordinance No. 1382, effective December 19, 2008). This action also resulted in the expiration of Interim Ordinance No. 1378 for the non-coastal areas of the City.

- D. The City Council also adopted Ordinance No. 1386 and Resolution No. 089-37 at its November 19, 2008, meeting to add medical marijuana standards to the coastal portion of the City. The City has consulted with the California Coastal Commission regarding the adoption of these standards as part of the Local Coastal Program adoption. The medical marijuana standards will not become effective in the coastal areas of the City until certification from the Coastal Commission is received.
- E. By operation of state law, Interim Ordinance No. 1376, as extended by Ordinance No. 1378, will expire automatically on May 6, 2009, unless the City Council for the City of Arcata takes action to extend said Interim Ordinance.
- F. Action to extend the Interim Ordinance and maintain the temporary moratorium on the establishment of medical marijuana dispensaries, growing and processing operations in the coastal areas of the City is necessary to alleviate the conditions in the coastal areas of the City, which gave rise to the adoption of the initial Interim Ordinance No. 1376, and are recited herein.

Section 2. Moratorium Extended

Interim Ordinance No. 1376 is hereby extended for a period of one year from its expiration date for the Coastal portion of the City. All terms adopted under Interim Ordinance No. 1376 shall continue with full force and effect as if re-stated here for the Coastal portion of the City.

Section 3. Notice and Public Hearing

This Interim Ordinance Extension is adopted after notice of public hearing was duly made pursuant to California Government Code section 65090 and a public hearing was held on May 6, 2009.

Section 4. Extension

This Interim Ordinance Extension shall, by operation of law, be of no further force and effect one year from and after the date of the expiration of Interim Ordinance No. 1376, as extended by Ordinance No. 1378, or May 6, 2010.

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. Effective Date

This extension shall be enforced and be in effect immediately upon the expiration of Extended Interim Ordinance No. 1378.

Section 7. Publication

Within fifteen (15) days after adoption of this Interim Ordinance Extension, this Ordinance shall be published 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, or posted in at least three public places within the City.

DATE: May 6, 2009

ATTEST:

APPROVED:

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

/s/ Mark E. Wheatley
Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of **Ordinance No. 1393**, passed and adopted at a regular meeting of the City Council of the City of Arcata, Humboldt County, California on the 6th day of May, 2009, by the following vote:

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

NOES: **NONE**

ABSENT: **NONE**

ABSTENTIONS: **NONE**

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