

INTERIM ORDINANCE NO. 1376

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. On December 7, 1994, the City Council for the City of Arcata adopted its zoning ordinance, the Land Use and Development Guide, or LUDG, as Title IX to the Arcata Municipal Code.
- B. There are no zoning standards or other provisions in the LUDG specific to medical marijuana dispensary, growing or processing type uses.
- C. 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 the LUDG? – YES; Vote = Yes-7; No-0.

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 the LUDG?
NO; Vote = Yes-0; No-5; Abstain-2.
- 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 the LUDG?
NO; Vote = Yes-0; No-5; Abstain-2.
- 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 the LUDG? – NO; Vote = Yes-1; No-4; Abstain-2.

- 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 the LUDG?
NO; Vote = Yes-2; No-4; Abstain-1.

- 2. Is the “Ggowing” of medical marijuana at the scale proposed by the applicant an “Agriculture” type “Use” as the term is defined by the LUDG? – YES; Vote = Yes-6; No-1.

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 = Yes-6; No-1.
- b. Is the “Dispensing” of processed medical marijuana an allowable “Accessory Use” of an “Agriculture” operation that “Grows” medical marijuana on-site? – NO; Vote = Yes-1; No-6.

- D. 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.
- E. 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.
- F. 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.
- G. 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.
- H. During the last year, the City has seen an increase in the number and interest in siting more medical marijuana facilities.

- I. In other cities, issues and concerns have occurred related to the establishment of medical marijuana dispensaries in close proximity to residential properties, schools and day cares. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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 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. Moratorium Established.

A moratorium is hereby imposed on the establishment of medical marijuana dispensary, growing, and processing operations in the City of Arcata. Notwithstanding any other provisions of the LUDG, 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 have as their result the final approval or allowance of medical marijuana 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 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 existing medical marijuana dispensaries and their present methods of operation and activities as set forth in Exhibit A. 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 urgency ordinance of the City of Arcata for preserving the public safety, health, and welfare. The reasons for the urgency 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 May 7, 2008; 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 initial period of time up to ten (10) months and fifteen (15) days. Thereafter, after hearing, a further one-year (1-year) extension is also permitted.

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: May 7, 2008

ATTEST:

APPROVED:

/s/ Michael Hackett
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. 1376**, passed and adopted at a regular meeting of the City Council of the City of Arcata, Humboldt County, California, on the 7th day of May, 2008, by the following vote:

AYES: WHEETLEY, STILLMAN, MACHI, GROVES, PITINO

NOES: NONE

ABSENT: NONE

ABSTENTIONS: NONE

/s/ Michael Hackett
City Clerk, City of Arcata