

8.1V

Draft ORDINANCE NO. 479

AN INTERIM URGENCY ORDINANCE OF THE CITY OF FARMERSVILLE, ENACTING A TEMPORARY MORATORIUM ON LAND USES INVOLVING NON-MEDICAL MARIJUANA POSSESSION, SMOKING, INGESTION, USE, PLANTING, DRYING, CULTIVATION, HARVESTING, TRANSPORTATION, DELIVERY, PURCHASING, GIFTING, MANUFACTURING AND BUSINESS OPERATIONS, PURSUANT TO GOVERNMENT CODE SECTION 65858.

THE CITY COUNCIL OF THE CITY OF FARMERSVILLE DOES ORDAIN AS FOLLOWS:

**SECTION 1. Findings.**

The City Council finds and declares as follows:

A. On June 28, 2016, the Secretary of State of the State of California certified Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA” or “**Proposition 64**”), for the November 8, 2016 statewide presidential general election ballot;

B. The AUMA would become law if a majority of the electorate votes “yes” on Proposition 64;

C. The AUMA would regulate, among other matters, the use of marijuana for non-medical personal and commercial purposes, including the recreational use of marijuana by adults over twenty-one (21) years of age;

D. To regulate personal use of marijuana, the AUMA would add Health and Safety Code § 11362.1 which, among other things, would make it “...lawful under state and local law...” for persons 21 years of age or older to “...possess, process, transport, purchase, obtain or give away to persons 21 years of age or older without any compensation whatsoever...” up to 28.5 grams of non-medical marijuana in the form of concentrated cannabis or not more than eight grams in the form of concentrated cannabis contained in marijuana products;

E. The AUMA would also make it lawful for specified adult individuals to “...possess, plant, cultivate, harvest, dry or process not more than six living marijuana plants and possess the marijuana produced by the plants...”;

F. The AUMA would also make it lawful for specified adult individuals to smoke or ingest marijuana or marijuana products;

G. If the AUMA is enacted by the electorate, many of its provisions would take effect on November 9, 2016;

H. To regulate commercial use of non-medical marijuana, the AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which would vest certain state agencies with “...the exclusive authority to create, issue, renew discipline, suspend or revoke...” licenses for certain non-medical marijuana businesses including the transportation, storage, distribution, sale, cultivation, manufacturing and testing of marijuana;

I. The AUMA provides that specified state agencies shall promulgate rules and regulations and shall begin issuing state business licenses under Division 10 of the Business & Professions Code by January 1, 2018;

J. The AUMA specifies that a local jurisdiction shall not prevent transportation of non-medical marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10;

K. The AUMA would authorize cities to “...reasonably regulate...” without completely prohibiting cultivation of marijuana inside a private residence or inside an “...accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure...”;

L. The AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence until a “...determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law...”;

M. The AUMA would authorize cities to completely prohibit the establishment or operation of any non-medical marijuana business licensed under Division 10 within its

jurisdiction, including marijuana dispensaries, marijuana retailers and marijuana delivery services;

N. Absent appropriate local regulation authorized by the AUMA, state regulations will control;

O. Until the AUMA is enacted, state statutes prohibit cultivation, possession, sale of non-medical marijuana and therefore the prohibitions enacted by the instant ordinance shall not take effect unless and until the moment the AUMA becomes enacted;

P. Allowing non-medical marijuana activities which would be decriminalized under the AUMA, and the continued approval of land-use permits, variances, building permits or any other applicable entitlements authorizing said non-medical marijuana activities, would result in a current and immediate threat to the public health, safety and welfare, because such land uses threaten to cause the harmful “secondary effects” identified elsewhere in the ordinance within the City, and because such uses may frustrate the accomplishment of the goals of the non-medical marijuana regulations which the City will consider and study. It is therefore necessary to adopt this ordinance to prohibit non-medical marijuana activities, which would be decriminalized under the AUMA, during the period of such consideration and study;

Q. The City has permissive zoning standards which prohibit all uses not expressly authorized as allowed and has applied the same, without exception, to all instances of medical and non-medical marijuana, including, but not limited to, cultivation, distribution, dispensing, transportation, sales and gifting;

R. The existence of marijuana cultivation operations carries the potential to increase secondary impacts such as: (1) robberies, break-ins and other thefts due to the high monetary value of marijuana plants; (2) dangerous alterations to the electrical wiring of buildings; (3) the amount of mold spores present in buildings; (4) the potential for exposure to or increased usage by school aged children; (5) the spread of strong or noxious odors from marijuana plants;

S. The City has legitimate and compelling interests in protecting the public health, welfare and safety of its residents, as well as preserving the peace and quiet of the neighborhoods within the City;

T. The City has determined that an urgency ordinance is necessary to immediately protect the public health, welfare and safety of residents of the City to the maximum extent allowable under California law to preemptively preserve the status quo in order to determine if future local legislation is necessary to address some proposed changes to California law in the event AUMA is enacted by the California electorate on November 8, 2016;

U. The City intends to consider and study possible means of regulating or prohibiting non-medical marijuana activities, including zoning regulations and other regulations, and by this ordinance shall direct the immediate commencement of such consideration and study; and

V. If non-medical marijuana activities which would be decriminalized under the AUMA were allowed to be occur within the City without appropriate regulations, such land uses may be established in areas, or operated in a manner, that would conflict with the proposed regulations to be considered and studied by the City, and would therefore defeat the purpose of the proposal to study and adopt new regulations regarding non-medical marijuana activities.

**SECTION 2. Applicability.** This ordinance applies to non-medical marijuana on and after November 9, 2016, if and only if California Proposition 64 is enacted by a majority approval by California voters in connection with the November 8, 2016 general election.

**SECTION 3. Moratorium on Non-Medical Marijuana.**

A. Except as provided in Section 4 below, from the date of adoption of this ordinance or extension of this ordinance, the following land uses and conduct are prohibited in all land use zones and all unzoned territory within the City of Farmersville

and no permit, building permit, variance or any other permit, entitlement or approval, whether administrative or discretionary, may be approved or issued for any of the following:

1. The possession, smoking, ingestion, use, planting, drying, cultivation, harvesting, transportation, purchasing, gifting, manufacturing and other actions and conduct pertaining to non-medical marijuana and marijuana products and accessories which is identified in Health and Safety Code § 11362.1(a)(3), except to the extent such actions and conduct occurs inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure;

2. The outdoor cultivation of non-medical marijuana;

3. The establishment or operation of any business which could otherwise be licensed under Division 10 of the Business and Professions Code (commencing with section 26000); and

4. Delivery, as defined by Business and Professions Code § 26001(h), of non-medical marijuana to any person or location within the City of Farmersville.

B. Notwithstanding anything within this ordinance to the contrary, any prohibition or other restriction within this ordinance which is contrary to state law shall not have any force or effect.

**SECTION 4. Exceptions.** The provisions of this ordinance shall not be construed to apply to the following:

- A. Any public agency officer or employee acting solely within the scope and course of their public duties and/or employment.

**SECTION 5. Violations.**

- A. Any violation of the provisions of this ordinance is hereby declared to be a public nuisance and may be abated by any or all remedies available.

B. The City may abate the violation of this ordinance by the prosecution of a civil action through the City Attorney, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this ordinance or requiring compliance with other terms.

C. Each violation of this section may be enforced by any and all lawful remedies available under this code and applicable state statute, including but not limited to civil fines and penalties, public nuisance abatement and civil injunction, and all available remedies shall be cumulative and not preclude other available remedies.

D. Each and every day that a violation exists as to any prohibition within this section shall constitute a separate and distinct violation.

#### **SECTION 6. Report.**

The City Manager or designee thereof is authorized and directed to prepare and issue, on behalf of the City Council, a written report describing the measures taken by the City to alleviate the conditions which have led to the adoption of this ordinance, at least ten (10) days prior to the expiration of this ordinance. A copy of the same shall be subsequently provided to the City Council for review.

**SECTION 7. CEQA Review.** The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) [the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment] and 15061(b)(3) [there is no possibility the activity in question may have a significant effect on the environment]. In addition to the foregoing general exemptions, the City Council further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 categorical exemption [regulatory activity to assure the protection of the environment]. The City Manager is hereby directed to ensure that a Notice of Exemption is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

**SECTION 8. No Liability.** The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability or responsibility for damage to person or property upon the City of Farmersville, or any official, employee or agent thereof.

**SECTION 9. Pending Actions.** Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance, nor shall any just or legal right or remedy of the City of any character be lost, impaired or affected by this ordinance.

**SECTION 10. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Farmersville hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**SECTION 11. Construction.** The City Council intends this ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Farmersville Municipal Code as amended by this ordinance are substantially the same as provisions in the Farmersville Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the

earlier provisions and not as new enactments.

**SECTION 12. Urgency; Effective Date; Duration and Publication.**

This ordinance is adopted by the City Council pursuant to the California Constitution, article XI, section 7 and Government Code section 65858 by a four-fifths (4/5) or greater vote, as an urgency measure to protect the public health, safety and welfare, and shall take effect immediately. The reasons for such urgency are set forth in Section 1 above. This ordinance shall expire and be of no further force or effect forty-five (45) days after its adoption, unless it is extended pursuant to Government Code section 65858. Prior to the expiration of fifteen (15) days from the passage hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the \_\_\_\_\_, a newspaper printed and published in the City of Farmersville, State of California, together with the names of the Council members voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the City Council of the City of Farmersville, State of California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, at a regular meeting of said Council duly and regularly convened on said day by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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PAUL BOYER, Mayor  
CITY OF FARMERSVILLE

ATTEST: \_\_\_\_\_