

ORDINANCE OF THE COUNCIL OF THE CITY OF ANDERSON

ORDINANCE NO. 803

AN INTERIM URGENCY ORDINANCE TO EXTEND THE DURATION OF ORDINANCE NO. 802 OF THE CITY OF ANDERSON UNDER THE AUTHORITY OF GOVERNMENT CODE §65858 TO REGULATE CULTIVATION AND PROHIBIT THE MANUFACTURE, PROCESSING, LABORATORY TESTING, LABELING, STORING, WHOLESALE OR RETAIL DISTRIBUTION OF NON-MEDICAL MARIJUANA

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

WHEREAS, the City Council adopted Ordinance No. 796 on January 19, 2016 in order to, among other things, expressly prohibit in all zoning districts in the City commercial cultivation and personal outdoor cultivation of medical marijuana, while allowing certain limited personal indoor cultivation for subsequent and personal medical use; and

WHEREAS, Proposition 64, also known as the "Adult Use Marijuana Act" ("AUMA"), was presented to California voters on a Statewide ballot at the November 8, 2016 election, which has passed and took effect on November 9 and, among other things, authorizes personal non-medical use of marijuana and creates a Statewide licensing scheme for commercial, non-medical marijuana businesses; and

WHEREAS, the State Regulations are required by State law to consider and mitigate a variety of identified environmental impacts and secondary effects related to commercial marijuana activity, including water diversion, electricity usage, agricultural discharges, land conversion, use of nonvolatile and volatile solvents in production, and adequate security measures to protect against diversion, theft, loss or other criminal activity related to cultivation, commercial storage and distribution of non-medical marijuana; and

WHEREAS, such State Regulations are not estimated to be fully developed and adopted until late 2017, with State licenses estimated to begin issuing on or around January 1, 2018, notwithstanding potential impacts or delays caused by passage of AUMA; and

WHEREAS, the City finds it necessary for the City Staff, Planning Commission and City Council to study, develop, and adopt regulations within a reasonable time regarding the cultivation of non-medical marijuana and the local regulatory processes that could associate with such cultivation to ensure all citizens concerns within the City are considered; and

WHEREAS, the City Council finds and declares that there is a current and immediate threat to the public peace, health, welfare, and safety, specifically including possible permanent damage to the City's aesthetic, health and safety, and economic interests arising from the potential gap in regulation of cultivation, use and distribution of nonmedical marijuana that follows passage of Proposition 64; and

WHEREAS, if personal outdoor marijuana cultivation of non-medical marijuana is allowed to proceed, it would conflict with, and defeat the purpose and intent of, current zoning requirements that prohibit personal outdoor cultivation of medical marijuana in all zoning districts due to nuisance, crime, and aesthetic factors. Allowance of any non-medical, commercial marijuana uses would likewise directly conflict with, and defeat the purpose and intent of, the current prohibition on commercial cultivation and marijuana dispensaries in the City as well as the cultivation allowances for medical marijuana until such time as the City has considered such uses and adopted appropriate ordinances and regulations; and

WHEREAS, failure to enact this moratorium may result in significant irreversible changes to neighborhood and community character, and may ultimately conflict with new and pending State law and State Regulations and City ordinances and regulations; and

WHEREAS, the immediate ban of all commercial or industrial marijuana activities will enable the City to develop a comprehensive approach to marijuana, including analysis of the provisions of Proposition 64's amendments and additions to the California Health and Safety Code; and

WHEREAS, in light of the foregoing, on November 15, 2016, the City Council for the City of Anderson enacted Ordinance No. 802, and thereafter on December 6, 2016, a summary report of the efforts taken by Staff to address the matters giving rise to the adoption of Ordinance No. 802 was presented to City Council, which included reports on discussions with other similarly situated jurisdictions (out-of-State) impacted by similar laws providing for the recreational use of marijuana as well as consideration of complaints by residents of our City associated with medical marijuana cultivation and use and those of neighboring cities ; and

WHEREAS, the City Staff needs more time to continue its study and investigation into the effects of Proposition 64 and its ability to locally regulate non-medical marijuana as expressly provided under the Adult Marijuana Users Act (Proposition 64), including the consideration of reasonable manner and place restrictions on cultivation and use; consideration of a regulatory process to secure registration or licensing before there exists an ability to cultivate marijuana; and to study the fiscal impacts to the City commensurate with such regulatory processes.

WHEREAS, Government Code 65858 permits the City to extend the Urgency Ordinance (No. 802) by adoption, after a public hearing, another urgency ordinance to prohibit uses of land which may conflict with contemplated zoning proposals as well as existing and proposed code obligations while City Staff is considering, studying, or intends to study within a reasonable time; and

WHEREAS, on December 20, 2016, the City Council held a duly noticed public hearing concerning an extension of the moratorium established through Ordinance No. 802; and

WHEREAS, after consideration of all information, evidence, and comments offered at the public hearing held on December 20, 2016, the City Council finds and declares that the current and immediate threat to public health, safety, and welfare described in the findings adopted pursuant to Ordinance No. 802 remain and it is therefore necessary to extend the moratorium as additional time is needed to address the current and immediate threat that prompted the adoption of Ordinance No. 802, and to complete the study and investigation by City Staff relative to its ability to locally regulate non-medical marijuana as expressly contemplated in the Adult Marijuana Users Act.

NOW THEREFORE, the City Council finds and declares;

1. there remains a current and immediate threat to the public peace, health, welfare, and safety, specifically including possible permanent damage to the City's aesthetic, health and safety, and economic interests arising from the potential gap in regulation of cultivation and distribution of non-medical marijuana.
2. there remains an immediate need to prevent unregulated nonmedical marijuana grows in the City of Anderson, which have the potential to adversely affect the character and aesthetics of the community as well as impose nuisance conditions within the City of Anderson where left unregulated.
3. This extension of the urgency ordinance is necessary to prevent potential "grandfathering" of nonmedical outdoor marijuana grows on private residences where the present Municipal Code does not address non-medical marijuana cultivation following the rapid change of law associated with Proposition 64, and to ensure urgent protections are put in place to address small scale private marijuana cultivation at greatly increased levels and its potential cause of adverse impacts to others within the City.
4. it remains necessary to protect the health, safety, and welfare, and specifically the City's and the public's interests in the City's aesthetic, economic, health, safety, and community character until additional staff review has been completed and any necessary code revisions have been adopted and made effective by the City Council.

BE IT FURTHER DETERMINED THAT; the City Council directs City staff to continue to study the issue of nonmedical commercial cultivation, manufacture, processing, laboratory testing, labeling, storing, wholesale, distribution, and retail sales of marijuana. The City Council also directs staff to continue its study and investigation into the issue of nonmedical cultivation, processing, and storing of marijuana for private use and how such actions can be reasonably regulated through use of the City's inherent police powers.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANDERSON AS FOLLOWS:

SECTION 1: REGULATION

The following regulations are hereby imposed through extension of Urgency Ordinance 802 by the adoption of this Ordinance No. 803. This regulation shall prevail over any conflicting provisions of the Anderson Municipal Code or other ordinances, resolutions, policies, and regulations of the City of Anderson.

(a) Any commercial or industrial use involving marijuana, including but not limited to the manufacture, processing, laboratory testing, labeling, storing, wholesale, distribution, and retail is prohibited in every zoning district within the City of Anderson.

(b) Outdoor cultivation of marijuana is prohibited in every zoning district in the City of Anderson. Indoor cultivation of marijuana is limited to residential districts, is limited to six (6) plants per residence and performed in strict compliance with the Adult Users Marijuana Act, and where performed within a residence occupied through tenancy, such cultivation shall occur with written consent of the owner of the property where the cultivation is occurring. Indoor cultivation shall not cause emanation of marijuana odors to leave the residence and enter adjoining or separated residential property of any kind where such odors unreasonably interfere with the peaceable enjoyment of the non-cultivator's property.

(c) For purposes of this interim urgency ordinance, the term "marijuana" shall mean all items included in Health and Safety Code Sections 11018 and 11018.1. The term "indoor cultivation" shall mean cultivation inside a fully enclosed private residence as defined in Health and Safety Code Section 11362.2(b)(2) or an accessory structure as set forth in Anderson Municipal Code, Section 17.65.060 (3). The term "outdoor cultivation" shall mean any cultivation that is not defined as indoor cultivation as defined in Health and Safety Code Section 11362.2(b)(2) or cultivation within an accessory structure that meets the conditions of Anderson Municipal Code, Section 17.65.060.

SECTION 2. INTERIM URGENCY ORDINANCE.

(a) The City Council does hereby, pursuant to Government Code Section 65858(a) and based on the findings and recitals above, extends the urgency ordinance for ten (10) months and fifteen (15) days, issuing interim regulations as stated in Section 1, above, and further declares that this is an urgency ordinance by authority conferred on the City Council as provided in Government Code 65858 and made effective immediately upon passage as further provided in Government Code 36937(b).

(b) The City Council finds and declares that this Ordinance is not a project as defined under the California Environmental Quality Act pursuant to Section 15061 (b)(3) of the Act's guidelines.

(c) At least ten (10) days prior to the expiration of this Ordinance, staff shall prepare a summary report as provided in Section 65858(d) of the Government Code describing the measures taken to alleviate the condition giving rise to the urgency ordinance, and shall present that report to City Council at a regularly scheduled Council Meeting.

SECTION 3. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Anderson hereby declares that it would have adopted this Ordinance and such section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

SECTION 4. VOTE REQUIREMENT.

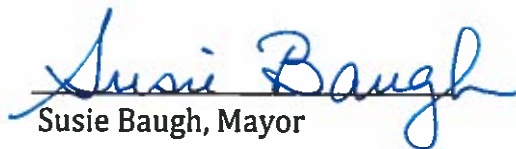
This is an extension of an urgency ordinance and requires a 4/5 vote of approval of all of the members of the City Council and goes into effect immediately upon its adoption.

SECTION 5. PUBLICATION OF INTERIM URGENCY ORDINANCE.

This interim urgency ordinance shall be certified by the City Clerk and shall be published once within fifteen (15) days of its adoption. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

The foregoing Ordinance was introduced and passed as an urgency measure at a regular meeting of the City Council of the City of Anderson held on December 20, 2016 by the following vote:

- AYES: Councilmembers Neutze, Hunt, Comnick, Browning, and Mayor Baugh.
- NOES: None.
- ABSENT: None.
- ABSTAIN: None.


Susie Baugh, Mayor

ATTEST:


Juanita Barnett, City Clerk