

ORDINANCE NO. 3610 C.S.

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTEREY ADOPTING A TEMPORARY MORATORIUM ON COMMERCIAL CANNABIS ACTIVITY IN ALL ZONING DISTRICTS IN THE CITY WITH A LIMITED AND TEMPORARY EXCEPTION FOR CANNABIS LABORATORY TESTING AT 31 UPPER RAGSDALE DRIVE

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, under federal law, the Controlled Substances Act prohibits the production, sale, and possession of marijuana. It is also illegal under the Controlled Substances Act to open, use, lease, or maintain any place for the purposes of manufacturing, distributing, or using marijuana. Federal law is enforceable despite state law. (Gonzales v. Raich (2005) 545 US 1.);

WHEREAS, in 2016, 57.13% of voters in the state approved Proposition 64, the Adult Use of Marijuana Act (AUMA);

WHEREAS, in June 2017, a bill repealed the Medical Cannabis Regulation and Safety Act (MCRSA) and amended the AUMA to consolidate and recast the provisions of MCRSA and AUMA into a single regulatory and licensing scheme applicable to both medical and adult-use commercial cannabis activity. (City Attorneys' Dept, League of Cal. Cities, *The Municipal Law Handbook* (Cont.Ed.Bar 2019 ed.) §10.150, p. 1145.) The new law is entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA - Business & Professions Code section 26000 et seq.) (Id.);

WHEREAS, Health & Safety Code section 11362.83 and Business & Professions Code section 26200 preserve the authority of local governments to enact local ordinances allowing or banning commercial cannabis activities;

WHEREAS, a State license for commercial cannabis activity, such as laboratory testing, cannot be issued to an applicant whose operations would violate the provisions of any local ordinance or regulations. State standards are minimum standards, and local government entities may establish additional standards and regulations regarding health and safety such as environmental protection, testing, food safety, security, and worker protections;

WHEREAS, according to a license search on the Bureau of Cannabis Control's website, there are no active testing laboratory licenses in Monterey County and there are 33 active licensed testing laboratories in the state;

WHEREAS, enactment of a temporary moratorium would enable Staff to further study the impact of commercial cannabis laboratory testing businesses and make recommendations to the City Council on regulations to ensure the public's health, safety, and welfare. Current policy concerns include the fact that marijuana processing and testing facilities may be targets for a variety of crimes to include robbery, burglary, and other criminal activity. In jurisdictions where marijuana businesses have been allowed, adjoining businesses have complained about

the smell, increased traffic, lack of parking, persons procuring marijuana and using it adjacent to their businesses, and a presence of security that was not previously needed, etc. For example, in Monterey in October 2018, the Police Department responded to and conducted an investigation into a report of an armed robbery in a marijuana business that was operating illegally in the IR district;

WHEREAS, the City Council finds that commercial cannabis activity significantly impacts, or has the potential to significantly impact, the residents, visitors, and businesses in the City;

WHEREAS, growing, selling, distributing, exchanging, or making cannabis or cannabis products, or participating in or engaging in any operation for this purpose, is prohibited under City Code section 22-39;

WHEREAS, marijuana sales and dispensaries are not permitted in the City pursuant to City Code section 22-39, subsections (d) and (e);

WHEREAS, the adoption of the term “cannabis” herein shall not invalidate references to “marijuana” in the City Code. The MAUCRSA consistently replaced the term “marijuana” with “cannabis” in state law. The two terms share the same meaning and are used interchangeable in the City Code;

WHEREAS, it is the City’s intention that the existing City Code prohibitions on marijuana commercial activity set forth in City Code section 22-39, and in this moratorium ordinance, shall prohibit all types of “commercial cannabis activity”, as that term is defined in Business & Professions Code section 26001(k), as may be amended;

WHEREAS, at a public hearing held on January 21, 2020, the City Council interpreted Section 22-39 as not prohibiting a commercial cannabis laboratory testing in the Industrial, Administration and Research (IR) zoning district;

WHEREAS, the temporary moratorium ordinance will provide time for staff to further study the impact of commercial cannabis laboratory testing businesses so that the City Council may make informed decisions on regulations to ensure the public’s health, safety, and welfare;

WHEREAS, the City Council finds that to allow one Bureau of Cannabis Control Type 8 license to operate at 31 Upper Ragsdale Drive, Monterey, with no vested rights arising as a result, and subject to immediate termination upon the termination of this Ordinance, shall not presently create a hindrance or obstruction to the development and implementation of a permanent ordinance regulating commercial cannabis testing laboratory use in the IR zone in the City; and

WHEREAS, the City of Monterey determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CCR, Title 14, Chapter 3 (CEQA Guidelines), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential

to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability. Furthermore, pursuant to Section 15060(c)(2) of the CEQA guidelines, the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment because the ordinance prevents changes in the environment pending the contemplated review of City Code amendments applicable to commercial cannabis activity.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: The foregoing recitals are true and correct and are hereby adopted by the City Council.

SECTION 3: Moratorium

A. Definitions.

"Commercial cannabis activity" includes possession, manufacture, processing, storing, laboratory testing, labeling, transportation, or delivery of cannabis or cannabis products for commercial purposes.

"Cannabis" has the same meaning as Health & Safety Code section 11018, as may be amended.

"Cannabis products" has the same meaning as Health & Safety Code section 11018.1, as may be amended.

"Person" means one or more individuals, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies, partnership, entities, associations, clubs, or organizations composed of two or more individuals (or the manager, lessee, agent, servant, officer, or employee of any of them), whether engaged in business, nonprofit, or any other activity.

B. Prohibition on Commercial Cannabis Activity.

No person shall operate, allow, or permit the establishment, maintenance, and/or operation of any commercial cannabis activity in any zoning district in the City of Monterey. This Section prohibits all activities for which a state license is required under the Medicinal and Adult-Use Cannabis Regulation and Safety Act, as may be amended.

C. Exceptions.

1. Limited and Temporary City Approval.

This Ordinance will not apply to one Bureau of Cannabis Control Type 8 license for cannabis laboratory testing use to occur at 31 Upper Ragsdale Drive, Monterey, with no vested rights arising as a result, and subject to immediate termination upon the termination of this Ordinance or when a permanent ordinance is adopted, whichever occurs sooner. Said limited

approval shall be conditioned upon the written acknowledgement by the property owner and the cannabis laboratory testing Type 8 license applicant/holder, that no vested rights as to the permitted use of the subject property shall accrue as a result of this limited and temporary approval.

2. This Ordinance does not prohibit indoor cannabis cultivation for personal use in compliance with Health & Safety Code section 11362.2.

3. This Ordinance does not prohibit any person employed by a licensed cannabis delivery service to travel on a public road within the City for the purpose of delivering cannabis to persons located in a city or county where the delivery of cannabis is not prohibited. (See, Business & Professions Code sections 26080(b) and 26090(e).)

SECTION 4. Effective Date. This Ordinance is declared to be an urgency measure adopted pursuant to Government Code section 65858. As set forth in the findings above, this Ordinance is necessary for preserving the public safety, health, and welfare. Pursuant to Government Code section 65858, this Ordinance is effective immediately by a 4/5 vote of the City Council, and shall be in full force and effect for 45 days from the date of its adoption. This 45-day period may be extended by the City Council in accordance with the provisions of Government Code section 65858.

SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 4th day of February, 2020, by the following vote:

AYES:	5	COUNCILMEMBERS:	Albert, Haffa, Smith, Williamson, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:



Mayor of said City

ATTEST:



City Clerk thereof

