

ORDINANCE NO. 17-08

**AN INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF
THE TOWN OF MAMMOTH LAKES, STATE OF CALIFORNIA,
ESTABLISHING A MORATORIUM ON THE ESTABLISHMENT OR
EXPANSION OF CANNABIS BUSINESSES PURSUANT TO
GOVERNMENT CODE SECTION 65858**

WHEREAS, the voters of the State of California approved Proposition 215, entitled the Compassionate Use Act of 1996, the intent of which was to enable persons in need of marijuana (also known as cannabis) for medicinal purposes to obtain and use it under limited, specified circumstances; and

WHEREAS, in 2015 the California Legislature adopted a series of laws collectively comprising the Medical Cannabis Regulation and Safety Act (MCRSA), establishing a framework for the licensure and regulation of medical cannabis; and

WHEREAS, Proposition 64, also known as the Adult Use of Marijuana Act (AUMA), was approved by the voters on November 8, 2016. As a result, it is no longer illegal under state law, regardless of medical purposes, to: (1) possess, process, transport, purchase, obtain, or give away certain amounts of marijuana or concentrated cannabis, including as contained in marijuana products, to those 21 years old or older; (2) possess, plant, cultivate, harvest, dry, or process not more than six living plants and the marijuana produced by those plants; (3) smoke or ingest marijuana or marijuana products; and (4) possess, transport, purchase, obtain, use, manufacture, or give away marijuana accessories without compensation to those 21 years old or older; and

WHEREAS, to regulate the commercial non-medical marijuana industry, the AUMA added Division 10 to the California Business and Professions Code, establishing state licensing requirements for commercial marijuana activity, defined as the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of marijuana and marijuana products, regardless of medical purposes and granting state agencies the “exclusive authority to create, issue, renew, discipline, suspend, or revoke” licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana, except as otherwise authorized. The AUMA states that these state agencies shall create the rules and regulations relating to these activities and begin issuing licenses by January 1, 2018; and

WHEREAS, the AUMA allows local governments authority to prohibit or regulate commercial marijuana activities and subject the commercial marijuana activities to zoning and permitting requirements; and

WHEREAS, in June 2017 the California Legislature adopted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which repealed MCRSA and further developed the state’s regulatory framework for both medicinal and non-medicinal marijuana, while preserving the authority of cities and counties to determine whether and how to allow

medicinal and non-medicinal marijuana businesses, commercial cultivation and sale to occur within their jurisdictions; and

WHEREAS, the Town of Mammoth Lakes currently regulates the production and sale of marijuana for medicinal purposes through the Mammoth Lakes Municipal Code, but does not have explicit land use, zoning, and permitting requirements or prohibitions in place regarding commercial cannabis activities; and

WHEREAS, the California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, if the State of California begins issuing licenses for commercial non-medicinal marijuana activities prior to the Town adopting appropriate land use, zoning, and public safety regulations, negative effects on the public health, safety, and welfare would likely occur as a result of commercial non-medicinal marijuana activities near schools, parks, residential zones, and other sensitive receptors; and

WHEREAS, based on the findings herein, the state legalization of commercial marijuana activities in the Town without regulation poses a current and immediate threat to the public health, safety, and welfare in the Town due to the negative land use and public safety impacts of such unregulated uses; and

WHEREAS, it is in the interest of the Town and its residents that the Town undertake a review to consider zoning, land use, and public safety measures to prohibit or regulate commercial marijuana activities and to establish how existing and future medicinal marijuana-related land uses should be regulated in light of the regulation of commercial marijuana activities; and

WHEREAS, California Government Code Section 65858 expressly authorizes the Town Council to adopt by four-fifths (4/5) vote, without following the procedures otherwise required for the adoption of a zoning ordinance, an urgency ordinance that would go into effect immediately following its passage, which is necessary for the immediate protection of the public health, safety, and welfare; and

WHEREAS, the Town of Mammoth Lakes has previously adopted an interim urgency ordinance pursuant to Government Code section 65858 regulating the operation of medicinal marijuana dispensaries, which ordinance was adopted on November 18, 2009 and subsequently expired as provided by law; and

WHEREAS, Government Code Section 65858(f) permits the Town of Mammoth Lakes, following termination of a previous interim urgency ordinance, to adopt another interim urgency ordinance to protect the public safety, health, and welfare from an event, occurrence or set of circumstances different from the event, occurrence or set of circumstances that led to the adoption of the prior interim urgency ordinance; and

WHEREAS, the Town's previous interim urgency ordinance regulating medicinal marijuana dispensaries was adopted at a time when there was considerable uncertainty regarding

cities' authority to regulate medicinal marijuana dispensaries and cities had very little experience with regulating medicinal marijuana dispensaries and observing the effects of the operation of dispensaries on neighborhoods and communities, and the Town wished to have more time to decide how to regulate dispensaries in Mammoth Lakes; and

WHEREAS, following the Town Council's adoption of an ordinance permitting dispensaries to operate, the passage of MCRSA, AUMA, and MAUCRSA has completely changed the treatment of non-medicinal marijuana under state law, and created numerous new issues for the Town to consider in deciding how to regulate medicinal and non-medicinal marijuana, thus satisfying the requirement of Government Code Section 65858(f); and

WHEREAS, the Town of Mammoth Lakes wishes to study its options for regulating the establishment and operation of non-medicinal marijuana businesses and new or expanded medicinal marijuana businesses, land uses, or operations, and wishes to adopt an interim ordinance prohibiting: (i) the operation of non-medicinal marijuana businesses in Mammoth Lakes; (ii) the operation of medicinal marijuana businesses, land uses, dispensaries, cooperatives, or facilities that do not have a valid use permit in Mammoth Lakes; and (iii) the issuance of any new use permit, or the amendment of any existing use permit for any purpose other than the expansion of storage space, for any medicinal marijuana businesses, land uses, dispensaries, cooperatives, or facilities in Mammoth Lakes, while the Town studies its options for the regulation of such establishments; and

WHEREAS, the Town Council intends to keep this urgency ordinance in effect only until the adoption of an ordinance that establishes a comprehensive policy as it relates to commercial and medicinal marijuana activities; and

WHEREAS, the Town Council also intends for the Town to immediately begin work to consider and study a comprehensive policy regarding commercial and medicinal marijuana activities and enact a policy as soon as possible; and

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES DOES ORDAIN AS FOLLOWS:

Section 1. The recitals above are incorporated herein.

Section 2. The Town Council hereby finds, determines, and declares that this urgency ordinance establishing a temporary moratorium as set forth below and adopted pursuant to California Government Code 65858 is necessary because:

A. Certain provisions of AUMA became effective immediately on November 9, 2016, and the AUMA directs the State of California to start issuing licenses for non-medical marijuana-related businesses by January 1, 2018 or sooner. As stated in the recitals, if the State of California begins issuing licenses for commercial non-medical marijuana activities prior to the Town adopting appropriate land use, zoning, and public safety regulations, negative effects on the public health, safety, and welfare would likely occur as a result of commercial non-medical marijuana

activities near schools, parks, residential zones, and other sensitive receptors. The AUMA allows local governments to prohibit or reasonably regulate certain activities thereunder.

B. The Town of Mammoth Lakes does not currently have explicit land use, zoning, and permitting requirements in place governing activities relating to commercial marijuana activities.

C. The Town needs time to consider, review, and enact a comprehensive policy relating to commercial marijuana activities, and therefore, it is necessary to suspend any establishment of medicinal or commercial marijuana activities, or the expansion of existing medicinal marijuana activities, as such uses may be in conflict with the development standards and implementation regulations that the Town will ultimately impose after the Town has considered and studied the issue, which shall be accomplished in an expedited fashion.

D. A temporary moratorium will provide the Town with time to study commercial marijuana activities and potential impacts such land uses may have on the public health, safety, and welfare, as well as how medicinal marijuana activities should be regulated in conjunction with commercial marijuana activities.

E. A temporary moratorium will also provide clarity and consistency that the Town will not allow the establishment of commercial non-medical marijuana activities until the Town has established a comprehensive policy regulating such operations and the State of California begins issuing licenses for such operations.

F. There is a current and immediate threat to the public health, safety, and welfare of the Town and its residents, thereby necessitating the immediate enactment of this moratorium as an urgency ordinance in order to ensure commercial marijuana activities, and new or expanded medicinal marijuana activities, are prohibited in the Town until a comprehensive policy is adopted. Imposition of a moratorium will allow the Town sufficient time to conclude the preparation and enactment of a comprehensive ordinance for the regulation commercial marijuana activities.

Section 3. The following are prohibited pursuant to this ordinance, so long as this ordinance and any extensions are in effect, provided that italicized terms shall be interpreted in accordance with their definitions in the AUMA as amended by the MAUCRSA: (i) the application, establishment, or operation of any *commercial non-medicinal cannabis activities*, defined as the *cultivation*, possession, *manufacture*, *distribution*, processing, storing, laboratory *testing*, labeling, transportation, *delivery*, or *sale* of non-medicinal *cannabis*, *cannabis products*, and *cannabis accessories*; (ii) the establishment of any new medical marijuana cooperative, cultivation facility, processing facility, or other land use or activity that does not have a valid use permit and for which a permit is required pursuant to Chapter 5.38, Chapter 17.24, Chapter 17.28, and/or Section 17.68.100 of the Mammoth Lakes Municipal Code; and (iii) the issuance of any new use permit, or the amendment of any existing use permit for any purpose other than the expansion of storage space, for any existing and/or approved medical marijuana cooperative, cultivation facility, processing facility, or other related land use or activity for which a permit is required pursuant to

Chapter 5.38, Chapter 17.24, Chapter 17.28, and/or Section 17.68.100 of the Mammoth Lakes Municipal Code.

Section 4. The Town Council hereby enacts this interim urgency ordinance by not less than a four-fifths vote, and in light of the findings set forth herein, under the authority granted to it by Article XI, Section 7 of the California Constitution and Section 65858(a) of the California Government Code, which allows the Town to adopt an interim urgency ordinance, in order to protect the public safety, health, and welfare, prohibiting any uses that may be in conflict with a zoning proposal that the Town Council, planning commission or the planning department is considering or studying or intends to study within a reasonable time.

Section 5. The Town Council hereby directs the Community Development Department and Police Department to consider and study possible means of regulating or prohibiting medical marijuana dispensaries, including zoning-based regulations and other regulations.

Section 6. The Town Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 7. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 8. This ordinance shall become effective immediately upon adoption and shall be in effect for forty-five days from the date of adoption unless extended by the Town Council as provided for in Government Code Section 65858.

Section 9. The Town Clerk shall certify to the passage of this ordinance and cause the same or a summary thereof to be published within fifteen (15) days after adoption in a newspaper of general circulation, printed and published in Mammoth Lakes, California.

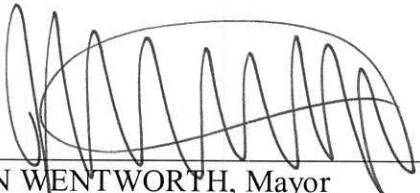
PASSED AND ADOPTED this 6th day of September, 2017 by the following vote:

AYES: Councilmembers Colin Fernie, Shields Richardson, Bill Sauser, Mayor Pro Tem Cleland Hoff, and Mayor John Wentworth

NOES:

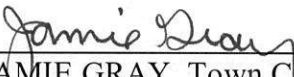
ABSENT:

ABSTAIN:



JOHN WENTWORTH, Mayor

ATTEST:



JAMIE GRAY, Town Clerk