URGENCY ORDINANCE NO. 798

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDUSTRY EXTENDING A CITYWIDE MORATORIUM ON THE CULTIVATION, PROCESSING, MANUFACTURING, LABORATORY TESTING, LABELING, STORING AND WHOLESALE AND RETAIL DISTRIBUTION OF CANNABIS IN THE CITY, FOR A PERIOD OF 10 MONTHS AND 15 DAYS, PURSUANT TO GOVERNMENT CODE SECTION 65858(a)

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

SECTION 1. Findings.
The City Council of the City of Industry (the "City") adopts this ordinance based upon the following findings and determinations:

A. On October 13, 2016, the City Council adopted Urgency Ordinance No. 797, which imposed a 45-day moratorium on the cultivation, processing, manufacturing, laboratory testing, labeling, storing, and wholesale and retail distribution of cannabis in the City. The purpose of the moratorium was to provide the City with time to study the issues related to recreational marijuana and possible amendments to the City's Municipal Code ("Code"), so that appropriate land use decisions can be made with respect to recreational marijuana. Staff has commenced its research on this issue in light of the provisions of Proposition 64, the Control Regulate and Tax the Adult Use of Marijuana Act ("AUMA"); and

B. Pursuant to the provisions of Government Code Section 65858, the City may extend a moratorium ordinance after a noticed public hearing, to prohibit uses of land which may conflict with a contemplated general plan, specific plan or zoning proposal which the legislative body, planning commission, or planning department is considering or studying, or intends to consider or study within a reasonable period of time; and

C. The City has an overriding interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life, maintaining commercial and industrial activities, and the character of the City's neighborhoods. Without stable, well-planned neighborhoods, areas of the City can quickly deteriorate, with tragic consequences to social, environmental and economic values. Absent the adoption of an extension of the moratorium, it is likely that the establishment and operation of recreational marijuana businesses, and the cultivation of marijuana in the City, will result in harmful effects to the City's businesses, property owners and residents; and

D. As drafted, the AUMA allows local governments to ban recreational marijuana businesses entirely, and allows cities to reasonably regulate personal indoor cultivation, and to ban outdoor cultivation.

E. On November 5, 1996, the voters of the State of California approved Proposition 215, which enacted the Compassionate Use Act of 1996, codified at California Health and Safety Code §11362.5 ("the CUA"). The CUA decriminalizes the otherwise unlawful possession and cultivation of marijuana for certain medical purposes under certain limited and specified circumstances; and

F. In 2004, the Legislature enacted Senate Bill 420, codified at California Health & Safety Code §11362.7 *et seq.*, and referred to as the Medical Marijuana Program ("MMP") to clarify the scope of the CUA, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMP to expressly recognize the authority of cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective"; and

G. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land…"; and

H. On October 9, 2015, Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act ("MMRSA"). The MMRSA established a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate before obtaining a State license. The MMRSA allows the City to completely prohibit commercial and private medical marijuana activities; and

I. On June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"), for the November 8, 2016 ballot. If passed by a majority of California voters, the AUMA would make it lawful for individuals 21 years of age and 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 marijuana in the form of concentrated cannabis, or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products. The AUMA would also make it lawful for individuals 21 years of age and older, to possess, plant, cultivate, harvest, dry or process not more than six living marijuana plants and possess the marijuana produced by the plants. Further, the AUMA would make it lawful for individuals 21 years of age and older, to smoke or ingest marijuana or marijuana products. If passed by the voters, portions of the AUMA could take effect as soon as the

day after the election, specifically recreational use by adults, and cultivation in private residences; and

J. As set forth in Chapter 9.92 of the City's Code, the cultivation and delivery of medical marijuana, and medical marijuana dispensaries are prohibited in all zones in the City; and

K. The City Council finds there is a current and immediate threat to the health, safety and welfare of City residents, those employed in the City, local businesses, and the community as a whole, arising from the risks associated with the cultivation, processing, manufacturing, laboratory testing, labeling, storing, and wholesale and retail distribution of cannabis whether medical or recreational. Citywide prohibition of all activities, from cultivation to point of sale, is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities; and

L. Several California cities have experienced negative secondary effects and adverse impacts, of marijuana processing and distribution uses, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and attempted robberies, and fire hazards; and

M. The California Attorney General's 2008 Guidelines for Security and Non-Diversion of Marijuana Grown for Medical Use points out that marijuana cultivation or other concentrations of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity, such as loitering or crime; and

N. Until and unless the California Department of Food and Agriculture establishes a track and trace program for reporting the movement of marijuana items through the distribution chain, as mandated by California Business & Professions Code §19335, the risk of crime from theft and burglary attendant to manufacturing and distribution facilities is significant. Until traceable, stolen product will have street value for sale to minors; and

O. Manufacturing of cannabis products can involve the use of chemicals and solvents, and as a result, the manufacture of hash oil concentrate, often added to edibles, drink and liquids, carries a significant risk of explosion due to the distillation process utilized to extract tetrahydrocannabinol. Major burn treatment centers at two hospitals in Northern California reported in 2015 that nearly 10 percent of severe burn cases were attributed to butane hash oil explosions, which was more than burn cases from car accidents and house fires combined; and

P. The CUA, MMP and Proposition 64 do not confer a land use right or the right to create or maintain a public nuisance; and

Q. The City Council desires to assure that the cultivation, processing, manufacturing, laboratory testing, labeling, storing, and wholesale and retail distribution of cannabis is prohibited in the City until the City has had a reasonable opportunity to study the ramification of same, and report the findings, so that appropriate land use decisions can be made; and

R. The City Council further desires to extend this moratorium ordinance to expressly clarify that the cultivation, processing, manufacturing, laboratory testing, labeling, storing, and wholesale and retail distribution of cannabis is prohibited in all zones throughout the City.

S. The immediate ban of all commercial or industrial cannabis activities will maintain the status quo while allowing the City to investigate and research the safety and options of regulation and taxation; and

T. The City will take steps to update its Municipal Code and Zoning Ordinance to develop a comprehensive approach to cannabis, meant to protect the public health, safety, and welfare; and

U. This ordinance is not a project subject to the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.*, pursuant to Sections 15306 and 15378 of the CEQA Guidelines because it does not have the potential to create a physical environmental effect.

SECTION 2. CEQA.

A. This ordinance is not a project within the meaning of Section 15378 of the CEQA Guidelines because it has no potential for resulting in a physical change in the environment, directly or indirectly.

B. This ordinance is not a project within the meaning of Section 15306 (Information Collection) because it does not have the potential to create a physical environmental effect.

C. This ordinance is not subject to CEQA under the general rule set forth in Section 15061(b)(3) of the CEQA Guidelines that CEQA only applies to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs A-B above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

SECTION 3. Extension of Moratorium.

A. The City Council finds and determines that the Recitals set forth in Section 1 are true and correct and are incorporated herein by reference.

B. In accordance with the authority granted pursuant to Government Code Section 65858, the moratorium imposed pursuant to Urgency Ordinance No. 797 shall hereby be extended for a period of ten (10) months and fifteen (15) days from and after the expiration of Urgency Ordinance No. 797, and the following regulations are hereby imposed. These regulations shall prevail over any conflicting provisions of the City of Industry Municipal Code, or other ordinances, resolutions, and policies of the City of Industry:

1. A person may not plant, cultivate, harvest, dry, or process cannabis outdoors in any zoning district in the City. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved for any such use or activity.

2. Any commercial or industrial use involving cannabis, including, but not limited to, the cultivation, processing, manufacturing, laboratory testing, labeling, storing, delivery, transportation, and wholesale and retail distribution of cannabis, and all cannabis derivatives, is prohibited. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved for any such use or activity.

3. For purposes of this Ordinance, the term "cannabis" shall have the same meaning as "cannabis" under California Business and Professions Code Section 19300.5(f).

Section 4. Interim Urgency Ordinance.

Based on the findings set forth in Section 1, above, this ordinance is an interim ordinance adopted as an urgency measure pursuant to Government Code Section 65858, and pursuant to the authority granted to the City in Article 11, Section 7 of the California Constitution, and is for the immediate preservation of the public peace, health and welfare.

Section 5. Effective Date.

Pursuant to Government Code Section 65858, this Ordinance shall become effective immediately upon adoption, if passed and adopted by at least a four-fifths vote of the City Council, and shall extend the moratorium from and after the date that Urgency Ordinance No. 797 would have otherwise expired, for a period of ten (10) months and fifteen (15) days, pursuant to Government Code Section 65858. This ordinance will terminate upon a determination by the City Council supported by substantial evidence that the threat to the public health, safety, and welfare described in Section 1 of this ordinance has been ameliorated, or by the adoption of ordinance or amendments extending or superseding this ordinance.

Section 6. 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, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

SECTION 6: Certification.

That the City Clerk shall certify to the adoption of this Resolution and that the same shall be in full force and effect.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Industry at a regular meeting held on November 10, 2016 by the following vote:

AYES:	COUNCIL MEMBERS:	Cruz, Ruggles, MPT/Moss, and M/Radecki
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	Haber

Mark D. Radecki, Mayor

ATTEST:

Diane M. Schlichting, Chief Deputy City Clerk

STATE OF CALIFORNIA COUNTY OF LOS ANGELES CITY OF INDUSTRY	)) ss.)	CHIEF DEPUTY CITY CLERK'S CERTIFICATION RE: ADOPTION OF CITY ORDINANCE

I, Diane M. Schlichting, Chief Deputy City Clerk of the City of Industry, do hereby certify that the foregoing Urgency Ordinance No. 798 was adopted at a regular meeting of the City Council on November 10, 2016 by the following roll-call vote:

AYES:	COUNCIL MEMBERS:	Cruz, Ruggles, MPT/Moss, M/Radecki
NOES:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	Haber
ABSTAIN:	COUNCIL MEMBERS:	None

Diane M. Schlichting

Diane M. Schlichting
Chief Deputy City Clerk, City of Industry

(SEAL)