

**CITY OF SAN MATEO
EMERGENCY ORDINANCE NO. 2017-3**

**AN EMERGENCY ORDINANCE OF THE CITY OF SAN MATEO
IMPOSING A MORATORIUM ON THE USE OF ANY PROPERTY IN
THE CITY OF SAN MATEO FOR THE CULTIVATION, PROCESSING,
OR SALE OF MARIJUANA AND PROHIBITING THE OUTDOOR
CULTIVATION OF MARIJUANA ON THE GROUNDS OF A PRIVATE RESIDENCE**

WHEREAS, on November 8, 2016, California voters approved Proposition 64 entitled "The Control, Regulate and Tax Adult Use of Marijuana Act" which legalized the possession and use of marijuana by persons 21 years of age and older, and made lawful, subject to state licensing, the cultivation, testing, and sale of nonmedical marijuana; and

WHEREAS, Proposition 64 added Section 26200 to the California Business and Professions Code which authorizes the City of San Mateo "to completely prohibit the establishment or operation of one or more types of [marijuana] businesses" made lawful by the proposition; and

WHEREAS, Proposition 64 added Section 11362.2 to the California Health and Safety Code which, among other things, permits individuals to grow for their personal use marijuana at their homes, but authorizes the City to prohibit the cultivation of marijuana outdoors upon the grounds of a private residence; and

WHEREAS, the City Council has expressed serious concerns about the cultivation, processing and sale of marijuana and marijuana products within the community and the outdoor cultivation of marijuana at private residences, including but not limited to, compatibility of these uses with sensitive neighboring uses, and potential security concerns with the open and obvious cultivation and sale of marijuana; and

WHEREAS, the San Mateo City Council is concerned that without carefully crafted, comprehensive local regulation these uses might have serious deleterious effects on the public peace, health, safety and general welfare of the city's residents, and the Council has determined it needs sufficient time to study and consider the potential impacts of commercial marijuana enterprises before deciding whether to allow such uses within the community; and

WHEREAS, on November 7, 2016, the City Council imposed a moratorium, expiring on February 5, 2017, on the establishment of commercial marijuana enterprises and the cultivations of marijuana at private residences to allow time for City staff to study these issues; and

WHEREAS, the City's study of these issues has not yet been completed and the City wishes to impose a continued moratorium on the establishment of commercial marijuana enterprises and the outdoor cultivations of marijuana at private residences; and

WHEREAS, the City of San Mateo is a charter city; and

WHEREAS, City Charter section 2.16 provides that any ordinance declared by the City Council to be necessary as an emergency measure for preserving the public peace, health, safety, or welfare and containing the reasons for its urgency, may be introduced and passed at one meeting.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN MATEO FINDS AND DOES ORDAIN AS FOLLOWS:

Section 1. FINDINGS. In accordance with City Charter Section 2.15, this Ordinance is necessary as an emergency measure to preserve the public health, safety, and welfare. As a result of the approval of Proposition 64, the commercial cultivation, processing, and sale of marijuana, as well as the cultivation for personal use of marijuana in one's private yard is now legal in the state. These uses have the potential to have serious adverse impacts on the use of neighboring properties, including, the emission of nuisance odors, fire safety associated with the use of high intensity lighting, and security and public safety concerns associated with the open cultivation and sale of marijuana which has, and in the near term will continue to have, high dollar value in illicit markets. In addition, these uses could have serious adverse impacts on the consumption of limited resources including excessive use of water and energy.

Section 2. MORATORIUM. Notwithstanding any provision of the San Mateo Municipal Code to the contrary, this ordinance imposes a moratorium on:

(a) the use of any property within the city for the cultivation, storage, manufacturing, processing, or sale of nonmedical marijuana for adults 21 years of age and over;

(b) the possession, planting, cultivation, harvesting, drying, or processing of marijuana outdoors upon the grounds of a private residence; and

(c) the issuance of any permit, license, or certificate for the operation of any such uses shall be prohibited.

Section 3. Nothing in this ordinance shall create any criminal liability for any individual who for personal use is processing, planting, possessing, cultivating, harvesting, or drying marijuana or marijuana products as defined in the proposition, so long as such activities occur indoors.

Section 4. SEVERABILITY. In the event any section, clause or provision of this Ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared to be invalid or unconstitutional.

Section 5. CEQA. In accordance with CEQA Guidelines section 15378(a), adoption of this ordinance is not a "project" subject to CEQA, because the ordinance has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even if adoption of this ordinance did constitute a "project," it would be exempt from CEQA in accordance with CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that there is no possibility that the activity in question may have a significant impact on the environment. The purpose of this urgency ordinance is to preserve the status quo while the City studies the potential adverse impacts of commercial marijuana enterprises and the outdoor cultivation of marijuana at private residences.

Section 6. EFFECTIVE DATE. This Ordinance shall take effect immediately upon passage by a 4/5ths vote of the City Council, and shall automatically be repealed on the 91st day after the date the ordinance is adopted, unless extended.

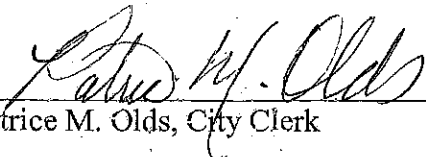
Section 7. PUBLICATION. This Ordinance shall be published in summary in a newspaper of general circulation, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the City Charter.

Section 8. LEGISLATIVE HISTORY AND EFFECTIVE DATE. PASSED AND ADOPTED by the City Council of the City of San Mateo, California at a regular City Council meeting held this 17th day of January 2017 by the following vote:

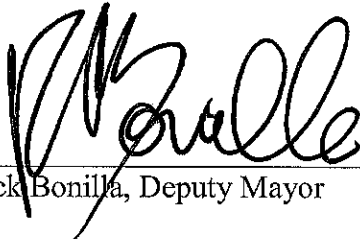
The foregoing ordinance was adopted by the City Council of the City of San Mateo, State of California by the following vote:

AYES: Council Members Bonilla, Freschet, Goethals and Papan
NOES: None
ABSENT: Lim

ATTEST:



Patrice M. Olds, City Clerk



Rick Bonilla, Deputy Mayor