CITY OF PHOENIX
PHOENIX, OREGON

ORDINANCE NO. 965

AN ORDINANCE PLACING A MORATORIUM ON THE GROWING AND CULTIVATION OF RECREATIONAL MARIJUANA, EXCEPTING GROWING AND CULTIVATION FOR PERSONAL RECREATIONAL USE, WITHIN THE CITY LIMITS OF PHOENIX, OREGON

RECITALS:

WHEREAS, in the coming months, Oregon will gain a second regulatory program for marijuana. The first is an existing program for medical marijuana, which was approved by the voters in 1998 and is governed by the Oregon Medical Marijuana Act ("OMMA"), codified at ORS 475.300 *et seq.* The Oregon Health Authority administers the OMMA. In 2013, House Bill 3460 required the Oregon Health Authority to adopt regulations for the registration of medical marijuana dispensaries. Shortly thereafter, the Oregon Legislature allowed local governments to adopt a moratorium on the operation of medical marijuana dispensaries.

WHEREAS, Oregon's second marijuana program was approved by the voters in November 2014, through Ballot Measure 91, which legalizes recreational marijuana. The recreational marijuana program will be administered by the Oregon Liquor Control Commission ("OLCC") in accordance with Measure 91. OLCC is currently developing rules to implement the program, which will go into effect initially on July 1, 2015, with the allowance of personal use and possession of recreational marijuana and then on January 4, 2016, when OLCC must begin accepting license applications to produce and sell marijuana. OLCC's rules will thus likely be adopted by January 4, 2016. In addition to OLCC's rules, the state legislature has proposed several bills, which if adopted may affect state law and regulation for both the recreational and medical marijuana programs as well as local government authority to regulate the programs. In sum, Oregon's two marijuana programs will be administered by two different state agencies under two separate and distinct regulatory frameworks. The regulations implementing recreational marijuana are not yet developed, and regulations implementing medical marijuana will likely be amended by the current state legislature. The regulations affecting both programs should be solidified in the coming months, but neither the state nor the regulatory agencies have enacted regulations regarding the commercial cultivation and growing of marijuana for recreational use.

WHEREAS, recent efforts to establish commercial marijuana grow facilities within the City jurisdictional boundaries have caused public safety, health and welfare concerns. Since the state law and agency rulemaking has not yet addressed or regulated the issue of commercial cultivation and growing of marijuana for recreational purposes, the purpose of this ordinance is to impose a moratorium on such activities in any area within the jurisdiction of City of Phoenix, with the exception of growth and cultivation for recreational use by the person conducting such activities on their own property. State law and agency regulations are currently silent and/or not directed at the commercial cultivation and growth of marijuana for recreational use. The moratorium will also allow the City to develop at a later time comprehensive regulations and land use regulations that are consistent with state regulations anticipated in the next year.

NOW, THE CITY OF PHOENIX ORDAINS AS FOLLOWS:

SECTION 1. TITLE

This ordinance shall be known as Ordinance No. 965.

SECTION 2. MORATORIUM DECLARED ON THE CULTIVATION AND GROWING OF RECREATIONAL MARIJUANA.

With the sole exception of growth and cultivation of recreational marijuana by a person who conducts such activities on his or her own residential property and for his or her own personal use or consumption, the cultivation and growth of recreational marijuana shall be prohibited within the City's jurisdictional boundaries.

For purposes of this ordinance, the term "marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include industrial hemp, as defined by ORS 571.300, the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

SECTION 3. DURATION OF MORATORIUM

The moratorium shall continue until hereinafter repealed.

SECTION 4. ENFORCEMENT

This Ordinance shall be enforceable under the City of Phoenix Municipal Code and state law. Violators of this ordinance are subject to the penalties provided therein.

SECTION 5. REMEDIES NOT EXCLUSIVE

The remedies available under this ordinance for a violation of the same are not exclusive of any other remedies available under any applicable federal, state or local law. The City may, in its discretion, seek cumulative remedies for a violation of the moratorium imposed herein.

SECTION 6. SEVERABILITY.

If for any reason any court of competent jurisdiction holds any portion of this ordinance to be invalid, and such holding is upheld on any appeal, such portion shall be deemed a separate, distinct and independent portion. Any such holding shall not affect the validity of the remaining portions.

SECTION 7. SCRIVENER'S ERRORS.

Any scrivener's errors in this ordinance may be corrected by order of the City Council.

SECTION 8. EFFECTIVE DATE AND EMERGENCY

This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall take effect immediately upon adoption.

PASSED AND APPROVED by the City Council of the City of Phoenix and signed in authentication thereof at a regular meeting on the 18th day of May, 2015.

Jeff Bellah, Mayor

Janette Boothe, City Recorder