

ORDINANCE NO. 2015-16

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MARIA,
CALIFORNIA AMENDING SECTION 12-54 TO THE SANTA MARIA MUNICIPAL
CODE REGARDING CANNABIS REGULATION**

The City Council of the City of Santa Maria, California, makes the following findings:

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code § 11362.5 and entitled "The Compassionate Use Act of 1996" or "CUA"); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere;" and

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as California Health & Safety Code § 11362.7 et seq. and referred to as the "Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215 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 Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

WHEREAS, 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..." Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that "there is no right – and certainly no constitutional right – to cultivate medical marijuana..." The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United State, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess

with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes, although there is recent case law that raises a question as to whether the Federal Government may enforce the Act where medical marijuana is allowed; and

WHEREAS, on October 9, 2015, Governor Jerry 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 (hereinafter, the "MMRSA"). The MMRSA establishes 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 in addition to a State license. The MMRSA allows the City to completely prohibit commercial and private medical marijuana activities; and

WHEREAS, the City Council finds that all medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP, can adversely affect the health, safety, and well-being of City residents. Citywide prohibition 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. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration 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

WHEREAS, the limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA requires the City to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so; and

WHEREAS, while the City Council believes cultivation and all commercial medical marijuana uses are prohibited under the City's permissive zoning regulations, it desires to enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City; and

WHEREAS, the Planning Commission held a duly noticed public hearing on November 18, 2015, at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt an ordinance regulating medical marijuana cultivation.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANTA MARIA:

SECTION 1. The following amendments shall be made to Section 12-54 of the Santa Maria Municipal Code:

CHAPTER 12-54 ~~MEDICAL MARIJUANA DISPENSARIES~~ CANNABIS REGULATIONS

Section 12-54.01. Purpose.

The purpose of this chapter is to ~~prohibit medical marijuana dispensaries from being opened or established~~ comprehensively regulate cannabis within the City of Santa Maria.

Section 12-54.02. Definition.

For purposes of this chapter, the following definition shall apply:

~~(a) "Medical marijuana dispensary" means a facility or location, whether fixed or mobile, where medical marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 et seq.~~

(a) "Cannabis" and "Medical Marijuana" mean all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code. "Cannabis" does not include 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 therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this ordinance, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(b) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(c) "Cultivation Site" means any facility or location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities.

(d) "Delivery" means the commercial transfer of medical marijuana, medical cannabis or medical marijuana or cannabis products from a medical marijuana dispensary. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a dispensary of medical marijuana, cannabis or medical marijuana or cannabis products.

~~(e) "Medical marijuana dispensary" means a facility or location, whether fixed or mobile, where medical marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 et seq.~~

Section 12-54.03. Medical marijuana dispensaries prohibited.

Medical marijuana dispensaries and the delivery of Medical Marijuana is ~~are~~ prohibited in every zone of the City. No person shall operate or permit to be operated a medical marijuana dispensary in or upon any premises in the City.

Section 12-55.03. Cannabis Cultivation prohibited.

The Cultivation of Cannabis, whether for private use or commercial sale or distribution, is prohibited in every zone of the City. No person shall operate a Cultivation Site, or otherwise grow or Cultivate Cannabis in or upon any premises in the City.

Section 12-54.04. Severability.

If any provision of this Section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Section that can be given effect without the invalid provision or application, and to this end the provisions of this Section are severable.

SECTION 2. ENVIRONMENTAL DETERMINATION. The within Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), and the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061(b)(3) (General Rule) of the CEQA Guidelines, because the City Council hereby finds with certainty that there is no possibility the passage of this Ordinance amending the zoning code will have a significant effect on the environment.

SECTION 3. This Ordinance shall be in full force and effect thirty (30) days after its passage. Within fifteen (15) days following its passage, the City Clerk shall cause this Ordinance to be published in a newspaper of general circulation in accordance with State Law; or when deemed necessary due to the length or complexity of the Ordinance, cause a summary of the Ordinance to be prepared and published at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. If a summary is published at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted, then within fifteen (15) days after adoption of the Ordinance the City Clerk shall publish a summary of the Ordinance with the names of those City Council Members voting for and against the Ordinance and shall post a certified copy of the full text of such adopted Ordinance along with the names of those City Council Members voting for and against the Ordinance.


INTRODUCED at a regular meeting of the City Council held on the 1st day of December, 2015, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

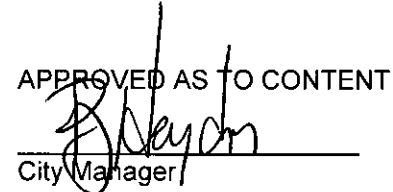
ATTEST:

Mayor

Chief Deputy City Clerk

APPROVED AS TO FORM


City Attorney

APPROVED AS TO CONTENT


City Manager