

ORDINANCE NO. 1575

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANTECA AMENDING MANTECA MUNICIPAL CODE TITLE 8, CHAPTER 8.35, SECTIONS 8.35.010, 8.35.020, 8.35.030, 8.35.040 AND 8.35.050, RELATING TO MEDICAL MARIJUANA

The City Council of the City of Manteca does ordain as follows:

SECTION I: Findings and Purpose. The City Council finds and declares as follows:

- A. 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”).
- B. 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.”
- C. 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.
- D. 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

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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.

- E. 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.

- F. On October 9, 2015 Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (hereafter “MMRSA”). The MMRSA set up 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 medical marijuana activities.

- G. The City Council finds that commercial 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. The San Joaquin County Sheriff’s Department, the City of Manteca Police Department, and other public entities have reported adverse impacts from the cultivation of marijuana, including offensive odors, increased water and electrical usage, increased risk of trespassing and burglary, and acts of violence associated with the commission of such crimes or the occupants’ attempts to prevent such crimes. 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.

- H. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program

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does not confer a land use right or the right to create or maintain a public nuisance.

- I. The MMRSA contains language that 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 contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. The MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.

SECTION II: Authority. This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program, and The Medical Marijuana Regulation and Safety Act.

SECTION III: The title of Chapter 8.35 and Sections 8.35.010 through 8.35.050 of the Manteca Municipal Code shall be amended to read as follows:

Chapter 8.35 Medical Marijuana

8.35.010 Purpose and Findings

- A. It is the purpose and intent of this chapter to ban cultivation of medical marijuana in all areas within the City of Manteca.
- B. It is the purpose and intent of this chapter to ban the delivery of medical marijuana in all areas within the City of Manteca.
- C. It is the purpose and intent of this chapter to ban all vehicular transportation and vehicular storage of medical marijuana in all areas in the City of Manteca, except that qualified patients and caregivers shall be allowed to transport lawfully acquired medical marijuana from a licensed dispensary to their place of residence and/or to their patient if they are a caregiver.
- D. It is the purpose and intent of this chapter to ban medical marijuana dispensaries in all areas within the City of Manteca.
- E. This ordinance, in compliance with the Compassionate Use Act and the Medical Marijuana Regulation and Safety Act, does not interfere with a patient's right to medical marijuana, nor does it criminalize possession

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of medical marijuana by qualified patients and caregivers, pursuant to state law.

8.35.020 Definitions.

“Cannabis” shall have the same meaning as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time.

“Caregiver” or “primary caregiver” shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.

“City” means the City of Manteca.

“Cultivation” shall have the same meaning as set forth in Business & Professions Code § 19300.5(l) as the same may be amended from time to time.

“Delivery” shall have the same meaning as set forth in Business & Professions Code § 19300.5(m). Delivery does not include the lawful transportation of medical cannabis or medical cannabis products on public roads by a state licensee transporting medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee.

“Dispensary” or “medical marijuana dispensary” shall have the same meaning as set forth in Business & Professions Code § 19300.5(n) as the same may be amended from time to time. For purposes of this Chapter, “Dispensary” shall also include a cooperative. “Dispensary” shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code, (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code, (3) a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code, (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code, (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

“Medical cannabis,” “medical cannabis product,” or “cannabis product” shall have the same meanings as set forth in Business & Professions Code § 19300.5(ag) as the same may be amended from time to time.

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“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

“Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate trust, business trust, receiver, syndicate or any other group or combination acting as a unit and includes the plural as well as the singular number.

“Qualifying patient” or “Qualified patient” shall have the same meaning as set forth in Health and Safety Code §11362.7 as the same may be amended from time to time.

“Transport” shall have the same meaning as set forth in Business & Professions Code § 19300.5(m) as the same may be amended from time to time.

8.35.030 Cultivation Prohibited

Commercial cannabis activities of all types are expressly prohibited in all zones and all specific plan areas in the City. No person shall establish, operate, conduct, or allow a commercial cannabis activity anywhere within the City.

Cultivation of cannabis for non-commercial purposes, including cultivation by a qualified person or a primary caregiver, is expressly prohibited in all zones and all specific plan areas in the City. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes.

This section is meant to prohibit all activities for which a State license is required. Accordingly, the City shall not issue any permit, license, or other entitlement for any activity for which a State license is required under the MMRSA.

8.35.040 Deliveries Prohibited

All deliveries of medical cannabis are expressly prohibited within the City. No person shall conduct any deliveries that either originate or terminate within the City.

This section is meant to prohibit all activities for which a State license is required. Accordingly, the City shall not issue any permit, license, or other entitlement for any activity for which a State license is required under the MMRSA.

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8.35.050 Transportation and Storage Prohibited

No person, including but not limited to a qualified patient or primary caregiver, shall store medical cannabis or medical cannabis products in a vehicle unless the vehicle is secured inside a locked building.

No person, including but not limited to a qualified patient or primary caregiver, shall transport medical cannabis or medical cannabis products in a vehicle except when transporting it directly from a licensed dispensary directly to their place of residence, or their patient's or caregiver's place of residence, or when transporting between the places of residence of the patient and caregiver.

No qualified patient or primary caregiver shall leave medical cannabis or medical cannabis products outside of their immediate control, for any length of time, in any place open to the public, including in any vehicle parked in a place open to the public.

SECTION IV: SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION V: EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days from adoption.

SECTION VI: PUBLICATION

Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a copy of it to be published once in the Manteca Bulletin, a newspaper of general circulation, along with a notice setting forth the date of the adoption and the title of this Ordinance.

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DATED: January 19, 2016

ROLL CALL:

AYES: Councilmembers DeBrum, Hernandez, Moorhead, Morowit and Silverman

NOES: None

ABSTAIN: None

ABSENT: None

**STEPHEN F. DEBRUM
MAYOR**

ATTEST:

**JOANN TILTON, MMC
CITY CLERK**

CERTIFICATE

I, JOANN TILTON, City Clerk of the City of Manteca, do hereby certify that Ordinance No. 1575 was **INTRODUCED** at the regular meeting of the Manteca City Council held the 5th day of January, 2016 and was thereafter **PASSED, ADOPTED AND ORDERED TO PRINT** at the regular meeting of the Manteca City Council held the 19th day of January 2016.

**JOANN TILTON, MMC
CITY CLERK**

