

**ORDINANCE NO. 2016-01**

**AN ORDINANCE OF THE CITY OF NEWMAN AMENDING  
TITLES 3 BUSINESS REGULATIONS AND 8 HEALTH AND SANITATION;  
SECTIONS 3.01 REVENUE LICENSES AND 8.07 MEDICAL MARIJUANA  
DISPENSARIES OF THE NEWMAN MUNICIPAL CODE.**

WHEREAS, the City Council believes that the cultivation of marijuana (cannabis) compromises the public peace, health and safety and quality of life for Newman residents; and

WHEREAS, the City of Newman is desirous of drafting a comprehensive policy to expressly make clear that the commercial and personal cultivation of medical marijuana (cannabis) as allowed by the CUA and MMP, and related commercial uses, are prohibited in all zones, planned developments, specific and master plan areas throughout the City; and

WHEREAS, the City Council of the City of Newman desires to prohibit the following:

- I. All Commercial Cannabis Activities,
  - II. Cannabis Deliveries Within The City,
  - III. All Activities For Which A License Is Required Under The Medical Marijuana Regulation And Safety Act,
  - IV. Cultivation Of Cannabis For Non-Commercial Purposes In The City Of Newman;
- and

WHEREAS, the proposed ordinance is not defined as a project under CEQA because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWMAN DOES ORDAIN AS FOLLOWS:

**SECTION 1.**

**FINDINGS AND PURPOSE.**

- 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 *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 States, 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 activities 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 (cannabis) 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.
- H. 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.
- 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 (cannabis) activities.
- J. While the City Council believes that cultivation and all commercial medical marijuana (cannabis) 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, planned developments, specific and master plan areas throughout the City.

## SECTION 2.

TITLE 3, Chapter 3.01.040 of the Newman City Code is amended as follows:

### **3.01.040 License and tax payment required.**

- A. It shall be unlawful for any person to commence, establish, maintain or carry on any business enterprise whatever in the City:
  - 1. Without first obtaining a license from the City, whether the business enterprise or the person is subject to a City license tax under this chapter or not; and
  - 2. Without fully complying with any and all other regulations of such business contained in this chapter, or other regulatory provisions now existing or hereafter to be adopted by the City.
- B. This section shall not be construed to require any person to obtain a license prior to doing business within the City if such requirement conflicts with applicable statutes of the United States or the State of California. Persons not so required to obtain a license prior to doing business within the City nevertheless shall be liable for payment of the tax imposed by this chapter.

C. Notwithstanding any provision of this code to the contrary, any use, entitlement, authorization, license or permit allowed or issued under this code shall be consistent with state and federal law.

D. *The City shall not approve licenses or uses for a medical marijuana (cannabis) collective, cooperative or dispensary or any other commercial cannabis (marijuana) activity.*

E. *The City shall not approve licenses or uses for the distribution, cultivation, manufacturing, transportation, delivery, testing, or processing of medical marijuana (cannabis).*

F. *The City shall not approve licenses or uses for any activity that requires a license or any other authorization or approval under the Medical Marijuana Regulation and Safety Act.*

### SECTION 3.

TITLE 8, Chapter 8.07 of the Newman City Code is amended as follows:

#### Chapter 8.07 MEDICAL MARIJUANA DISPENSARIES (CANNABIS) AND CULTIVATION

##### Sections:

8.07.010 Definitions.

~~8.07.020 Medical marijuana dispensaries as prohibited use: Prohibition.~~

~~8.07.030 Public Nuisance.~~

~~8.07.040 Civil Penalties.~~

8.07.010 Definitions.

~~The term “medical marijuana dispensary” or “dispensary” means any facility or location, stationary or mobile, where medical marijuana is cultivated, made available to and/or distributed to any of the following: a primary caregiver, a qualified patient, or a person with an identification card, in accordance with Health and Safety Code Section 11362.5 et seq. The terms “primary caregiver,” “qualified patient,” and “person with an identification card” shall be as defined in Health and Safety Code Section 11362.5 et seq.~~

~~A “medical marijuana dispensary” shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with the applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.~~

~~The term “medical marijuana dispensary” as defined herein is not intended, nor shall it be construed, to apply to the cultivation, delivering, giving away, providing, or furnishing of marijuana by a qualified patient, a primary caregiver, or a person with an identification card, as defined in Health and Safety Code Section 11362.5 et seq., provided such activity complies strictly with all applicable California law, including but not limited to Health and Safety Code Sections 11362.5, 11362.765, and 11362.77. (Ord. 2008-6, 10-28-2008)~~

*“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.*

*“Commercial cannabis activity” shall have the same meaning as that set forth in Business & Professions Code § 19300.5(k) as the same may be amended from time to time.*

*“Cooperative/Collective” shall mean two or more persons collectively or cooperatively cultivating, distributing, using, transporting, possessing, administering, delivering or making available medical marijuana (cannabis), with or without compensation.*

*“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.*

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

*“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/collective.*

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

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

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

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

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

*“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.*

*“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.*

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

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

*“Testing laboratory” shall have the same meaning as set forth in Business & Professions Code § 19300.5(z) 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(am) as the same may be amended from time to time.*

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

~~8.07.020 Medical marijuana dispensaries as prohibited use. A medical marijuana dispensary as defined in this chapter is prohibited in all zones and planned developments as defined in NCC Title 5, Zoning, and no permit shall be issued therefor. (Ord. 2008-6, 10-28-2008)~~

#### 8.07.020 Prohibition.

- A. *Commercial cannabis (marijuana) activities of all types including, but not limited to, dispensaries, collectives, cooperatives, transportation, distribution, cultivation, manufacturing, delivery, testing, and processing are expressly prohibited in all zones, planned developments, and all specific and master plan areas in the City of Newman. No person shall establish, operate, conduct or allow any commercial cannabis (marijuana) activity anywhere within the City.*
- B. *To the extent not already covered by subsection A above, all deliveries of medical cannabis (marijuana) are expressly prohibited within the City of Newman. No person shall conduct any deliveries that either originate or terminate within the City.*
- C. *This section is meant to prohibit all activities for which a State license is required. Accordingly, the City shall not issue any permit, license, authorization or other entitlement for any activity for which a State license is required under the MMRSA.*
- D. *Cultivation of cannabis (marijuana) for non-commercial purposes including, but not limited to, cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones, planned developments, and all specific and master plan areas in the City of Newman. No person including, but not limited to, a qualified patient or primary caregiver, shall cultivate any amount of cannabis (marijuana) in the City, even for medical purposes.*

E. *In the event that there is future legislation or an initiative that authorizes recreational marijuana (cannabis) use/activities, to the greatest extent permitted by law and to the extent not already prohibited by this Chapter, the prohibitions contained herein related to medical cannabis (marijuana) shall apply to recreational marijuana (cannabis).*

**8.07.030 Public Nuisance.**

*Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure Section 731 or any other remedy available to the City.*

**8.07.040 Civil Penalties.**

*In addition to any other enforcement remedies permitted by this Chapter, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity violating this Chapter. In any civil action brought pursuant to this Chapter, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party.*

**SECTION 4.**

All other sections and provisions of Titles 3 and 8 shall remain in full force and effect.

**SECTION 5.**

That a duly noticed public hearing was held by the City Council.

**SECTION 6.**

This Ordinance shall take effect 30 days after the date of its adoption, and prior to the expiration of 15 days from the passage thereof shall be published and circulated in the City of Newman and thenceforth and thereafter the same shall be in full force and effect.

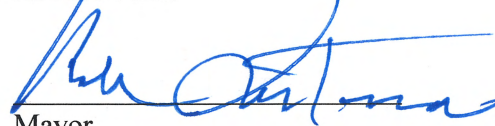
Introduced at a regular meeting of the City Council of the City of Newman held on the 12<sup>th</sup> day of January, 2016 by Council Member Graham, and adopted at a regular meeting of said City Council held on the 26<sup>th</sup> day of January, 2016 by the following vote:

AYES: Graham, Candea, Day and Mayor Martina.


NOES: None.

ABSENT: Davis.

APPROVED:

  
Mayor

ATTEST:



City Clerk