

ORDINANCE NO. 2015 -1035

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CERES ADDING CHAPTER 9.120, MARIJUANA CULTIVATION AND DELIVERY, TO TITLE IX, PUBLIC PEACE, SAFETY AND MORALS, OF THE CERES MUNICIPAL CODE

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code § 11362.5, also known as “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. However, the CUA also states 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;” and

WHEREAS, the limited immunity from specified state marijuana laws provided by the CUA and the Medical Marijuana Program (“MMP”) does not confer a land use right or the right to create or maintain a public nuisance; 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...”; and

WHEREAS, 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...” affirming the ability of a local government to prohibit the cultivation of marijuana under its land use and police power authority; and

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, 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 Brown signed 3 bills into law (AB 266, AB 243, and SB 643), collectively referred to as the Medical Marijuana Regulation and Safety Act (the “Act”); and

WHEREAS, the Act becomes effective January 1, 2016, and contains provisions that govern cultivation, processing, transport, testing, and distribution of medical cannabis to qualified patients. The Act contains new statutory provisions that:

- Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4)); and
- Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a)); and
- Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and
- Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)); and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City if marijuana cultivation, processing and distribution activities are allowed; and

WHEREAS, the Act allows cities to maintain local control of marijuana cultivation, provided that cities must take certain action prior to March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority; and

WHEREAS, the City Council finds that (1) medical marijuana activities can adversely affect the health, safety, and well-being of City residents; (2) 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; and (3) 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, while the City Council finds that medical marijuana dispensaries are prohibited under Section 18.46.020 of the City Code, and that delivery and commercial cultivation of marijuana is prohibited within City limits under the City's permissive zoning regulations, the City Council desires to enact this ordinance to make clear that such uses are expressly prohibited throughout City limits; and

WHEREAS, the City Council of the City of Ceres finds that this ordinance is

consistent with the City's current prohibitions and banning cultivation, deliveries, and dispensaries of marijuana is in the best interest of the health, welfare and safety of the public.

THE CITY COUNCIL OF THE CITY OF CERES DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 9, Public Peace, Safety and Morals, of the Ceres Municipal Code is amended to add Chapter 9.120, Marijuana Cultivation and Delivery, which shall read as follows:

Chapter 9.120 – MARIJUANA CULTIVATION AND DELIVERY.

9.120.010 - DECLARATION OF PURPOSE.

The City finds and declares that:

- A. The commercial cultivation and delivery of marijuana, and marijuana dispensary locations can adversely affect the health, safety, and well-being of City residents by increasing the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities.
- B. 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.
- C. The above conditions may create significant hazards and nuisances to the public such that a Citywide prohibition of such activities is proper and necessary.

9.120.020 - DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY: the City of Ceres, California.

COMMERCIAL CANNABIS ACTIVITY: cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, as defined by Business & Professions Code § 19300.5.

CULTIVATION: any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

DELIVERY: the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. Delivery also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

9.120.030 - ENFORCEMENT AUTHORITY.

The Chief of Police or his or her designated agents and designated code enforcement officers shall have the authority and powers necessary to determine whether a violation of this Chapter exists and to take appropriate action to gain compliance with the provisions of this Chapter. These powers include the power to issue administrative citations and to inspect public and private property in accordance with State and Federal law. It also includes the power to impose civil penalties for any violation of this Chapter as provided in Title 19 of this Code.

9.120.040 - AUTHORITY TO INSPECT.

The Chief of Police or his or her designated agents and designated Code Enforcement Officers are authorized to enter upon any property or premises in accordance with State and Federal law to ascertain whether the provisions of this Chapter are being obeyed, and to make any examinations as may be necessary in the performance of their enforcement duties. All inspections, entries, and examinations shall be done in a reasonable manner as allowed by State and Federal law. If an owner, tenant, occupant or agent or other responsible party refuses to grant the City permission to enter or inspect, the City may seek an inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure.

9.120.050 – PROHIBITION OF MARIJUANA CULTIVATION.

All commercial cannabis activity and cultivation, as these activities are defined in section 9.120.020, shall be deemed a nuisance and prohibited in all areas and planned developments within the City. No permit or business license shall be issued for any commercial cannabis activity or cultivation of marijuana within City limits.

9.120.060 – PROHIBITION OF MARIJUANA DELIVERIES.

The delivery of medical marijuana, as defined in section 9.120.020, shall be prohibited in all areas and planned developments within the City. No permit or business license shall be issued for any marijuana delivery within City limits.

9.120.070 - PENALTY.

Any person who violates any of the provisions of Sections 9.120.050 or 9.120.060 may be subject to administrative enforcement remedies set forth in Title 19 of this Code for violations of this Section.

SECTION 2. This ordinance shall take effect thirty (30) days after its passage by the City Council, and following the affirmative vote of a majority of the members of the City Council. Within 15 days of its adoption, a summary of the ordinance shall be published in the Ceres Courier, a newspaper of general circulation, circulated and published in the City of Ceres, State of California, which summary shall include the names of those Council Members voting for and against the ordinance. A certified copy of the full text of such adopted ordinance or amendment shall be on file in the office of the City Clerk.

SECTION 3. CERTIFICATION OF COUNCIL ADOPTION AND APPROVAL. This Ordinance was introduced and approved by Ordinance No. 2015 - 1035 at a regular meeting of the City Council of the City of Ceres held on the (date of afore-mentioned council meeting) by the following vote:

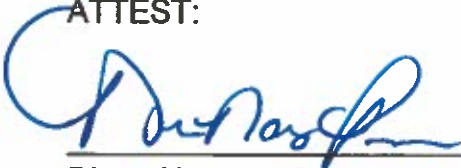
AYES: 5 COUNCIL MEMBERS: Durossette, Kline, Lane, Ryno, Virerra
NOES: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None
ABSTAIN: COUNCIL MEMBERS: None

APPROVED:



Chris Vierra
Mayor of the City of Ceres

ATTEST:



Diane Nayares-Perez
City Clerk