

**ORDINANCE NO. 2016- XX**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EASTVALE,  
CALIFORNIA AMENDING IN FULL CHAPTER 6.36 OF THE EASTVALE  
MUNICIPAL CODE PROHIBITING ALL COMMERCIAL MEDICAL MARIJUANA  
USES IN THE CITY, INCLUDING MOBILE DISPENSARIES, AND PROHIBITING  
CULTIVATION FOR MEDICAL USE BY A QUALIFIED PATIENT OR PRIMARY  
CAREGIVER AND AMENDING SECTION 120.03.010 RELATING TO UNLAWFUL  
USES AND DECLARING THE URGENCY THEREOF**

The City Council of the City of Eastvale does hereby ordain as follows:

Section 1. 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.4<sup>th</sup> 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.4<sup>th</sup> 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. Successful enforcement actions involving storefront dispensaries have coincided with an increase in mobile marijuana dispensaries. In parts of the state, shuttered marijuana dispensaries have converted their operations to mobile delivery services. An attorney in the region is also advising his marijuana dispensary clients to change their business model to distribution from a mobile source to avoid bans on storefront enterprises.

G. Mobile medical marijuana dispensaries have been associated with criminal activity. Delivery drivers, for example, have been targets of armed robbers who seek cash and drugs. As a result, many of the drivers for medical marijuana dispensaries reportedly carry weapons or have armed guards as protection. Examples of such criminal activity reported in the media include the following, each of which the City Council finds contain persuasive, documented evidence that mobile medical marijuana dispensaries and deliveries pose a threat to public health, safety and welfare.

1. A West Covina deliveryman was reportedly robbed after making a delivery. The deliveryman told police that he was approached by two subjects in ninja costumes who chased him with batons and took the marijuana and money he was carrying.
2. A Temecula deliveryman was reportedly robbed of cash outside of a restaurant, which led to a vehicular chase that continued until the robbers' vehicle eventually crashed on a freeway on-ramp.
3. Marijuana deliverymen in Imperial Beach were reportedly robbed after being stopped by assailants (one with a semiautomatic handgun) after making a stop.
4. A deliveryman was reportedly robbed of three ounces of marijuana while making a delivery outside a restaurant in Riverside, and he told police that the suspect may have had a gun.
5. A deliverywoman in La Mesa was reportedly shot in the face with a

pellet gun by assailants who subsequently carjacked her vehicle.

6. A marijuana delivery from a Los Angeles mobile marijuana dispensary turned deadly in Orange County when four individuals reportedly ambushed the dispensary driver and his armed security guard and tried to rob them. One of the suspects approached the delivery vehicle and confronted the driver and a struggle ensued. A second suspect armed with a handgun, approached the security guard, who fired as the suspect hitting him multiple times.
7. A deliveryman was reportedly robbed of \$20,000 worth of marijuana (approximately 9 pounds) and a cellular phone in Fullerton, and suffered a head injury during the crime.

H. 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.

I. 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. 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.

J. 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.

K. 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.

L. While the City Council believes that 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.

M. The Planning Commission held a duly noticed public hearing on January 20, 2016 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 this Ordinance.

N. The City Council held a duly noticed public hearing on this Ordinance on January 27, 2016, at which time it considered all evidence presented, both written and oral.

Section 2. 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 3. Chapter 6.36 of the Eastvale Municipal Code is hereby amended in full to read as follows:

#### "Chapter 6.36

#### MEDICAL MARIJUANA AND CULTIVATION

##### 6.36.010. 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.

"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" shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, 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. “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. For purposes of this definition a Dispensary is a facility or location, whether fixed or mobile.

“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.

6.36.020. Prohibition.

- A. Commercial cannabis activities of all types are expressly prohibited in all zones and all specific plan areas in the City of Eastvale. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City. It is the intent of this prohibition to include the delivery of cannabis within the City from a fixed location, from a Mobile Dispensary, the prohibition on cultivation, and any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet, or assist in the operation of a commercial cannabis activity.
- B. To the extent not already covered by subsection A above, all deliveries of medical cannabis are expressly prohibited within the City of Eastvale. 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 or other entitlement for any activity for which a State license is required under the MM RSA.
- D. Cultivation of cannabis for non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones and all specific plan areas in the City of Eastvale. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes.

6.36.030. Public Nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this

Chapter 6.36 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, whether in law or in equity, including but not limited to administrative citations.

6.36.040. Civil Penalties.

In addition to any other enforcement permitted by this Chapter 6.36, the City Attorney may bring a civil action for injunctive relief and civil penalties pursuant to Chapter 1.01 of this code against any person or entity that violates this Chapter. In any civil action brought pursuant to this Chapter, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party.

Section 4. Section 120.03.010 of Chapter 120.03 of the Eastvale Municipal Code is hereby amended to read as follows:

(d) *Unlawful Uses.* Uses that are unlawful under federal or state law, or under the Eastvale Municipal Code shall not be treated as permitted or conditionally permitted uses, and shall not be determined to be similar uses pursuant to this Section.

Section 5. Nothing in this Ordinance shall be interpreted to mean that the City's permissive zoning scheme allows any other use not specifically listed therein.

Section 6. CEQA. This ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15305, minor alterations in land use limitations in areas with an average slope of less than 20% that do not result in any changes in land use or density and section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The City's permissive zoning provisions already prohibits all uses that are being expressly prohibited by this ordinance. Therefore, this ordinance has no impact on the physical environment as it will not result in any changes.

Section 7. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 8. To the extent the provisions of the Eastvale Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as they read

immediately prior to the adoption of this Ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

**Section 9. Declaration of Facts Supporting Urgency Ordinance.** This ordinance is adopted under the authority of Section 36937 of the California Government Code. The statements of fact set forth in the preamble to this Ordinance are incorporated by this reference. The MMRSA allows the City to completely prohibit commercial medical marijuana activities, including dispensaries, mobile dispensaries and cultivation. Alternatively, a City may choose to regulate medical marijuana uses along with the State (although the City ordinances must be as strict) or to leave regulation to the State. A City Ordinance must be in effect by March 1, 2016 or the state regulations will control. There is currently state legislation, AB 21 (Bonta)--Medical Marijuana Cultivation, in which the March 1st deadline would be removed. The bill has passed the Senate Health Committee and there appears to be no opposition thus far to its passage; however, AB 21 has not yet made it to the Governor's Desk. In the absence of AB 21 not being signed into law, the City of Eastvale would be required to follow State regulations for these operations; consequently, the absence of this Ordinance may pose a public safety threat to health, safety and welfare of the children and others within the City. In the absence of the immediate effect of this Ordinance, the safety of children and other potential victims within the City will be threatened or imperiled. For these same reasons, property values in many neighborhoods would also be substantially impacted. Therefore, the City Council finds, determines and declares that the immediate preservation of the public peace, health, safety and welfare necessitates the enactment of this ordinance as an urgency ordinance, and accordingly, this Ordinance shall take effect immediately upon 4/5ths vote.

**Section 10.** The City Clerk shall certify to the adoption of this ordinance and shall cause the same to be published in accordance with law, and it shall be in full force and effect immediately upon its adoption.

**PASSED, APPROVED, AND ORDAINED** this 27<sup>th</sup> day of January, 2016.

\_\_\_\_\_  
Ike Bootsma, Mayor

Attest:

\_\_\_\_\_  
Marc Donohue, City Clerk

Approved as to form:

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John E. Cavanaugh, City Attorney



STATE OF CALIFORNIA)

COUNTY OF RIVERSIDE) §  
CITY OF EASTVALE)

I, Marc Donohue, City Clerk of the City of Eastvale, do hereby certify that the foregoing Ordinance No. 2016-\_\_\_\_ was adopted as an urgency measure at a regular meeting of the City Council of the City of Eastvale held on the 27<sup>th</sup> day of January, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Marc Donohue, City Clerk