

Ordinance No. 689

An Ordinance of the City Council of the City of Jackson Amending Sections 5.04.040, 17.06.040, and 17.220.020 of the Municipal Code Regarding Marijuana Cultivation and Dispensaries

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5 et seq. and entitled the Compassionate Use Act of 1996 (“CUA”), decriminalizing the use of marijuana for medical purposes; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program (“MMP”), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subjected to criminal prosecution; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban medical marijuana land uses; and

WHEREAS, under the federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana is unlawful and subject to federal prosecution, regardless of a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“Act”) into law; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate the licensing of marijuana cultivation uses and sites; and

WHEREAS, under the Act, and commencing on March 1, 2016, the State will become the sole licensing authority for marijuana cultivation in those local jurisdictions that do not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, or that choose not to administer a conditional permit program; and

WHEREAS, the City Council previously adopted Ordinance No. 664 to ensure that all land uses, operations and businesses within the City are permitted under both state and federal law, specifically prohibiting marijuana dispensaries, in order to protect the health and welfare of residents and visitors of Jackson; and

WHEREAS, some California cities have reported negative impacts of marijuana cultivation, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, it is unknown at this time whether additional negative health or environmental impacts will be reported, and in what degree they may occur, with implementation of the Act and other local governments' regulation or prohibition of marijuana cultivation; and

WHEREAS, the City Council recognizes that there is now even more conflict between State and Federal law regarding authorized medical marijuana uses, and therefore the existing Municipal Code provisions prohibiting land uses and licenses which are prohibited by State or Federal law should be clarified; and

WHEREAS, the City Council therefore desires to retain and maintain its control and regulation of medical marijuana uses within its boundaries; and

WHEREAS, the City Council desires to amend the Municipal Code to clarify the existing prohibition of marijuana dispensaries to include marijuana cultivation, and to expressly reserve any future local licensing scheme granted by the Act.

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

SECTION 1. Recitals. The City Council hereby incorporates the above recitals into this Ordinance by this reference.

SECTION 2. Findings. Pursuant to Section 17.160.060 of the City of Jackson Municipal Code, the City Council hereby makes the following findings:

A. This Ordinance ensures and maintains internal consistency with all of the goals, policies, and actions of all elements of the General Plan and any applicable specific plan by clarifying the existing provisions and prohibitions in the Development Code regarding medical marijuana. These amendments will help avoid the adverse secondary impacts created by certain types of businesses that are illegal under state or federal law, including an increase in crime or environmental degradation related to medical marijuana cultivation and production, and will help avoid local conflict in light of the tension between State and Federal law.

B. This Ordinance is not detrimental to the public interest, health, safety, convenience, or welfare of the City because it preserves and maintains the City's control over medical marijuana, makes the existing prohibition of marijuana dispensaries express, and specifically includes a prohibition on marijuana cultivation within the City in light of new State law. As a result, the amendments made by this Ordinance preserve the City's local control over medical marijuana and avoid adverse secondary impacts of medical marijuana cultivation and production, further promoting the public health, safety, and welfare of the residents and visitors of Jackson.

C. This Ordinance ensures and maintains internal consistency with other applicable provisions of the City's Development Code.

SECTION 3. Amendment. Section 5.04.040 of the Jackson Municipal Code is hereby amended to read in full as follows:

"A. There are imposed upon the businesses, trades, professions, callings, and occupations specified in this chapter license taxes in the amounts hereinafter prescribed. It is unlawful for any person to transact and carry on any business, trade, profession, calling, or occupation in the city without first having procured a license from the city to do so and paying the tax hereinafter prescribed or without complying with any and all applicable provisions of this chapter.

B. Subsection A 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 of the state. 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. As a prerequisite to the issuance of any license herein, the applicant shall submit to the collector a copy of his or her sales tax permit or sellers permit (pursuant to the requirements of Revenue and Tax Code Section 6067) which clearly designates the city as his or her place of business. If requested by the applicant, the collector may provide forms for changing the address of the place of business, and upon the applicant's execution thereof, the collector shall transmit said forms to the State Board of Equalization.

D. Notwithstanding any provision of this section or chapter, no person shall transact, perform, engage in and carry on in the city any business, trade, profession, calling, use or occupation that cannot be, or is not, conducted or carried out without being in violation of state or federal law, or this code, and no license will be issued for any such business, trade, profession, calling, use, or occupation, including but not limited to a medical marijuana dispensary, medical marijuana delivery or medical marijuana cultivation as defined in section 17.220.020 of this code. In the event of any future amendments to this code, including amendments to allowable medical marijuana uses, the City hereby expressly reserves the right to develop, implement, and conduct local licensing of medical marijuana cultivation under Health and Safety Code section 11362.777(c)."

SECTION 4. Amendment. Section 17.06.040(B)(3) of the Jackson Municipal Code is hereby amended to read in full as follows:

"3. Medical marijuana dispensaries and other illegal uses. Notwithstanding any provision of this code to the contrary, any land use that cannot be conducted or carried out without being in violation of state or federal law or this Code, expressly including, but not limited to medical marijuana dispensaries, medical marijuana deliveries and medical marijuana cultivation, shall be prohibited in all planning areas and zoning districts within the City."

SECTION 5. Amendment. Section 17.220.020 of the Jackson Municipal Code is hereby amended to include the following definitions of “Medical marijuana cultivation” and “Medical marijuana delivery” to be located between the definitions of “Mean sea level” and “Medical marijuana dispensary”:

“**Medical marijuana cultivation.** Any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of any form of cannabis, regardless of whether there is an intent to produce, distribute, or sell the resulting product commercially.”

“**Medical marijuana delivery.** The commercial transfer of medical marijuana or medical marijuana products from a medical marijuana dispensary to a primary caregiver or qualified patient as defined in California Health and Safety Code section 11362.7, or to a testing laboratory, and including the use of any technology platform owned or controlled by a dispensary to arrange or facilitate the transfer of medical marijuana or medical marijuana products within the City. Medical marijuana delivery shall not include the carriage of medical marijuana or medical marijuana products on public roads otherwise in compliance with California Business and Professions Code section 19340.”

SECTION 6. Amendment. Section 17.220.020 of the Jackson Municipal Code is hereby further amended to amend the definition of “Medical marijuana dispensary” to read in full as follows:

“**Medical marijuana dispensary.** Any facility or location, whether fixed or mobile, where marijuana, marijuana products, or devices for the use of marijuana or marijuana products, either individually or in any combination, are offered, carried, transported, transmitted, manufactured, stored, placed, cultivated, sold, traded, exchanged, bartered, made available to and/or distributed, expressly including an establishment that delivers marijuana or marijuana products as part of a retail sale.”

SECTION 7. CEQA. It is hereby found and declared that the adoption of the regulations in this Ordinance will not have a significant effect on the environment and therefore the adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA).

SECTION 8. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 9. Effective Date and Publication. The City Clerk shall certify to the adoption of this Ordinance and shall publish or post the Ordinance as required by law. This Ordinance shall be effective thirty days from its adoption.

SECTION 6. The City Clerk shall certify to the adoption of this Ordinance and shall publish or post the Ordinance as required by law.

SECTION 7. This Ordinance shall be effective thirty days from its adoption.

SECTION 8. This Ordinance will not have a significant adverse effect upon the environment. Moreover, the Ordinance is exempt from the requirements of the California Environmental Quality Act under CEQA Guidelines section 15319 and 15320.

On a motion by Councilmember Garibaldi, seconded by Councilmember Crew, the foregoing ordinance was duly passed and adopted by the City Council of the City of Jackson at a meeting thereof held on this 14th day of December 2015 by the following vote:

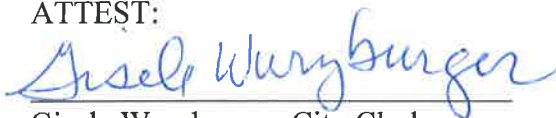
AYES: Crew, Garibaldi, Lewis, Sweet
NOES: None
ABSENT: Gonsalves
ABSTAIN: None

CITY OF JACKSON



Keith Sweet, Mayor

ATTEST:



Gisele Wurzburger, City Clerk

APPROVED AS TO FORM:

Joshua Nelson, City Attorney