

CITY OF RIVERBANK
ORDINANCE NO. 2016-001

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AMENDING THE RIVERBANK MUNICIPAL CODE BY REPEALING
IN ITS ENTIRETY CHAPTER 120: MEDICAL MARIJUANA DISPENSARY BAN OF
TITLE XI: BUSINESS REGULATIONS AND SUBSTITUTING IT WITH A NEW
CHAPTER 120: BAN ON MEDICAL MARIJUANA DISPENSARIES AND
COMMERCIAL AND OUTDOOR MARIJUANA CULTIVATION**

WHEREAS, 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”); 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 governmental to prohibit the cultivation of marijuana under its land use 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”). The Act allows cities to maintain local control of marijuana cultivation, provided that cities take certain actions; and

WHEREAS, the Act contains language that requires the City to take actions to regulate the cultivation of medical marijuana by March 1, 2016, either expressly or otherwise under principles of permissive zoning, or the State will become the sole licensing authority; and

WHEREAS, the City Council finds that (1) commercial and outdoor medical marijuana activities can adversely affect the health, safety, and well-being of City residents; (2) City-wide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment and malodorous smells that may result from such activities; (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 concentrations 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 outdoor cultivation and all commercial medical marijuana uses are prohibited under the City's permissive zoning regulations, it desires to enact this ordinance to make clear that such uses are prohibited throughout City limits; and

WHEREAS, the City Council of the City of Riverbank finds that this ordinance is consistent with the City's current prohibitions and banning commercial and outdoor cultivation is in the best interest of the health, welfare and safety of the public.

SECTION 1: NOW THEREFORE, THE CITY OF RIVERBANK CITY COUNCIL DOES ORDAIN AS FOLLOWS:

The Riverbank Municipal Code is amended by repealing in its entirety Chapter 120: Medical Marijuana Dispensary Ban of Title XI: Business Regulations and substituting it with a new Chapter 120: Ban on Medical Marijuana Dispensaries and Commercial and Outdoor Marijuana Cultivation, which shall read as follows:

CHAPTER 120: BAN ON MEDICAL MARIJUANA DISPENSARIES AND COMMERCIAL AND OUTDOOR CULTIVATION

Section

- 120.01 Medical marijuana dispensaries
- 120.02 Medical marijuana cultivation

§120.01 MEDICAL MARIJUANA DISPENSARIES.

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

(1) **MEDICAL MARIJUANA DISPENSARY** or **DISPENSARY.** 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 Cal. Health and Safety Code §§ 11362.5 et seq. The terms **PRIMARY CAREGIVER**, **QUALIFIED PATIENT**, and **PERSON WITH AN IDENTIFICATION CARD** shall be as defined in Cal. Health and Safety Code §§ 11362.5 et seq.

(2) **A MEDICAL MARIJUANA DISPENSARY** shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Cal. Health and Safety Code Division 2, Chapter 1, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Cal. Health and Safety Code Division 2, Chapter 3.01, a residential care facility for the elderly licensed pursuant to Cal. Health and Safety Code Division 2, Chapter 3.2, a residential hospice or a home health agency licensed pursuant to Cal. Health and Safety Code Division 2, Chapter 8, as long as any such use complies strictly with the applicable law including, but not limited to, Cal. Health and Safety Code §§ 11362.5 et seq.

(3) 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 Cal. Health and Safety Code §§ 11362.5 et seq., provided such activity complies strictly with all applicable state law, including but not limited to, Cal. Health and Safety Code §§ 11362.5 and 11362.765.

(B) *Medical marijuana dispensaries as a prohibited use.* A medical marijuana dispensary as defined in division (A)(1) of this section is prohibited in all zones and planned developments as defined in Chapter 153 of this Code of Ordinances and no permit shall be issued therefore.

§ 120.02 MEDICAL MARIJUANA CULTIVATION.

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

(1) **COMMERCIAL CANNABIS ACTIVITY** shall mean cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, delivery transport, distribution, or sale of medical cannabis or a medical cannabis product, and other similar activities defined under Business & Professions Code § 19300.5, as amended from time to time.

(2) **COMMERCIAL CANNABIS ACTIVITY** shall not include qualified patients and primary caregivers defined in Cal. Health and Safety Code § 11362.7, provided such activity complies strictly with all applicable state law, including but not limited to, Cal. Health and Safety Code §§ 11362.5 and 11362.765.

(3) **CULTIVATION** shall mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(4) **OUTDOOR CULTIVATION** shall mean cultivation of plants that are not grown within a fully enclosed and secure structure, and where such plants rely primarily on the sun for photosynthesis.

(B) Commercial cannabis activity and outdoor cultivation are expressly prohibited in all zones and planned development areas in the City of Riverbank, and no permit shall be issued therefore. No person shall establish, engage in, conduct or allow commercial cannabis activity or outdoor cultivation anywhere within the City.

SECTION 2: This Ordinance shall become effective thirty (30) days from and after its final passage and adoption (February 12, 2016), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on December 8, 2015. Said ordinance was given a second reading by title only and adopted.


PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the 12th day of January, 2016; motioned by Councilmember Leanne Jones Cruz, seconded by Councilmember Cal Campbell; moved said ordinance by a City Council roll call vote of 5-0:

AYES: Campbell, Jones Cruz, Tucker, Barber-Martinez, and Mayor O'Brien
NAYS: None
ABSENT: None
ABSTAINED: None

ATTEST:


Annabelle H. Aguilar, CMC
City Clerk

APPROVED:


Richard D. O'Brien
Mayor

APPROVED AS TO FORM:


Tom P. Hallinan, City Attorney