

SUMMARY OF ORDINANCE 2016-02

Ordinance 2016-02 adding WMC Chapter 8.34, entitled "MEDICAL MARIJUANA AND CULTIVATION" and Amending WMC Chapter 5.04, entitled "BUSINESS LICENSE TAX" by Amending WMC Section 5.04.020, entitled "LICENSE-REQUIRED" and Amending Title 17, entitled "ZONING" by Adding WMC Section 17.40.320, entitled "MEDICAL MARIJUANA AND CULTIVATION".

The proposed ordinance adds and amends various Chapters of the Waterford Municipal Code to prohibit medical marijuana cultivation for commercial or non-commercial purposes, transportation, delivery or processing of medical marijuana (cannabis) and expressly prohibited in all zones, planned developments, and all zoning districts, as well as specific and master plan areas in the City of Waterford. 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.

A certified copy of the full text is posted in the office of the City Clerk. Copies and a complete text of the ordinance are available at Waterford City Hall, 101 E Street, Waterford, CA for review.

This ordinance was adopted by the Waterford City Council on January 21, 2016. The ordinance will be in effect thirty (30) days from the date of adoption.

AYES: 4 Aldaco, Krause, Whitfield, Gothan

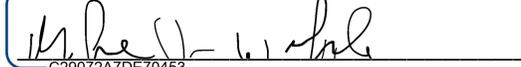
NOES: 0

ABSENT: 1 Van Winkle

ABSTAIN: 0

CITY OF WATERFORD

DocuSigned by:



C29072A7DE70453
Mike Van Winkle, Mayor

ATTEST:

DocuSigned by:



LORI MARTIN, City Clerk

APPROVED AS TO FORM:

DocuSigned by:



CORBETT BROWNING, City Attorney

ORDINANCE 2016-02

AN ORDINANCE OF THE WATERFORD CITY COUNCIL ADDING WATERFORD MUNICIPAL CODE CHAPTER 8.34, ENTITLED “MEDICAL MARIJUANA AND CULTIVATION” AND BY AMENDING WMC CHAPTER 5.04, ENTITLED “BUSINESS LICENSE TAX” BY AMENDING WMC SECTION 5.04.020, ENTITLED “LICENSE-REQUIRED” AND AMENDING TITLE 17, “ZONING” BY ADDING WMC SECTION 17.40.320, ENTITLED “MEDICAL MARIJUANA AND CULTIVATION

WHEREAS, the City Council of the City of Waterford is amending Title 8, “HEALTH AND SAFETY” by adding WMC Chapter 8.34, “MEDICAL MARIJUANA AND CULTIVATION” to completely prohibit commercial medical marijuana activities and amending Waterford Municipal Code Chapter 5, “BUSINESS LICENSE TAX”, by adding language to prohibit the issuance of a business license for medical marijuana (cannabis) collective, cooperative or dispensary and shall not approve licenses or uses for the distribution, cultivation, transportation, delivery, or processing of medical marijuana (cannabis) and by amending Title 17, “ZONING”, by adding WMC Section 17.40.320, entitled “MEDICAL MARIJUANA AND CULTIVATION” to completely prohibit commercial and non-commercial cannabis activities of all types expressly in all zones, planned developments, master plan areas, and all zoning districts in the City of Waterford.

THE CITY COUNCIL OF THE CITY OF WATERFORD, COUNTY OF STANISLAUS, STATE OF CALIFORNIA, 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 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. 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.

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 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 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 throughout the City.

K. The Planning Commission held a duly noticed public hearing on December __, 2015 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 not adopt/adopt this Ordinance.

L. The City Council held a duly noticed public hearing on this Ordinance on December __, 2015, at which time it considered all evidence presented, both written and oral.

SECTION 2. AMENDED. Title 8, "HEALTH AND SAFETY" is hereby amended by adding Chapter 8.34, Entitled, "MEDICAL MARIJUANA AND CULTIVATION" to the Waterford Municipal Code to read as follows:

**TITLE 8
CHAPTER 8.34**

8.34.010 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/Collective" shall mean two or more persons collectively or cooperatively cultivating, distributing, 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/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.

8.34.020 Prohibition.

A. Commercial cannabis (marijuana) activities of all types are expressly prohibited in all zones, planned developments, and all specific and master plan areas in the City of Waterford. 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 Waterford. 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 MMRSA.

D. Cultivation of cannabis 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 Waterford. 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), to the greatest extent permitted by law and to the extent not already prohibited by this Chapter and/or municipal code, the prohibitions contained herein (marijuana) shall apply to recreational marijuana (Cannabis)..

8.34.030 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.

8.34.040 Civil Penalties.

In addition to any other enforcement permitted by this Chapter, the City Attorney may bring a civil action for injunctive relief and civil penalties pursuant 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 attorney’s fees and costs to the prevailing party.

SECTION 3. AMENDED. Title 5, Chapter 5.04.020, entitled “BUSINESS LICENSE TAX” of the Waterford Municipal Code is hereby amended to read as follows:

**TITLE 5
CHAPTER 5.04**

5.04.020 License-Required/Prohibition

It is unlawful for any person to commence, establish, maintain or carry on any business enterprise whatever in the city without first obtaining a license from said city, whether said business enterprise or said person is subject to a city license tax under this chapter or not. (Ord. 71-2 §1, 1971). The city shall not approve licenses or uses for a medical marijuana (cannabis) collective, cooperative or dispensary. The city shall not approve licenses or uses for the distribution, cultivation, transportation, delivery, or processing of medical marijuana (cannabis). The city shall not approve licensees or uses for any activity that requires a license or any other authorization or approval under the Medical Marijuana Regulation and Safety Act.

SECTION 4. AMENDED. Title 17, “ZONING”, CHAPTER 17.40, “GENERAL REGULATIONS” by adding Section 17.40.320 to the Waterford Municipal Code to read as follows:

**TITLE 17
CHAPTER 17.40**

17.40.320 Medical Marijuana and Cultivation

Cultivation of cannabis for non-commercial purposes or commercial purposes including, but not limited to, cultivation by a qualified patient or primary caregiver, is expressly prohibited in all zones, planned developments, and all zoning districts, as well as all specific and master plan areas in the City of Waterford. No person including, but not limited, a qualified patient or primary caregiver, shall cultivate any amount of cannabis (marijuana) in the city, even for medical purposes. In addition, all commercial cannabis (marijuana) activities of all types are expressly prohibited in all zones, planned developments, and all zoning districts as well as all specific and master plan areas in the City of Waterford. All deliveries of medical cannabis (marijuana) are expressly prohibited within the city of Waterford.

SECTION 5. 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 6. PERMISSIVE ZONING SCHEME. 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 7. 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 8. 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 9. To the extent the provisions of the Waterford 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 10. The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of adoption and shall post a certified copy of this Ordinance, including the vote for and against same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

SECTION 11. ENACTMENT: Prior to the expiration of fifteen (15) days from the passage and adoption thereof, this ordinance shall be published in a newspaper of general circulation printed and published in the County of Stanislaus, State of California, together with names of the members of the City Council voting for and against the same.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Waterford this 21st day of January, 2016, by the following vote:

AYES: 4 Aldaco, Krause, Whitfield, Gothan

NOES: 0

ABSTAIN: 0

ABSENT: 1 Van Winkle

CITY OF WATERFORD

Michael Van Winkle
C29072A7DE70453...

MICHAEL VAN WINKLE, Mayor

ATTEST:

DocuSigned by:
Lori Martin

0E40B251B23D4F2...

LORI MARTIN
City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Corbett Browning

F2D1FA69CB4B4A7...

CORBETT J. BROWNING
City Attorney