

ORDINANCE NO. 16-

An Ordinance Of The City Council Of The City Of Emeryville To Amend Chapter 28 Of Title 5 Of The Emeryville Municipal Code, "Marijuana"; CEQA Determination: Exempt Pursuant To Section 15061(B)(3) Of The California CEQA Guidelines

WHEREAS, the Federal Controlled Substances Act (21 U.S.C. Section 841 et seq.) makes it unlawful to manufacture, distribute, dispense or possess marijuana, and accordingly, medical marijuana dispensaries are illegal under federal law;

WHEREAS, in 2013, Deputy Attorney General James Cole issued a memorandum to all federal prosecutors to provide guidance on the enforcement of the Federal Controlled Substances Act as it related to marijuana, indicating that enforcement would not be a priority in states and local jurisdictions that have laws authorizing marijuana-related conduct; that have implemented strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests; and that have provided the necessary resources to demonstrate the willingness to enforce their laws and regulations;

WHEREAS, in 2015, Congress began to defund enforcement of the Federal Controlled Substances Act in states where such enforcement activities would prevent states from implementing their own state laws that authorize the use, distribution, possession or cultivation of medical marijuana;

WHEREAS, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq., "The Compassionate Use Act of 1996"); the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to obtain and use it without fear of State criminal prosecution;

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("MMRSA"), effective January 1, 2016, which establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana, also known as cannabis; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution, delivery, and sale of medical marijuana;

WHEREAS, the City Council of the City of Emeryville has recognized, and continues to recognize, the potential adverse impacts on the health, safety, and welfare of its residents and business from secondary effects associated with the cultivation and distribution of marijuana, which include, offensive odors, trespassing, theft, violent encounters between growers and persons attempting to steal plants, fire hazards,

increased crime in about the dispensary, robberies of customers, negative impacts on nearby businesses, nuisance problems, and increased DUI incidents;

WHEREAS, there is a need to adopt health, safety, and welfare regulations to avoid adverse impacts on the community which may arise from the cultivation, distribution and delivery of marijuana;

WHEREAS, the MMRSA sets forth a comprehensive framework to regulate medical marijuana from seed to ingestion by a patient, which includes uniform health and safety standards designed to implement quality control, a labeling and a track-and-trace program, and other consumer protections, which mitigates against some of the potential adverse impacts identified by the City Council in the past;

WHEREAS, neighboring local jurisdictions that allow medical marijuana dispensaries have implemented effective regulatory and enforcement systems that address the adverse impacts that marijuana dispensaries could pose to public safety, health, and welfare;

WHEREAS, allowing medical marijuana dispensaries that operate lawfully in neighboring jurisdictions to deliver marijuana to qualified patients or their primary caregivers located in Emeryville would offer relief to those patients and their caregivers; and

WHEREAS, an effective regulatory system governing the delivery of medical marijuana in the City of Emeryville, as provided in this Chapter, will address potential adverse impacts to the public health, welfare, and safety; an effective regulatory and enforcement system thereby allows delivery of marijuana to a qualified patient or primary caregiver consistent with federal law as applicable to the State of California and the local jurisdictions therein.

WHEREAS, this Ordinance is adopted pursuant to the City's police powers, afforded by the state constitution and state law, and as recognized by the MMRSA, to protect the health, safety, and welfare of the public; now, therefore be it

RESOLVED, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. REPEALING AND REPLACING CHAPTER 28 OF TITLE 5 TO THE EMERYVILLE MUNICIPAL CODE IN ITS ENTIRETY

Chapter 28 of Title 5 of the Emeryville Municipal Code is hereby repealed in its entirety and replaced with the following:

CHAPTER 28 MARIJUANA

5-28.01 Findings.

(a) The Federal Controlled Substances Act (21 U.S.C. Section 841 et seq.) makes it unlawful to manufacture, distribute, dispense or possess marijuana, and accordingly, medical marijuana dispensaries are illegal under federal law;

(b) In 2013, Deputy Attorney General James Cole issued a memorandum to all federal prosecutors to provide guidance on the enforcement of the Federal Controlled Substances Act as it related to marijuana, indicating that enforcement would not be a priority in states and local jurisdictions that have laws authorizing marijuana-related conduct; that have implemented strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests; and that have provided the necessary resources to demonstrate the willingness to enforce their laws and regulations;

(c) In 2015, Congress began to defund enforcement of the Federal Controlled Substances Act in states where such enforcement activities would prevent states from implementing their own state laws that authorize the use, distribution, possession or cultivation of medical marijuana;

(d) The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq., "The Compassionate Use Act of 1996"); the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to obtain and use it without fear of State criminal prosecution;

(e) On October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("MMRSA"), effective on January 1, 2016, which establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana, also known as cannabis; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution, delivery, and sale of medical marijuana;

(f) The City Council of the City of Emeryville has recognized, and continues to recognize, the potential adverse impacts on the health, safety, and welfare of its residents and business from secondary effects associated with the cultivation and distribution of marijuana, which include, offensive odors, trespassing, theft, violent encounters between growers and persons attempting to steal plants, fire hazards, increased crime in about the dispensary, robberies of customers, negative impacts on nearby businesses, nuisance problems, and increased DUI incidents;

(g) There is a need to adopt health, safety, and welfare regulations to avoid adverse impacts on the community which may arise from the cultivation, distribution and delivery of marijuana;

(h) The MMRSA sets forth a comprehensive framework to regulate medical marijuana from seed to ingestion by a patient, which includes uniform health and safety standards designed to implement quality control, a labeling and a track-and-trace program, and other consumer protections, which mitigates against some of the potential adverse impacts identified by the City Council in the past;

(i) Neighboring local jurisdictions that allow medical marijuana dispensaries have implemented effective regulatory and enforcement systems that address the adverse impacts that marijuana dispensaries could pose to public safety, health, and welfare;

(j) Allowing medical marijuana dispensaries that operate lawfully in neighboring jurisdictions to deliver marijuana to qualified patients or their primary caregivers located in Emeryville would offer relief to those patients and their caregivers; and

(k) An effective regulatory system governing the delivery of medical marijuana in the City of Emeryville, as provided in this Chapter, will address potential adverse impacts to the public health, welfare, and safety; an effective regulatory and enforcement system thereby allows delivery of marijuana to a qualified patient or primary caregiver consistent with federal law as applicable to the State of California and the local jurisdictions therein.

5-28.02 Purpose and Intent.

It is the purpose and intent of this Chapter for the City Council to exercise its police powers derived from Section 7 of Article XI of the California Constitution and state law to promote the health, safety, and general welfare of the residents and businesses of the City of Emeryville by prohibiting the cultivation, manufacturing, distribution, and delivery of marijuana within the City's jurisdictional limits, unless preempted by federal or state law, and except as provided in this Chapter.

5-28.03 Definitions.

For purposes of this Chapter, the following definitions shall apply:

(a) "Marijuana" means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not, the seeds thereof, the resin or separated resin, whether crude or purified, extracted from any party of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as defined in California Health and Safety Code section 11362.5

and “medical cannabis”, “medical cannabis product” and “cannabis product” as defined in Business and Professions Code section 19300.5(ag).

(b) “Marijuana cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or processing of marijuana.

(c) “Marijuana processing” means any method used to prepare marijuana or its byproducts for distribution, whether wholesale or retail, including but not limited to, drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

(d) “Marijuana dispensary” or “marijuana dispensaries” means any business, office, store, facility, location, retail storefront, or wholesale component of any establishment, cooperative or collective that delivers (as defined in California Business and Professions Code section 19300.5(m), or as may be amended) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent the purposes set forth in California Health and Safety Code section 11362.5, or as may be amended.

(e) “Primary caregiver” shall have the same meaning as set forth in California Business and Professions Code section 19300.5(h), as that section now appears, or may hereafter be amended or renumbered.

(f) “Qualified patient” means a patient that uses or ingests medical cannabis as that term is defined in California Business and Professions Code section 19300.5(ag) and who is entitled to the protections of California Health and Safety Code section 11362.5.

5-28.04 Marijuana Activities Prohibited

Except as provided in Section 5-28.05, marijuana cultivation, marijuana processing, marijuana distribution, which includes delivery as defined in Business and Professions Code § 19300.5(m), and marijuana dispensaries shall be prohibited activities in the City, and no person or entity shall conduct or engage in said activities, except where the City is preempted by federal or state law from enacting a prohibition on any such activity or prohibiting a person or entity from conducting or engaging in any such activity.

5-28.05 Allowed Marijuana Delivery

Notwithstanding Section 5-28.04, delivery of medical marijuana is allowed as described in this section.

(a) Primary Caregivers. A primary caregiver, who is not subject to the MMRSA, engaged in the delivery of marijuana to a qualified patient is exempt from the prohibition prescribed in Section 5-28.04.

(b) Delivery by Marijuana Dispensary. It is unlawful for any marijuana dispensary to deliver, which includes, but is not limited to, dispense, distribute, exchange, transmit, transport, sell or provide, marijuana to a qualified patient or a primary caregiver without a valid permit as specified herein.

(1) Application. The form and content of the application for a permit shall be specified by the Chief of Police. The application shall be signed under the penalty of perjury, and the following standards constitute the minimum standards to qualify for a permit to delivery marijuana to a qualified patient or primary caregiver:

- a. Name and address of the applicant; if the applicant is a corporation, the names and addresses of its directors.
- b. Certificate of insurance demonstrating ability to comply with the insurance requirements set forth in this Section in a form acceptable to the City.
- c. Applicant's trade name and business address.
- d. Copies of applicable authorizing state and local licenses and permits issued to applicant allowing it to operate a marijuana dispensary in a neighboring jurisdiction.
- e. Listing of all vehicles and devices to be used for delivery of marijuana to a qualified patient or primary caregiver within the City, which includes the vehicle's make, model, year, license plate number and vehicle identification number.
- f. Identifying all persons who will deliver marijuana on behalf of the dispensary to qualified patients located in the City. Such individuals must be at least 21 years of age at the time of submittal of the application.

(2) Review of Application. The Police Chief shall consider the application, as well as the criminal records, if any, and personal references, if demanded by the Police Chief, of individuals identified in the application, and any other results from investigation into the application as deemed necessary by the Police Chief.

(3) Disapproval of Application. If the Police Chief disapproves an application, he or she shall notify the applicant in writing, stating the reasons for the

disapproval. Notification of disapproval shall be delivered by first class mail to the applicant. No permit shall issue unless a successful appeal of the disapproval is made within the requisite time frame.

(4) Appeal of Disapproval:

- a. Within 15 days after the Police Chief serves notification of disapproval, an applicant may appeal the disapproval by notifying the City Clerk in writing of the appeal, the reasons for the appeal, and paying any applicable fees.
- b. The City Clerk shall set a hearing on the appeal and shall fix a date and time certain, within 30 days after the receipt of the applicant's appeal, unless the City and the applicant agree to a longer time, to consider the appeal. The City Clerk shall provide notice of the date, time and place of hearing, at least 7 days prior to the date of the hearing.
- c. The City Manager shall appoint a Hearing Officer to hear the appeal and determine the order of procedure, and rule on all objections to admissibility of evidence. The applicant and the Police Chief shall each have the right to submit documents, call and examine witnesses, cross-examine witnesses and argue their respective positions. The proceeding shall be informal, and the strict rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely upon in making decisions.
- d. The Hearing Officer shall issue a written decision within 15 days after the close of the hearing. The decision of the Hearing Officer shall be final.

(5) Grounds for Denial, Revocation or Suspension of Permit. The granting of a permit or a renewal thereof may be denied and an existing permit revoked or suspended if the applicant or permittee, or any individual engaged by the applicant or permittee to deliver marijuana in the City:

- a. Has knowingly made a false statement in the application or in any reports or other documents furnished to the City.
- b. Engages vehicles or devices for delivery that are neither maintained nor operated in a manner and in a condition required by law and applicable regulations.

- c. Is required to register as a sex offender under Section 290 of the California Penal Code to deliver marijuana.
 - d. Has been convicted of any offense relating to the use, sale, possession or transportation of narcotics or habit-forming drugs.
 - e. Has been under suspension, revocation or probation by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle, or has been convicted of any of the following offenses: driving while under the influence, or reckless driving involving bodily injury, or who does not possess a valid driver's license.
 - f. Has been convicted of any offense punishable as a felony, or has been convicted within a five (5) year period immediately preceding the crime of theft in either degree.
 - g. Has been convicted of any offense involving moral turpitude.
 - h. Has been involved within the two years immediately preceding the application in any motor vehicle accident causing death or personal injury.
 - i. Has been in three or more motor vehicle accidents within the year immediately preceding the application.
 - j. Engages individuals to deliver marijuana who were not identified in the application.
 - k. Fails to pay required City fees and taxes.
 - l. Violates any provision of this Chapter.
- (6) Suspension and Revocation.
- a. If the Police Chief deems continuation of the operation of delivery by the marijuana dispensary will cause a significant threat to the health, safety or welfare of the public, the Police Chief may suspend the permit and all rights and privileges thereunder until a Hearing Officer renders a written decision on the revocation of the permit.
 - b. The Police Chief shall give notice to a marijuana dispensary of his or her intent to revoke a permit in the same manner as notice of disapproval and provide the City Clerk with a copy of the notice.

- c. The hearing for the revocation of the permit shall be set and conducted in the same manner as an appeal of disapproval. The decision of the Hearing Officer shall be final.

(7) Permittee's Obligations. Permittee's duties and obligations shall include all of the following:

- a. Comply with all applicable federal, state and local laws.
- b. Obtain and maintain a business license from the City.
- c. Maintain at all times all licenses and permits as required by California state law and the laws of the local jurisdiction in which the permittee is located, and provide immediate notification to the Police Chief if any license or permit is suspended or revoked.
- d. Package the marijuana to be delivered in compliance with California Business Professions Code section 19347 and any other regulations promulgated by the State Department of Public Health.
- e. Any person who delivers marijuana from a marijuana dispensary must have in possession a copy of the permit, which shall be made available upon request to law enforcement.
- f. Delivery vehicles shall not advertise any activity related to marijuana nor shall it advertise the name of the permittee.
- g. Delivery of the marijuana shall be directly to the residence or business address of the qualified patient or the qualified patient's primary caregiver; deliveries to any other location are prohibited.
- h. Deliveries of marijuana shall occur only between the hours of 10:00 a.m. and 4:00 p.m.
- i. No permittee shall transport nor cause to be transported marijuana in excess of the limits established by the State Bureau of Medical Marijuana during the course of delivering marijuana; until the State Bureau of Medical Marijuana establishes the limit, the limit is eight (8) ounces of dried marijuana or its marijuana product equivalent within the City.
- j. All orders to be delivered shall be packaged by the names of the qualified patient or qualified patient and primary caregiver, if

delivery is made to the primary caregiver, with a copy of the request for delivery with each package.

- k. Maintain at all times Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000). The Commercial General Liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, shall specify that insurance coverage afforded to the City shall be primary, and shall name the City, its officials and employees as additional insured. Failure to maintain insurance as required herein at all times shall be grounds for suspension of the permit immediately, and ultimately, revocation.
- l. By accepting the permit, each permittee agrees to indemnify, defend and hold harmless to the fullest extent permitted by law, the City, its officers, agents and employees from and against any all actual and alleged damages, claims, liabilities, costs (including attorney's fees), suits or other expenses resulting from and arising out of or in connection with permittee's operations, except such liability causes by the active negligence, sole negligence of willful misconduct of City, its officers, agents and employees.
- m. Maintain for a minimum of three (3) years, a written accounting or ledger of all cash, receipts, credit card transactions, and reimbursements (including any in-kind contributions) as well as records of all operational expenditures and costs incurred by the permittee in accordance with generally accepted accounting practices and standards typically applicable to business records, which shall be made available to the City during business hours for inspection upon reasonable notice by the Police Chief.

(8) Fees. Applicants and permittees shall pay all applicable fees as set forth in the City's Master Fee Schedule adopted by resolution. Applicants and permittees also shall pay the amount as prescribed by the Department of Justice of the State of California for the processing of applicant's fingerprints. None of the above fees shall be prorated, or refunded in the event of a denial, suspension or revocation of the permit.

(9) Term. All permits issued pursuant to this section shall be for the period of one calendar year, and shall expire at midnight on the 31st day of December. Permit holders shall submit an application for renewal of the permit at least sixty (60) days prior to the expiration of the permit. The renewal of the permit shall be processed in the same manner as the initial application.

(10) Police Chief or Designee. Any action required by the Police Chief under this Section may be fulfilled by the Police Chief's designee.

(11) Failure to comply with any one of the regulations contained herein shall constitute a violation of Section 5.28-04.

5.28-06 Penalties

(a) Violations of this Chapter are punishable as misdemeanors. Each day of engaging in any of the prohibited activities shall constitute a separate offense.

(b) Any violation of this Chapter is hereby declared to be a public nuisance.

SECTION TWO. CEQA DETERMINATION

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

SECTION THREE. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses or phrases.

SECTION FOUR. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

SECTION FIVE. CODIFICATION

Section One of this Ordinance shall be codified in the Emeryville Municipal Code. Sections Two, Three, Four, and Five shall NOT be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting on Tuesday, April 19, 2016, and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, May 3, 2016.

MAYOR

ATTEST:

APPROVED AS TO FORM:

CITY CLERK



CITY ATTORNEY