

ORDINANCE NO. _____, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 9.16 (MEDICAL MARIJUANA DISTRIBUTION FACILITIES) TO TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) AND SECTION 18.02.075 TO TITLE 18 (ZONING) OF THE MORGAN HILL MUNICIPAL CODE PROHIBITING MARIJUANA CULTIVATION, MARIJUANA DELIVERY SERVICES, AND MARIJUANA DISPENSARIES.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL HEREBY FINDS AND DECLARES AS FOLLOWS:

WHEREAS, Article XI, Section 7 of the California Constitution provides that the City of Morgan Hill (the "City") may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, in 1970, Congress enacted the Controlled Substances Act ("CSA") which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act ("CUA") (codified as Health and Safety ("H&S") Code Section 11362.5 et seq.); and

WHEREAS, the CUA creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, on January 1, 2004, the "Medical Marijuana Program Act" ("MMPA"), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the State Legislature to clarify the scope of the CUA and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA; and

WHEREAS, the CUA expressly anticipated the enactment of additional local legislation and provided: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes" (H&S Code Section 11362.5); and

WHEREAS, neither the CUA nor the MMPA require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or distribute 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.*, et al., holding that cities have the authority to ban medical marijuana land uses; and

WHEREAS, in December 2015, the California Court of Appeal upheld local governments' authority to ban marijuana dispensaries and cultivation in *Kirby v. County of Fresno*; 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 are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("MMRSA"), which is comprised the state legislative bills known as AB 243, AB 266, and SB 643, into law; and

WHEREAS, the MMRSA becomes effective January 1, 2016 and contains provisions and that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The MMRSA also contains new statutory provisions that:

- Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to H&S Code Section 11362.777 for the cultivation of marijuana (H&S Code Section 11362.777(c)(4));
- Expressly provide that the MMRSA does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions ("B&P") Code Section 19315(a));
- Expressly provide that the MMRSA does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including, but not limited to, a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (B&P Code § 19316(c)); and
- Require a local government that wishes to prevent marijuana delivery activity, as defined in B&P Code Section 19300.5(m) of the MMRSA, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (B&P Code Section 19340(a)); and

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

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery, or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, delivery, and distribution activities; and

WHEREAS, the Morgan Hill Municipal Code currently prohibits medical marijuana distribution facilities but does not expressly address the cultivation and delivery of medical marijuana; and

WHEREAS, based on the findings above, the potential establishment of the cultivation and delivery of medical marijuana in the City without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative impacts of such activities as described above; and

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation, delivery, and/or distribution will result in the aforementioned threat to public health, safety, and welfare; and

WHEREAS, an ordinance prohibiting medical marijuana cultivation and delivery and reaffirming the prohibition on medical marijuana distribution facilities, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana cultivation, delivery services, and distribution facilities, is necessary and appropriate to maintain and protect the public health, safety, and welfare of the citizens of the City.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 9.16 (Medical Marijuana Distribution Facilities) of Title 9 (Public Peace, Morals and Welfare) of the Morgan Hill Municipal Code is hereby amended as follows:

“Chapter 9.16 MEDICAL MARIJUANA

9.16.010. Intent..

9.16.020. Definitions .

9.16.030. Prohibited activities.

9.16.040. Violation - penalty.

9.16.050. Public nuisance.

9.16.010 - Intent.

The city council intends that this chapter: (1) is meant to prohibit all activities related to the cultivation, delivery, and dispensing of medical marijuana for which a State license is required under the Medical Marijuana Regulation and Safety Act (Bills AB 243, AB 246, and SB 643) which were signed into law on October 9, 2015, as the same may be amended from time to time; (2) expresses its intent to prohibit the cultivation of marijuana in the city and to not administer a conditional permit program pursuant to California Health and Safety Code section 11362.777 for the cultivation of marijuana in the city; (3) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; (4) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the city and its community; and (5) expressly prohibits the delivery of marijuana and medical marijuana distribution facilities in the city.

9.16.020 - Definitions.

(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 part 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 any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the Office of the Attorney General for the State of California or subject to the provisions of California Health and Safety Code section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

(b) "Marijuana Cultivation" means growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana.

(c) “Medical marijuana distribution facility” means any facility or location, whether fixed or mobile, where a primary caregiver, a person with identification cards, a qualified patient, or other person makes available, dispenses, distributes, exchanges, sells, transmits, gives, delivers (as defined in California Business and Professions Code section 19300.5(m) or any other successor statute thereto), or otherwise provides marijuana to any person for any reason, including two or more primary caregivers, persons with identification cards or qualified patients, as defined in California Health and Safety Code section 11362.5 *et. seq.*, or any facility where qualified patients, persons with identification cards and primary caregivers meet or congregate collectively and cooperatively to cultivate or distribute marijuana for medical purposes under the

purported authority of California Health and Safety Code section 11362.5 *et. seq.*, including "dispensaries" as defined in California Business and Professions Code section 19300.5(n) or any other successor statute thereto

"Medical marijuana distribution facility" shall not include the following uses, so long as such uses comply with this Code, Health and Safety Code Section 11362.5 *et seq.*, and other applicable law:

- (1) A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
- (2) A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
- (3) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.
- (4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
- (5) A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.
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9.16.030 - Prohibited activities.

Marijuana cultivation, marijuana delivery, and medical marijuana distribution facilities, as defined in this chapter, are declared to be unlawful and prohibited uses in all zoning districts in the City of Morgan Hill. The City shall not issue or approve any permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, for the activities of marijuana cultivation or marijuana delivery, or the establishment or operation of a marijuana distribution facility in the city, and no person shall otherwise establish or conduct such activities in the city.

9.16.040 - Violation—penalty.

- (a) Any person found to be in violation of any provision of this chapter shall be subject to the enforcement remedies set forth in Title 1, at the discretion of the city.
- (b) Each violation of this chapter and each day of violation of this chapter shall be considered as separate and distinct violations thereof.

9.16.050 - Public nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the city pursuant to the procedures set forth in Chapter 1.18.

Section 2. Section 18.02.075 of Chapter 18.02 (General Provisions) of Title 18 (Zoning) of the Morgan Hill Municipal Code is hereby amended as follows:

“18.02.075 - Medical marijuana.

Marijuana cultivation, marijuana delivery, and medical marijuana distribution facilities, as defined in Chapter 9.16, are prohibited uses in all zoning districts in the City of Morgan Hill.”

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or

invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

Section 4. Effective Date; Posting. This ordinance shall take effect on _____, 2016. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

Section 5. Exempt from CEQA. The City Council determines and finds that this ordinance is exempt from the California Environmental Quality Act under section 15061(b)(3) because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

The foregoing ordinance was introduced at a meeting of the City Council of the City of Morgan Hill held on the 16th of December, 2015 and was finally adopted at a meeting of said Council on the 20th day of January, 2016 and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Steve Tate, Mayor

□ **CERTIFICATE OF THE CITY CLERK** □

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 20th day of January, 2016.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:

IRMA TORREZ, City Clerk