

ORDINANCE NO. 1012

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, AMENDING CHAPTER 17.04 (GENERAL ZONING PROVISIONS) OF THE LANCASTER MUNICIPAL CODE BY ADDING NEW SECTION 17.04.235, PROHIBITING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES, THE INDOOR AND OUTDOOR CULTIVATION OF MEDICAL MARIJUANA AND THE DELIVERY OF MEDICAL MARIJUANA.

WHEREAS, in 1996, the People of the State of California approved Proposition 215, the Compassionate Use Act, which exempted qualified patients and their primary caregivers from criminal liability for the possession and cultivation of marijuana for medical purposes; and

WHEREAS, in 2003, the California Legislature enacted additional regulations through the passage of Senate Bill 420, the Medical Marijuana Program Act, to establish and implement a program for voluntary registration of qualified patients and their primary caregivers through a statewide identification card; and

WHEREAS, in late 2015, the Legislature passed, and the Governor signed, three pieces of legislation, AB 266, AB 243 and SB 643, collectively called the Medical Marijuana Regulation and Safety Act (the "Act"), which provides a statewide program for the licensing and regulation of commercial medical cannabis activity, specifically, the operation of medical marijuana dispensaries and the delivery and cultivation of medical marijuana; and

WHEREAS, the Act provides that, in accordance with the California Constitution and as expressly held by the California Supreme Court, local authority remains intact, and therefore the City may adopt ordinances to either regulate medical marijuana businesses or to prohibit such operations and related activities altogether; and

WHEREAS, the Act further provides that, if a city or county does not have a zoning ordinance expressly addressing medical marijuana cultivation, the State will become the sole licensing and regulatory authority for that activity effective March 1, 2016; and

WHEREAS, the Act further provides that if a city does not have an ordinance in effect that expressly prohibits the delivery of medical marijuana in conjunction with a dispensary before the State begins issuing licenses, the State will be the sole regulatory body for that activity and delivery will be permissible with just a State license; and

WHEREAS, when the City Council enacted a temporary moratorium on marijuana dispensaries between 2009 and 2011, it took express notice of the adverse and often dangerous secondary effects related to the medical marijuana activities as reported by cities that allowed dispensaries, specifically criminal activity; and

WHEREAS, the City Council takes legislative notice that the use, possession, cultivation, distribution and sale of marijuana remain illegal under the Controlled Substances Act (“CSA,” 21 U.S.C. Section 841), and that federal courts have recognized that despite California laws, marijuana is deemed to have no accepted medical use and the federal government may properly enforce the CSA in California; and

WHEREAS, in light of the continuing conflict between state and federal law, the City must resolve for itself whether, as a land use matter, medical marijuana dispensaries and related activities should be permitted, regulated or prohibited; and

WHEREAS, the City Council finds and declares that it is necessary to retain local control over the regulation of commercial medical marijuana activities in order to protect public health, safety and welfare while it further considers whether future regulations may allow for the safe and responsible operation of medical marijuana dispensaries and related activities within the City of Lancaster.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 17.04 of the Lancaster Municipal Code is hereby amended by adding new section 17.04.235, as follows:

17.04.235 Medical Marijuana Dispensaries, Cultivation and Delivery.

A. Findings.

In enacting this section, the City Council finds as follows:

1. In 1996, California voters approved Proposition 215, the Compassionate Use Act, which exempted qualified patients and their primary caregivers from criminal liability for the possession and cultivation of marijuana for medical purposes.
2. In 2003, the California Legislature enacted additional regulations through the passage of Senate Bill 420, the Medical Marijuana Program Act, to establish and implement a program for voluntary registration of qualified patients and their primary caregivers through a statewide identification card.
3. The City Council takes legislative notice that on October 9, 2015, the Governor signed three bills into law, specifically AB 266, AB 243 and SB 643, collectively called the Medical Marijuana Regulation and Safety Act (the “Act”). The Act provides a statewide program for the licensing and regulation of commercial cannabis activity, specifically, the operation of medical marijuana dispensaries and the delivery and cultivation of marijuana.
4. The City Council further takes legislative notice that the Act provides that, in accordance with the California Constitution and as expressly held by the California Supreme Court, local authority remains intact, and therefore the City may adopt ordinances to either regulate medical marijuana businesses or to prohibit such operations and related activities altogether.

5. The City Council takes notice of the adverse and often dangerous secondary effects, specifically criminal activity, related to medical marijuana activities, as reported by cities and other states that allow dispensaries, due in large part to the fact that the commercial marijuana industry is primarily a cash-only business.
6. The City Council further takes legislative notice that the use, possession, cultivation, distribution and sale of marijuana remain illegal under the Controlled Substances Act (“CSA,” 21 U.S.C. Section 841), and that federal courts have recognized that despite California laws, marijuana is deemed to have no accepted medical use and the federal government may properly enforce the CSA in California.
7. It is necessary to retain local control over the regulation of commercial medical marijuana activities in order to protect public health, safety and welfare while the City Council further considers whether future regulations may allow for the safe and responsible operation of medical marijuana dispensaries and related activities.

B. Definitions.

Notwithstanding any other provision in the Lancaster Municipal Code, the following terms shall have the following meanings for purposes of this section:

1. “Medical marijuana” or “medical cannabis” means “medical cannabis” as defined in Section 19300.5(ag) of the Cal. Bus. & Prof. Code.
2. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, storing or trimming of medical marijuana.
3. “Delivery” means the commercial transfer of medical marijuana from a dispensary to a qualified patient, primary caregiver or person with an identification card, as defined in Section 11362.7 of the Cal. Health & Safety Code, through any means of transport or delivery service. “Delivery” also includes the use by a medical marijuana dispensary, as defined herein, of any technology platform that enables qualified patients or primary caregivers to arrange for or facilitate the transfer of medical marijuana by a dispensary.
4. “Medical marijuana dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is offered, provided, sold, made available or otherwise distributed to a qualified patient, primary caregiver, or person with an identification card, as defined in Section 11362.7 of the Cal. Health & Safety Code. For purposes of this section, the following do not constitute a “medical marijuana dispensary” so long as they comply with this section, the Lancaster Municipal Code and all other applicable laws, and hold a current and valid state license duly issued in accordance with the applicable California law:
 - a. A clinic, as defined in Health & Safety Code section 1200;
 - b. A health care facility, as defined in Health & Safety Code section 1250;

- c. A residential care facility for persons with chronic life-threatening illness, as defined in Health & Safety Code section 1568.01;
 - d. A residential care facility for the elderly, as defined in Health & Safety Code section 1569.2;
 - e. A home health agency, as defined in Health & Safety Code section 1727, or a hospice that operates in accordance with Health & Safety Code section 1726;
 - f. A pharmacy, as defined in Bus. & Prof. Code section 4037.
5. "Person" means any individual, partnership of any kind, corporation, limited liability company, association, joint venture, or other organization or entity, however formed.

C. Prohibited medical marijuana activities.

The following prohibitions apply to all property within the City's boundaries, regardless of the zone, adopted specific plan, overlay zone or any other development or use classification or other designation of the property:

1. It is unlawful for any person, to establish or operate, or to allow, cause, create, suffer or permit the establishment or operation of a medical marijuana dispensary.
2. It is unlawful for any person to engage in the indoor or outdoor cultivation of medical marijuana, or to allow, cause, create, suffer or permit the indoor or outdoor cultivation of medical marijuana.
3. It is unlawful for any person to deliver medical marijuana, or to allow, cause, create, suffer or permit the delivery of medical marijuana.
4. This subsection does not apply to cultivation or transport of medical marijuana by a qualified patient or person with an identification card, as defined in section 11362.7 of the Health & Safety Code, who so cultivates or transports for his or her personal medical use and does not provide, donate, sell or distribute medical marijuana to any other person.
5. This subsection does not apply to cultivation or delivery of medical marijuana by a primary caregiver, as defined in section 11362.7 of the Health & Safety Code, who acts as the sole primary caregiver to no more than five qualified patients and does not receive remuneration for the activities prohibited in this subsection, except for compensation provided in full compliance with section 11362.765(d) of the Health & Safety Code.

D. Public nuisance; Violation; Remedies not exclusive.

1. The City Council finds and declares that the engagement in and/or the use of property for the activities prohibited in this subsection constitutes a public nuisance subject to abatement.
2. Notwithstanding any other provision of the zoning ordinance or the Lancaster Municipal Code, any person who violates this section shall be guilty of a misdemeanor. Each day or any portion thereof that a person violates any provision of this section shall constitute a separate offense.

3. Any enforcement action taken pursuant to this section shall not prejudice or adversely affect any other action, whether administrative, civil or criminal, that may be brought to abate the public nuisance or violation or to seek compensation for damages suffered. An administrative, civil or criminal action may be brought concurrently with any other process regarding the same public nuisance or violation.

SECTION 2. This Ordinance is hereby declared an urgency measure pursuant to Section 36937(b) of the California Government Code, and shall be effective immediately upon adoption by a four-fifth (4/5th) vote of the City Council. This declaration of urgency is based on the following facts:

A. The California Medical Marijuana Regulation and Safety Act (the "Act"), enacted in 2015 and effective January 1, 2016, provides a statewide program for the licensing and regulation of commercial cannabis activity, specifically, the operation of medical marijuana dispensaries and the delivery and cultivation of marijuana.

B. The Act provides that, in accordance with the California Constitution and as expressly held by the California Supreme Court, local authority remains intact, and therefore the City may adopt ordinances to either regulate medical marijuana businesses or to prohibit such operations and related activities altogether.

C. The Act further provides that, if a city or county does not have a zoning ordinance expressly addressing medical marijuana cultivation, the State will become the sole licensing and regulatory authority for that activity effective March 1, 2016.

D. The Act further provides that, if a city does not have an ordinance in effect that expressly prohibits the delivery of medical marijuana before the State begins issuing licenses, the State will be the sole regulatory body for that activity and delivery will be permissible with just a State license.

E. The City Council takes notice of the adverse and often dangerous secondary effects, specifically criminal activity, related to commercial medical marijuana activities, as reported by cities and other states that allow dispensaries, due in large part to the fact that the commercial medical marijuana industry is primarily a cash-only business.

F. It is necessary that the City retain local control over commercial medical marijuana activities in order to determine the appropriate actions to take to protect the peace, health, safety and general welfare of its residents, business owners and visitors.

G. Immediate enactment of this Ordinance is necessary to prevent the State from become the sole licensing and regulatory authority for certain commercial medical marijuana activities, in order to protect public peace, health, safety and general welfare.

SECTION 3. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that the enactment of this new land use regulation may have a significant effect on the environment (CEQA Guidelines Section 15061(b)(3)).

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held for any reason 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 the Ordinance. The City Council of the City of Lancaster hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 5. The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

I, Britt Avrit, CMC, City Clerk of the City of Lancaster, do hereby certify that the foregoing urgency ordinance was regularly introduced and adopted at a regular meeting of the City Council on the 9th day of February, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

BRITT AVRIT, CMC
City Clerk
City of Lancaster

R. REX PARRIS
Mayor
City of Lancaster

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES }ss
CITY OF LANCASTER }

CERTIFICATION OF ORDINANCE
CITY COUNCIL

I, _____, _____ City of Lancaster, California, do hereby certify that this is a true and correct copy of the original Ordinance No. 1012, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this _____ day of _____, _____.

(seal)
