

**ORDINANCE NO. -16-01**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CENTRO AMENDING THE CITY CODE BY ADDING ARTICLE VII TO CHAPTER 13 PROHIBITING THE CULTIVATION, MANUFACTURING AND DELIVERY OF MEDICAL MARIJUANA AND ALL ASSOCIATED BUSINESS AND OPERATIONAL ACTIVITIES IN THE CITY OF EL CENTRO**

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215 which was codified as Health and Safety Code Section 11362.5 et seq. and entitled the Compassionate Use Act of 1996 (CUA); and

**WHEREAS**, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use and cultivate marijuana for medical use under state law; and

**WHEREAS**, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program (MMP), codified as Health and Safety Code section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subjected to criminal prosecution; and

**WHEREAS**, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow authorize, or sanction the establishment of facilities that cultivate or process 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.* (2013) 56 Cal. 4<sup>th</sup> 729, holding the cities have the authority to regulate or ban medical marijuana land uses; 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 is unlawful and subject to federal prosecution, regardless of a claimed medical need; and

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“Act”) which goes into effect on January 1, 2016, and establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacturing, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills 243 and 266 and Senate Bill 643; and

**WHEREAS**, under the Act, unless local jurisdictions have a land use ordinance in place by March 1, 2016 that expressly regulates or prohibits the cultivation of marijuana and/or the delivery of marijuana within their boundaries, the State will become the sole licensing authority of marijuana cultivation; and

**WHEREAS**, some California cities have reported negative impacts of marijuana cultivation, processing and distribution uses, 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, and detectable far beyond property boundaries if grown outdoors; and

**WHEREAS**, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants, including structural damage to the building due to increased moisture and excessive mold growth which can occur and pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

**WHEREAS**, prohibiting the cultivation, manufacturing and the delivery of marijuana within the City as business activities and uses is necessary to protect the health, safety and welfare of the community, and to prevent adverse impacts that such activities may have on nearby properties and residents; and

**WHEREAS**, the City Council therefore desires to retain and maintain its control and regulation of medical marijuana uses within its boundaries; and

**WHEREAS**, the City Council desires to amend the Municipal Code to clarify the existing prohibition of medical marijuana dispensaries to include the cultivation of marijuana, the delivery of marijuana, the manufacturing of marijuana and all associated business and operational activities and to expressly reserve any future local licensing scheme granted by the Act.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CENTRO, CALIFORNIA HEREBY ORDAINS AS FOLLOWS:**

SECTION 1. Chapter 13 of the El Centro City Code is hereby amended by adding Article VII entitled “Medical Marijuana”, which reads as follows:

“ARTICLE VII. Medical Marijuana

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#### **Sec. 13-110. Purpose and Intent**

The purpose of this Article is to enact and enforce a ban on all medical marijuana dispensaries, medical marijuana manufacturers, medical marijuana cultivation, and delivery of medical marijuana located within the City limits.

#### **Sec. 13-111. Definitions**

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

***Marijuana Cultivation*** means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of any form of cannabis, regardless of whether there is intent to produce, distribute or sell the resulting product commercially.

***Marijuana Delivery*** means the commercial transfer of medical marijuana or medical marijuana products from a medical marijuana dispensary to a primary caregiver or qualified patient as defined in California Health and Safety Code section 11362.7, or to a testing laboratory, and including the use of any technology platform owned or controlled by a dispensary to arrange or facilitate the transfer of medical marijuana or medical marijuana products within the City. Medical marijuana delivery shall not include the carriage of medical marijuana or medical marijuana products on public roads otherwise in compliance with California Business and Professions Code section 19340.

***Marijuana Processing or Processing*** means any method used to prepare marijuana, marijuana edibles and/or marijuana by products for commercial retail and /or wholesales sales, including, but not limited to: cleaning, curing, preparation, laboratory testing, manufacturing packaging, and extraction of active ingredient to create marijuana related products and concentrates.

***Medical Marijuana Dispensary*** means any facility or location, whether fixed or mobile, where marijuana, marijuana products, or devices for the use of marijuana or marijuana products, either individually or in any combination, are offered, carried, transported, transmitted, manufactured, stored, placed, cultivated, sold, traded, exchanged, bartered, made available to and/or distributed, expressly including an establishment that delivers marijuana or marijuana products as part of a retail sale.

#### **Sec. 13-112.**

##### **Medical Marijuana Dispensaries as a Prohibited Use and/or Activity**

A medical marijuana dispensary is prohibited in all zones within the city's jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such use.

#### **Sec. 13-113**

##### **Cultivation of Marijuana as a Prohibited Use and/or Activity**

Marijuana cultivation by any person or entity, including, but not limited to, clinics, collectives, cooperatives and dispensaries, is prohibited in all zones within the city's jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity.

#### **Sec. 13-114**

##### **Processing of Marijuana as a Prohibited Use and/or Activity**

Marijuana processing by any person or entity, including but not limited to, clinics, collectives, cooperatives, and dispensaries, is prohibited in all zones within the city's jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity.

#### **Sec. 13-115**

##### **Delivery of Marijuana as a Prohibited Use and/or Activity**

Marijuana delivery by any person or entity, including, but not limited to, clinics, collectives, cooperatives, and dispensaries, is prohibited in all zones within the city's jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity.

##### **Sec. 13-116. Separate Offense for Each Day.**

Any person that violates any provision of this Article shall be guilty of a separate offense for each and every day, during any portion of which, any such person commits, continues, permits or causes a violation thereof, and shall be penalized accordingly.

##### **Sec. 13-117. Public Nuisance.**

Any use or condition caused, or permitted to exist, in violation of any provision of this Article shall be, and hereby is, declared a public nuisance and may be summarily abated by the City pursuant to Section 731 of the California Code of Civil Procedure.

##### **Sec. 13-118. Criminal Penalties.**

Any person who violates, causes or permits another person to violate any provision of this Article commits a misdemeanor, and upon conviction thereof, shall be punished as provided in the City Code unless said violation is charged as or reduced to an infraction by the City Attorney pursuant to Section 1-12 of the City Code.

##### **Sec. 13-119. Civil Injunction.**

The violation of any provision of this Article shall be, and hereby is, declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

##### **Sec. 13-120. Administrative Remedies.**

In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this Article may be subject to administrative remedies as set forth in the City Code.

##### **Sec. 13-121. Severability.**

The provisions of this Article are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this Article, or the application thereof, to any person, establishment or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this Article."

SECTION 2. If any section, subsection, sentence, clause, phrase or work of this Ordinance is for any reason held to be invalid and/or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, then such decision shall be affect the validity of the remaining portions of this Ordinance.

SECTION 3. This Ordinance shall take effect thirty (30) days from and after its adoption. Within fifteen (15) days after adoption, it shall be published once in a newspaper, published and circulated within the City of El Centro, California.

INTRODUCED at a regular meeting of the City Council of the City of El Centro, California, held on the 19<sup>th</sup>-day of Jan., 2016.

PASSED AND ADOPTED at an adjourned regular meeting of the City Council of the City of El Centro, California, held on the 26<sup>th</sup>-day of Jan., 2016.

CITY OF EL CENTRO

By \_\_\_\_\_  
Jason Jackson, Mayor

ATTEST:

By \_\_\_\_\_  
L. Diane Caldwell, City Clerk

APPROVED AS TO FORM  
Office of the City Attorney

By \_\_\_\_\_  
Ryan D. Childers  
Associate City Attorney

STATE OF CALIFORNIA )  
COUNTY OF IMPERIAL ) ss  
CITY OF EL CENTRO )

I, L. Diane Caldwell, City Clerk of the City of El Centro, California do hereby certify that the foregoing Ordinance No. 16-01 had its first reading on Jan. 19, 2016, and had its second reading on Jan. 26, 2016, and was passed by the following vote:

AYES: Silva, Cardenas, Jackson, Viegas-Walker  
NOES: None  
ABSENT: Garcia  
ABSTAINED: None

AYES: Silva, Cardenas, Viegas-Walker, Garcia  
NOES: None  
ABSENT: Jackson  
ABSTAINED: None

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By  
L. Diane Caldwell, City Clerk

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