

## ORDINANCE NO. 945-2015

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BARSTOW AMENDING SECTION 19.06.110 AND SUBSECTION 19.06-110(D) OF THE BARSTOW MUNICIPAL CODE TO PROHIBIT MARIJUANA USES

**WHEREAS**, the City of Barstow has an existing medical marijuana ordinance regulating marijuana dispensaries under the Barstow Municipal Code that does not adequately address current needs and desires of the City, nor recent state legislation;

**WHEREAS**, the existing medical marijuana ordinance in Section 19.06.110 of the Barstow Municipal Code prohibits dispensaries, but does not adequately address recreational marijuana, delivery or cultivation;

**WHEREAS**, on December 14, 2015, the Planning Commission of the City of Barstow held a duly noticed public hearing recommending approval of the amendment, and on December 21, 2015, the City Council of the City of Barstow introduced for first reading of the ordinance, conducting a second reading on January 19, 2016 pertaining to marijuana dispensaries, deliveries and cultivation.

**WHEREAS**, the City desires to update its marijuana ordinance as follows.

**NOW, THEREFORE**, the City Council of the City of Barstow does hereby ordain as follows:

**Section 1. Code Amendment.** Section 19.06.110 entitled "Special Provisions" and Subsection 19.06.110(D) entitled "Marijuana Dispensaries" of the Municipal Code, shall read as follows:

**"19.06.110 Special Provisions**

19.06.110 Special Provisions

Subsections:

- A. Distance between buildings in any residentially zoned district.
- B. Zoning annexed areas.
- C. Architectural requirements.
- D. Marijuana Dispensaries.

*Subsections A, B and C shall remain in effect as currently written.*

**And;**

**"19.06.110(D) Marijuana Dispensaries**

D. Marijuana Dispensaries

1. Definitions:

Delivery.

"Delivery" means the commercial transfer of marijuana or marijuana products from a dispensary, up to an amount determined by the Bureau of Medical Marijuana Regulation (within the Department of Consumer Affairs) to a primary caregiver or qualified patient as defined in Section 11362.7 of the California Health and Safety Code, or a testing laboratory.

"Delivery" also includes the use by a dispensary or any technology platform owned and controlled by the dispensary or independently licensed under this chapter that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical marijuana or medical marijuana products. (Business and Professions Code 19300.5(m)).

"Marijuana" is defined as that term is defined in California Health & Safety Code section 11018 as that section may be amended from time to time.

The following uses are prohibited in all zones established by this title and may not be conducted anywhere in the city: marijuana cultivation and dispensaries or any other facility or use which involves the manufacture, distribution of drugs or other substances which it is illegal to distribute or possess under state or federal law. Delivery within the city of marijuana or any substance which is illegal under either state or federal law is prohibited, regardless of any license a dispensary or person may possess to deliver or dispense marijuana outside of the city.

3. No conduct which is protected from criminal liability pursuant to the Compassionate Use Act (Health & Safety Code, § 11362.5) and the Medical Marijuana Program Act (Health & Safety Code, §§ 11362.7 through 11362.83) shall be made criminal by this code. Such conduct that violates the requirements of this code shall be subject to non-criminal remedies only, including, but not limited to, enforcement pursuant to Chapter 6.30, entitled "Administrative Fines and Penalties."

**Section 2.** *California Environmental Quality Act.* This ordinance is not a "project" subject to the California Environmental Quality Act (CEQA). "Project" does not include "general policy and procedure making" or "[o]rganizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment pursuant to CEQA Guidelines § 15378(b).

**Section 3.** *Severability.* Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**Section 4.** *Effective Date.* This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

**Section 5.** *Construction.* To the extent the provisions of the Barstow Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this ordinance, they shall be read as continuations of those earlier provisions and not as new enactments.

**Section 6.** *Certification.* The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

**PASSED, APPROVED AND ADOPTED**, this 19<sup>th</sup> day of January, 2016.

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Julie Hackbarth-McIntyre, Mayor

ATTEST:

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JoAnne V. Cousino, City Clerk

I, JoAnne V. Cousino, City Clerk for the City of Barstow, California and ex-officio Clerk of the City Council, do hereby certify, UNDER PENALTY OF PERJURY, that the foregoing is a true and correct copy of Ordinance No. 945-2015 which was introduced at the regular meeting of the City Council of the City of Barstow held on the 21<sup>st</sup> day of December, 2015, and adopted at the regular meeting of the City Council of the City of Barstow on the 19<sup>th</sup> day of January, 2016 by the following vote:

AYES: COUNCIL MEMBERS GRACEY, HARPOLE, HERNANDEZ; MAYOR PRO TEM  
SILVA; MAYOR HACKBARTH-MCINTYRE

NOES: NONE

ABSENT: NONE

ABSTAINED: NONE

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JoAnne V. Cousino, City Clerk