

ORDINANCE NO. 492

AN ORDINANCE OF THE CITY OF FARMERSVILLE AMENDING REGULATIONS FOR MEDICINAL AND NON-MEDICINAL CANNABIS USE, CULTIVATION, BUSINESSES, TRANSACTIONS AND LAND USES.

THE CITY COUNCIL OF THE CITY OF FARMERSVILLE DOES ORDAIN AS FOLLOWS:

Section 1. PURPOSE. There are adverse secondary impacts of cannabis/marijuana cultivation, processing, manufacturing, distribution, sales and use which include, without limitation, criminal activity, pungent odors, excess water consumption, toxic mold, excessive energy consumption and indoor electrical fire hazards, loitering at dispensaries and robbery of cannabis businesses which transact business primarily in cash. The provisions of this ordinance are intended to promote the public safety, health, comfort and general welfare, in order to provide a plan for sound and orderly development, and to ensure social and economic stability within the various zones established by the Farmersville Zoning Ordinance.

Section 2. FINDINGS AND PURPOSE. The City Council of the City of Farmersville hereby finds and declares the following:

- (a) California Constitution Article 11, Section 7 authorizes the City of Farmersville ("City") to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws;
- (b) California Government Code § 37100 authorizes the legislative body of a local government to enact local ordinances which are not in conflict with the Constitution and laws of the State of California or the United States;
- (c) The federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies cannabis/marijuana as a Schedule I drug, which is defined as a drug or other substance which has a high potential for abuse, no currently accepted medical use in treatment in the United States, and has not been accepted as safe for use under medical supervision. The federal Controlled Substances Act declares it unlawful for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, cannabis. The federal Controlled Substances Act contains no exemption for cultivation, manufacture, distribution, dispensation or possession of cannabis for medical or non-medical purposes;
- (d) On June 28, 2016, the Secretary of State of the State of California certified Proposition 64, the Control, Regulate and Tax Adult Use of Cannabis Act ("AUMA" or "Proposition 64"), for the November 8, 2016 statewide presidential general election ballot;
- (e) The AUMA become law when a majority of the electorate voted "yes" on Proposition 64. The AUMA, to a certain degree, decriminalized under State law the possession, consumption, cultivation, processing, manufacture, distribution, testing and sale of non-medicinal cannabis/marijuana and derivative products, including edibles, for adults twenty-one (21) years of age and older. The AUMA

also included provisions for licensing commercial cannabis and preserved the authority of local governments to regulate, and in some cases ban, certain cannabis activities within their boundaries.

(f) On June 27, 2017, Senate Bill 94 ("SB-94"), which was a state budget trailer bill, was signed into law by the Governor of the State of California. This legislation clarified and/or revised certain portions of the AUMA and the Medical Cannabis Regulation and Safety Act of 2015 (MCRSA) and also certain state statutes pertaining to medicinal cannabis/marijuana, including the authority of local governments to regulate, and in some cases ban, certain cannabis activities within their boundaries; SB 94 unified these two regulatory structures into the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA);

(g) The MAUCRSA now regulates, among other matters, the use of cannabis/marijuana for medicinal, non-medicinal personal and commercial purposes, including the recreational use of cannabis by adults twenty-one (21) years of age and over;

(h) To regulate personal use of cannabis, the AUMA added Health and Safety Code § 11362.1 which, among other things and with certain exceptions, made it "...lawful under state and local law..." for persons 21 years of age or older to "...possess, process, transport, purchase, obtain or give away to persons 21 years of age or older without any compensation whatsoever..." up to 28.5 grams of non-medical cannabis in the form of concentrated cannabis or not more than eight grams in the form of concentrated cannabis contained in cannabis products;

(i) The AUMA also removed certain state criminal law prohibitions for adult individuals who "...possess, plant, cultivate, harvest, dry or process not more than six living cannabis plants and possess the cannabis produced by the plants...";

(j) The AUMA also legalized smoking or ingesting of cannabis or cannabis products by adults for non-medical purposes;

(k) To regulate commercial use of non-medical cannabis, the AUMA added Division 10 (Cannabis) to the Business & Professions Code, which vested certain state agencies with "...the sole authority to create, issue, deny, renew, discipline, suspend, or revoke licenses..." for certain non-medicinal commercial cannabis business activity including microbusinesses, transportation, storage (unrelated to manufacturing activities), distribution, testing, and sale of cannabis and cannabis products within the state;

(l) The AUMA provides that specified state agencies shall promulgate rules and regulations and shall begin issuing state business licenses under Division 10 of the Business & Professions Code by January 1, 2018;

- (m) The AUMA specifies that a local jurisdiction shall not prevent transportation of non-medicinal cannabis or derivative products on public roads by a licensee transporting cannabis or derivative products in compliance with Division 10;
- (n) The AUMA authorized cities to "...reasonably regulate..." without completely prohibiting cultivation of cannabis inside a private residence or inside an "...accessory structure to a private residence located upon the grounds of a private residence which is fully enclosed and secure...";
- (o) The AUMA authorized cities to completely prohibit outdoor cultivation on the grounds of a private residence until a "...determination by the California Attorney General that nonmedical use of cannabis is lawful in the State of California under federal law...";
- (p) The AUMA authorized cities to completely prohibit the establishment or operation of any non-medical cannabis business licensed under Division 10 within its jurisdiction, including cannabis dispensaries, cannabis retailers and cannabis delivery services;
- (q) If locals fail to enact appropriate local regulations, they can be pre-empted by the state in regard to regulating all commercial cannabis businesses within their jurisdiction.
- (r) Until the AUMA was enacted, state statutes prohibited cultivation, possession and sales of non-medicinal cannabis and therefore overlapping local regulations would have been preempted by State statute;
- (s) The City has permissive zoning standards which prohibit all land uses not expressly allowed and has applied the same, without exception, to all instances of medicinal cannabis, including, but not limited to, cultivation, distribution, dispensing, transportation, sales and gifting; Since legalization, permissive zoning may not be sufficient, and there is a need to affirmatively and specifically prohibit via local ordinances the commercial cannabis activities that are not allowed.
- (t) The existence of cannabis cultivation operations carries the potential to increase secondary impacts such as: (1) robberies, break-ins and other thefts due to the high monetary value of cannabis plants; (2) dangerous alterations to the electrical wiring of buildings; (3) toxic amounts of mold spores present in buildings intended for human occupation; (4) the potential for exposure to or increased usage by school aged children; (5) the spread of strong, pungent and/or noxious odors from cannabis plants;
- (u) The City has legitimate and compelling interests in protecting the public health, welfare and safety of its residents, as well as preserving the peace and quiet of the neighborhoods within the City;
- (v) The City has determined that a regulatory ordinance is necessary to protect the public health, welfare and safety of residents of the City to the maximum extent allowable under California law to address the adverse secondary impacts resulting from changes to California law through the AUMA

and Senate Bill 94/the MAUCRSA (2017). The City Council previously adopted Ordinance 485 on (May 14, 2018) establishing procedures and regulations to permit the cultivation, processing, manufacturing and testing of cannabis products, however retail cannabis dispensaries were prohibited in that ordinance. More recently the City Council has decided to allow a limited number of retail cannabis dispensaries in limited locations.

(w) Cultivation and sales of any amount of cannabis and/or derivative products at locations or parcels within one thousand (1,000) feet of schools, school bus stops, school evacuation sites, parks, child care centers, or youth-oriented facilities creates unique risks that the cannabis plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with cannabis cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation and sales of any amount of cannabis or derivative products within such locations or parcels is especially hazardous to public safety and welfare, and to the protection of children.

(x) As recognized by the California Attorney General's August 2008 GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF CANNABIS GROWN FOR MEDICAL USE, the cultivation or other concentration of cannabis in any location or parcels without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime. There is no known reason why this same principle would not apply to non-medicinal cannabis.

(y) It is the purpose and intent of this ordinance to implement State law by providing a means for regulating non-medicinal and medicinal cannabis in a manner which is consistent with applicable State laws and which promotes the health, safety, security and welfare of local residents within the City. This Chapter is intended to be consistent with Proposition 64 and Senate Bill 94, and to that end, is not intended to prohibit any person from exercising any right otherwise granted by State law. Rather, the intent and purpose of this Chapter is to establish reasonable regulations upon the manner in which cannabis and cannabis products must be cultivated, manufactured, processed, stored and sold or gifted, in order to protect the public health, safety, security and welfare of all of the residents of the City.

(z) The limited right of individuals under State law to cultivate cannabis plants for non-medicinal purposes and/or to carry on a cannabis business without violating state criminal laws does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the City will achieve a significant reduction in the aforementioned harms caused or threatened by the cultivation of non-medicinal cannabis and/or carrying on of any cannabis business within the City.

(aa) Nothing in this ordinance shall be construed to allow or legalize cannabis for any purposes, or allow or legalize any activity relating to the cultivation, distribution or consumption of cannabis which is otherwise illegal under state or federal law. No provision of this Chapter shall be deemed a

defense or immunity to any action brought against any person by the County District Attorney or the Attorney General of State of California.

Section 3. Subsection 17.53.060 B.3. (Annual registration of parcels prior to use for cannabis business) of the Farmersville Municipal Code is amended as follows:

3. Zoning Compliance: Notwithstanding any other provision within the municipal code, and except as otherwise specifically provided otherwise within this Chapter, for all cannabis business activity, the parcel to be registered must be located within the "I" (industrial) zone or IL (Light Industrial) zone in the case of retail cannabis sales) as established by Chapter 17.60 of the municipal code. **Further, all commercial cannabis uses shall be located at least 1,000 feet from schools (or proposed school site as identified in the general plan), school bus stops, school evacuation sites, parks, child care centers, or youth-oriented facilities and not less than 300 feet from churches or places of worship. Measurements shall be from property boundary to property boundary. For purposes of this section, school means any public or private school providing instruction in kindergarten or grades 1-12, inclusive, but does not include any private school in which education is primarily conducted in private homes. The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code unless otherwise provided by law.**

Section 4. Subsection 17.53.070 A.1. (Registration of parcels prior to commercial cultivation) of the Farmersville Municipal Code is amended as follows:

1. Zoning Compliance. This subsection shall apply notwithstanding any other provision within the municipal code. The parcel to be registered must be located within the "I" (industrial) zone as established by Chapter 17.60 of the municipal code. **Further, all cannabis cultivation uses shall be located at least 1,000 feet from schools (or proposed school site as identified in the general plan), school bus stops, school evacuation sites, parks, child care centers, or youth-oriented facilities and not less than 300 feet from churches or places of worship. Measurements shall be from property boundary to property boundary. For purposes of this section, school means any public or private school providing instruction in kindergarten or grades 1-12, inclusive, but does not include any private school in which education is primarily conducted in private homes. The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code unless otherwise provided by law.**

Section 5. Subsection 17.53.077 L. (Cannabis dispensaries requirements and restrictions) of the Farmersville Municipal Code is amended as follows:

L. Distance Separation from Schools, school bus stops, school evacuation sites, parks, child care centers, or youth-oriented facilities and other sensitive uses. . ~~Cannabis dispensaries shall comply with the distance separation requirements from schools as required by state law.~~ In addition, A cannabis dispensary shall not be located within one thousand feet from any existing school or proposed school site as identified in the general plan, bus stops, school evacuation sites, parks, child care centers, or youth-oriented facilities, nor less than 300 feet from any church or place of worship. Measurements shall be from property boundary to property boundary. For purposes of this section, school means any public or private school providing instruction in kindergarten or grades 1—12, inclusive, but does not include any private school in which education is primarily conducted in private homes. The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code unless otherwise provided by law.

Section 6. CEQA REVIEW. The City Council hereby finds that this ordinance and General Plan Amendment are not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) [the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment] and 15061(b)(3) [there is no possibility the activity in question may have a significant effect on the environment]. In addition to the foregoing general exemptions, the City Council further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 categorical exemption [regulatory activity to assure the protection of the environment]. The City Manager is hereby directed to ensure that a *Notice of Exemption* is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

Section 7. NO LIABILITY. The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability or responsibility for damage to person or property upon the City of Farmersville, or any official, employee or agent thereof.

Section 8. PENDING ACTIONS. Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 9. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Farmersville hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 10. CONSTRUCTION. The City Council intends this ordinance to supplement, not to duplicate, contradict or otherwise conflict with, applicable State and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Farmersville Municipal Code as amended by this ordinance are substantially the same as provisions in the Farmersville Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 11. EFFECTIVE DATE. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof. Prior to the expiration of fifteen (15) days from the passage hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code § 36933(c)(1) and a summary shall be published once in a newspaper of general circulation in the community, together with the names of the Council members voting for and against the same.

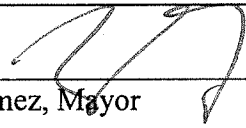
THE FOREGOING ORDINANCE was passed and adopted by the City Council of the City of Farmersville, State of California, on June 10, 2019 at a regular meeting of said Council duly and regularly convened on said day by the following vote:

AYES: Gomez, Vasquez, Boyer, Hernandez

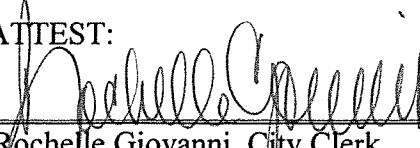
NOES: Ø

ABSTAIN: Ø

ABSENT: Macareno


Greg Gomez, Mayor

ATTEST:


Rochelle Giovanni, City Clerk

