

ORDINANCE NO. 2376

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VICTORVILLE, AMENDING THE VICTORVILLE MUNICIPAL CODE (CHAPTER 13.150 AND SECTIONS 13.02.145, 16-3.03.010, 16-3.07.025 AND 16-7.01.150) FOR THE PURPOSES OF LIMITING CANNABIS CULTIVATION FOR ADULT PERSONAL USES TO INDOOR SPACES ONLY AS PERMITTED BY STATE LAW; PROHIBITING ALL COMMERCIAL CANNABIS ACTIVITIES (BOTH MEDICINAL AND NON-MEDICINAL) IN THE CITY, EXCEPT DELIVERIES OF MEDICINAL CANNABIS ORIGINATING OUTSIDE THE CITY LIMITS, UNTIL SUCH TIME AS THE RESULTS OF STAKEHOLDER WORKSHOPS CAN BE INTEGRATED INTO A VIABLE REGULATORY PLAN AND CODIFIED BY A SEPARATE ORDINANCE; MAKING RELATED MUNICIPAL CODE AMENDMENTS TO HARMONIZE THE CODE WITH STATE LAW; AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, pursuant to Section 16-2.01.020 of the Victorville Municipal Code, the City of Victorville Development Department initiated an amendment to the Victorville Municipal Code (hereinafter this "Ordinance"), as a means to update, clarify and make consistent with new State law its provisions relating to Commercial Cannabis Activity (both Medicinal and Non-Medicinal) as those terms are defined herein, and to permit indoor cultivation of cannabis for adult personal use in accordance with State law, as well as specific deliveries of Medicinal Cannabis from State licensees; and

WHEREAS, on October 9, 2015 the Governor signed Assembly Bill Nos. 243 and 266, and Senate Bill No. 643 into law, which were collectively known as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA established a State licensing scheme for commercial medical cannabis businesses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MCRSA allowed the City to completely prohibit commercial medical cannabis activities, which existing prohibition the City confirmed on February 2, 2016 by adopting Ordinance No. 2352; and

WHEREAS, on November 8, 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"). The AUMA legalized personal cultivation and use of non-medical marijuana for persons 21 years of age or older and added a Division 10 to the California Business & Professions Code, *Section 26000 et seq.*, to grant State agencies authority to create, issue, renew, discipline, suspend, or revoke licenses for non-medical (recreational) cannabis businesses and uses, and issue State licenses for such businesses and uses if not prohibited by local laws; and

WHEREAS, on June 27, 2017, the Governor signed Senate Bill No. 94, which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medical and recreational cannabis businesses and activities known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"); and

WHEREAS, the MAUCRSA retained the provisions of the MCRSA and the AUMA granting local agencies control over whether Commercial Cannabis Activity can occur in their jurisdictions and specifically provides in Section 26200 of Business & Professions Code that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed by the State within that local jurisdiction; and

WHEREAS, the MAUCRSA further provides that a State licensing authority shall not approve an application for a State license for a business to engage in Commercial Cannabis Activity if approval of the State license will violate the provisions of any local ordinance or regulation. MAUCRSA requires that State licensing authorities begin issuing licenses to cannabis businesses beginning January 1, 2018; and

WHEREAS, the Victorville Planning Commission held a noticed public hearing on October 4, 2017, at which time all persons interested in the proposed Ordinance had the opportunity and did address the Planning Commission on these matters. Following the receipt of public testimony, the Planning Commission closed the public hearing; and

WHEREAS, following said hearing and after due consideration of the testimony and making the CEQA exemption findings (as set forth in Section 7 of this Ordinance), the Planning Commission adopted Resolution No. P-17-032 recommending that the City Council adopt this proposed Ordinance, prohibiting all Commercial Cannabis Activity (except for delivery of Medicinal Cannabis originating outside of the City) and outdoor cultivation for personal use; and

WHEREAS, on October 17, 2017, the Victorville City Council held a noticed public hearing, at which time all persons interested in this proposed Ordinance had the opportunity and did address the City Council on these matters. After receipt of such public testimony the City Council closed the public hearing.

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

SECTION 1. RECITALS AND FINDINGS.

The City Council of the City of Victorville hereby finds that the above recitals are true and correct and are incorporated as findings into the substantive portion of this Ordinance.

SECTION 2. CHAPTER 13.150 OF TITLE 13 OF THE VICTORVILLE MUNICIPAL CODE, CURRENTLY ENTITLED “MEDICAL MARIJUANA PROHIBITED,” IS HEREBY AMENDED IN ITS ENTIRETY TO READ AS FOLLOWS:

CHAPTER 13.150 - Commercial Cannabis Activity

13.150.010 - Legislative findings and statement of purpose.

- (a) The purpose of this Chapter is to expressly prohibit all Commercial Cannabis Activity in the City, with a limited exception for certain deliveries of Medicinal

Cannabis under specified conditions, and to prohibit outdoor cultivation of cannabis for personal adult use in conformance with the provisions of State law.

- (b) The City Council finds that the prohibitions in this Chapter are necessary for the preservation and protection of the public health, safety, and welfare of the city and are within the authority conferred upon the City Council by State law as an excise of its police powers.

13.150.020 - Definitions.

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

- (a) "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. For purposes of this Chapter and this Code "Cannabis" includes cannabis that is used for medicinal, non-medicinal or other purposes. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter and this Code "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code.
- (b) "Cannabis Product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients
- (c) "Code" or "this Code" means the Victorville Municipal Code.
- (d) "Commercial Cannabis Activity" includes the cultivation, possession, manufacture, distribution, processing, storing, dispensing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and Cannabis Products used for medicinal, non-medicinal, or other purposes, including without limitation, the activities of any business licensed by the State or other government entity under Division 10 of the California Business and Professions Code, or any provision of State law that regulates the licensing of cannabis businesses. "Commercial Cannabis Activity" does not include the personal adult uses allowed by Health and Safety Code sections 11362.1 and 11362.2.
- (e) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

- (f) "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer.
- (g) "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Division 10 of the California Business and Professions Code, as may be amended from time to time.
- (h) "Fully enclosed and secure structure" means a space within a greenhouse or other accessory structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors.
- (i) "Indoors" means inside a private residence or inside a fully enclosed and secure structure accessory to a private residence that is located on the grounds of said private residence.
- (j) "Private Residence" means a house, an apartment unit, a townhome or condominium, a mobile home, or other similar dwelling that is lawfully used as a residence.
- (k) "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.
- (l) "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act as codified in Division 10 of the California Business and Professions Code, as the same may be amended from time to time.
- (m) "Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation.
- (n) "Person" means and includes any: A natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, cooperative and/or collective, and any manager, lessee, agent, servant, officer or employee thereof.

13.150.030 – Prohibited Activities

- (a) Commercial Cannabis Activity, whether or not for profit, is prohibited in all zones, specific plan areas, and overlay zones of the city. No Person shall establish, operate, maintain, conduct, allow, or engage in Commercial Cannabis Activity anywhere within the city, unless otherwise exempted by Section 13.150.040. To the extent that this prohibition conflicts with any other provision of this Code, this prohibition will control.

- (b) Subsection (a) above shall prohibit all activities for which a State license is required pursuant to the MAUCRSA, as the same may be amended from time to time. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MAUCRSA, as the same may be amended from time to time. The City shall also not issue any local license to a non-profit entity as described in California Business and Professions Code Section 26070.5.
- (c) The Chapter shall not be construed to prohibit any Commercial Cannabis Activity that the city is required by State law to permit within its jurisdiction pursuant to the MAUCRSA.

13.150.040 - Exceptions.

- (a) Notwithstanding the provisions of Section 13.150.030, the delivery of medicinal cannabis or medicinal cannabis products from a business located outside the City and licensed under the MAUCRSA shall be permitted under the following conditions:
 - 1. The applicant shall present proof of its permit to operate a commercial cannabis delivery service from the city or county in which the business is located.
 - 2. Commencing on January 1, 2018, the applicant shall present proof of required state license(s) issued by the Bureau of Cannabis Control pursuant to Business and Professions Code 26010 *et seq.*
 - 3. The business license application shall be denied if the applicant or any delivery driver has a felony conviction, any other convictions involving theft, the manufacture, transportation, sale or possession of a controlled substance, or within seven (7) years prior to the application, any convictions involving driving under the influence of alcohol or drugs. Prior to the issuance of a business license and prior to each annual renewal, the applicant shall disclose the names of all drivers to the Victorville Police Department.
 - 4. The applicant shall present proof of the driver's licenses for each driver. Each driver shall be twenty-one (21) years of age or older.
 - 5. The applicant shall pay all applicable business license administrative fees required by Title 16 of this Code.
 - 6. In addition to the administrative fees referenced in Subsection (a)(5) of this Section, the applicant shall pay a processing fee, as set by resolution of the City Council for any driver requested to be added to the license outside of the annual business license renewal process.
 - 7. The delivery vehicles shall not display or advertise any Commercial Cannabis Activity, nor shall they display or advertise the name of the dispensary.
 - 8. Deliveries shall be directly to the residence or business address of the qualified patient who possesses an identification card issued pursuant to California Health and Safety Code Section 11362.7 *et seq.*, or that person's

primary caregiver. Any other delivery or transaction is prohibited. The qualified patient or primary caregiver shall maintain a copy of the delivery request and make it available to law enforcement officers upon request as required by California Business and Professions Code Section 26090(d).

9. Delivery drivers shall not transport medicinal cannabis in excess of the limits established by the State. Prior to the issuance of State regulations, no driver may transport more than eight ounces of medical marijuana.
10. All orders shall be packaged by name of the qualified patient with an identification card. The delivery driver shall maintain a copy of the delivery request and make it available upon request to law enforcement officers as required by Business and Professions Code Section 26090(e).
11. Deliveries shall occur only between the hours of 6:00 a.m. and 9:00 p.m.
12. Prior to the issuance and renewal of the business license, the applicant shall present proof that each delivery vehicle is properly registered with California Department of Motor Vehicles.
13. The Applicant shall maintain General Liability, Automobile Liability and Workers' Compensation Insurance from an insurance company admitted by the Insurance Commissioner of the State of California to transact the business of insurance in the state for the following types and limits of coverage:

- (i) General Liability - \$1,000,000 Million Dollars per Occurrence, \$2,000,000 Million Dollars Aggregate
- (ii) Automobile Liability - \$1 Million Dollars Combined Single Limit (CSL), with coverage including, but not limited to owned autos, hired or non-owned autos, covering any vehicle utilized by Applicant, subcontractor, or its officers, employees, servants, volunteers, or agents and independent contractors performing medicinal cannabis delivery services on behalf of the Applicant.
- (iii) Workers' Compensation - \$1,000,000 Million Dollars Each Accident. (This is the Statutory Limit required by the State of California.)

The City of Victorville, its officers, officials, employees, agents or volunteers, shall be included as Additional Insureds on the General Liability and Automobile Liability policies. Coverage should also include a General Liability, Auto Liability and Workers' Compensation Waiver of Subrogation provision in favor of the City of Victorville. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled with either party, reduced in coverage or in limits, except after (30) days prior written notice, by certified mail return receipt requested, has been given to the City of Victorville. In the case of non-payment, ten (10) days advance written notice shall be given.

- (b) A business license issued by the City's business license division shall be subject to revocation for failure to comply with any of the conditions described above in Section 13.150.040(a), or for failure to comply with applicable provisions of Title 13 and Title 16 of this Code. The revocation of a business license shall be subject to the procedures set forth in Section Chapter 7, Article 2 of this Code, and the City shall also notify the State licensing authority of any delivery service operating in violation of this Section 13.150.040.
- (c) The provisions of this Section 13.150.040 do not permit any temporary, persistent, or fixed physical presence to be established in the City for Commercial Cannabis Activity besides delivery vehicles as described in this Section in the active state of making a delivery.
- (d) Nothing in this Chapter shall prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery or distribution to a person located outside the city, where such transport does not involve delivery or distribution within the jurisdictional limits of the City, except as permitted herein

Section 13.150.050 –Adult Use and Cultivation

- (a) Nothing in this Chapter shall prohibit a person 21 years of age or older from engaging in the adult uses and personal cultivation of cannabis in accordance with California Health and Safety Code Sections 11362.1, 11362.2 and 11362.3, except that cultivation shall be subject to the local regulations set forth Subsections (b) and (c) below. Cultivation of cannabis for medical purposes pursuant to Section 11362.77 of the California Health and Safety Code is also subject to these local regulations.
- (b) Cultivation for personal use of six (6) or fewer live cannabis plants within a single Private Residence is permitted only to take place:
 - 1. Indoors (as defined in Section 13.150.020 of this Chapter); and
 - 2. In residential zones of the City.
- (c) The following additional local regulations shall apply to cultivation for personal use:
 - 1. There shall be no exterior visibility or evidence of Cannabis Cultivation (including odors) outside the Private Residence, or outside a Fully Enclosed and Secure Structure located on the private residential parcel from the public right-of-way, a public place, or adjacent residence, including but not limited to any cannabis plants, equipment used in the growing and cultivation operation, and any light emanating from cultivation lighting.
 - 2. No more than a total of six (6) Cannabis plants, mature or immature, are permitted within a single Private Residence, or in a Fully Enclosed and Secure Structure located upon the grounds of such Private Residence, at one time.

3. Cannabis cultivated for personal use may not be sold.
4. Outdoor cultivation is not permitted.

13.150.060 - Penalties.

- (a) General penalty. In addition to any other penalties that may exist under State, Federal, and local laws, a violation of any provision of this Chapter or a failure to comply with any mandatory requirements of this Chapter is subject to the enforcement mechanisms and penalties set forth in Chapters 1.04 and 1.05 of this Code. Notwithstanding the penalties set forth in Chapter 1.04 of this Code, this Chapter 13.150 does not authorize a criminal prosecution, arrest or penalty inconsistent with or prohibited by California Health and Safety Code Section 11362.71 *et seq.* or Section 11362.1 *et seq.*, as the same may be amended from time to time. In addition to any other remedy specified in this Chapter, or otherwise provided at law or in equity, any mandatory provision of this Chapter may be enforced by injunction issued by the courts upon a civil suit brought by the City.
- (b) Public nuisance. The conduct of any activity or business in violation of this Chapter is declared to be a public nuisance and the City may, in addition to all other remedies set forth hereunder, commence an action or actions or proceedings, for the abatement, removal and enjoinder thereof, in any manner provided by the law.
- (c) Cost recovery. Administering departments are authorized to charge cost recovery fees for services provided under this Chapter. Cost recovery fees may also be recovered for equipment and personnel expenses incurred. Said fees may be established from time to time by resolution of the City Council.
- (d) Other laws. Nothing in this Chapter shall limit or preclude the enforcement of other applicable laws.

13.150.070 Use or activity prohibited by State or Federal law

Nothing contained in this Chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any State or Federal law.

SECTION 3. SECTION 13.02.145 OF TITLE 13, CHAPTER 13.02 OF THE VICTORVILLE MUNICIPAL CODE, ENTITLED "MEDICAL MARIJUANA DISPENSARIES," IS HEREBY REPEALED IN ITS ENTIRETY.

SECTION 4. THE DEFINITION OF "MEDICAL MARIJUANA DISPENSARY" SET FORTH IN SECTION 16-3.03.010 OF TITLE 16 OF THE VICTORVILLE MUNICIPAL CODE IS HEREBY REPEALED AND REPLACED WITH THE FOLLOWING:

Commercial Cannabis Activity	means and includes the cultivation, possession, manufacture, distribution, processing, storing, dispensing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products used for medicinal, non-medicinal, or other purposes, including without limitation, the activities of any business licensed by the State or other government entity under Division 10 of the California Business and Professions Code, or any provision of State law that regulates the licensing of cannabis businesses. "Commercial Cannabis Activity" does not include the personal adult uses allowed by Health and Safety Code sections 11362.1 and 11362.2.
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SECTION 5. THE LIST OF PROHIBITED USES IN ALL ZONING DISTRICTS AS SET FORTH SECTION 16-3.07.025(a) OF TITLE 16 OF THE VICTORVILLE MUNICIPAL CODE IS HEREBY REVISED IN ITS ENTIRETY TO READ AS FOLLOWS:

(a) Prohibited uses:

- (1) Commercial Cannabis Activity
- (2) Gold exchange businesses (unless accessory to a jewelry store).
- (3) Hydroponic shops (unless accessory to a home improvement store).
- (4) Internet cafes.
- (5) Money service businesses.
- (6) Pawn shops.
- (7) Smoking lounges.
- (8) Smoke shops.

SECTION 6. **SECTION 16-7.01.150 OF TITLE 16 OF THE VICTORVILLE MUNICIPAL CODE, IS HEREBY AMENDED IN ITS ENTIRETY TO READ AS FOLLOWS:**

16-7.01.150 – Cannabis Activity Prohibited

Commercial Cannabis Activity is prohibited in all zones of the City, except as set forth in Chapter 13.150 of this Code.

SECTION 7. **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

This Ordinance has been assessed in accordance with the California Environmental Quality Act (“CEQA”), the CEQA Guidelines, and the environmental regulations of the City. Planning Staff determined that: (1) the adoption and implementation of this Ordinance is eligible for a Class 5 categorical exemption for minor changes in land use limitations and will not have a significant environmental impact and is exempt from the environmental review requirements of CEQA pursuant to Section 15305 of Title 14 of the CEQA Guidelines; and (2) the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance to prohibit commercial cannabis activity except for the limited delivery of medical cannabis will have a significant effect on the environment. The adoption and implementation of the Ordinance will not result in a permanent alteration of property nor the construction of any new or expanded structures. The City Council has reviewed the Planning Staff determination of exemption, and based on its own independent judgment, concurs with said Staff determination.

SECTION 8. **REPEAL OF CONFLICTING PROVISIONS.**

All the provisions of the Victorville Municipal Code as heretofore adopted by the City Council that are in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 9. **SEVERABILITY.**

The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

SECTION 10. **EFFECTIVE DATE.**

This Ordinance shall take effect thirty (30) days after its final passage.

SECTION 11. **CERTIFICATION.**

The City Clerk of the City of Victorville is hereby directed to certify to the passage and adoption of this Ordinance and to cause it to be published as required by law.

ORDINANCE NO. 2376

THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT ON DECEMBER 7, 2017.

PASSED, APPROVED AND ADOPTED THIS 7th DAY OF NOVEMBER, 2017.

Gloria Garcia
MAYOR OF THE CITY OF VICTORVILLE

ATTEST:

Carlee Bates
CITY CLERK

11-15-17
DATE

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

I, CAROLEE BATES, City Clerk of the City of Victorville and ex-officio Clerk to the City Council of said City, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2376 which was duly adopted at a meeting held on the 7th day of November, 2017 by the following roll call vote, to wit:

AYES: Councilmembers Garcia, Cox and Negrete

NOES: Councilmember Gomez

ABSENT: Councilmember Kennedy

ABSTAIN: None

Carlee Bates
CITY CLERK OF THE CITY OF VICTORVILLE