

CITY OF ALAMEDA ORDINANCE NO. 3146

New Series

AMENDING ALAMEDA MUNICIPAL CODE SECTION 30-5.15 REGARDING MEDICAL MARIJUANA DISPENSARIES TO DEFINE AND PROHIBIT THE CULTIVATION OF MARIJUANA IN THE CITY OF ALAMEDA.

BE IT ORDAINED by the City Council of the City of Alameda:

SECTION 1. Section 30-5.15 is hereby amended in the Alameda Municipal Code to read as follows:

Section 30-5.15 - Medical Marijuana Dispensaries and Cultivation.

Section 30-5.15 - Medical Marijuana Dispensaries and Cultivation.

a. Findings.

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

1. In 1996, the voters of the State of California approved Proposition 215, also known as the Compassionate Use Act of 1996 (the Act), codified at California Health & Safety Code (H&S) section 11362.5 et seq.

The Act creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.
3. On January 1, 2004, S.B. 420 went into effect. S.B. 420, known as the "Medical Marijuana Program" (MMP) (codified at Cal. H&S Code sections 11362.7 through 11362.83) was enacted by the State Legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with S.B. 420.
4. The Act expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes." Cal. H&S Code section 11362.5.
5. The City Council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. According to these communities, and according to news stories widely reported, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other

persons without medical need in the areas immediately surrounding such medical marijuana dispensaries. The City of Alameda reasonably could anticipate experiencing similar adverse impacts and effects.

6. The City Council further takes legislative notice that as of July 2009, at least twenty-nine (29) cities and two (2) counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The City Council further takes legislative notice that as of July 2009, at least one hundred eleven (111) cities and seven (7) counties in California have adopted permanent prohibitions against medical marijuana dispensaries.
7. The City Council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal under the CSA; that the federal courts have recognized that despite California's Act and MMP, marijuana is deemed to have no accepted medical use (Gonzales v. Raich, (2005) 545 U.S. 1; United States v. Oakland Cannabis Buyers' Cooperative, (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (United States v. Oakland Cannabis Buyers' Cooperative, (2001) 532 U.S. 483); and that the federal government properly may enforce the CSA despite the Act and MMP. (Gonzales v. Raich, (2005) 545 U.S. 1).
8. While the City Council in no manner intends or undertakes by the adoption of this section to enforce federal law, the City Council is concerned about interfering with federal law enforcement efforts.
9. The City Council further takes legislative notice that concerns about nonmedical marijuana use arising in connection with the Act and the MMP also have been recognized by state and federal courts. See, e.g., Bearman v. California Medical Bd., (2009) 176 Cal.App.4th 1588; People ex rel. Lungren v. Peron, (1997) 59 Cal.App.4th 1383, 1386-1387; Gonzales v. Raich, (2005) 545 U.S. 1, 32 n. 43.
10. Allowing medical marijuana dispensaries or the commercial cultivation of marijuana, and issuing permits, business licenses or other applicable licenses or entitlements providing for the establishment and/or operation of medical marijuana dispensaries poses a threat to the public health, safety and welfare.
11. An ordinance prohibiting medical marijuana dispensaries and commercial cultivation of marijuana, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana dispensaries and commercial cultivation of marijuana, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Alameda.
12. The City Council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the State's medical marijuana laws, entitled "GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE (August 2008)." (http://ag.ca.gov/cms__attachments/press/pdfs/n1601__medicalmarijuanaaguidelines.pdf.) The Attorney General has stated in the guidelines that "[a]lthough medical marijuana "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law."

13. The City Council further takes legislative notice that in *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, the Court held that neither the Act nor the MMP preempts cities from adopting land use regulations for medical marijuana dispensaries.
14. The City Council further takes legislative notice that the Act anticipates local regulations at Cal. H&S Code section 11362.5(b)(2): "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes."
15. The City Council further takes legislative notice that in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...." Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that "there is no right – and certainly no constitutional right – to cultivate medical marijuana....." The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.
16. The City Council further takes legislative notice that on October 9, 2015 Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (hereafter "MMRSA"). The MMRSA set up a State licensing scheme for commercial medical marijuana uses 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 MMRSA allows the City to completely prohibit commercial medical marijuana activities.
17. The City Council further takes legislative notice that the MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority.
18. The Planning Board held a duly noticed public hearing on November 23, 2015 at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a motion recommending that the City Council adopt this Ordinance.
19. The City Council held a duly noticed public hearing on this Ordinance on January 5, 2016, at which time it considered all evidence presented, both written and oral.

b. Definitions.

As used in this ordinance, the following terms shall be ascribed the following meanings:

1. Medical marijuana means "marijuana" as that term is defined and used in the Act and the MMP, to wit, Cal. H&S Code sections 11362.5 through 11362.83.

Cultivation means any activity involving the planting, growing, harvesting, drying, curing, grading, storage, or trimming of cannabis.

3. Medical marijuana dispensary means any facility or location, whether fixed or mobile, where medical marijuana is provided, sold, made available, or otherwise distributed to one or more of the following: a primary caregiver, a qualified patient or a person with an identification card.
4. A Medical Marijuana Dispensary shall not include the following uses, so long as such uses comply with this Code, Cal. H&S Code Secs. 11362.5, 11362.7 et seq., as amended, and other applicable laws:
 - a) A clinic licensed pursuant to chapter 1 (commencing with section 1200) of division 2 of the Cal. H&S Code, as amended.
 - b) A health care facility licensed pursuant to chapter 2 (commencing with section 1250) of division 2 of the Cal. H&S Code, as amended.
 - c) A residential care facility for persons with chronic life-threatening illness licensed pursuant to chapter 3.01 (commencing with section 1568.01) of division 2 of the Cal. H&S Code, as amended.
 - d) A residential care facility for the elderly licensed pursuant to chapter 3.2 (commencing with section 1569) of division 2 of the Cal. H&S Code, as amended.
 - e) A hospice or a home health agency, licensed pursuant to Chapter 8 (commencing with Sec. 1725) of Division 2 of the Cal. H&S Code, as amended.
5. Person with an identification card shall have the meaning given that term by Cal. H&S Code section 11362.7, as amended.
6. Primary caregiver shall have the meaning given that term by Cal. H&S Code section 11362.7, as amended.
7. Qualified patient shall have the meaning given that term by Cal. H&S Code section 11362.7, as amended.
- c. Operation of medical marijuana dispensaries and the commercial cultivation of marijuana prohibited.
 1. Medical marijuana dispensaries and commercial cultivation of marijuana are prohibited in the City of Alameda. No person or entity shall cultivate marijuana plants or operate or permit to be operated a medical marijuana dispensary in or upon any premises in the city. The City shall not issue, approve or grant any permit, license or other entitlement for commercial cultivation of marijuana or the establishment or operation of a medical marijuana dispensary.

This section shall not apply to cultivation by a qualified patient cultivating marijuana pursuant to California Health and Safety Code Section 11362.5 if the area he or she uses to cultivate does not exceed 100 square feet and he or she

cultivates for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity.

In addition, this section shall not apply to a primary caregiver cultivating marijuana pursuant to California Health and Safety Code Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 500 square feet and he or she cultivates exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765. The area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises.

Presiding Officer of the Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 19th day of January, 2016, by the following vote to wit:

AYES: Councilmembers Daysog, Ezzy Ashcraft, Matarrese and Mayor Spencer – 4.

NOES: Councilmember Oddie - 1.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 20th day of January, 2016.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Janet C. Kern, City Attorney
City of Alameda