

ORDINANCE NO. 3532 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

AMENDING MONTEREY CITY CODE SECTION 22-39 TO CLARIFY THAT MEDICAL MARIJUANA DELIVERY AND CULTIVATION BUSINESSES ARE PROHIBITED

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, in 1996 the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 (Health & Safety Code section 11362.5 et seq.), the intent of which was to enable seriously ill residents of California to obtain and use marijuana for medical purposes with the recommendation of a physician;

WHEREAS, in 2003, the California Legislature enacted the Medical Marijuana Program (Health & Safety Code section 11362.7 et seq.) to clarify the scope of the Compassionate Use Act of 1996;

WHEREAS, on January 19, 2010, the City adopted an urgency ordinance under Government Code section 65858 imposing a moratorium on the establishment and operation of marijuana dispensaries;

WHEREAS, on October 19, 2010, the City adopted Ordinance No. 3454, extending the moratorium for one year;

WHEREAS, on August 16, 2011, the City enacted an ordinance (Monterey City Code section 22-39) banning marijuana dispensaries within the City. The ordinance passed and was in full force and effect on October 6, 2011;

WHEREAS, the California Supreme Court in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc (2013) 56 Cal.4th 729, held that neither the Compassionate Use Act nor the Medical Marijuana Program expressly or impliedly preempt the authority of California counties or cities, under their police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana. Cities and counties may adopt local ordinances that regulate the location, operation, or establishment of medical marijuana cooperatives or collectives, and to enforce such ordinances;

WHEREAS, in Maral v. City of Live Oak (2014) 221 Cal.App.4th 975, the appellate court held that the Compassionate Use Act and the Medical Marijuana Program Act do not preempt a city's police power to prohibit marijuana cultivation. The Live Oak decision has no exceptions for cultivation by qualified patients;

WHEREAS, in October 2015, the State enacted the Medical Marijuana Regulation and Safety Act (MMRSA) for the licensure and regulation of medical marijuana. Local authority remains intact under the law. All medical marijuana businesses (dispensary sales, delivery

services, cultivation, or transport) must have a State license;

WHEREAS, under the MMRSA, a medical marijuana business in the City may only operate if it has a license with the State and the City (dual licensing);

WHEREAS, under the MMRSA, if a City does not have an ordinance in place prohibiting the cultivation of marijuana, either expressly or otherwise under the principles of permissive zoning, or chooses not to administer a conditional program, then commencing on March 1, 2016, the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applicants;

WHEREAS, the City operates under the principles of permissive zoning. Under a permissive zoning code, any use not enumerated in the code is presumptively prohibited. (City of Monterey v. Carrnshimba (2013) 215 Cal.App.4th 1068, 1091-1095; City of Corona v. Naulls (2008) 166 Cal.App.4th 418, 425.) Here, although Monterey City Code section 38-18(B) defines a use that includes "Crop Production. Raising and harvesting of tree crops, row crops, or field crops on an agricultural or commercial basis, including packing and processing," the use is not permitted in any zone under the Zoning Ordinance. Consequently, it is not authorized (e.g., Monterey City Code section 38-29(B).);

WHEREAS, the City adopts this ordinance amendment to expressly state that cultivation will not be permitted in the City;

WHEREAS, under the MMRSA, if the City does not expressly prohibit the delivery of medical marijuana within its jurisdiction, delivery will be allowed with a State dispensary license. The City's existing ordinance prohibits "mobile" dispensaries. The City adopts this ordinance amendment to ensure that medical marijuana delivery businesses will not be permitted to operate in the City;

WHEREAS, the Police Department strongly recommends against allowing the delivery or cultivation of marijuana in Monterey for two primary reasons. First, in all jurisdictions where any type of marijuana distribution has occurred there has been an increase in police services associated with the marijuana distribution. This is primarily due to the fact that marijuana and cash are both commodities that are highly sought after. Any type of marijuana distribution leads to an increase in illegal activity to obtain the marijuana and/or cash by means of robbery, burglary or theft. Additionally, marijuana distribution scenarios consistently result in quality of life complaints in the areas where the distribution is occurring. Second, any distribution of marijuana will require regulation. While the state has passed legislation that it will take the lead on marijuana regulation, the primary issues surrounding compliance and enforcement of regulations to ensure compliance will fall to local government. An analogy would be the state's regulation of alcohol laws and massage establishments. In both scenarios the state has oversight, however almost all of the compliance and regulation is left to local entities. Any regulation of marijuana distribution by the Monterey Police Department or Code Compliance would divert resources from other law enforcement or regulatory priorities;

WHEREAS, the City finds the experience in Santa Cruz County to be instructive. Santa Cruz County made findings in April 2015 with the adoption of Ordinance No. 5201 [subsequently repealed], that following the County's grant of limited immunity to cultivation operations, "County staff documented a sharp rise in illegal cannabis cultivation sites that constitute a public nuisance by degrading the environment, improperly diverting natural resources, creating fire danger, and negatively impacting the quality of life for residents in Santa Cruz County."

WHEREAS, Monterey County recently enacted a moratorium that, in part, prohibits the establishment of cultivation businesses. On July 25, 2015, the County made findings that "...cultivation of medical marijuana has also been associated with serious harmful effects in areas where they are located, to owners of property in such areas, and to people living, visiting, conducting business or otherwise present in the area, as reported by other California counties and cities. Harmful effects at both outdoor and indoor cultivation facilities have included an increase in criminal activity because of the high monetary value of the marijuana plants, adverse environmental impacts, interference with farming practices, fire from grow light systems, extensive energy consumption and strong offensive odors";

WHEREAS, the City Council finds that the cultivation and delivery of medical marijuana significantly impacts, or has the potential to significantly impact, the residents, visitors, and businesses in the City. These impacts include damage to buildings in which cultivation occurs, including improper and dangerous electrical alterations and use, inadequate ventilation, increased occurrences of home-invasion robberies and similar crimes and nuisance impacts to neighboring properties from the odors from the plants and increased crime;

WHEREAS, the purpose of these ordinance amendments is to protect the public health, safety, and welfare of the community and prevent the adverse impacts that the delivery and cultivation of medical marijuana will have on nearby properties and residents;

WHEREAS, the City does not wish to be in violation of federal law; and

WHEREAS, the City of Monterey determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CCR, Title 14, Chapter 3 (CEQA Guidelines), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: The foregoing recitals are true and correct and are hereby adopted by the City Council.

SECTION 3: Monterey City Code, Chapter 22, Section 22-39 is hereby amended to read as follows:

“22-39” Prohibiting Medical Marijuana Dispensaries, Delivery, and Cultivation, and Marijuana Dispensaries and Marijuana Sales.

(a) **Medical Marijuana Dispensaries Prohibited.** Medical marijuana dispensaries are prohibited in the City of Monterey. No person shall locate, operate, own, suffer, allow to be operated or aid, abet, lease to or assist in the operation of any fixed or mobile medical marijuana dispensary

within the City in any zone. The operation of a medical marijuana dispensary in the City of Monterey shall constitute a public nuisance.

“Medical marijuana dispensary” is defined as any facility, clinic, cooperative, club, business, group or location, whether fixed or mobile, where medical marijuana is made available to, exchanged, sold, or distributed to a qualified patient, a person with an identification card, and/or a primary caregiver as defined by State law. A medical marijuana dispensary shall not include the following uses, as long as the location of such use is otherwise in accordance with this code and other applicable law:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
5. A hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

(b) **Medical Marijuana Delivery Prohibited.** Deliveries of medical marijuana and medical cannabis products are prohibited. “Delivery” is as defined in Business & Professions Code section 19300.5(m), as these sections may be further amended.

(c) **Medical Marijuana Cultivation Prohibited.** Marijuana cultivation by any person or business, including but not limited to primary caregivers, qualified patients, collectives, cooperatives, or dispensaries, is prohibited.

(d) **Marijuana Dispensaries Prohibited.** Marijuana dispensaries are prohibited in the City of Monterey. No person shall locate, operate, own, suffer, allow to be operated or aid, abet or assist in the operation of any fixed or mobile marijuana dispensary within the City in any zone. The operation of a marijuana dispensary in the City of Monterey shall constitute a public nuisance.

“Marijuana dispensary” is defined as any facility, clinic, cooperative, club, business, group or location, whether fixed or mobile, where marijuana is made available to, sold, exchanged, or distributed to any person. A marijuana dispensary shall not include the following uses, as long as the location of such use is otherwise in accordance with this code and other applicable law:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.

4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.

5. A hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

(e) Marijuana Sales Prohibited.

1. No person shall grow, sell, exchange, or distribute marijuana within the City in any zone, or engage in any operation for this purpose.

2. No person shall make, sell or distribute any marijuana-infused product such as tinctures, baked goods or other consumable products, or participate in any operation for this purpose.

SECTION 4: All ordinances and parts of ordinances in conflict herewith are hereby repealed.


SECTION 5: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 15th day of December, 2015, by the following vote:

AYES:	3	COUNCILMEMBERS:	Downey, Smith, Roberson
NOES:	2	COUNCILMEMBERS:	Barrett, Haffa
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:



Mayor of said City



City Clerk thereof

