

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING SECTION 19.08.030 AND ADDING CHAPTER 19.98 OF TITLE 19 OF
THE CUPERTINO MUNICIPAL CODE REGARDING MEDICAL MARIJUANA
DISPENSARIES, MARIJUANA CULTIVATION FACILITIES, COMMERCIAL
CANNABIS ACTIVITIES, AND MEDICAL MARIJUANA DELIVERIES**

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States.; and

WHEREAS, in 1972, California added Chapter 6 to the state Uniform Controlled Substances Act, commencing at Health and Safety Code section 11350, which established the state's prohibition, penalties, and punishments for the possession, cultivation, transportation, and distribution of marijuana; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (the "CUA;" Health and Safety (H&S) Code Section 11362.5 et seq.); and

WHEREAS, California courts have held that the CUA created 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; and

WHEREAS, On January 1, 2004, the state Legislature enacted "Medical Marijuana Program" (MMP), codified as Health and Safety Code sections 11362.7 to 11362.83, to clarify the scope of the CUA, establish a voluntary program for identification cards issued by counties for qualified patients and primary caregivers, and provide criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana, including the collective or cooperative cultivation of medical marijuana; and

WHEREAS, the California Supreme Court ruled unanimously in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, that the CUA and the MMP do not preempt local ordinances that completely and permanently ban medical marijuana dispensaries, collectives, and cooperatives; and

WHEREAS, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Third District Court of Appeal held, based on *Inland Empire*, that there was no right to cultivate medical marijuana and that a city could implement and enforce a complete ban on this activity, including a ban on personal cultivation; and

WHEREAS, on October 9, 2015, Governor Brown signed Assembly Bills 243 and 266 and Senate Bill 643, which taken together create a broad state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, the manufacturing of marijuana products, and physician recommendations for medical marijuana, and provide immunity to marijuana businesses operating with both a state license and a local permit; and

WHEREAS, while the new legislation expressly preserves local control over medical marijuana facilities and land uses, including the authority to prohibit all medical marijuana businesses and cultivation completely, newly-added Health & Safety Code section 11362.777(c)(4) provides that if a city does not have a land use regulation or ordinance regulating or prohibiting marijuana cultivation, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program under that section, then commencing March 1, 2016, the state Department of Food and Agriculture will become the sole licensing authority for marijuana cultivation in that jurisdiction; and

WHEREAS, under newly-added Business and Professions Code section 19340(a), if a city wants to prevent medical marijuana deliveries within its jurisdiction, it must adopt an ordinance expressly prohibiting them; and

WHEREAS, medical marijuana businesses, dispensaries, cultivation activities, and deliveries are not listed in the Zoning Code as either permitted or conditionally-permitted land uses and are, therefore, prohibited under the City's permissive zoning provisions, as set forth in Municipal Code sections 19.04.030 and 19.04.050 (*City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 431-433); and

WHEREAS, the City Council has determined that express Municipal Code provision regarding medical marijuana dispensaries, marijuana cultivation facilities, commercial cannabis activities, and medical marijuana deliveries will benefit the public by providing clear guidelines regarding the scope of prohibited conduct and minimize the potential for confusion regarding the City's policies, and

WHEREAS, many California communities have experienced adverse impacts and negative secondary effects from medical marijuana establishments and cultivation

sites, including hazardous construction, unsafe electrical wiring, noxious odors and fumes affecting neighboring properties and businesses, increased crime in and around such land uses, and the diversion of medical marijuana to minors; and

WHEREAS, there is significant evidence that medical marijuana delivery services are also targets of violent crime and pose a danger to the public; and,

WHEREAS, a California Police Chiefs Association compilation of police reports, news stories, and statistical research regarding crimes involving medical marijuana businesses and their secondary impacts on the community is contained in a 2009 white paper report which is attached to the staff report presented to the City Council for purposes of its analysis of crime and secondary impacts and on file with the City Clerk; and

WHEREAS, the Santa Clara County District Attorney's Office issued a May 2014 memorandum entitled "Issues Surrounding Marijuana in Santa Clara County," which outlined many of the negative secondary effects resulting from marijuana cultivation; a copy of this memorandum is attached to the staff report presented to the City Council with this ordinance and on file with the City Clerk; and

WHEREAS, the staff report presented to the City Council identifies other negative impacts from unregulated marijuana which are incorporated herein; and

WHEREAS, it is reasonable to conclude that medical marijuana dispensaries, marijuana cultivation facilities, commercial cannabis activities, and medical marijuana deliveries could cause similar adverse impacts on the public health, safety, and welfare in Cupertino; and

WHEREAS, in order to protect the public health, safety, and welfare, the City Council desires to add Cupertino Municipal Code Chapter 19.98 to prohibit, in express terms, medical marijuana dispensaries, marijuana cultivation facilities, commercial cannabis activities, and medical marijuana deliveries; and

WHEREAS, the State regulation and licensing as contemplated in Assembly Bills 243 and 266 and Senate Bill 643 have not yet taken effect nor been implemented, and the City Council desires to preserve local control over these uses; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance; and

WHEREAS, the proposed Ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA") Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

WHEREAS, the City Council has reviewed and considered the not a project and exemption determination under the California Environmental Quality Act prior to taking any approval actions on this Ordinance and approves such determinations; and

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

SECTION 1. Cupertino Municipal Code section 19.08.030C of Chapter 19.08 of Title 19 is amended by adding the following definitions placed into alphabetical order:

"Commercial cannabis activity" shall have the meaning set forth in California Business and Professions Code section 19300.5(k).

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

SECTION 2. Cupertino Municipal Code section 19.08.030I of Chapter 19.08 of Title 19 is amended by adding the following definition placed into alphabetical order:

"Identification Card" shall have the same meaning as set forth in state law, including Health and Safety Code Sections 11352.5, 11362.7, and following, or as may be amended.

SECTION 3. Cupertino Municipal Code section 19.08.030M of Chapter 19.08 of Title 19 is amended by adding the following definitions placed into alphabetical order:

"Marijuana" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes marijuana infused in foodstuff, and concentrated cannabis and the separated resin, whether crude or petrified, obtained from marijuana. It 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 resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germination.

"Medical marijuana" is marijuana used for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of acquired immune deficiency syndrome ("AIDS"), anorexia, arthritis, cancer, chronic pain, glaucoma, migraine, spasticity, or any other serious medical condition for which marijuana is deemed to provide relief as defined in subsection (h) of Health and Safety Code § 11362.7.

"Marijuana cultivation facility" means any business, facility, use, establishment, property, or location where the cultivation of marijuana occurs. A "marijuana cultivation facility" does not include a "qualified patient's" primary residence provided such cultivation of medical marijuana is for his or her personal use.

"Medical marijuana dispensary" means any business, facility, use, establishment, property, or location, whether fixed or mobile, where medical marijuana is sold, made available, delivered, transported, and/or distributed. A "medical marijuana dispensary" does not include the following uses:

- a. A "qualified patient" transporting "medical marijuana" for his or her personal use;
- b. A "primary caregiver" delivering or transporting "medical marijuana" to a "qualified patient;"
- c. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;
- d. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
- e. 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;
- f. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or
- g. A residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

SECTION 4. Cupertino Municipal Code section 19.08.030P of Chapter 19.08 of Title 19 is amended by adding the following definition placed into alphabetical order:

“Primary caregiver” shall have the same meaning as set forth in state law, including Health and Safety Code Sections 11352.5, 11362.7, and following, or as may be amended.

SECTION 5. Cupertino Municipal Code section 19.08.030Q of Chapter 19.08 of Title 19 is amended by adding the following definition placed into alphabetical order:

“Qualified patient” shall have the same meaning as set forth in state law, including Health and Safety Code Sections 11352.5, 11362.7, and following, or as may be amended.

SECTION 6. Title 19 of the Cupertino Municipal Code is hereby amended to add Chapter 19.98 to be numbered, entitled, and to read as follows:

CHAPTER 19.98 Medical Marijuana

19.98.010	Purpose
19.98.020	Prohibitions
19.98.030	Enforcement

19.98.010 Purpose. The purpose and intent of this section is to prohibit medical marijuana dispensaries, marijuana cultivation facilities, medical marijuana deliveries, and commercial cannabis activities, as defined in Chapter 19.08, Definitions, within the city limits. It is recognized that it is a Federal violation under the Controlled Substances Act to possess or distribute marijuana even if for medical purposes. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with marijuana cultivation facilities and medical marijuana dispensaries and in connection with medical marijuana deliveries, which is detrimental to the public’s health, safety, and welfare. The State of California’s licensing and regulation as contemplated by Assembly Bills 243 and 266 and Senate Bill 643 have not yet taken effect nor been implemented, and the City Council desires to preserve local control over these uses and activities. Nothing in this Chapter is intended to circumvent compliance with state law.

19.98.020 Prohibitions.

(a) The following are prohibited:

(1) Medical marijuana dispensaries in all zones in the city and shall not be established or operated anywhere in the city.

(2) Marijuana cultivation facilities in all zones in the city and shall not be established or operated anywhere in the city.

(3) Commercial cannabis activities in all zones in the city and shall not be established or operated anywhere in the city.

(b) No person shall own, establish, open, operate, conduct, or manage a medical marijuana dispensary, marijuana cultivation facility, or commercial cannabis activity in the city, or be the lessor of property where a medical marijuana dispensary, marijuana cultivation facility, or commercial cannabis activity is located. No person shall participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any medical marijuana dispensary, marijuana cultivation facility, or commercial cannabis activity in the city.

(c) No Permits, grading permit, building permit, building plans, zone change, business license, certificate of occupancy or other applicable approval will be accepted, reviewed, approved or issued for the establishment or operation of a marijuana cultivation facility, medical marijuana dispensary, or commercial cannabis activity.

(d) Nothing contained in this section shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

19.98.030 Enforcement. The city may enforce this section in any manner permitted by law. The violation of this Chapter shall be and is hereby declared to be a public nuisance and shall, at the discretion of the city, create a cause of action for injunctive relief.

SECTION 7. FINDINGS. The following findings are made under Cupertino Municipal Code section 19.152.030(D):

(1) The proposed Ordinance conforms with the latest adopted general plan for the City in that a prohibition against marijuana cultivation facilities, medical marijuana dispensaries, commercial cannabis activities, and medical marijuana delivery services does not conflict with any allowable uses in the land use element and does not conflict with any policies or programs in any other element of the general plan.

(2) The proposed Ordinance will protect the public health, safety, and welfare and promote the orderly development of the City in that prohibiting marijuana

cultivation facilities, medical marijuana dispensaries, commercial cannabis activities, and medical marijuana delivery services will protect the City from the adverse impacts and negative secondary effects connected with these activities.

(3) The proposed Ordinance is consistent with Municipal Code Title 19, which currently bans marijuana cultivation facilities, medical marijuana dispensaries, commercial cannabis activities, and medical marijuana delivery services under principles of permissive zoning.

(4) The proposed Ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA") Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 8. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 9. The City Clerk shall certify the 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.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 19th day of January, 2016 and ENACTED at a regular meeting of the City Council of the City of Cupertino the ____ of _____ 2016, by the following vote:

Vote: Members of the City Council

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Barry Chang, Mayor, City of Cupertino