

ORDINANCE NO. 2017-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA AMENDING THE HESPERIA MUNICIPAL CODE TO BOTH PROHIBIT ALL COMMERCIAL CANNABIS ACTIVITIES EXCEPT FOR MEDICAL CANNABIS DELIVERIES FROM LIMITED USE DISPENSARIES, AS WELL AS TO REGULATE PERSONAL CANNABIS CULTIVATION, BY ADDING ARTICLE XIV (CANNABIS RELATED USES AND PROHIBITED ACTIVITIES) TO CHAPTER 16.16 OF TITLE 16, BY REPEALING SECTION 16.08.513 (MEDICAL MARIJUANA DISPENSARY) BY REPEALING SECTION 16.16.073 (MEDICAL MARIJUANA DISPENSARY), OF THE HESPERIA DEVELOPMENT CODE, AND BY FINDING AN EXEMPTION FROM CEQA (DCA17-00005)

WHEREAS, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters at the November 8, 2016 general election as Proposition 64; and

WHEREAS, the AUMA provides that the State of California will begin issuing licenses for cannabis businesses in 19 different categories, which are found in Business & Professions Code section 26050(a), and which categories include cannabis cultivation, dispensaries, manufacturing, testing, retailer, distributor, and microbusiness; and

WHEREAS, the AUMA’s Business & Professions Code section 26200(a) provides that local jurisdictions may prohibit persons from operating within the local jurisdiction under any or all of the 19 different state license categories described above; and

WHEREAS, the AUMA’s Business & Professions Code section 26055(e) provides that a state license may not be issued to an applicant whose operations would violate the provisions of any local ordinance or regulation; and

WHEREAS, the City Council of Hesperia now desires to expressly prohibit (to the fullest extent allowed under state law) any and all commercial cannabis activity otherwise allowed under AUMA and/or under any and all state licenses issued pursuant to the 19 different categories of state AUMA licenses described above (and as may be amended); and

WHEREAS, the AUMA’s Health & Safety Code section 11362.1(a)(3) make it lawful for any person 21 years of age or older to “[p]ossess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants”; and

WHEREAS, the AUMA’s Health & Safety Code section 11362.2(b)(3), explicitly allows a city to “completely prohibit persons from engaging in [the personal cultivation of cannabis] outdoors upon the grounds of a private residence”; and

WHEREAS, the AUMA’s Health & Safety Code section 11362.2(b) explicitly allows a city to “enact and enforce reasonable regulations to reasonably regulate” the cultivation of cannabis permitted under Health & Safety Code section 11362.1(a)(3), so long as the city does not completely prohibit the cultivation of up to six plants “inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, the AUMA’s Health & Safety Code section 11362.2(a)(2) further restricts such personal cannabis cultivation so that “[t]he living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of that private residence, are in a locked space, and are not visible by normal unaided vision from a public place”; and

WHEREAS, the AUMA’s Health & Safety Code section 11362.2(a)(3) further restricts cannabis cultivation such that “[n]ot more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time”; and

WHEREAS, several California cities have reported negative impacts of cannabis cultivation and related activities, including but not limited to offensive odors, criminal activity, (such as trespassing, theft, violent robberies and robbery attempts, and the illegal sale and distribution of cannabis), and public health and safety concerns (such as fire hazards and problems associated with mold, fungus, and pests); and

WHEREAS, cannabis plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors or if grown indoors without proper ventilation, odor control, and other regulations; and

WHEREAS, due to the value of cannabis plants and their strong smell (which alerts others to their locations), cannabis cultivation has been linked to break-ins, robbery, armed robbery, theft and attendant violence and injury, creating an increased risk to public safety; and

WHEREAS, unregulated cannabis cultivation can be harmful to the welfare of the surrounding community and its residents and constitute a public nuisance, in that cannabis cultivation has been shown to involve avoidance of environmental laws and regulations, and has resulted in the pollution of waters and navigable waterways in the State of California; and

WHEREAS, the indoor cultivation of cannabis has potential adverse effects to the structural integrity of the buildings in which cannabis is cultivated, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire, which presents a clear and present danger to the buildings, its occupants, and neighboring buildings and residents; and

WHEREAS, unregulated indoor cultivation of cannabis can be harmful to the public health, safety and welfare, given electrical modifications risk fires, poor irrigation can cause mold, overloaded circuits can leave entire neighborhoods in the dark, plant chemicals can cause illness, improper carbon dioxide mixed with insufficient ventilation can cause injury or death, and structural changes put first responders in danger if they rush into the unknown; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognize that the cultivation or other concentration of cannabis in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering and/or crime; and

WHEREAS, unregulated indoor cannabis cultivation is likely to generate these negative effects on the public health, safety, and welfare in the City, based on the experiences of other cities; and

WHEREAS, absent clear regulation, cannabis cultivation in the City poses a potential threat to the public peace, health, and safety, and, unless the City takes action to regulate it, the secondary impacts described above are likely to occur in the City; and

WHEREAS, the City has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, and in preserving the peace and quiet of the neighborhoods within the City, by regulating the personal indoor cultivation of cannabis; and

WHEREAS, pursuant to the above-described express statutory authority and its police power, the City has the authority to enact reasonable regulations for the indoor personal cultivation of up to six cannabis plants, to protect the public health, safety and welfare, by adding a new Article XIV (Cannabis Related Uses and Activities) with Section 16.16.455 (Personal Cultivation of Cannabis) to the Hesperia Municipal Code; and

WHEREAS, in October 2015, the State of California adopted AB 266, AB 243, and SB 643, which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"), to establish a comprehensive regulatory and licensing scheme for commercial medical cannabis operations; and

WHEREAS, the MCRSA provides that the State of California will begin issuing licenses for medical cannabis businesses in 17 different categories, which are found in Business & Professions Code sections

19300.7 and 19332, and which categories include medical cannabis cultivation, manufacturing, testing, dispensaries, distribution, and transportation; and

WHEREAS, the MCRSA's Business & Professions Code section 19320 requires a person to obtain both a state license in one of the categories described above, as well as a local permit, prior to engaging in any commercial medical cannabis activities; and

WHEREAS, on June 27, 2017 the State of California passed Senate Bill 94, integrating the regulation of Proposition 64 and existing medical marijuana law contained in the Compassionate Use Act, Assembly Bill 243, Senate Bill 643, and Assembly Bill 266; and

WHEREAS, Senate Bill 94 authorizes local jurisdictions to exercise regulations on marijuana businesses, whether adult or medicinal, engage in the collection of taxes related to those businesses, and exert local control over the manner in which the businesses operate; and

WHEREAS, The City Council declares that the following marijuana license types are hereby prohibited within the City of Hesperia:

- (1)A-Type 1—Cultivation; Specialty outdoor; Small.
- (2)A-Type 1A—Cultivation; Specialty indoor; Small.
- (3)A-Type 1B—Cultivation; Specialty mixed-light; Small.
- (4)A-Type 1C—Cultivation; Specialty cottage; Small.
- (5)A-Type 2—Cultivation; Outdoor; Small.
- (6)A-Type 2A—Cultivation; Indoor; Small.
- (7)A-Type 2B—Cultivation; Mixed-light; Small.
- (8)A-Type 3—Cultivation; Outdoor; Medium.
- (9)A-Type 3A—Cultivation; Indoor; Medium.
- (10)A-Type 3B—Cultivation; Mixed-light; Medium.
- (11)A-Type 4—Cultivation; Nursery.
- (12)A-Type 5—Cultivation; Outdoor; Large.
- (13)A-Type 5A—Cultivation; Indoor; Large.
- (14)A-Type 5B—Cultivation; Mixed-light; Large.
- (15)A-Type 6—Manufacturer 1.
- (16)A-Type 7—Manufacturer 2.
- (17)A-Type 8—Testing laboratory.
- (18)A-Type 9 – Non-Storefront Retailer.
- (19)A-Type 10—Retailer.

(20)A-Type 11—Distributor.

(21)A-Type 12—Microbusiness.

(1)M-Type 1—Cultivation; Specialty outdoor; Small.

(2)M-Type 1A—Cultivation; Specialty indoor; Small.

(3)M-Type 1B—Cultivation; Specialty mixed-light; Small.

(4)M-Type 1C—Cultivation; Specialty cottage; Small.

(5)M-Type 2—Cultivation; Outdoor; Small.

(6)M-Type 2A—Cultivation; Indoor; Small.

(7)M-Type 2B—Cultivation; Mixed-light; Small.

(8)M-Type 3—Cultivation; Outdoor; Medium.

(9)M-Type 3A—Cultivation; Indoor; Medium.

(10)M-Type 3B—Cultivation; Mixed-light; Medium.

(11)M-Type 4—Cultivation; Nursery.

(12)M-Type 5—Cultivation; Outdoor; Large.

(13)M-Type 5A—Cultivation; Indoor; Large.

(14)M-Type 5B—Cultivation; Mixed-light; Large.

(15)M-Type 6—Manufacturer 1.

(16)M-Type 7—Manufacturer 2.

(17)M-Type 8—Testing laboratory.

(18)M –Type 10, Retailer.

(19)M-Type 11—Distributor.

(20)M-Type 12—Microbusiness.

WHEREAS, The Medical Marijuana License Type = M-Type 9, non-storefront Retailer; shall be allowed to operate within the City of Hesperia, subject to all regulations herein, the regulations contained in Ordinance 2017-15 (as adopted or amended), the Hesperia Municipal Code, and State Law governing such license type; and

WHEREAS, The City Council desires to adopt regulations related to the allowed business type, M-Type 9 – Non-storefront Retailer; and

WHEREAS, the City Council of Hesperia in 2005, consistent with the Compassionate Use Act of 1996 and the Medical Marijuana Program Act of 2003, prohibited within the City of Hesperia all medical marijuana dispensaries, and the express intent of this ordinance is to maintain that prohibition, through prohibiting all cannabis business activities, regardless of whether such cannabis business activities are not-for-profit, collectives, cooperatives, for-profit, or engaged in for any other reason; and

WHEREAS, this Ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act of 2003, the Medical Cannabis Regulation and Safety Act of 2015, and the Adult Use of Marijuana Act of 2016, to protect the public health, safety, and welfare of City residents in relation to cannabis related uses and activities; and

WHEREAS, pursuant to the above-described express statutory authority and its police power, the City has the authority to prohibit and/or regulate commercial cannabis activities (whether not-for-profit or for-profit) that may otherwise be permitted by the State of California under the AUMA and/or the MCRSA, by adding a new Article XIV (Cannabis Related Uses and Prohibited Activities) to the Hesperia Municipal Code; and

WHEREAS, nothing in this Ordinance shall be construed to: (1) allow any person to engage in conduct that endangers others or causes a public nuisance; or (2) allow any activity relating to the cultivation, distribution, or consumption of cannabis that is illegal under state or federal law; and

WHEREAS, this Ordinance will affect all properties city-wide; and

WHEREAS, on July 13, 2017, the Planning Commission conducted a duly noticed public hearing on this Ordinance and recommended that the City Council adopt the same; and

WHEREAS, on October 12, 2017, the Planning Commission conducted a duly noticed public meeting to review an expanded area eligible for delivery dispensaries and recommended that the City Council adopt this expanded area; and

WHEREAS, on September 5, 2017 and November 21, 2017, the City Council conducted duly noticed public hearings on this Ordinance, and all testimony received was made a part of the public record; and

WHEREAS, the City Council has duly considered all information presented to it, including the Planning Commission findings, Planning Commission Resolutions Nos. PC-2017-14 and PC-2017-32, written staff reports, and any testimony provided at the public hearing; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HESPERIA FINDS AND ORDAINS AS FOLLOWS:

SECTION 1. THE CITY COUNCIL OF THE CITY OF HESPERIA HEREBY MAKES THE FOLLOWING FINDINGS:

- A. The recitals set forth above are all true and correct and are incorporated herein.
- B. The prohibitions on cannabis activities established by this Ordinance are reasonable and necessary to protect the public health, safety and welfare, and are enacted pursuant to the authority granted to the City by state law.
- C. The regulations of the indoor personal cultivation of cannabis established by this Ordinance are reasonable and necessary to protect the public health, safety and welfare, and are enacted pursuant to the authority granted to the City by state law.

SECTION 2. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15061(b)(3) because it can

be seen with certainty that it will not have a significant effect or physical change to the environment. The proposed amendment to the Hesperia Municipal Code would not cause a significant effect on the environment.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or circumstances, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or application, and to this end the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

SECTION 4. Title 16 the Hesperia Municipal Code is hereby revised as set forth in “Exhibit A”.

SECTION 5. The map of Marijuana Shops – Restricted Areas is hereby adopted as shown in “Exhibit B” (and as may be amended from time to time).

SECTION 6. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

SECTION 7. CERTIFICATION. The City Clerk shall certify to the adoption of this Ordinance, and shall cause the same to be posted and codified in the manner required by law.

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council on this 5th day of December 2017.

Paul Russ, Mayor

ATTEST:

Melinda Sayre, City Clerk

APPROVED AS TO FORM:

Eric Dunn, City Attorney