

**Ordinance No. 1621(16)**

**An Ordinance of the City Council of the City of Lompoc,  
County of Santa Barbara, State of California,  
Amending Chapter 9.36 of the Lompoc Municipal Code,  
Prohibiting the Establishment of Medical Marijuana  
Dispensaries, to Further Prohibit Marijuana Cultivation Citywide,  
and Provide Other Miscellaneous Edits**

**WHEREAS**, in 1996, the voters of the state of California approved Proposition 215, codified at Health and Safety Code section 11362.5 *et seq.* and entitled “The Compassionate Use Act of 1996” (the “CUA”); and

**WHEREAS**, the CUA was intended to provide seriously ill Californians the ability to possess, use and cultivate marijuana for medical use once a physician has deemed the use beneficial to a patient’s health; and

**WHEREAS**, in 2003, California Senate Bill (SB) 420 was enacted by the Legislature to clarify the scope of the CUA and to allow California cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the CUA; and

**WHEREAS**, those new regulations and rules became known as the Medical Marijuana Program (“MMP”), which, among other things, enhanced the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects; and

**WHEREAS**, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

**WHEREAS**, in 2007, the City Council of the City of Lompoc (“City”) adopted a prohibition on medical marijuana dispensaries city-wide by adopting Ordinance No. 1540(07), codified in the Lompoc Municipal Code (“LMC”) at Title 9 (Public Peace and Safety), Chapter 9.36, “PROHIBITION OF MEDICAL MARIJUANA DISPENSARIES” (the “Ordinance”); and

**WHEREAS**, the Ordinance prohibits the establishment and operation of medical marijuana dispensaries, fixed and mobile (LMC §§ 9.36.010-020) and deems those uses to be a “public nuisance” pursuant to the City’s police powers, subject to abatement by the City (LMC § 9.36.030), as well as criminal and civil penalties (LMC § 9.36.040); and

**WHEREAS**, in 2013, the California Supreme Court confirmed cities have the authority to ban medical marijuana land uses (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729); and

**WHEREAS**, also in 2013, the California Supreme Court further determined the CUA and MMP do “not preempt a city’s police power to prohibit the cultivation of all marijuana within that city” (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 978); and

**WHEREAS**, under the Federal Controlled Substances Act, codified in 21 U. S. C. Section 801 *et seq.*, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

**WHEREAS**, on October 9, 2014, Governor Jerry Brown signed into law, three bills – Assembly Bill (AB) 243, AB 266 and SB 643 – which together form the Medical Marijuana Regulation and Safety Act (the “Act”); and

**WHEREAS**, the Act, which becomes effective January 1, 2016, creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis; and

**WHEREAS**, in addition to creating those State controls, the Act preserves the City’s authority to prohibit, regulate and/or license medical marijuana uses within its jurisdiction, as it expressly provides that the Act:

- Is not intended “to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements” (Bus. & Prof. Code § 19315(a));
- Does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government’s right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c));
- Authorizes local jurisdictions like the City with the power to “adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity” (Bus. & Prof. Code § 19316); and

**WHEREAS**, the Act further expressly allows local governments to enact ordinances expressing their intent to prohibit the **cultivation** of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362. 777(c)(4)); and

**WHEREAS**, the Act requires a local government that wishes to prevent **marijuana delivery activity**, as defined in Business & Professions Code § 19300.5(m), from operating within the local government’s boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)); and

**WHEREAS**, under the dual licensing system created by the Act, before any kind of medical marijuana license will be issued by the State, the applicant must have obtained the necessary local license and/or permit for the requested marijuana-related use; and

**WHEREAS**, pursuant to the following statutes created by the Act, local jurisdictions that adopt a ban on medical marijuana dispensaries, cultivation and/or mobile delivery will effectively have a “veto” over whether a state license for the locally regulated activities can be issued:

Business & Professions § 19320(b): “A licensee shall not commence [commercial cannabis] activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.”

Health & Safety Code § 11362.777(b)(1): “A person shall not cultivate medical marijuana without first obtaining . . . A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city. . . in which the cultivation will occur.”

Business & Professions Code § 19320(b): “Revocation of a local license, permit or authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction. . . .”

Business & Professions Code § 19312: “Each licensing authority may suspend or revoke licenses. . . .”

**WHEREAS**, the City hereby re-affirms and confirms the City’s Zoning Code is adopted and operates under the principles of permissive zoning, meaning any land use not specifically authorized or identified in the zoning code is prohibited; and

**WHEREAS**, California Health & Safety Code Section 11362.777(b)(3) expressly provides the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under the principles of permissive zoning; and

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

**WHEREAS**, marijuana 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; and

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

**WHEREAS**, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the buildings in which it 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 building and its occupants; and

**WHEREAS**, the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes the cultivation or other concentration of marijuana 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 or crime; and

**WHEREAS**, based on the experiences of other cities, those negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing and distribution activities; and

**WHEREAS**, based on the findings set forth above and herein, the potential establishment of the cultivation, processing and distribution of medical marijuana in the City without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative impacts of such activities as described above; and

**WHEREAS**, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation, processing, delivery, and/ or distribution will result in the aforementioned threat to public health, safety, and welfare; and

**WHEREAS**, pursuant to the above-described express statutory authority and its police power, the City has determined, in addition to the existing prohibition on the establishment of medical marijuana dispensaries codified in the Ordinance, an express prohibition on the cultivation and delivery of marijuana is needed to protect the public health, safety and welfare; and

**WHEREAS**, in light of the findings and determinations set forth herein and further advanced during the public hearing on this matter, the City now desires to amend Chapter 9.36 of the Lompoc Municipal Code to further prohibit cultivation and mobile dispensaries pursuant to the new state law requirements (AB 266 and AB 243), and to make other miscellaneous edits to effectuate the same (the “Amendments”); and

**WHEREAS**, the Amendments would affect all properties City-wide; and

**WHEREAS**, the City Council has duly considered all information presented to it, including written staff reports and any public comment regarding same.

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

**SECTION 1. Findings.** The City Council finds and determines the recitals above are true and correct, and are hereby incorporated by reference. Additionally, the City Council finds as follows:

**A. The cultivation and dispensing of marijuana, both fixed and mobile, has significant impacts or the potential for significant impacts on the City.** Those impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, and the nuisance of strong and noxious odors. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with medical marijuana dispensaries, cultivation and the mobile delivery of same.

**B. The proposed Amendments will further the public health, safety and general welfare.** The proposed Amendments to the Ordinance will prohibit marijuana and medical marijuana dispensaries, cultivation and the mobile delivery of marijuana within the City limits and will help protect the public health, safety and general welfare of the City and its residents. They will also mitigate or reduce the crime-related secondary impacts associated with medical marijuana dispensaries, cultivation and the mobile delivery of marijuana, which is contrary to policies that are intended to promote and maintain the public's health, safety and welfare. These prohibited services will help preserve the City's law enforcement services, in that monitoring and addressing the negative secondary effects and adverse impacts will likely burden the City's law enforcement resources.

**C. The proposed Amendments will not adversely affect adjoining property as to value, precedent or be detrimental to the area.** The proposed Amendments to the Ordinance will further solidify the City's stance on prohibiting medical marijuana dispensaries, cultivation, and the mobile delivery of marijuana. The prohibition of these uses will help protect property values in the City and discourage a wide range of illicit activities associated with the sale, cultivation and dispensing of marijuana and/or medical marijuana.

**D. The proposed Amendments are consistent with the General Plan and are in compliance with all applicable provisions of the Municipal Code and other ordinances and regulations of the City.** The proposed amendments prohibiting marijuana and medical marijuana dispensaries, cultivation, and the mobile delivery of marijuana within the City limits are consistent with the existing language of Chapter 9.36, Prohibition of Medical Marijuana Dispensaries, within the LMC.

**E. The proposed Amendments are consistent with Federal Law.** The possession, cultivation, use, and dispensing of marijuana continues to be illegal under Federal law. The Federal Controlled Substances Act classifies marijuana as “Schedule I Drug,” which is defined as a drug or other substance that has a high potential for abuse, and makes it unlawful for any person to cultivate or dispense marijuana. The Controlled Substance Act contains no statutory exemption for the possession of marijuana for medical purposes.

**SECTION 2.** Chapter 9.36 of Title 9 of the Lompoc Municipal Code is hereby amended in its entirety to read as follows:

**Chapter 9.36  
MEDICAL MARIJUANA**

<b>9.36.010</b>	<b>Purpose.</b>
<b>9.36.020</b>	<b>Findings.</b>
<b>9.36.030</b>	<b>Definitions.</b>
<b>9.36.040</b>	<b>Prohibition.</b>
<b>9.36.050</b>	<b>Use or activity prohibited by state or federal law.</b>
<b>9.36.060</b>	<b>Enforcement.</b>

**Section 9.36.010 Purpose.**

The purpose of this Chapter is to prohibit the establishment of marijuana and medical marijuana dispensaries, cultivation of marijuana, and mobile delivery or distribution of marijuana, as defined herein, within the City of Lompoc.

**Section 9.36.020 Findings.**

In adopting the prohibitions codified in this Chapter, the City Council makes the following findings and determinations:

A. The prohibitions on marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council’s prohibition of such activities is within the authority conferred upon the City Council by its police power and state law.

B. On October 9, 2015, the governor signed the “Medical Marijuana Regulation and Safety Act”(the “Act”) into law. The Act becomes effective January 1, 2016 and contains new statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code § 11362.

777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));

2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Bus. & Prof. Code § 19315(a));
3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Bus. & Prof. Code § 19316(c)); and
4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code § 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Bus. & Prof. Code § 19340(a)).

C. It is recognized the Federal Controlled Substances Act, codified at 21 U.S.C. Section 801 *et seq.*, classifies marijuana as "Schedule I Drug," which is defined as a drug or other substance that has a high potential for abuse. The Controlled Substances Act makes it unlawful for any person to cultivate or dispense marijuana without regard to a claimed medical need.

D. The City Council finds this chapter: (1) expresses its intent to prohibit the cultivation of marijuana in the City and not to administer a conditional permit program pursuant to Health & Safety Code § 11362.777 for the cultivation of marijuana in the City; (2) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; (3) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; and (4) expressly prohibits the delivery of marijuana in the City.

#### **Section 9.36.030 Definitions.**

A. **"Marijuana"** means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated 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, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or

authorized in strict compliance with the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

B. **“Marijuana Cultivation”** means the growing, planting, harvesting, drying, curing, grading, trimming or processing of marijuana or any part thereof.

C. **“Marijuana Processing”** means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

D. **“Marijuana Dispensary”** means any for-profit or not-for-profit facility or location, whether permanent or temporary, where the owner(s) or operator(s) intends to or does possess and distribute marijuana, or allows others to possess and distribute marijuana, to more than one person, such as a qualified patient, primary caregiver or a person with an identification card issued in accordance with California Health and Safety Code Sections 11362.5 to 11362.83. A “medical marijuana dispensary” includes a “collective” or “cooperative” as described in Health and Safety Code Section 11362.775, and includes an establishment that delivers marijuana to offsite locations. A “medical marijuana dispensary” shall not include the following uses; provided, that the location of such uses is permitted by the Code and the uses comply with all applicable state laws including Health and Safety Code Section 11362.5 *et seq.*:

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 facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
4. 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;
5. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or
6. A residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

E. **“Mobile Marijuana Dispensary”** means any business, office, store, facility, location, retail “storefront” or wholesale component of any establishment, cooperative, collective, club or entity of that nature that transports or delivers (as defined in Business &

Professions Code § 193500(m) or any successor statute thereto), or arranges the transportation or delivery of marijuana and/or medical marijuana for any purpose.

F. **“Operation”** means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a marijuana dispensary, fixed or mobile.

G. **“Person”** means any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer or salesperson.

H. **“Primary caregiver”** means the individual (or individuals) older than 18 years of age, designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that qualified patient.

I. **“Qualified patient”** means a seriously ill person who obtains a recommendation from a physician, licensed to practice medicine in the State of California, to use marijuana for personal medical purposes. In addition, persons currently under the care of a physician for certain medical conditions including, but not limited to, HIV/AIDS, cancer, glaucoma, epilepsy or other spasticity related illnesses, migraine, anorexia, severe nausea are presumed to be “qualified patients.”

#### **Section 9.36.040 Prohibition.**

A. Marijuana Dispensaries. The establishment or operation of a medical marijuana dispensary, as defined in this Chapter, is prohibited in all zones throughout the City. The delivery of marijuana within City limits by any means is further prohibited.

B. Marijuana Cultivation. With the potential exception of personal individual cultivation for personal use by the cultivator of medical marijuana, as permitted by the Compassionate Use Act of 1996, marijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives and dispensaries, is prohibited in all zones throughout the City.

C. Mobile Marijuana Dispensaries. The establishment or operation of a mobile marijuana dispensary as defined in this Chapter, shall be prohibited within City limits. No person shall locate, operate, own, suffer, allow to be operated or aid, abet, or assist in the operation of any mobile marijuana dispensary within the City.

1. No person shall deliver and/or dispense marijuana and/or medical marijuana to any location within the City from a mobile marijuana dispensary or any other vehicle or method, regardless of where the mobile marijuana dispensary or vehicle is located, or engage in any operation for this purpose.

2. No person shall deliver and/or dispense any marijuana-infused product such as tinctures, baked goods or other consumable products, to any location within the City from a mobile marijuana dispensary, or any other vehicle or method, regardless of where the mobile marijuana dispensary or vehicle is located, or engage in any operation for this purpose.

D. Marijuana-Related Licenses and Permits. No permit or any other applicable license or entitlement for use, whether administrative or discretionary, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a marijuana dispensary within the City limits, the establishment or operation of a mobile marijuana dispensary within the City limits, marijuana cultivation, marijuana processing or marijuana delivery, and no person shall otherwise establish or conduct such activities in the City, except as otherwise expressly allowed by federal or state law.

**Section 9.36.050 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 9.36.060 Enforcement.**

A. Public Nuisance. The violation of any provision in this Chapter shall be and is declared to be a public nuisance and contrary to the public interest and shall, in addition to any other remedy and, at the discretion of the city, create a cause of action for injunctive relief.

B. Penalties. The following nonexclusive remedies may be used by the City as penalties for violations of this Chapter:

1. Criminal. Violation of the prohibition against the establishment or operation of a medical marijuana dispensary, fixed or mobile, as set forth at Section 9.36.040 of this Chapter, or the causing or permitting another to violate said prohibition, is a misdemeanor.
2. Civil. The violation of any provision of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief as well as any other available civil remedies.
3. Separate Offense for Each Day. Any person who violates any provision of this Chapter is guilty of a separate offense for each day during any portion of which such person commits, continues, permits, or causes a violation of this Chapter and shall be penalized accordingly.

**SECTION 3.** This ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this ordinance and shall cause this ordinance to be posted in the manner required by law.

This Ordinance was introduced on \_\_\_\_\_, 2015, and duly adopted by the City Council of the City of Lompoc at its duly noticed regular meeting on \_\_\_\_\_, 2015, by the following electronic vote:

PASSED AND ADOPTED this \_\_\_ day of January 2016, by the following electronic vote:

AYES: Councilmember(s)

NOES: Councilmember(s)

ABSENT: Councilmember(s)

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Bob Lingl, Mayor  
City of Lompoc

ATTEST:

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Stacey Haddon, City Clerk  
City of Lompoc