

Chapter 9.36

PROHIBITION OF MEDICAL MARIJUANA DISPENSARIES

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Section 9.36.010 ~~Prohibition~~ Purpose.

~~Notwithstanding any contrary provision of the Lompoc City Code, no medical establishment of marijuana dispensary shall be established and medical marijuana dispensaries, cultivation of marijuana, and mobile delivery or located or operated distribution of marijuana, as defined herein, within the City of Lompoc, nor shall.~~
The purpose of this Chapter is to prohibit the

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 building permit, use permit, zoning clearance, business tax receipt person to cultivate or dispense marijuana without regard to a claimed medical need.

A-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 for use be issued for any medical marijuana dispensary, nor shall any existing uses be modified to add a medical marijuana dispensary 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.

~~No person shall establish, operate, or permit to be operated a medical marijuana dispensary in or upon any premises in the City, nor operate such a dispensary as a mobile vendor. It is a violation of this Chapter for any person to knowingly allow property of which he or she is the tenant or owner to be used as a medicinal marijuana dispensary.~~

Section 9.36.020030 Definitions.

~~For the purposes of this Chapter, unless otherwise apparent from the context, the following definitions apply:~~

~~"Identification card" "Marijuana" means a document issued by the California Department of Health Services, or by a county in the State of California, that identifies a person authorized to engage in the medical use of marijuana and that person's primary caregiver, if any.~~

A. ~~"Marijuana" means any or all parts of organically grown the plant Cannabis plantsativa 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 seed, or its resin.~~ "Marijuana" does not include the mature stalks of the plant,

~~fiber produced from the stalks, oil, or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination, 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. “Medical marijuana dispensary,” “medicinal marijuana dispensary,” “dispensary,” “medical marijuana clinic” and “clinic”~~ **“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.

~~B.D. “Marijuana Dispensary”~~ means any for-profit or not-for-profit facility, ~~site, or location, or mobile vending vehicle whether permanent or temporary, where medical marijuana is distributed, sold, exchanged, given away, distributed, or made available to three or more persons in the following categories: primary caregiver, 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 a valid an identification card, issued in strict accordance with California Health and Safety Code Sections 11362.5—11362.9, but does not 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, so long as such uses and; provided, that the location of such uses is permitted by the Code and the uses comply with all applicable state laws, including but not limited to California Health and Safety Code Sections Section 11362.5—11362.9 and the Lompoc City Code: et seq.:~~

- ~~1.~~ 4.—A clinic licensed pursuant to Chapter 1 of Division 2 (~~Sections 1200 et seq.~~) of the Health and Safety Code;
- ~~2.~~ 2.—A health care facility licensed pursuant to Chapter 2 of Division 2 (~~Sections 1250 et seq.~~) of the ~~California~~ Health and Safety Code;
- ~~3.~~ 3.—A facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
- ~~3.4.~~ 3.4. A residential care facility for persons with chronic life-threatening ~~illnesses~~ illness licensed pursuant to Chapter 3.01 of Division 2 (~~Sections 1568.01 et seq.~~) of the ~~California~~ Health and Safety Code;

~~4.5.~~ 4.—A residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 (~~Sections 1569.2 et seq.~~) of the ~~California~~ Health and Safety Code; ~~and/or~~

~~5.6.~~ 5.—A residential hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 (~~Sections 1725 et seq.~~) of the ~~California~~ Health and Safety Code.

~~“Medicinal marijuana” is marijuana authorized in strict compliance with California Health and Safety Code Sections 11362.5—11362.9.~~

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.

~~C.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.

~~D.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 9.36.030040 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.

Any use or condition caused or permitted to exist in ~~The~~ violation of any of the provisions of ~~provision in~~ this Chapter shall be and is hereby declared to be a public nuisance that may be summarily abated by the City 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.

Section 9.36.040—B. Penalties.

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

1. A.—Criminal. Violation of ~~any provision~~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 ~~any provision of this Chapter~~said prohibition, is a misdemeanor.
2. B.—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. C.—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.