

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA, ADDING
CHAPTER 20.84, "MEDICAL MARIJUANA AND
CULTIVATION" TO THE MERCED MUNICIPAL
CODE PROHIBITING ALL COMMERCIAL
MEDICAL MARIJUANA USES IN THE CITY AND
PROHIBITING CULTIVATION FOR MEDICAL
USE BY A QUALIFIED PATIENT OR PRIMARY
CAREGIVER**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:**

SECTION 1. FINDINGS AND PURPOSE. The City Council finds and declares as follows:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996" or "CUA").

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

C. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code § 11362.7 *et seq.* and referred to as the "Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize

the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

D. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . .” Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

E. The Federal Controlled Substances Act, 21 U.S.C. Section 801 *et seq.*, classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana.

F. On October 9, 2015, Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (hereafter “MMRSA”). MMRSA set up a state licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a state license. MMRSA allows the City to completely prohibit commercial medical marijuana activities.

G. The City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of

marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

H. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

I. MMRSA contains language that requires the City to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning, or the State of California will become the sole licensing authority. MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.

J. While the City Council believes that cultivation and all commercial medical marijuana uses are prohibited pursuant to Merced Municipal Code Section 20.060.050(E), it desires to enact this Ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City.

SECTION 2. AUTHORITY. This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to, Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program, and The Medical Marijuana Regulation and Safety Act.

SECTION 3. ADOPTION OF CHAPTER 20.84. Chapter 20.84, Medical Marijuana and Cultivation,” is hereby added to the Merced Municipal Code to read as follows:

**“Chapter 20.84
MEDICAL MARIJUANA AND CULTIVATION**

Section:

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| 20.84.010 | Definitions. |
| 20.84.020 | Prohibition. |
| 20.84.030 | Public Nuisance. |
| 20.84.040 | Civil Penalties. |

20.84.010 Definitions.

‘Cannabis’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(f) as the same may be amended from time to time.

‘Caregiver’ or ‘primary caregiver’ shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

‘Commercial cannabis activity’ shall have the same meaning as that set forth in Business and Professions Code Section 19300.5(k) as the same may be amended from time to time.

‘Cooperative’ shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.

‘Cultivation’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(l) as the same may be amended from time to time.

‘Cultivation site’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(x) as the same may be amended from time to time.

‘Delivery’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(m) as the same may be amended from time to time.

‘Dispensary’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(n) as the same may be amended from time to time. For purposes of this Chapter, ‘Dispensary’ shall also include a cooperative. ‘Dispensary’ shall not include the following uses:

- (1) A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code,
- (2) A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code,
- (3) A residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code,
- (4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code,
- (5) A residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

‘Dispensing’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(o) as the same may be amended from time to time.

‘Distribution’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(p) as the same may be amended from time to time.

‘Distributor’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(q) as the same may be amended from time to time.

‘Manufacturer’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(y) as the same may be amended from time to time.

‘Manufacturing site’ shall have the same meaning as set forth in Business and Professions Code Section

19300.5(af) as the same may be amended from time to time.

‘Medical cannabis,’ ‘medical cannabis product,’ or ‘cannabis product’ shall have the same meanings as set forth in Business & Professions Code § 19300.5(ag) as the same may be amended from time to time.

‘Medical Marijuana Regulation and Safety Act’ or ‘MMRSA’ shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

‘Nursery’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(ah) as the same may be amended from time to time.

‘Qualifying patient’ or ‘Qualified patient’ shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

‘Testing laboratory’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(z) as the same may be amended from time to time.

‘Transport’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(am) as the same may be amended from time to time.

‘Transporter’ shall have the same meaning as set forth in Business and Professions Code Section 19300.5(aa) as the same may be amended from time to time.

20.84.020 Prohibition.

A. Commercial cannabis activities of all types are expressly prohibited in all zones and all specific plan areas in the City of Merced. No person shall establish,

operate, conduct or allow a commercial cannabis activity anywhere within the City.

B. To the extent not already covered by subsection A above, all deliveries of medical cannabis are expressly prohibited within the City of Merced. No person shall conduct any deliveries that either originate or terminate within the City.

C. This Section is meant to prohibit all activities for which a state license is required. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a state license is required under the MMRSA.

D. Cultivation of cannabis for non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones and all specific plan areas in the City of Merced. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes.

20.84.030 Public Nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter 20.84 shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure Section 731 or any other remedy available to the City.

20.84.040 Civil Penalties.

In addition to any other enforcement permitted by this Chapter 20.84, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Chapter. In any civil action brought pursuant to this Chapter, a court of competent jurisdiction may award reasonable attorney fees and costs to the prevailing party.”

SECTION 4. CEQA. This Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15305, minor alterations in land use limitations in areas with an average slope of less than 20% that do not result in any changes in land use or density and Section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. Merced Municipal Code Section 20.06.050(E) already prohibits all uses that are being expressly prohibited by this Ordinance. Therefore, this Ordinance has no impact on the physical environment as it will not result in any changes.

SECTION 5. 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 6. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

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The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2015, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2015, by the following called vote:

AYES: **Council Members:**

NOES: **Council Members:**

ABSTAIN: **Council Members:**

ABSENT: **Council Members:**

APPROVED:

Mayor

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM

Ker Boyd *1-7-2-15*
City Attorney **Date**