

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

AN ORDINANCE ADDING CHAPTER 5.90, *COMMERCIAL CULTIVATION OF MARIJUANA FOR MEDICINAL PURPOSES*, TO THE LIVERMORE MUNICIPAL CODE PROHIBITING COMMERCIAL CULTIVATION OF CANNABIS FOR MEDICAL PURPOSES FOR A PERIOD OF EIGHTEEN MONTHS

The Federal Controlled Substances Act, 21 U.S.C. section 801, *et seq.*, was adopted in 1970, and prohibits the manufacture, cultivation, distribution, and possession of marijuana, also known as cannabis.

In 1996, the voters of the State of California approved Proposition 215, which was codified as "The Compassionate Use Act of 1996," at California Health and Safety Code section 11362.5 ("CUA"). The stated intent of the CUA was to ensure that seriously ill individuals have the right to obtain and use marijuana for medical purposes when recommended by a physician.

In 2003, the California Legislature enacted the Medical Marijuana Program Act ("MMPA") codified at Health and Safety Code section 11362.7, *et seq.* The MMPA provided qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medicinal purposes with a limited defense to certain specified State criminal statutes.

In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4th 729 (2013), the California Supreme Court upheld the right of local public agencies to regulate medical marijuana operations through their land use powers.

On October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("MMRSA"), which goes into effect on January 1, 2016, and establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana, also known as cannabis, through Assembly Bills 243 and 266 and Senate Bill 643. Among the things the MMRSA does is establish regulations that will allow for commercial cultivation of cannabis for medicinal purposes where authorized by the land use regulations of a city or county. The MMRSA also expressly preserves the right of a city or county to regulate or ban cultivation though the exercise of local land use powers.

To legally cultivate, all operators will be required to obtain a State cultivation license. If a city or county allows cultivation and requires a local license, an operator in that jurisdiction will also be required to obtain a local cultivation license. Thus, cultivation operators may be required to have two licenses in order to operate. The MMRSA also preserves the ability of a qualified patient and of primary caregivers to cultivate for personal, non-commercial purposes, sets new limits on such cultivation, and exempts such personal cultivation from State cultivation licensing requirements.

The MMRSA, however, also states that if a city or county has not adopted land use regulations by March 1, 2016, to either regulate or ban cultivation of marijuana for medicinal purposes, the State will be the sole authority that issues cultivation licenses in that jurisdiction, meaning no local license will be required. Specifically, Health and Safety Code section 11362.777(a)(4) states,

If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

As explained above, prior to passage of the MMRSA, State law provided no legal mechanism for commercial cultivation of marijuana for medicinal purposes and Federal law prohibited all cultivation of marijuana. Until the MMRSA was passed, cultivation of marijuana for medicinal purposes in California was restricted to individual qualified patients or their primary caregivers for non-commercial purposes and limited to personal quantities.

Until now, therefore, the City of Livermore's land use regulations were not required to expressly prohibit commercial cultivation of medicinal marijuana because it was not legal pursuant to State or Federal law and because such commercial cultivation is not recognized as a specifically allowed use in any of the City's land use districts.

Although such cultivation remains a non-allowed use in the City's land use districts, in order to ensure full local control over regulation of commercial cultivation of marijuana for medicinal purposes in the City of Livermore is preserved, the MMRSA requires the City to adopt cultivation regulations or a ban by ordinance in advance of March 1, 2016. The City therefore must adopt an express commercial cultivation ordinance to ensure the State is not the sole regulator of cultivation activities provided pursuant to the terms of the MMRSA.

There is presently insufficient time for the City to fully consider all of the policy, safety and land use issues that are raised when considering whether to, and how to, authorize commercial cultivation of marijuana for medicinal purposes in the City. Therefore, the only type of regulation the City can currently adopt prior to March 1, 2016, to preserve full local control over commercial cultivation issues, is a ban of all commercial cultivation of marijuana for medicinal purposes.

Personal cultivation as allowed by State law will not be subject to this new ordinance.

The City Council and the public have not yet, however, had sufficient time to determine whether such a ban should be permanent. To enable full consideration of the subject and to ensure that a ban does not become permanent until such discussions and considerations take place, the City Council will adopt its cultivation ban on a temporary basis by providing that it expires within 18 months of adoption, on September 1, 2017. It is the City Council's intent for the temporary ban to be only up to 18 months for the purpose of allowing staff sufficient time to

analyze the new legislation and for the City Council and community to have a discussion concerning the regulation of medical marijuana in Livermore. The goal is for the discussion to occur within a reasonable time period to enable staff to obtain City Council direction and to develop the regulations for implementation before the 18-month time period expires.

This ordinance is adopted pursuant to the land use powers of the City and to protect the health, safety, and welfare of the public which would be put at risk if commercial cultivation of marijuana for medicinal purposes is allowed to move forward in the City without any local regulation.

Because commercial cultivation of marijuana for medicinal purposes has never been authorized in the City, this 18-month ban does not change any land use policy and makes no change that has the potential to impact the environment.

The Planning Commission held a duly noticed public hearing on December 15, 2015, at which time it considered all evidence presented, both written and oral concerning this ordinance and made the recommendation attached to the staff report accompanying this ordinance.

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

Section 1. *Amendment.* Chapter 5.90, entitled, “*Commercial Cultivation of Marijuana for Medicinal Purposes*,” is added to the Livermore Municipal Code as set forth in Exhibit A, attached hereto.

Section 2. *Environmental.* The passage of this ordinance is not a project according to the definition in the California Environmental Quality Act and, therefore, is not subject to the provisions requiring environmental review.

Section 3. *Severability.* If any part of this ordinance is declared invalid by a court, such invalidity shall not affect any of the remaining parts.

Section 4. *Publication.* This ordinance shall be published once in a newspaper of general circulation of the city of Livermore within fifteen days after its adoption.

Section 5. *Effective date.* This ordinance shall take effect 30 days after its adoption.

The foregoing ordinance was introduced at the meeting of the City Council of the City of Livermore held on January 11, 2016, by the following vote:

AYES: Council Members Spedowfski, Turner, Woerner, Vice Mayor Gary, Mayor Marchand
NOES: None
ABSENT: None
ABSTAIN: None

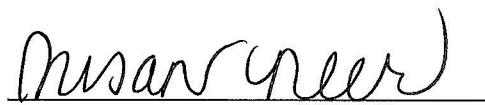
The ordinance was adopted at the regular meeting of the City Council held on January 25, 2016, by the following vote:

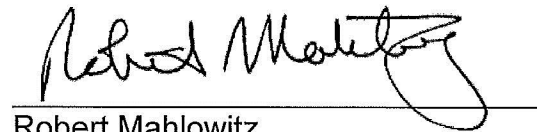
AYES: Council Members Spedowfski, Turner, Vice Mayor Gary, Mayor Marchand
NOES: None
ABSENT: Council Member Woerner
ABSTAIN: None


MAYOR, CITY OF LIVERMORE

ATTEST:

APPROVED AS TO FORM:


Susan Neer
City Clerk


Robert Mahlowitz
Assistant City Attorney

Dated: January 26, 2016

Exhibit A

CHAPTER 5.90 COMMERCIAL CULTIVATION OF MARIJUANA FOR MEDICINAL PURPOSES

Sections:

- 5.90.010** **Definitions**
- 5.90.020** **Commercial Cultivation of Marijuana Banned**
- 5.90.030** **Public Nuisance**
- 5.90.040** **Civil Penalties**
- 5.90.050** **Expiration of Chapter**

5.90.010 **Definitions.**

“Cannabis” shall have the same meaning as set forth in subpart (f) of Business & Professions Code section 19300.5, as the same may be amended from time to time.

“Primary Caregiver” shall have the same meaning as set forth in Health & 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 subpart (k) of Business & Professions Code section 19300.5, as the same may be amended from time to time.

“Cultivation” shall have the same meaning as set forth in subpart (l) of Business & Professions Code section 19300.5, as the same may be amended from time to time.

“Marijuana” shall mean Cannabis.

“Qualified patient” shall have the same meaning as set forth in Health & Safety Code section 11362.7 as the same may be amended from time to time.

5.90.020 **Commercial Cultivation of Marijuana Banned.**

- A. No Commercial Cannabis Activity constituting Cultivation shall occur in any City land use District.
- B. This section expressly prohibits all activities for which a State license is required in order to engage in Commercial Cannabis Activity constituting Cultivation. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the California Medical Marijuana Regulation and Safety Act, Business and Professions Code, section 19300, *et seq.*, to engage in Commercial Cannabis Activity constituting Cultivation.

Exhibit A

- C. Cultivation of Cannabis for non-commercial, personal purposes by a Qualified Patient or a Primary Caregiver, subject to the limitations and requirements of subsection (g) of Health & Safety Code section 11362.777, is not a prohibited use in any City land use district.

5.90.030 Public Nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter 5.90, 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.

5.90.040 Civil Penalties.

In addition to any other enforcement permitted by this Chapter 5.90, the City Attorney may bring a civil action for injunctive relief and civil penalties pursuant to the provisions of this Code against any person or entity that violates this Chapter.

5.90.050 Expiration of Chapter.

This Chapter shall expire of its own accord eighteen months from its effective date.