

CITY OF OJAI
ORDINANCE NO. 867-U

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF OJAI, CALIFORNIA REGULATING
THE USE AND CULTIVATION OF CANNABIS**

WHEREAS, Congress passed the Federal Controlled Substances Act (CSA) in 1970, which prohibits the manufacture, cultivation, distribution and possession of cannabis; and

WHEREAS, California law generally makes it a crime to possess and cultivate cannabis under Health and Safety (H&S) Code Sections 11357 and 11358, respectively; and

WHEREAS, California voters approved Proposition 215 (Health and Safety Code Section 11362.5), entitled the Compassionate Use Act (CUA), in 1996, which exempts patients and their primary caregivers from criminal prosecution or sanctions under H&S Code Sections 11357 and 11358 for qualified use and cultivation of medical cannabis; and

WHEREAS, the California Legislature passed Senate Bill 420 (H&S Code Sections 11362.7 et seq.) in 2003 to create the Medical Marijuana Program (MMPA), which established a voluntary program for the issuance of medical cannabis identification cards for qualified patients, set limits on the amount of cannabis any individual could possess, and provided an exemption from state criminal liability for persons “who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes”; and

WHEREAS, under the recently passed Medical Marijuana Regulation and Safety Act, all commercial medical cannabis activity requires both a state license and local approval through a license, permit, or other authorization (Bus. & Prof. Code, § 19320; Health & Safety Code, § 11362.777); and

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

WHEREAS, many of the AUMA’s provisions took effect on November 9, 2016; and

WHEREAS, among other effects, the AUMA authorizes the recreational use of cannabis by persons aged 21 years or older, and regulates personal and commercial activities related to recreational cannabis use; and

WHEREAS, the AUMA authorizes the City to completely prohibit outdoor cultivation of cannabis on the grounds of a private residence, unless there is “a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law” and to date, the Attorney General has not made that declaration; and

WHEREAS, the AUMA authorizes the City to “reasonably regulate,” but not “completely prohibit,” cultivation of cannabis “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 authorizes the City to regulate or completely prohibit the establishment or operation of cannabis businesses within its limits, even such businesses eligible for state licenses; and

WHEREAS, absent appropriate local regulation authorized by the AUMA, state regulations will control;

WHEREAS, the California Supreme Court has held that cities have the authority to regulate or completely ban medical cannabis land uses (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729); and

WHEREAS, the California Planning and Zoning Law (Gov. Code, § 65000 et seq.) authorizes the City to adopt and administer zoning laws, ordinances, rules, and regulations; and

WHEREAS, due to the immediate effect of many of the AUMA’s provisions, an urgency ordinance is necessary to respond to a newly arisen requirement, taking effect statewide immediately given the voters’ approval of Proposition 64, and to protect the health and safety of the City’s residents regarding the use and cultivation of cannabis; and

WHEREAS, regulating the cultivation, use, and delivery of cannabis within the City is necessary to protect the health, safety and welfare of the community, and to prevent adverse impacts that such activities may have on nearby properties and residents while ensuring qualified patients and primary caregivers have access to medical cannabis.

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

SECTION 1. Findings. The City Council hereby determines that the foregoing findings are true and correct, and incorporates them herein by reference.

SECTION 2. Addition of Title 4, Chapter 25. Chapter 25 is added to Title 4 of the Ojai Municipal Code, to read in its entirety as follows:

Chapter 25 CANNABIS USE AND CULTIVATION

Sec. 4-25.01. Definitions.

(a) “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(b) “Delivery” means the commercial transfer of cannabis or cannabinoid preparations to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and

controlled by the retailer or independently licensed under California law that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabinoid preparations.

(c) "Cannabis" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" does not include:

- (1) Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or
- (2) The weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other products.

(d) "Cannabinoid preparations" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

(e) "Medical use" of cannabis or cannabinoid preparations means the use permitted by the Compassionate Use Act (California Health & Safety Code, § 11362.5) and the Medical Marijuana Program Act (California Health & Safety Code, § 11362.7 et seq.).

(f) "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

(g) "Recreational use" of cannabis or cannabinoid preparations means the use permitted by Section 11362.1 of the California Health & Safety Code.

(h) Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

Sec. 4-25.02. Smoking or Consumption of Cannabis Prohibited in Public Places.

Within the City's limits, no person may smoke or ingest cannabis or cannabinoid preparations in any public place or in any location where smoking tobacco is prohibited.

Sec. 4-25.03. Outdoor Cultivation Prohibited.

No person may cultivate cannabis outdoors in any zoning district of the City. No conditional use permit, building permit, variance, or any other permit or entitlement, whether ministerial or discretionary, shall be approved or issued for any such use or activity.

Sec. 4-25.04. Deliveries and Non-Storefront Dispensaries.

(a) To the extent such a prohibition is permitted under California law, delivery of cannabis or cannabinoid preparations within the City for recreational use is prohibited, regardless of any license or other authorization a person may have to engage in any commercial activity related to recreational cannabis outside of the City.

(b) A person may deliver cannabis or cannabinoid preparations within the City for medical use if he or she first obtains a license from the City to do so. The City Manager or his or

her designee shall issue applications and processing guidelines for the City medical cannabis delivery license. No such license shall be issued prior to the release of these guidelines, and no license shall be granted that has not complied fully with the application and processing requirements.

(c) A person may operate a medical cannabis non-storefront, non retail dispensary if the person obtains a license from the City for such facility. The City Manager or his or her designee shall issue applications and processing guidelines for the City medical cannabis business license. No such license shall be issued prior to the release of these guidelines, and no license shall be granted that has not complied fully with the application and processing requirements. The business in question must operate as a medical cannabis delivery or appointment-only service. The business in question may not engage in any commercial activities related to recreational cannabis within the City's limits. This is intended as a temporary measure, notwithstanding any other provision of the Ojai Municipal Code, to ensure the City's residents have safe and reliable access to medical cannabis while the City Council considers a more permanent cannabis policy. This section creates no vested right to engage in any such activity or business.

Sec. 4-25.05. Violations.

Every act prohibited or declared unlawful by this Chapter, and every failure to perform an act made mandatory by this Chapter, shall be punishable as a misdemeanor or an infraction at the discretion of the City Attorney or the District Attorney, in accord with Ojai Municipal Code section 1-2.03. In addition, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a public nuisance subject to abatement as provided in this Code or under California law.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases or portions might be declared invalid or unconstitutional.

SECTION 4. Environmental Determination. The City Council determines that the following findings reflect the independent judgment of the City Council. The City Council finds that this amendment to the Municipal Code is exempt from California Environmental Quality Act (CEQA). The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during the public hearing on the matter held by the City Council, and hereby determines that that the text amendments will not have a significant effect on the environment. This Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061 (b)(3) of the California Code of Regulations.

SECTION 5. Certification. The City Clerk shall cause this Ordinance to be published once, within fifteen (15) calendar days after its passage, in the *Ojai Valley News*, a newspaper of

general circulation, printed, published and circulated in the City, and shall cause a copy of this Ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the City.

SECTION 6. Effective Date. Pursuant to Section 36937(b) of the California Government Code, this Ordinance shall take effect immediately upon its approval by a four-fifths vote because its passage is required for the immediate preservation of the public peace, health, and safety. Delivery and cultivation of cannabis within the City has the potential to create significant adverse effects on the health and safety of residents and visitors, and without immediate action the City will lose the ability to regulate such conduct, and therefore it is necessary that this Ordinance be effective immediately.

CITY OF OJAI, CALIFORNIA

By 

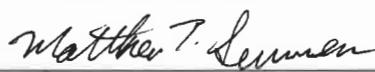
Paul Blatz, Mayor

ATTEST:



Cynthia Burell, City Clerk

APPROVED AS TO FORM:



Matthew T. Summers, City Attorney

STATE OF CALIFORNIA)

COUNTY OF VENTURA)

CITY OF OJAI)

I, Cynthia Burell, City Clerk of the City of Ojai do hereby certify that the foregoing Ordinance was adopted at a special meeting of the City Council of the City of Ojai held on November 15, 2016 by the following vote:

AYES: BLATZ, HANEY, LARA, WEIRICK

NOES: NONE

ABSTAIN: NONE

ABSENT: CLAPP



Cynthia Burell

City Clerk for the City of Ojai