

ORDINANCE NO. 3059

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA16-004, A DEVELOPMENT CODE AMENDMENT ADDING CHAPTER 18 OF TITLE 6 OF THE ONTARIO MUNICIPAL CODE AND AMENDING THE ONTARIO DEVELOPMENT CODE DIVISION 9.01 (DEFINITIONS), TABLE 5.02-1 (LAND USE TABLE), AND SECTION 5.03.280 (MEDICAL MARIJUANA DISPENSARIES) TO REGULATE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA, AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, the City of Ontario has initiated an Application for the approval of a Development Code Amendment, File No. PDCA16-004, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the City of Ontario, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, the City Council adopted Ordinance No. 2858 on March 20, 1997, prohibiting the establishment and operation of medical marijuana dispensaries and other similar uses; and

WHEREAS, the City Council adopted Ordinance No. 3004 on December 2, 2014, explicitly prohibiting marijuana cultivation; and

WHEREAS, the City desires to continue to ban all marijuana dispensaries, cultivation, and delivery service land uses within City Limits to the extent allowed by California law. Ordinance No. 2858 and Ordinance No. 3004 updated the Municipal Code and the Development Code to effectuate that aim; and

WHEREAS, on June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), for the November 8, 2016 ballot; and

WHEREAS, the AUMA would become law if a majority of the electorate votes "Yes" on the proposition; and

WHEREAS, should the AUMA pass, many of its provisions would take effect on November 9, 2016; and

WHEREAS, the AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

WHEREAS, to regulate personal use of marijuana the AUMA would add Section 11362.1 to the Health and Safety Code, which makes it “lawful under state and local law” for persons 21 years of age or older to “possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever” up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

WHEREAS, the AUMA would make it lawful under state and local law for those individuals to smoke or ingest marijuana or marijuana products; and

WHEREAS, the AUMA would make it lawful under state and local law for those individuals to “possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants; and

WHEREAS, the AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a “determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law”; and

WHEREAS, the AUMA would authorize cities to “reasonably regulate” without completely prohibiting cultivation of marijuana 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, to regulate commercial use of marijuana, the AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies “the exclusive authority to create, issue, renew, discipline, suspend, or revoke” licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana; and

WHEREAS, the AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, the AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

WHEREAS, the AUMA would authorize cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers, and marijuana delivery services; and

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

WHEREAS, the “Medical Marijuana Regulation and Safety Act” (“MMRSA”), which took effect January 1, 2016, regulates use of marijuana for medical purposes; and

WHEREAS, the MMRSA contains a provision which provides that the State shall become the sole authority for regulation under certain parts of the Act unless local governments pass their own regulations; and

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

WHEREAS, the California Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that 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, under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

WHEREAS, based on the experiences of other cities, these 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 uses; and

WHEREAS, this Ordinance would amend the Municipal Code and the Development Code to clarify the substantive objectives of the City’s regulation of marijuana within its City limits and to preemptively address some proposed changes to California law in the event AUMA passes on November 8, 2016; and

WHEREAS, on August 23, 2016, the Planning Commission conducted a public hearing to consider the above-described Development Code Amendment and concluded said hearing on that date. Upon conclusion of the public hearing, the Planning Commission voted unanimously (7-0) to approve Resolution No. PC16-049, recommending that the City Council approve the Development Code Amendment; and

WHEREAS, on September 20, 2016, the City Council of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario as follows:

SECTION 1. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

a. The administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

b. The Application is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

c. The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

d. The determination of CEQA exemption reflects the independent judgment of the City Council; and

e. The City Council directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

SECTION 2. A new Chapter 18 is hereby added to Title 6 of the Ontario Municipal Code to read, in its entirety, as follows:

Chapter 18: Marijuana

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| Section 6-18.01 | Purpose |
| Section 6-18.02 | Definitions |
| Section 6-18.03 | Regulation on the Personal Use of Marijuana, Marijuana Accessories, and Marijuana Products |
| Section 6-18.04 | Regulation on the Medical Use of Marijuana, Marijuana Accessories, and Marijuana Products |
| Section 6-18.05 | Regulation on the Commercial Use of Marijuana, Marijuana Accessories, and Marijuana Products |
| Section 6-18.06 | Penalty for Violations |

Sec. 6-18.01. Purpose.

The purpose of this Section is to regulate personal, medical, and commercial marijuana uses. Nothing in this Section shall preempt or make inapplicable any provision of state or federal law.

Sec. 6-18.02. Definitions.

For purposes of this chapter, the following definitions shall apply:

- (a) "Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery or sale of marijuana and marijuana products.
- (b) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
- (c) "Delivery" means the commercial transfer of marijuana or marijuana products 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 marijuana or marijuana products.
- (d) "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.
- (e) "Licensee" means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.
- (f) "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
- (g) "Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It 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 marijuana to prepare topical or oral administrations, food, drink, or other product.
- (h) "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging,

repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

- (i) "Marijuana products" means marijuana 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 marijuana or concentrated cannabis and other ingredients.
- (j) "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.
- (k) "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.
- (l) "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.
- (m) 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. 6-18.03. Regulation on the Personal Use of Marijuana, Marijuana Accessories, and Marijuana Products.

- (a) For purposes of this section, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the City to the extent it is unlawful under California law.
- (b) Outdoor Cultivation. A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any zoning district of the City. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.
- (c) Indoor Cultivation.
 - (1) A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, or inside any other enclosed structure within any zoning district of the City. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.

(2) To the extent a complete prohibition on indoor cultivation inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, is not permitted under California law:

- (a) A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence (or any accessory structure to such private residence located upon the grounds of that private residence) if such residence (or accessory structure) is not fully enclosed and secure;
- (b) A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence (or any accessory structure to such private residence located upon the grounds of that private residence) which the individual cultivating those plants does not maintain as his or her primary residence;
- (c) A person may not plant, cultivate, harvest, dry, or process more than a combined total of six (6) marijuana plants inside the private residence or accessory structure located upon the grounds of the private residence;
- (d) No pesticides or fertilizers may be used for any marijuana cultivation inside a private residence or accessory structure located on the grounds of a private residence;
- (e) No artificial light, ventilation, heating, or air conditioning may be used in support of marijuana cultivation in any accessory structure to a private residence located upon the grounds of a private residence except in compliance with the California Building Code, the Ontario Municipal Code, and any other permitting requirements which may be imposed; and
- (f) No artificial light, ventilation, heating, or air conditioning may be used in support of marijuana cultivation inside a private residence except in compliance with the California Building Code, the Ontario Municipal Code, and any other permitting requirements which may be imposed.

Sec. 6-18.04. Regulation on the Medical Use of Marijuana, Marijuana Accessories, and Marijuana Products.

- (a) Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements laid out in subsection (c) of Section 6-18.03.
- (b) The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the City. No use

permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, or provider in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

Sec. 6-18.05. Regulation on the Commercial Use of Marijuana, Marijuana Accessories, and Marijuana Products.

- (a) The establishment or operation of any business of commercial marijuana activity is prohibited. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation. Such prohibited businesses or operations may include, but are not limited to:
- (1) The transportation, delivery, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories;
 - (2) The cultivation of marijuana;
 - (3) The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or
 - (4) Any other business licensed by the state or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.

Sec. 6-18.06. Penalty for Violations.

- (a) No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Chapter. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this Chapter, shall be a misdemeanor or an infraction, at the discretion of the City Attorney or the District Attorney. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is declared a public nuisance and may be abated as provided in Section 1-2.01 and/or under state law.

SECTION 3. The definition of "Marijuana" found in Ontario Development Code Division 9.01.010: Terms and Phrases, Paragraph M "Definitions of Words Beginning with the Letter "M", is hereby amended in its entirety to read as follows:

"Marijuana. All parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It 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 marijuana to prepare topical or oral administrations, food, drink, or other product.”

SECTION 4. The definition of “Medical Marijuana Dispensary” found in Ontario Development Code Division 9.01.010: Terms and Phrases, Paragraph M “Definitions of Words Beginning with the Letter “M”, is hereby amended in its entirety to read as follows:

“Marijuana Dispensary. Any association, cooperative, club, coop, delivery service, collective and any other similar use involved in the sale, exchange, bartering, giving away for any form of compensation whatsoever, possession, cultivation, use and/or distribution of marijuana.”

SECTION 5. Ontario Development Code Division 9.01.010: Terms and Phrases, Paragraph M “Definitions of Words Beginning with the Letter “M” is hereby amended to include a definition for the term “Marijuana Cultivation” as follows:

“Marijuana Cultivation. Any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.”

SECTION 6. Ontario Development Code Division 5.03.280 is hereby amended in its entirety to read as follows:

“5.03.280: Marijuana Dispensary.

Notwithstanding any other provision of this Development Code, a Marijuana Dispensary, as defined in Division 9.01 (Definitions) of this Development Code, shall be a prohibited use in all zoning districts of the City, as follows:

- (1) The operation of any marijuana dispensary within the City is hereby declared a public nuisance and shall be abated pursuant to all available remedies. Violations of this Section may be enforced by any applicable law.
- (2) No person shall deliver marijuana or marijuana-infused products, such as tinctures, baked goods or other consumable products, to any location within the City from a marijuana dispensary, regardless of whether the marijuana dispensary from which the delivery originated is within the City, or engage in any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet, or assist in the operation of any marijuana dispensary in the City.
- (3) No person shall deliver marijuana or marijuana-infused products with such delivery originating from any marijuana dispensary located within the City, regardless of whether the delivery destination is within the City.”

SECTION 7. Table 5.02-1 (Land Use Matrix) of the Ontario Development Code is amended as set forth in Exhibit "A," attached hereto and incorporated by reference herein.

SECTION 8. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Ordinance are based are located at the City Clerk's office located at 303 East "B" Street, Ontario, CA 91764. The custodian of these records is the City Clerk.

SECTION 9. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 10. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

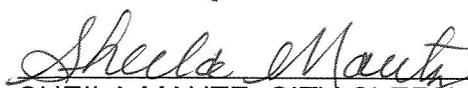
SECTION 11. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 4th day of October 2016.



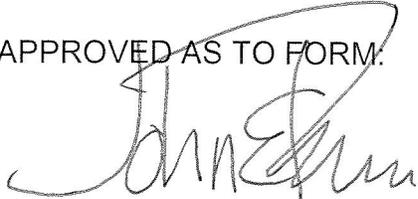
PAUL S. LEON, MAYOR

ATTEST:



SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "John E. Smith". The signature is written in a cursive style with a large, looping initial "J".

BEST BEST & KRIEGER LLP
CITY ATTORNEY

