

ORDINANCE NO. 2827

AN ORDINANCE OF THE CITY OF REDLANDS AMENDING CHAPTER 18.18 OF THE REDLANDS MUNICIPAL CODE TO PROHIBIT CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS, CULTIVATION, AND DELIVERY OF CANNABIS IN THE CITY

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996"); and

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the Penal Code; and

WHEREAS, neither the Compassionate Use Act ("CUA") nor the MMP require nor impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

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

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder; and

WHEREAS, the Act contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the Act, unless local governments have "land use regulations or ordinances regulating or prohibiting the cultivation of marijuana..." (Health and Safety Code §11362.777(c)(4); and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing, and distribution uses, including offensive odors, illegal sales, and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery, or armed robbery; 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, the 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, 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, the City's Municipal Code ("Code") does not address the cultivation, processing, delivery and distribution of medical cannabis; and

WHEREAS, based on the findings above, the potential establishment of cannabis dispensaries, cultivation, cannabis manufacturers and delivery of cannabis uses in the City without regulation poses a current and immediate threat to the public health, safety and welfare in the City due to the negative land use and other impacts of such uses as described above; and

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for cannabis dispensaries, cultivation, cannabis manufacturers and delivery of cannabis will result in the aforementioned threat to public health, safety, or welfare;

THE CITY COUNCIL OF THE CITY COUNCIL OF THE CITY OF REDLANDS DOES ORDAIN AS FOLLOWS:

Section 1. The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

Section 2. Chapter 18.18 of the Redlands Municipal Code, entitled "Medical Marijuana," is hereby amended to read in its entirety as follows:

**"CHAPTER 18.18
Medical Marijuana**

- 18.18.010 Purpose
- 18.18.020 Definitions
- 18.18.030 Prohibited Use
- 18.18.040 Public Nuisance Declared
- 18.18.050 Penalty for Violation

18.18.010: Purpose.

The purpose of this Chapter is to enact and enforce a ban on all cannabis dispensaries, cannabis manufacturers, cultivation, and delivery of cannabis located within the City limits. Nothing in this Chapter shall preempt or make inapplicable any provision of state or federal law.

18.18.020: Definitions.

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

A. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the 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 seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

B. "Cannabis dispensary" means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for wholesale or retail sale, including an establishment that delivers cannabis and cannabis products either wholesale or as part of a retail sale.

C. "Cannabis manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a

combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.

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

E. “Delivery” means the commercial transfer of cannabis or cannabis products, and includes origination or termination within the City as well as a delivery business.

18.18.030: Prohibited Use.

Cannabis dispensaries, cultivation, cannabis manufacturers, and delivery of cannabis, as defined herein, shall be considered prohibited uses in all zoning districts, including specific plans, 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 or operation of a dispensaries, cannabis cultivation, cannabis manufacturers, and delivery of cannabis as defined herein in any zoning district or specific plan, and no person shall otherwise establish such businesses or operations in any zoning district or specific plan.

18.18.040: Public Nuisance Declared.

Marijuana cultivation, marijuana delivery, and operation of any marijuana business or marijuana dispensary in violation of the provisions of this Code including, without limitation, this Chapter, is hereby declared a public nuisance and shall be abated pursuant to all available remedies.

18.18.050: Penalty for Violation.

Violations of this chapter may be enforced by any applicable law; provided, however, that a person who is in full compliance with the Compassionate Use Act (California Health and Safety Code Section 11362.5) (“CUA”) and the Medical Marijuana Program Act (California Health and Safety Code Section 11362.7 et seq.) (“MMPA”) shall not be subject to criminal penalties and nothing in this chapter is intended, nor shall it be construed, to conflict with or burden any defense to criminal prosecution under the CUA and the MMPA. Notwithstanding the foregoing and in addition to the specific prohibitions set forth in this Code, this chapter is intended to prohibit all activities for which a license from the State of California is required and for which an exemption is granted under the Medical Marijuana Regulation and Safety Act (Stats. 2015, c. 689 (AB 266); Stats. 2015, c. 688 (AB 243); Stats. 2015, c. 719 (SB 643)) (“MMRSA”). Accordingly, the City shall not issue any permit, license, approval or other entitlement for any activity for which a license from the State of California is required or for which an exemption is granted under the MMRSA. Notwithstanding the foregoing, nothing in this chapter is intended or shall be interpreted as limiting the City’s rights under all applicable laws, rules and regulations, including, but not limited to, its police powers and applicable case law, to regulate the storage, cultivation, selling, delivery or other distribution or dispensing of marijuana or marijuana-related products.”

Section 3. The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

Section 4. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is 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 5. The Mayor shall sign this ordinance and the City Clerk shall certify to the adoption of this ordinance and shall cause it, or a summary of it, to be published once in the Redlands Daily Facts, a newspaper of general circulation within the City, and thereafter, this ordinance shall take effect as provided by law.

By: _____
Paul W. Foster, Mayor

ATTEST:

By: _____
Sam Irwin, City Clerk

I, Sam Irwin, City Clerk, City of Redlands, hereby certify that the foregoing Ordinance was duly adopted by the City Council at the regular meeting thereof, held on the ____ day of ____ 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sam Irwin, City Clerk