

ORDINANCE NO. 2016-03

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOWLER
AMENDING CHAPTER 18, OF TITLE 5, OF THE FOWLER MUNICIPAL
CODE PERTAINING TO MEDICAL AND RECREATIONAL MARIJUANA**

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

SECTION 1. FINDINGS.

1. State Law Findings.

a. In 1996, with the adoption of Proposition 215, the California voters approved the Compassionate Use Act (Health and Safety Code § 11362.5) to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician, without fear of criminal prosecution under limited, specified circumstances.

b. In 2004, the State Legislature enacted SB 420 to clarify the scope of the Compassionate Use Act and provide additional statutory guidance regarding medical marijuana use. These statutes are codified at Health and Safety Code § 11362.7 et seq. and allow cities and counties to adopt supplemental rules and regulations.

c. On October 9, 2015, almost 20 years after passage of the Compassionate Use Act, the Governor signed the Medical Marijuana Regulation and Safety Act ("Act"), comprised of California legislative bills AB 243, AB 266, and SB 643. The Act creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis, all subject to local control. One of the purposes of the Act is to ensure uniformity among jurisdictions that wished to allow commercial marijuana operations.

d. On June 27, 2016, the Governor signed SB 837, effective immediately, changing the terms in the Act from "medical marijuana" or "marijuana" to "medical cannabis" or "cannabis", and making other technical changes to the Act. SB 837 also adopted regulations relating to the use and diversion of water in connection with the cultivation of cannabis.

e. Pending before the voter this November is the Adult Use of Marijuana Act ("AUMA"). The purpose of AUMA is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products. Adults, age 21 and older, will be allowed to possess marijuana and grow certain amounts at home for personal use.

2. City of Fowler Marijuana Regulatory History.

a. In 2006 as amended in 2015 and earlier in 2016, the City adopted Title 5, Chapter 18, of the Fowler Municipal Code pertaining to Medical Marijuana (Marijuana

Ordinance). The Marijuana Ordinance places a complete ban on commercial marijuana cultivation, commercial deliveries, and dispensaries in the City based upon various health, safety and welfare and land use findings relating to marijuana cultivation, dispensing, and consumption, which findings are incorporated herein by reference.

b. The Marijuana Ordinance provides for personal use cultivation under limited circumstances.

c. At the time the City adopted the commercial cultivation ban, the issue of other commercial marijuana operations, such as manufacturing, testing and distribution, were not considered an area of concern in need of regulation. Now, with the adoption of the Act, these other commercial marijuana operations are imminent.

d. Since adoption of the Act there have been inquiries from individuals and entities, both from within and outside the City of Fowler, seeking to start a commercial marijuana operation in the City. Clear guidance is required in the City's Municipal Code so there is no ambiguity.

e. The City of Fowler has identified a number of health, safety, and welfare concerns associated with marijuana activities. These concerns are set forth in the original reports accompanying the Marijuana Ordinance, and are incorporated herein by reference. These concerns continue and have been exemplified throughout Fresno County and the State as evidenced by numerous area agency police reports and news articles and stories. Some of the continued documented problems include offensive odors, trespassing, theft, violent encounters, fire hazards and problems associated with mold, fungus, and pests.

f. Under the Act, and AUMA if it passes, the City retains its police powers and land use authority to regulate or ban marijuana activities, including commercial marijuana operations, cultivation, distribution and consumption for the health, safety, and welfare of the citizens of Fowler.

SECTION 2. AMENDMENT OF CHAPTER Title 5, Chapter 18

Chapter 18, of Title 5, of the Fowler Municipal Code is amended in its entirety to read as follows:

Chapter 18 - MARIJUANA

Section 5-18.01 Purpose and Intent

It is the purpose and intent of this Chapter to promote the health, safety, morals, and general welfare of the residents and businesses within the City by regulating the cultivation, processing, extraction, manufacturing, testing, distribution, transportation, sale, and consumption of marijuana, whether for medical purposes as currently allowed under State law, or for recreational use should recreational use become lawful under State law.

Section 5-18.02 Definitions

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

(a) “Act” means the Medical Marijuana Regulation and Safety Act, now called the Medical Cannabis Regulation and Safety Act, including implementing regulations, as the Act and implementing regulations may be amended from time to time. The terms Act, Medical Marijuana Regulation and Safety Act, Medical Cannabis Regulation and Safety Act, may be used interchangeably, but shall have the same meaning.

(b) “Cannabis” or “marijuana” shall have the meaning set forth in California Business and Professions Code section 19300.5(f). Cannabis and marijuana may be used interchangeably, but shall have the same meaning.

(c) “Collective or cooperative cultivation” means the association within California of qualified patients, persons with valid identification cards, and designated primary care givers to cultivate marijuana for medical purposes as may be allowed under the Compassionate Use Act, the Medical Marijuana Program Act, or the California Medical Cannabis Regulation and Safety Act adopted on October 9, 2015 with legislative bills AB 243, AB 266, and SB 643.

(d) “Commercial marijuana operation” means any commercial cannabis activity as set forth in California Business and Professions Code section 19300.5(k) and allowed under the Act, and all uses permitted under any subsequently enacted State law pertaining to the same or similar uses for recreational cannabis.

(e) “Delivery” means the commercial transfer of medical or recreational use marijuana and marijuana products from a dispensary as well as the use of any technology platform that enables persons, whether qualified patients, caregivers, or recreational users, to arrange for or facilitate the transfer.

(f) “Marijuana dispensary” or “dispensary” means any facility or location, whether fixed or mobile, and any building or structure, where cannabis is made available to, distributed by, or distributed to more than two (2) persons.

(g) “Marijuana products” 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.

(h) “Medical marijuana or medical marijuana use” means the use of cannabis for the purposes set forth in the Compassionate Use Act and the Medical Marijuana Program Act, California Health and Safety Code sections 11362.5 and 11362.7 et seq.

(i) “Recreational marijuana or recreational marijuana use” means all uses of cannabis not included within the definition of medical marijuana use.

Section 5-18.03 Regulations applicable to the cultivation of medical marijuana.

To the extent that the City is required to allow the cultivation of medical marijuana under State law, the rules set forth herein shall apply. Nothing in this section shall be interpreted to permit commercial marijuana operations or marijuana dispensaries otherwise prohibited by this chapter.

(a) Personal use cultivation. An individual qualified patient or person with an identification card shall be allowed to cultivate medical marijuana within his/her private residence, in an attached garage, or in an accessory building if the property is detached single-family residential. A primary caregiver shall only cultivate medical marijuana at the residence of a qualified patient or person with an identification card for whom he/she is the primary caregiver. Medical marijuana cultivation for personal use shall be subject to the following requirements:

(1) Area. The medical marijuana cultivation area shall not exceed thirty-two (32) square feet measured by the canopy and not exceed ten (10) feet in height per residence. This limit applies regardless of the number of qualified patients or persons with an identification card residing in the residence. The cultivation area shall be a single designated area.

(2) Lighting. Medical marijuana cultivation lighting shall not exceed a total of 1,200 watts.

(3) Building Code Requirements. Any alterations or additions to the residence, including garages and accessory buildings, shall be subject to applicable building and fire codes, including plumbing and electrical, and all applicable zoning codes, including lot coverage, set back, height requirements, and parking requirements.

(4) Gas products. The use of gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.

(5) Evidence of cultivation. From a public right of way or other public space, there shall be no exterior evidence of medical marijuana cultivation occurring on the site.

(6) Residence. The qualified patient or person with an identification card shall reside in the residence where the medical marijuana cultivation occurs.

(7) Cultivation elsewhere in City. The qualified patient or person with an identification card shall not participate in medical marijuana cultivation in any other location within the City of Fowler.

(8) Incidental use. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for medical marijuana cultivation.

(9) Ventilation. The medical marijuana cultivation area shall include a ventilation and filtration system designed to ensure that odors from the cultivation are not detectable beyond the residence, or property line for detached single family residential, and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence and cultivating the marijuana. This shall include at a minimum, a system meeting the requirements of the current, adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or its equivalent(s)).

(10) Storage of chemicals. Any chemicals used for medical marijuana cultivation shall be stored outside of the habitable areas of the residence and outside of public view from neighboring properties and public rights-of-way.

(11) Nuisance. The medical marijuana cultivation area shall: not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts; and not be hazardous due to the use or storage of materials, processes, products or wastes, or from other actions related to the cultivation.

(12) Property owner authorization. For rental property, the lessee shall obtain written authorization from the property owner or property management company to cultivate medical marijuana.

(13) Notification. The owner and any lessee of the residence upon which cultivation will occur shall inform the Police Department of the intent to cultivate medical marijuana and pick up a handout setting forth the owner and lessee responsibilities under this section. This notification shall be provided prior to the commencement of the cultivation except that for existing cultivation, the information shall be provided within ten (10) days of the effective date of this Chapter. The Police Department may direct the owner and lessee to the Building and Planning Departments for more information about building code and permit requirements that may be applicable if alterations or additions to the residence are contemplated. The Police Department and Department of Planning and Development Services shall keep patient information confidential to the extent required by law.

(14) Additional requirements for garages and accessory buildings. The following additional requirements shall apply for personal use cultivation that occurs in a garage or accessory building: the garage or accessory building shall be secure, locked, and fully enclosed, with a ceiling, roof or top, and entirely opaque. The garage or building shall include a burglar alarm monitored by an alarm company or private security company. The garage or building, including all walls, doors, and the roof, shall be constructed with a firewall assembly of green board meeting the minimum building code requirements for residential structures and include material strong enough to prevent entry except through an open door.

(15) Posting of physician recommendation or identification card; posting of owner permission. A copy of a qualified patient physician recommendation or identification card shall be posted in a conspicuous place in the cultivation area for each patient residing in the residence that is cultivating medical marijuana. For rental properties, a copy of the owner's written authorization to cultivate marijuana shall be posted in the same manner.

(b) Collective or cooperative cultivation. The collective or cooperative cultivation of medical marijuana shall be prohibited in the City.

Section 5-18.04 Regulations applicable to the cultivation of recreational marijuana.

To the extent recreational marijuana use becomes legal under State law and the City is required to allow the cultivation of recreational marijuana under State law, the rules set forth herein shall apply. Nothing in this section shall be interpreted to permit commercial marijuana operations or marijuana dispensaries otherwise prohibited by this chapter.

(1) State law limits. The cultivation of recreational marijuana shall be subject to the limits set forth in any applicable State law.

(2) Compliance with medical marijuana personal use cultivation rules. All persons lawfully allowed to cultivate recreational use marijuana under State law shall be subject to the same rules, requirements, and limitations applicable to the personal use cultivation of medical marijuana set forth in this chapter.

Section 5-18.05 Regulations applicable to commercial marijuana operations, dispensaries, and deliveries.

(a) Commercial marijuana operations. Commercial marijuana operations as defined in section 5.18.02(d) are prohibited within the City.

(b) Dispensaries. Marijuana dispensaries as defined in Section 5.18.02(f) are prohibited within the City.

(c) Deliveries. The delivery of marijuana as defined in Section 5.18.02(e) is prohibited in the City regardless of whether the delivery is initiated within or outside of the City, and regardless of whether a technology platform is used for delivery by the dispensary.

Section 5-182.06 Regulations Applicable to the Consumption of Marijuana

No person shall smoke, ingest, or otherwise consume marijuana or marijuana products, whether recreational or medical, in the City of Fowler unless such smoking, ingesting or consumption occurs entirely within a private residence. "Within a private

residence” shall mean inside habitable areas and shall not include garages, whether attached or detached, and other accessory buildings unless those buildings are at all times fully enclosed during the consumption.

Medical marijuana may also be consumed within a clinic, health care facility, residential care facility, or residential hospice licensed pursuant to applicable provisions of the California Health and Safety Code.

All consumption shall be done in a manner so as to not cause a nuisance to nearby residents with noxious odors or other adverse health and safety impacts.

Section 5.22.06 Penalties and Enforcement

Violations of this chapter for conduct that is not otherwise considered lawful under State law, shall be considered misdemeanors and are punishable in accordance with Chapter 2, Title 1, of the Municipal Code. Each and every day, or portion thereof, a violation exists is a separate offense. The City may also pursue all applicable civil and administrative remedies, including but not limited to injunctive relief and administrative citations.

Should a court of competent jurisdiction subsequently determine that the criminal penalty provision renders this chapter unlawful, the City intends that the misdemeanor provision be severable from the remaining penalty provisions and the City will only pursue non-criminal remedies for violations of this chapter.

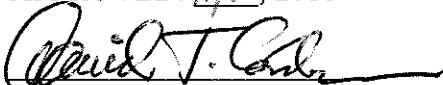
Section 5.22.07 Judicial Review


Judicial review of a decision made under this chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6, which shall be applicable for such actions.

SECTION 3: EFFECTIVE DATE.

This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

APPROVED: 11/11, 2016


David Cardenas, Mayor


Jeannie Davis, City Clerk

The foregoing Ordinance was introduced at a regular meeting of the City Council held on October 18, 2016, and was adopted at a regular meeting of said Council held on November 1, 2016 by the following vote, to wit:

AYES: Cardenas, Parra, Hammer & Monis

NOES: None

ABSENT: None

DATED: November 1, 2016

Jeannie Davis, MMC
Jeannie Davis, City Clerk

STATE OF CALIFORNIA }
COUNTY OF FRESNO } ss.

I, Jeannie Davis, Clerk of the CITY OF FOWLER, do hereby certify the foregoing to be a full, true and correct copy of the original ORDINANCE NO. 2016-03 now on file in my office, and of the whole of such original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the CITY OF FOWLER this 1st day of November, 2016

THIS ORDINANCE WAS DULY PUBLISHED
ACCORDING TO LAW

Jeannie Davis, MMC
Clerk of the CITY OF FOWLER