

ORDINANCE NO. 2016-01

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARINA AMENDING MUNICIPAL CODE, TITLE 17 (ZONING) TO ADD SECTION SECTION 17.04.210.5 TO DEFINE "CULTIVATION OF MARIJUANA," SECTION 17.04.210.7 TO DEFINE COMMERCIAL CANNABIS ACTIVITY AND 17.06.020, SUBSECTIONS P AND Q TO PROHIBIT COMMERCIAL CANNABIS ACTIVITY AND THE CULTIVATION OF MARIJUANA IN ALL ZONES EXCEPT FOR THE CULTIVATION BY QUALIFIED PATIENTS WITH AN IDENTIFICATION CARD, AT HIS OR HER PERSONAL RESIDENCE

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

WHEREAS, in October 2015, the California Legislature enacted the Medical Marijuana Regulation and Safety Act (MMRSA) for the licensure and regulation of medical marijuana. Local authority remains intact under the law. All medical marijuana businesses (dispensary sales, delivery services, cultivation, or transport) must have a State license;

WHEREAS, under the MMRSA, if a city does not have an ordinance in place prohibiting the cultivation of marijuana either expressly or otherwise under the principles of permissive zoning, or chooses not to administer a conditional program, then commencing on March 1, 2016, the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applicants;

WHEREAS, the City operates under the principles of permissive zoning, in which any use not enumerated in the code is presumptively prohibited;

WHEREAS, under the MMRSA, if the City does not condition the cultivation of marijuana within its jurisdiction, cultivation of marijuana will be permitted with only a State license. The City's intent is to condition the cultivation of marijuana so as to be able to retain local control over the cultivation of marijuana within its jurisdiction;

WHEREAS, pursuant to the Marina Police Department, Commercial Cannabis Activity and the cultivation of marijuana, except for on a limited basis by "Qualified Patient," with an "Identification Card," as defined in California Health and Safety Code Section 11362.7, impacts upon the public health, welfare and safety of the citizens of the City of Marina for the following reasons: Other California cities have experienced an increase in police services associated with commercial or large scale marijuana cultivation, processing and distribution activities. Marijuana and the cash it generates are commodities that are highly sought after and any type of

commercial or large scale marijuana distribution leads to illegal activity to obtain marijuana and cash. Some of the illegal activities associated with this are: illegal sales and distribution of marijuana; trespassing; theft; violent robberies; and, burglary. Additionally, large marijuana cultivation and processing sites consistently result in quality of life issues/complaints in the areas where these activities occurs. This can lead to additional police calls for service and potentially calls for service from other City departments. The strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the plants, creating a risk of various types of criminal activity.

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 risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime. Based on the Attorney General's analysis and the experiences of other California cities, the Police Department would need to provide a higher level of patrol in the areas where large scale or commercial amounts of marijuana are cultivated, processed and distributed, thus taking valuable time away from other areas of the City. Additionally, the Department would need to set intensive Crime Prevention through Environmental Design requirements on these businesses and do higher levels of follow up to ensure compliance.

WHEREAS, the cultivation of large amounts of marijuana in a small city such as Marina, in neighborhoods with usually small lots constitutes a public nuisance due to the smell, degradation of the environment, serious fire dangers and excessive use of electricity;

WHEREAS, the cultivation of marijuana outside of the living unit increases the likelihood of trespass and crime on said property, by individuals confiscating said cultivated plants;

WHEREAS, the City of Marina reasserts the findings made by the Monterey County Board for Supervisors for this County that the "...cultivation of medical marijuana has also been associated with serious harmful effects in areas where they are located, to owners of property in such areas, and to people living, visiting, conducting business or otherwise present in the area, as reported by other California counties and cities. Harmful effects at both outdoor and indoor cultivation facilities have included an increase in criminal activity because of the high monetary

value of the marijuana plants, adverse environmental impacts, interference with farming practices, fire from grow light systems, extensive energy consumption and strong offensive odors”;

WHEREAS, the proposed action is not a “Project” under the California Environmental Protection Act (CEQA Guidelines Section 15378) and has no potential for causing a significant impact on the environment and therefore is otherwise exempt under the General Rule (Section 15061(b)(3)).

WHEREAS, there is a current and immediate threat to the public health, safety and welfare presented by the recent enactment of the MMRSA, and the potential for cultivation of large amounts of marijuana or commercial operations of the cultivation of marijuana, to occur prior to the establishment of zoning regulations under normal planning and zoning processes of the City. Moreover, as discussed above, the cultivation of medical marijuana poses a serious fire risk to the residents of the community. The City Council finds that the immediate preservation of the public health, safety and welfare require an interim ordinance be enacted prior to an actual ordinance, pursuant to Government Code Sec. 65858 and take place immediately upon adoption, and its urgency is hereby declared.

NOW THEREFORE, the Marina City Council declares as follows:

1. Section 17.04.210.5 Added. The Municipal Code is hereby amended by the addition of Section 17.04.210.5 to read as follows: “**Marijuana Cultivation**’ means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof, and any and all associated business and/or operational activities”;
2. Section 17.04.210.7 Added. The Municipal Code is hereby amended by the addition of Section 17.04.210.7 to read as follows: “**Commercial Cannabis Activity**’ is as defined by subpart (k) of California Business and Professions Code section 19300.5”;
3. Section 17.06.020, Subsection (P) Added. The Municipal Code is hereby amended by the addition of Section 17.06.020, Subsection (P) to read as follows: “**Commercial Cannabis Activity as a Prohibited Use and/or Activity.** Commercial Cannabis

Activity by any person or entity, including clinics, collectives, cooperatives and dispensaries, is prohibited in all zones within the City's jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity. Any Commercial Cannabis Activity that takes place in violation of this provision is unlawful, and is hereby declared a public nuisance. Nothing in this Chapter is intended to, nor shall it be construed to, make legal any Commercial Cannabis activity that is allowed or otherwise prohibited under California law. Nothing in this Chapter is intended to, nor shall it be construed to, preclude any landlord from limiting or prohibiting Marijuana Cultivation by its tenants. This Chapter shall be administratively enforced"; and,

4. Section 17.06.020, Subsection (Q) Added; The Municipal Code is hereby amended by the addition of Section 17.06.020, Subsection (Q) to read as follows: **"Marijuana Cultivation" is a Prohibited Use and/or Activity, Except for 'Marijuana Cultivation by a "Qualified Patient" with an "Identification Card" on a Property on which He or She Resides, for a Limited Non-Commercial Purpose .**

Marijuana Cultivation by any person or entity, including clinics, collectives, cooperatives and dispensaries, is prohibited in all zones within the City's jurisdictional limits, except as set forth herein. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity, except that a "Qualified Patient," with an "Identification Card," as defined in California Health and Safety Code Section 11362.7 may cultivate cannabis for non-commercial, personal purposes as set forth in Health and Safety Code section 11362.77 per each "Qualified Patient" with an "Identification Card," upon property he or she rents or owns and inhabits, either inside the dwelling or on land included in such rented or owned property. Nothing in this Chapter is intended to, nor shall it be construed to, preclude any landlord from limiting or prohibiting Marijuana Cultivation by its tenants. The cultivation shall be at a location on the property that is secluded so that it cannot be observed by a member of the public who passes by the property. This Chapter shall be administratively enforced"

5. Validity of Ordinance. If any part of this ordinance is held to be invalid, unlawful, or unconstitutional, it shall not affect the validity of any other part of the ordinance.
6. Effective Date. This ordinance is adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Sec. 65858(b) and therefore shall be passed immediately upon its introduction and shall become effective immediately upon its adoption by a minimum 4/5 vote, it shall take effect as a regular ordinance and be in force 30 days from and after its final passage.
7. Posting of Ordinance. Within 15 days after the passage of this ordinance, the City Clerk shall cause it to be posted in the three public places designated by resolution of the City Council.

The foregoing ordinance was passed and adopted at a duly held meeting of the City Council of the City of Marina held on the 20th day of January, 2016 by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None



Bruce C. Delgado, Mayor

ATTEST:



Anita Sharp, Deputy City Clerk