

RESOLUTION NO. MPA16-0001

**RESOLUTION OF THE CITY OF CHULA VISTA PLANNING
COMMISSION RECOMMENDING THAT THE CITY COUNCIL
APPROVE AN AMENDMENT TO MUNICIPAL CODE TITLE 19
TO AFFIRM PERMISSIVE ZONING PRINCIPLES AND TO
CLARIFY THAT USES PROHIBITED ELSEWHERE IN THE
MUNICIPAL CODE ARE ALSO PROHIBITED LAND USES**

WHEREAS, the impetus for this subject amendment to Municipal Code Title 19 stems from the state laws governing medical marijuana; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" (the "Act"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis (i.e., marijuana) to qualified patients; and

WHEREAS, the Act states that a local government that wishes to prevent marijuana cultivation, as defined in the Business and Professions Code section 19300.5(1), must have a land use regulation or ordinance regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under the principles of permissive zoning, prior to March 1, 2016 to retain jurisdiction over such cultivation (Health and Safety Code 11362.777(c)(4)); and

WHEREAS, the Chula Vista Municipal Code expressly prohibits the cultivation of medical marijuana in Title 5, section 5.66.020; and

WHEREAS, the Chula Vista Municipal Code in Title 19 operates as a permissive zoning code, whereby uses not expressly permitted are prohibited; and

WHEREAS, the Director of Development Services has reviewed the proposed project for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the state CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to the CEQA. In addition, and notwithstanding the foregoing, the Director of Development Services has also determined that there is no possibility that the activity may have a significant effect on the environment; therefore, pursuant to Section 15061(b)(3) of the State CEQA Guidelines, the activity is not subject to the CEQA. Thus, no environmental review is required; and

WHEREAS, the Director of Development Services set the time and place for a public hearing on the Amendment to Title 19, and notice of the public hearing, together with its purpose, was given by its publication in a newspaper of general circulation in the City at least 10 days prior to the hearing; and

WHEREAS, the public hearing was held at the time and place as advertised, namely January 13, 2016 in the City Council Chambers at 276 Fourth Avenue at 6:00 p.m.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Chula Vista hereby makes the following findings:

1. The Planning Commission of the City of Chula Vista recommends that the City Council amend Title 19 to affirm that Title 19 operates under the principles of permissive zoning, whereby any use not permitted under Title 19 is prohibited.

Section 19.08.020 of the Municipal Code currently declares unlawful any land uses not permitted in the City of Chula Vista, as such, the Planning Commission finds and affirms and recommends that the City Council find and affirm, that the City's Zoning Code has and continues to operate as a permissive zoning code. Further, the Planning Commission recommends that the City Council enact an ordinance amending Title 19 to affirm and make clear that Title 19 operates under permissive zoning principles and that any use not permitted, including the cultivation of marijuana, is prohibited.

2. The Planning Commission of the City of Chula Vista recommends that the City Council amend Title 19 to clarify that any action prohibited elsewhere in the municipal code is also prohibited as a land use under Title 19.

While cultivation of marijuana is currently prohibited under the City's permissive zoning regimen and under Chapter 5.66 of the City's Municipal Code, the Planning Commission desires to amend Title 19, and recommends that the City Council amend Title 19 to make clear that any action prohibited elsewhere in the Municipal Code, which would include the cultivation of medical marijuana under Chapter 5.66, is also prohibited as a land use under Title 19.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Chula Vista hereby recommends that the City Council approve an amendment to Municipal Code Title 19 (Chapter 19.02) to affirm permissive zoning principles and to clarify that uses prohibited elsewhere in the Municipal Code are also prohibited land uses.

Presented by:

Approved as to form by:

Kelly Broughton, FASLA
Development Services Director

Glen R. Googins
City Attorney

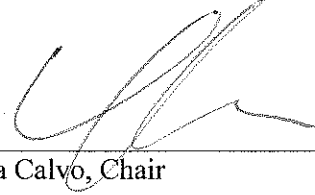
PASSED AND APPROVED BY THE PLANNING COMMISSION OF THE CITY OF CHULA VISTA, CALIFORNIA, this 13th day of January 2016, by the following vote, to-wit:

AYES: Fuentes, Gutierrez, Liuag, Nava, Calvo

NOES: N/A

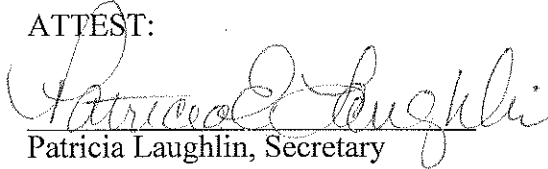
ABSENT: Fragomeno

ABSTAIN: Anaya



Yolanda Calvo, Chair

ATTEST:



Patricia Laughlin, Secretary