

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE SECTION 1.41.110 TO INCREASE THE MAXIMUM DAILY CIVIL PENALTY AMOUNT; AMENDING CHULA VISTA MUNICIPAL CODE CHAPTER 5.66 TO SPECIFY THAT ALL COMMERCIAL MARIJUANA ACTIVITY IN THE CITY OF CHULA VISTA IS PROHIBITED; AND AMENDING CHAPTER 9.14 TO ADD MARIJUANA AND OTHER CONTROLLED SUBSTANCES TO THE EXISTING SOCIAL HOST REGULATIONS

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all police, sanitary and other ordinances and regulations not in conflict with general law; and

WHEREAS, with respect to changes to Chula Vista Municipal Code chapter 5.66, in 1970 the United States Congress enacted the Controlled Substances Act (“CSA”), which among other things makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States; and

WHEREAS, California Health and Safety Code section 11362.5, the Compassionate Use Act of 1996 (“CUA”), adopted by the voters of the State of California, authorizes a limited defense to criminal charges for the use, possession or cultivation of marijuana for medical purposes under limited, specified circumstances; and

WHEREAS, Health and Safety Code Section 11362.7, *et seq.*, the Medical Marijuana Program Act (“MMPA”) was adopted by the state legislature and offers some clarification on the scope of the Compassionate Use Act of 1996, and section 11362.83 specifically authorizes cities and other governing bodies to adopt and enforce rules and regulations related to medical marijuana; and

WHEREAS, the United States Supreme Court has twice found that the Compassionate Use Act does not preempt or supersede federal drug laws in *Gonzalez v. Raich* (2005) and *United States v. Oakland Cannabis Buyers Cooperative* (2001); and

WHEREAS, Chula Vista Municipal Code chapter 5.66 currently prohibits medical marijuana dispensaries and cultivation in the City of Chula Vista; and

WHEREAS, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) that cities have the authority to ban medical marijuana uses within their boundaries and prohibit any use that constitutes a violation of state or federal law; and

WHEREAS, California appellate courts in *Maral v. City of Live Oak* (2013) and *Kirby v. County of Fresno* (2015) have found that cities have the authority to ban medical marijuana cultivation in within their boundaries; and

WHEREAS, on October 9, 2015, Governor Brown signed three bills into law (AB 266, AB 243, and SB 643(which collectively are known as the Medical Marijuana Regulation and Safety Act (“MMRSA”), which set up dual local-state licensing and regulation of commercial medical marijuana activities and allow cities to completely prohibit such commercial medical marijuana activities; and

WHEREAS, on November 8, 2016, voters of the State of California passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”), which authorizes recreational personal use of recreational marijuana in limited circumstances, directs state agencies to license and regulate commercial recreational marijuana activities, and in Business and Professions Code section 26200, allows cities to completely prohibit such commercial recreational marijuana activities; and

WHEREAS, the Chula Vista City Council finds that commercial marijuana activities, both medical and recreational, can adversely affect the health, safety, and well-being of City residents and that it is proper and necessary to avoid the risks of criminal activity, access to minors, degradation of the natural environment, offensive odors, indoor fire hazards, and their resulting harmful effects on businesses, property owners, and residents of the City; and

WHEREAS, with respect to changes to Chula Vista Municipal Code section 1.41.110, unlawful marijuana dispensaries have continued to operate in violation of Chula Vista Municipal Code section 5.66.020 despite administrative enforcement, the assessment of civil penalties of up to \$1,000 per violation per day, and the commencement of civil litigation; and

WHEREAS, Chula Vista Municipal Code section 1.41.110(C) currently caps the amount of civil penalties that can be assessed per violation per day at \$1,000; and

WHEREAS, under California Government Code section 36901, cities governed by general laws are limited to fines not exceeding \$1,000 per day for violations of ordinances, charter cities may enact ordinances that provide for different penalties so long as such penalties do not exceed any maximum limits set by their charters (*Los Angeles County v. City of Los Angeles*, 219 Cal.App.2d 838, 844); and

WHEREAS, the amount and duration of any civil penalties imposed remains limited by constitutional excessive fines clauses regardless of the maximum allowable penalty amount specified in the City’s ordinance; and

WHEREAS, it is in the best interests of the City to amend the Chula Vista Municipal Code to permit penalties of up to of \$2,500 when warranted; and

WHEREAS, with respect to the changes to Chula Vista Municipal Code chapter 9.41, the Chula Vista City Council passed Ordinance 3066 in 2007 adopting Chula Vista Municipal Code chapter 9.14, which requires persons to take reasonable steps to prevent the consumption of alcohol by minors at parties, gatherings, or events on private property; and

WHEREAS, the consumption of marijuana or other controlled substances by underage persons is also harmful to the underage persons and a threat to public health, safety, quiet enjoyment of residential property and general welfare; and

WHEREAS, persons held responsible for abetting or tolerating gatherings at which underage persons have access to or consume marijuana or other controlled substances will be more likely to properly supervise or stop such conduct at gatherings held on property under their possession or control;

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I.

A. Chapter 1, Section 1.41.110(C) of the Chula Vista Municipal Code regarding the assessment of civil penalties is amended to read as follows:

1.41.110 Civil Penalties

C. Except for violations of land grading ordinances contained in Chapter 15.04 CVMC, civil penalties may be assessed at a daily rate not to exceed \$2,500 per violation per day.

[Note: [1.41.110 Subsections A, B, and D through G remain unchanged]]

B. Chapter 5.66 of the Chula Vista Municipal Code regarding marijuana activities is amended to read as follows:

Chapter 5.66

COMMERCIAL MARIJUANA ACTIVITY

Sections:

5.66.010 Definitions.

5.66.020 Commercial marijuana activity prohibited.

5.66.030 Provision for delivery services.

5.66.040 Public nuisance – penalties.

5.66.010 Definitions.

“Commercial marijuana activity” includes cultivation, possession, manufacture, processing, storing, testing, labeling, transporting, distribution, delivery, dispensing, and/or the sale of marijuana or marijuana product, whether for medical or recreational purpose, except as set forth in California Business and Professions Code Section 19319, related to qualifying patients and primary caregivers.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana, and any and all associated business and/or operational activities, including the production of clones, immature plants, seeds and other agricultural products as described in the definition of "Nursery" below.

"Delivery" means the commercial transfer of marijuana or marijuana products to or from any location within the jurisdictional limits of the City of Chula Vista, and any and all associated business and/or operational activities, including the use of any technology to arrange for or facilitate the commercial transfer of cannabis to or from any location within the jurisdictional limits of the City of Chula Vista.

"Dispensing" means providing, selling, making available or otherwise distributing marijuana or marijuana products from any facility or location, whether fixed or mobile.

"Distribution" means the procurement, sale, and transport of marijuana and marijuana products.

"Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

"Marijuana" 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.

"Marijuana product" 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.

"Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of marijuana.

"Processing" means any method used to prepare marijuana and/or marijuana products for commercial retail and/or wholesale sales, including but not limited to: cleaning, curing, preparation, laboratory testing, manufacturing, packaging and extraction of active ingredients to create marijuana related products and concentrates.

"Sell," "sale," and "to sell" include 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.

5.66.020 Commercial marijuana activity prohibited.

A. Commercial marijuana activity is prohibited in the City of Chula Vista, and no person or association of persons, however formed, shall operate, perform, participate in or locate a commercial marijuana activity in the City. The City shall not issue, approve, or grant any permit, license or other entitlement for the establishment or operation of commercial marijuana activity in the City of Chula Vista.

B. This chapter does not apply where preempted by state or federal law.

5.66.030 Provision for delivery services.

Notwithstanding the foregoing, the delivery of marijuana or marijuana product originating from a dispensary licensed in accordance with California Business and Professions Code section 19334(a)(1) is permitted, so long as the delivery originates from a licensed dispensary outside the City of Chula Vista, and is conducted in accordance with all codified and administrative state and local regulations.

5.66.040 Public nuisance – Penalties.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be, and is hereby declared, a public nuisance, which may be abated by the City pursuant to the procedures set forth in this code, and be subject to any associated civil or criminal remedies, including but not limited to injunctive relief, except to the extent expressly and validly preempted by state or federal law.

C. Chapter 9.14 of the municipal code regarding consumption of alcohol by minors is amended to read as follows:

Chapter 9.14

**ALCOHOL, MARIJUANA, OR OTHER CONTROLLED SUBSTANCE
CONSUMPTION BY MINORS**

Sections:

9.14.010 Purpose and intent.

9.14.020 Definitions.

9.14.030 Consumption of alcohol, marijuana, or other controlled substances by minors prohibited in public place, place open to public, or place not open to public.

9.14.040 Hosting, permitting, or allowing a party, gathering, or event where minors consume alcoholic beverages, marijuana, or other controlled substances prohibited.

9.14.050 Mandatory minimum fines.

9.14.060 Reservation of legal options.

9.14.070 Local authority.

9.14.010 Purpose and intent.

The City Council finds and declares as follows:

A. The City of Chula Vista, pursuant to the police powers delegated to it by the California Constitution and as a charter city, has the authority to enact laws that promote the public health, safety, and general welfare of its residents.

B. The occurrence of parties, gatherings, or events on private property where alcoholic beverages, marijuana, or other controlled substances are consumed by minors, are harmful to the minors themselves and a threat to public health, safety, quiet enjoyment of property, and general welfare.

C. Minors often obtain alcoholic beverages, marijuana, or other controlled substances at gatherings held at private residences or other private property, places, or premises, including rented commercial premises, which are under the control of a person who knows or should know of the consumption of alcoholic beverages, marijuana, or other controlled substances by minors.

D. Persons responsible for the occurrence of such gatherings often fail to take reasonable steps to prevent the consumption of alcoholic beverages, marijuana, or other controlled substances by minors at these gatherings.

E. The ability of police officers to control gatherings on private property where alcoholic beverages, marijuana, or other controlled substances are consumed by minors is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public.

F. Gatherings involving consumption of alcohol, marijuana, or other controlled substances by minors, as defined by this chapter, are unlawful and constitute a public nuisance pursuant to state law and provisions of this municipal code.

G. The purpose and intent of this chapter is: (1) to protect the public health, safety, and general welfare of people and premises in the City, including the quiet enjoyment of property; (2) to enforce laws prohibiting the consumption of alcohol, marijuana, or other controlled substances by minors; and (3) to reduce the costs of providing police services to parties, gatherings, or events requiring a response by requiring the person who knowingly hosts, permits, or allows a party, gathering, or event to ensure minors are not consuming alcoholic beverages, marijuana, or other controlled substances through criminal, civil, administrative, and other penalties as allowed by State and local law. (Ord. 3066 § 1, 2007).

9.14.020 Definitions.

For purposes of CVMC 9.14.010 through 9.14.070, the following definitions shall apply:

“Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

“Alcoholic beverage” includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

“Controlled substance” means a drug or substance whose possession and use are regulated under the Controlled Substances Act. Such term does not include any drug or substance for which the individual found to have consumed such substance has a valid prescription issued by a licensed medical practitioner authorized to issue such a prescription.

“Gathering” is a party, gathering, or event where a group of three or more persons have assembled or are assembling for a social occasion or social activity.

“Legal guardian” means: (1) a person who, by court order, is the guardian of the person of a minor; or (2) a public or private agency with whom a minor has been placed by the court.

“Marijuana” 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. For purposes of this chapter, marijuana also 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.

“Minor” means any person under 21 years of age.

“Parent” means a person who is a natural parent, adoptive parent, foster parent, or stepparent of another person.

“Premises” means any residence or other private property, place, or premises, including any commercial or business premises.

“Response costs” are the costs associated with responses by law enforcement, fire, and other emergency response providers to a gathering, including but not limited to: (1) salaries and benefits of law enforcement, code enforcement, fire, or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with a gathering, and the administrative costs attributable to such response(s); (2) the cost of any medical treatment for any law enforcement, code enforcement, fire, or other emergency response personnel injured responding to, remaining at, or leaving the scene of a gathering; (3) the cost of repairing any city equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at, or leaving the scene of a gathering; and (4) any other allowable costs related to the enforcement of CVMC 9.14.030 and 9.14.040. (Ord. 3066 § 1, 2007).

9.14.030 Consumption of alcohol, marijuana, or other controlled substances by minor prohibited in public place, place open to public, or place not open to public.

Except as permitted by State law, it is unlawful for any minor to:

A. Consume at any public place or any place open to the public any alcoholic beverage, marijuana, or other controlled substance; or

B. Consume at any place not open to the public any marijuana or other controlled substance; or

C. Consume at any place not open to the public any alcoholic beverage, unless in connection with the consumption of the alcoholic beverage that minor is being supervised by his or her parent or legal guardian. (Ord. 3066 § 1, 2007).

9.14.040 Hosting, permitting, or allowing a party, gathering, or event where minors consume alcoholic beverages, marijuana, or other controlled substances prohibited.

A. Imposition of Duty and Violation.

1. It is the duty of any person having control of any premises, who knowingly hosts, permits, or allows a gathering at said premises to take all reasonable steps to prevent the consumption of alcoholic beverages, marijuana, or other controlled substances by any minor at the gathering. Reasonable steps are prohibiting controlled substances at the gathering; controlling access to alcoholic beverages and marijuana at the gathering; controlling the

quantity of alcoholic beverages and marijuana present at the gathering; verifying the age of persons attending the gathering by inspecting driver's licenses or other government-issued identification cards to ensure that minors do not consume alcoholic beverages or marijuana while at the gathering; and supervising the activities of minors at the gathering.

2. It is unlawful for any person having control of any premises to knowingly host, permit, or allow a gathering to take place at said premises where at least one minor consumes an alcoholic beverage, marijuana, or other controlled substance, whenever the person having control of the premises either knows a minor has consumed an alcoholic beverage, marijuana, or other controlled substance or reasonably should have known that a minor consumed an alcoholic beverage, marijuana, or other controlled substance had the person taken all reasonable steps to prevent the consumption of an alcoholic beverage, marijuana, or other controlled substance by a minor as set forth in subsection (A)(1) above.

B. This section shall not apply to conduct involving the use of alcoholic beverages that occurs exclusively between a minor and his or her parent or legal guardian, as permitted by Article I, Section 4, of the California Constitution.

C. This section shall not apply to any California Department of Alcoholic Beverage Control licensee at any premises regulated by the Department of Alcoholic Beverage Control. (Ord. 3066 § 1, 2007).

[Note: [9.14.050 through 9.14.070 remain unchanged]]

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Glen R. Googins
City Attorney

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