

ORDINANCE NO. _____

AN EMERGENCY ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHAPTER 19.02 OF THE CHULA VISTA MUNICIPAL CODE 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 Chapter 19.02 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(l), 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, it is necessary that this Emergency Ordinance be immediately enacted to ensure that the City of Chula Vista meets the March 1, 2016 deadline required to maintain jurisdiction over the cultivation of marijuana under state law; 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 Planning Commission previously held a public hearing on this matter and recommends that the City Council affirm permissive zoning principles and clarify that uses prohibited elsewhere in the Municipal Code are also prohibited land uses; and

WHEREAS, the Director of Development Services set the time and place for a public hearing on the Amendment to Chapter 19.02, 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 public hearing.

NOW, THEREFORE, BE IT ORDAINED, that the City Council of the City of Chula Vista hereby makes the following findings:

Section I.

1. That 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 City Council finds and affirms that the City's Zoning Code has and continues to operate as a permissive zoning code. Therefore, the City Council desires to enact an ordinance amending Municipal Code Chapter 19.02 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. That 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 City Council desires to amend Chapter 19.02 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.
3. On January 26, 2016, the City Council held a public meeting during which it considered the adoption of this Emergency Ordinance pursuant to California Government Code § 36937 and the Chula Vista Charter § 311. Both California Government Code § 36937 and Chula Vista Charter § 311 allow the adoption of such emergency ordinances to take effect immediately to ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Chula Vista.
4. The City Council finds that the amendments to the City's Municipal Code implemented by this Emergency Ordinance are immediately necessary as an emergency measure in order to meet the March 1, 2016 deadline imposed by newly enacted California Health and Safety Code § 11362.777(c)(4). The Emergency Ordinance is necessary to protect the public safety, health, and welfare of Chula Vista residents as it maintains and secures local jurisdiction over the cultivation of medical marijuana and prevents negative secondary side effects related to the cultivation of medical marijuana as previously recognized by the City Council in its adoption of Chula Vista Ordinance 3204 on September 20, 2011.

THE CITY COUNCIL OF THE CITY OF CHULA VISTA DOES FURTHER ORDAIN as follows:

Section II. That Chapter 19.02 of the Chula Vista Municipal Code is hereby amended to read as follows:

Chapter 19.02 – General Provisions

19.02.070 Permissive Zoning Principle

The provisions of this title are governed by the principles of permissive zoning, whereby any use not permitted is prohibited.

19.02.080 Actions Prohibited Elsewhere In Code

Actions prohibited elsewhere in this code are also prohibited as land uses under this Title.

Section III. Severability

If any portion of this Emergency 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 Emergency 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 Emergency Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Emergency Ordinance be declared invalid, unenforceable or unconstitutional.

Section IV. Construction

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

Section V. Effective Date

This Emergency Ordinance shall take effect and be in force immediately upon adoption by the City Council.

Section VI. 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:

Kelly Broughton, FASLA
Development Services Director

Glen R. Googins
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California on this 26th day of January, 2016, by the following vote:

AYES: Councilmembers:
NAYS: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmemebers:

Mary Casillas Salas, Mayor

ATTEST:

Donna Norris, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.
CITY OF CHULA VISTA)

I, Donna Norris, City Clerk of the City of Chula Vista, California, do hereby certify that the foregoing Emergency Ordinance No. XXXX was adopted at a regular meeting of said City Council held on the 26th day of January, 2016.

Executed this 26th day of January, 2016.

Donna Norris, City Clerk