

CITY OF SAND CITY

ORDINANCE 16-02 (2016)

AN ORDINANCE OF THE CITY OF SAND CITY TO AMEND SECTION 18.69 OF TITLE 18 (ZONING ORDINANCE) OF THE SAND CITY MUNICIPAL CODE PROHIBITING MEDICAL MARIJUANA DISPENSARIES, CULTIVATION OF MARIJUANA, COMMERCIAL MARIJUANA DELIVERIES, AND ALL COMMERCIAL MEDICAL MARIJUANA ACTIVITIES IN SAND CITY

WHEREAS, in 1996 the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 (Cal. Health and Safety Code Section 11362.5 *et seq.*), the intent of which was to enable seriously ill residents of California to obtain and use marijuana for medical purposes; and

WHEREAS, in 2003, the California Legislature enacted the Medical Marijuana Program Act (“MMP”) (Cal. Health and Safety Code Section 11362.7, *et seq.*) to clarify the scope of the Compassionate Use Act of 1996; and

WHEREAS, in 2009, the City Council adopted an urgency interim ordinance imposing a temporary ban on the establishment of medical marijuana dispensaries in Sand City; and

WHEREAS, on October 5, 2010, the City Council of Sand City unanimously approved Ordinance 10-07, adopting Municipal Code Chapter 18.69 prohibiting medical marijuana dispensaries and the sale of medical marijuana within any zoning district within the municipal boundaries of the City of Sand City; and

WHEREAS, the California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, held that neither the Compassionate Use Act nor the Medical Marijuana Program expressly or impliedly preempt the authority of California counties or cities, under their police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana and that cities and counties may adopt local ordinances that regulate the location, operation or establishment of medical marijuana cooperatives or collectives, and to enforce such ordinances; and

WHEREAS, in *Maral v. City of Live Oak* (2014) 221 Cal.App.4th 975, the appellate court held that the Compassionate Use Act and the Medical Marijuana Program Act do not preempt a city’s police power to prohibit marijuana cultivation; and

WHEREAS, on October 9, 2015, Governor Brown signed three bills into law (AB 266, AB 243, and SB 643), collectively are known as the Medical Marijuana Regulation and Safety Act (the “Act”); and

WHEREAS, no medical marijuana businesses (dispensary sales, delivery services, cultivation, or transport) may operate in the City unless it has both a State license and approval by the City; and

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. Section 901 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States of America, and that has not been accepted as safe for use under medical supervision; and further, the Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense marijuana; and

WHEREAS, it is recognized by the 'Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use' that marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increased the risk that surrounding homes and/or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, the limited immunity from specified California state marijuana laws provided by the Compassionate Use Act and the Medical Marijuana Program Act does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the California Constitution grants charter cities the power to make and enforce all ordinances and regulations with respect to municipal affairs; and thus, the City of Sand City, through its Council, can and may exercise all powers necessary to ensure the general welfare of its inhabitants; and

WHEREAS, the goals, policies, and objectives of the Sand City General Plan call for the elimination of urban blight and reinvestment of public and private funds to revitalize Sand City, whereby the establishment of marijuana dispensaries, sales, cultivation, and/or distribution activities and/or facilities can potentially undermine such policies by inhibiting private reinvestment in the vicinity of medical and/or recreational marijuana sales, cultivation and/or distribution activities and facilities; and

WHEREAS, The City Council finds that medical marijuana activities, as allowed by the Compassionate Use Act and Medical Marijuana Program Act, can adversely affect the health, safety, and welfare of City residents and visitors; justifying a city-wide prohibition as proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, high water usage, and malodorous odors that may result from such activities; and

WHEREAS, the City hereby finds it necessary at this time to amend Section 18.69.010 of the Sand City Municipal Code in extend the existing prohibit on medical

marijuana dispensaries and sales to include the prohibition of cultivation, storage, processing, production, and distribution of marijuana; and

WHEREAS, there is no feasible alternative other than adoption of this Ordinance that will satisfactorily mitigate or avoid those previously identified impacts to the public health, safety, and welfare; and

WHEREAS, this Ordinance is exempt from CEQA (California Environmental Quality Act) pursuant to CEQA Guidelines Section 15060(c)(2) when an activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and 2) CEQA Guidelines Section 15060(c)(3) when the activity is not a project as defined in Section 15378 of the CEQA Guidelines; whereby the City Council finds that there is no possibility that the adoption of these regulations could have a significant effect on the environment; therefore, no further environmental review is necessary in accordance with Section 15061(b)(3) of the CEQA Guidelines; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Sand City as follows:

SECTION 1: Adoption of Recitals. The foregoing recitals are true and correct and are hereby adopted by the City Council.

SECTION 2: Chapter 18.69.010 of the Sand City Municipal Code is hereby amended to read in its entirety to read as follows:

“Section 18.69.010 Medical Marijuana Dispensaries, Delivery, Cultivation and Sales.

A. Medical Marijuana Dispensaries Prohibited. Medical marijuana dispensaries are prohibited in the City. No person shall locate, operate, own, suffer, allow to be operated or aid, abet, lease to or assist in the operation of any fixed or mobile medical marijuana dispensary within the City in any zoning district. The operation of a medical marijuana dispensary in the City shall constitute a public nuisance.

(1) “Medical marijuana dispensary” shall mean any facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale.

B. Commercial Marijuana Activities Prohibited. Commercial marijuana or cannabis activities of all types, including the cultivation, possession,

manufacture, processing, storing, laboratory testing, labeling, transport, deliver, dispensing, transfer, distribution or sale of medical cannabis or medical cannabis products all as defined under California Business and Professions Code section 19300.5, as the same may be amended from time to time, are expressly prohibited in all zones and specific plan areas of the City. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City.

C. Medical Marijuana Delivery Prohibited. Deliveries of medical marijuana and medical cannabis products are prohibited.

(1) "Delivery" means the commercial transfer of medical cannabis or medical cannabis products.

D. Medical Marijuana Cultivation Prohibited. Marijuana cultivation by any person or business, including but not limited to primary caregivers, qualified patients, collectives, cooperatives, or dispensaries, is prohibited.

(1) "Cultivation" shall include planting, growing, harvesting, drying, curing, grading, trimming, or other related processing method of cannabis.

E. Enforcement. The activities prohibited by this Section 18.69.010 are hereby declared to be a public nuisance. The City Attorney shall, upon order of the Council, immediately commence a civil action or proceeding for the abatement and removal and enjoyment of any such prohibited activity. In any civil action to enforce the provisions of this Section 18.69.010, where the City seeks recovery of its costs and attorneys' fees, the prevailing party shall be entitled to recover from the losing party its reasonable costs including, but not limited to attorneys' fees, the costs of investigation, court costs, and the costs of monitoring compliance with any order or judgement entered in such an action. Upon entry of a second or subsequent civil judgement within a two year period for abatement of medical marijuana dispensary, the court may order the property owner to pay treble the costs of abatement, except as otherwise provided by State Law.

SECTION 3: **Severance.** All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: **Effective Date.** This Ordinance shall become effective thirty (30) days from and after its final passage and adoption.

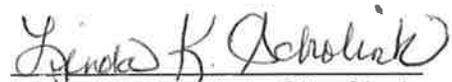
PASSED AND ADOPTED BY THE CITY COUNCIL OF SAND CITY, this 19th, day of January, 2016 by the following vote:

AYES: Council Members Blackwelder, Carbone, Hubler, Pendergrass
NOES: None
ABSTAIN Council Member Kruper
ABSENT: None

APPROVED:


David K. Pendergrass, Mayor

ATTEST:


Linda K. Scholink, City Clerk