

ORDINANCE NO. 2016-01

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING EL CERRITO MUNICIPAL CODE CHAPTER 6.80 ("MEDICAL MARIJUANA DISPENSARIES") REGARDING THE CULTIVATION OF MARIJUANA

WHEREAS, California law currently authorizes the personal use of marijuana for medical purposes; and

WHEREAS, the Legislature recently passed, and the Governor signed new legislation which requires certain state agencies to promulgate regulations relating to medical marijuana cultivation and deliveries; and

WHEREAS, the new legislation provides that if a city does not have land use regulations or ordinances regulating or prohibiting the cultivation of medical marijuana, then commencing on March 1, 2016, a state agency will be the sole licensing authority for medical marijuana cultivation applications in that city; and

WHEREAS, a city with a prohibition or regulations regarding the cultivation of medical marijuana in effect before March 1, 2016 retains the authority to later modify that prohibition or those regulations; and

WHEREAS, the new legislation also authorizes licensed medical marijuana dispensaries to make medical marijuana deliveries in any city that does not explicitly prohibit it; and

WHEREAS, the City Council wishes to prevent a state agency from becoming the sole licensing authority for medical marijuana cultivation in the City and wishes to explicitly prohibit medical marijuana deliveries; and

WHEREAS, the El Cerrito Municipal Code currently prohibits medical marijuana dispensaries in all zones throughout the City, and marijuana cultivation is not a permitted use in any zoning district. Under the Zoning Ordinance of the El Cerrito Municipal Code, any use that is not expressly permitted is prohibited; and

WHEREAS, the El Cerrito City Council desires to clarify that the cultivation of marijuana is prohibited throughout the City, and that cultivation of marijuana is not within the definition of permitted or conditionally permitted nursery use.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The City Council finds that the above Recitals are true and correct and are incorporated herein by reference.

SECTION 2. Amendment of Municipal Code. The title of Chapter 6.80 of the El Cerrito Municipal Code is amended to be read as follows:

6.80 – MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION

SECTION 3. Amendment of Municipal Code. Section 6.80.010 of the El Cerrito Municipal Code is amended to read as follows (with text in ~~strikeout~~ format indicating deletion and underlined text indicating addition):

6.80.010 - Definitions.

The following words or phrases, whenever used in this chapter, shall be given the following definitions:

"Cultivation of marijuana" means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of marijuana.

"Medical marijuana delivery" means the transfer of medical marijuana or medical marijuana products from a medical marijuana dispensary to a qualified patient or primary caregiver, as well as the use by a dispensary of any technology platform to arrange for or facilitate the transfer of medical marijuana or medical marijuana products.

"Medical marijuana dispensary" means any facility or location where a primary caregiver makes available, sells, transmits, gives, or otherwise provides medical marijuana to two or more persons with identification cards or qualified patients. A medical marijuana dispensary shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice licensed pursuant to Chapter 8.5 of Division 2 of the Health & Safety Code, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code, as long as any such use complies strictly with applicable law, including, but not limited to, Health & Safety Code Sections 11362.5 et seq.

"Person with an identification card" shall have the meaning set forth in California Health & Safety Code Section 11362.7, as may be amended from time to time, or any successor statute.

"Primary caregiver" shall have the meaning set forth in California Health & Safety Code Section 11362.7, as may be amended from time to time, or any successor statute.

"Qualified patient" shall have the meaning set forth in California Health & Safety Code Section 11362.7, as may be amended from time to time, or any successor statute.

SECTION 4. Amendment of Municipal Code. Section 6.80.020 of the El Cerrito Municipal Code is amended to read as follows (with text in ~~strikeout~~ format indicating deletion and underlined text indicating additions):

6.80.020 – Medical marijuana dispensary, medical marijuana delivery and cultivation of marijuana as a prohibited uses.

A medical marijuana dispensary, medical marijuana delivery and cultivation of marijuana, as defined in this chapter, is are prohibited in all zones throughout the city of El Cerrito, including but not limited to cultivation of marijuana as part of a permitted or conditionally permitted nursery use.

SECTION 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 6. Effective Date.

This Ordinance shall take effect and be enforced thirty days after the date of its adoption, and prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING ORDINANCE was introduced and first read at a regular meeting of the El Cerrito City Council on December 15, 2015, and approved by the following vote on December 15, 2015:

AYES:	Councilmembers Abelson, Bridges, Lyman, Quinto and Mayor Friedman
NOES:	None
ABSENT:	None
ABSTAIN:	None

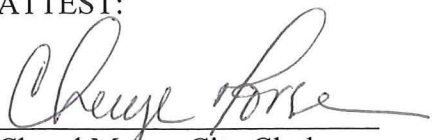
ADOPTED AND ORDERED published at a regular meeting of the City Council held on January 19, 2016 by the following vote of the City Council:

AYES:	Councilmembers Abelson, Bridges, Lyman, Quinto and Mayor Friedman
NOES:	None
ABSENT:	None
ABSTAIN:	None

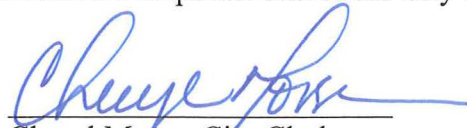
APPROVED:


Gregory B. Lyman, Mayor

ATTEST:


Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on January 22, 2016.


Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2016-01 of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the 19th day of January, 2016; and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this 22nd day of January, 2016.


Cheryl Morse, City Clerk