

ORDINANCE NO. 09-2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING CHAPTER 9.31 OF THE ELK GROVE MUNICIPAL CODE TO PROHIBIT MEDICAL MARIJUANA DISPENSARY DELIVERY WITHIN THE CITY OF ELK GROVE (CEQA EXEMPT)

WHEREAS, the City Council of the City of Elk Grove has prohibited the establishment of medical marijuana dispensaries and medical marijuana cultivation in the City of Elk Grove; and

WHEREAS, the City Council of the City of Elk Grove seeks to prohibit the delivery of medical marijuana and finds that such prohibition is consistent with the City's previous actions in relation to medical marijuana; and

WHEREAS, pursuant to Business and Professions Code section 19340, medical marijuana deliveries can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance.

NOW, THEREFORE, the City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose.

The purpose of this ordinance is to revise the City's Municipal Code concerning the delivery of medical marijuana within the City and to revise certain definitions related thereto, without substantive change in terminology. This ordinance is enacted pursuant to the authority granted to cities by state law including, without limitation, the City's general police powers under California Constitution article XI, section 7 and the Medical Marijuana Regulation and Safety Act.

Section 2: Environmental Review/California Environmental Quality Act (CEQA).

This ordinance will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

Section 3: Amendment/Addition to Elk Grove Municipal Code Chapter 9.31.

Sections 9.31.010 and 9.31.020 of the Elk Grove Municipal Code are hereby amended, and section 9.31.035 is hereby added, to read as follows.

Additions are indicated by double underline, deletions are indicated by ~~strike-through~~.

9.31.010 Purpose and authority.

The City Council of the City of Elk Grove finds that Federal and State laws prohibiting the possession, sale and distribution of marijuana would preclude the opening or establishment of medical marijuana dispensaries, or medical marijuana delivery service, sanctioned by the City of Elk Grove, and in order to serve public health, safety and welfare of the residents and businesses within the City, the declared purpose of this chapter is to prohibit medical

marijuana dispensaries from being opened or established within the City of Elk Grove, and to prohibit the delivery of medical marijuana within the City of Elk Grove. Nothing contained in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any State or Federal law.

9.31.020 Definitions.

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B. “Medical marijuana,” “medical cannabis,” “medical cannabis product,” or “cannabis product” means marijuana authorized in strict compliance with and as set forth in California Health and Safety Code Section 11362.5 et seq. used for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine or any other serious medical condition for which marijuana is deemed to provide relief and includes any product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

C. “Medical marijuana dispensary” means any facility or location where medical marijuana is made available to, distributed by, or distributed to one (1) or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. All three (3) of these terms are identified in strict accord with California Health and Safety Code Section 11362.5 et seq. A medical marijuana dispensary shall not include the following uses, as long as the location of such use is otherwise in accord with this Code and other applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and 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 and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq. “Medical marijuana dispensary” shall include a 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 or in exchange for contribution of money or other resources, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale or in exchange for contribution of money or other resources.

...

G. “Delivery” means the commercial transfer of medical cannabis or medical cannabis products from a dispensary to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or to a testing laboratory. “Delivery” also includes the use by a dispensary of any technology platform owned and controlled by the

dispensary, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

9.31.035 Medical marijuana delivery prohibited.

Delivery of medical marijuana, medical cannabis, medical cannabis product, or cannabis product within the City is prohibited, and it shall be unlawful for any person to deliver medical marijuana, as specified herein and in California Business and Professions Code section 19340, within the City.

Section 4: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of this ordinance be enforced.


Section 6: Savings Clause.

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or any proceeding, suit or prosecution shall remain in full force and effect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 7: Effective Date and Publication.

This ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of this ordinance within fifteen (15) days after its passage, a summary of this ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to Government Code section 36933(c)(1).

ORDINANCE: 09-2016
INTRODUCED: April 27, 2016
ADOPTED: May 11, 2016
EFFECTIVE: June 10, 2016



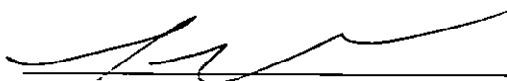
GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS
CITY ATTORNEY

Date signed: May 26, 2016

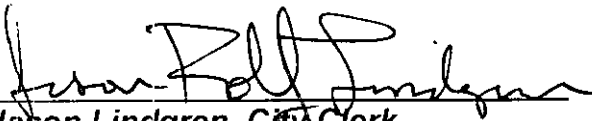
**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 09-2016**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on April 27, 2016 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on May 11, 2016 by the following vote:

AYES : **COUNCILMEMBERS:** *Davis, Ly, Detrick, Hume, Suen*
NOES: **COUNCILMEMBERS:** *None*
ABSTAIN: **COUNCILMEMBERS:** *None*
ABSENT: **COUNCILMEMBERS:** *None*

A summary of the ordinance was published pursuant to GC 36933(c) (1).



*Jason Lindgren, City Clerk
City of Elk Grove, California*