

ORDINANCE NO. 1083

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COACHELLA, CALIFORNIA AMENDING SECTION 17.34.020, AMENDING CHAPTER 17.84, AND ADDING CHAPTER 17.85 TO THE COACHELLA MUNICIPAL CODE REGARDING MEDICAL CANNABIS DISPENSARIES, MOBILE DISPENSARIES, AND CULTIVATION.

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 *et seq.* and entitled “The Compassionate Use Act of 1996”); and,

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and,

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program (“MMP”), codified as Health and Safety Code Section 11362.7 *et seq.*, which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the Penal Code; and,

WHEREAS, neither the Compassionate Use Act (“CUA”) nor the MMP require nor impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and,

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban outright medical marijuana land uses; and,

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 *et seq.*, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“Act”) into law; and,

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder; and,

WHEREAS, the Act contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the Act, unless local governments have “land use regulations or ordinances regulating or prohibiting the cultivation of marijuana...” (Health and Safety Code §11362.777(c)(4); and,

WHEREAS, several California cities have reported negative impacts of marijuana distribution and delivery uses, including illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts; and,

WHEREAS, outdoor cultivation of marijuana plants can produce a strong odor, and detectable far beyond property boundaries; and,

WHEREAS, without regulation, the indoor cultivation and manufacturing of marijuana and subsequent testing, distribution, and transportation has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure, and adequate security is necessary; and,

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana distribution uses and unregulated medical marijuana cultivation facilities; and,

WHEREAS, the City’s Municipal Code (“Code”) bans medical cannabis dispensaries, it does not address the mobile delivery, cultivation, manufacturing, testing, distribution, or transportation of medical cannabis; and,

WHEREAS, based on the findings above, the potential establishment of cannabis dispensaries, mobile dispensaries, and unregulated medical marijuana cultivation facilities in the City and poses a current and immediate threat to the public health, safety and welfare in the City due to the negative land use and other impacts of such uses as described above; and,

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for cannabis dispensaries and delivery of cannabis will result in the aforementioned threat to public health, safety, or welfare; and,

WHEREAS, the regulatory requirement imposed upon issuance or approval of conditional use permits and regulatory permits for medical marijuana cultivation, manufacturing, distribution, testing, and transportation facilities will combat any potential threat to public health, safety, or welfare; and

WHEREAS, the City intends to adopt a new Chapter under Title 5, Business Licenses and Regulations, establishing a regulatory permit scheme for medical cannabis cultivation, manufacturing, distribution, testing, and transportation facilities; and

WHEREAS, the Planning Commission of the City of Coachella conducted a properly noticed public hearing on December 16, 2015 at which members of the public were afforded an opportunity to comment upon this Ordinance, the recommendations of staff, and public testimony; and

WHEREAS, after such hearing, the Planning Commission recommended that the City Council approve this Ordinance; and

WHEREAS, the City Council conducted a properly noticed public hearing on January 13, 2016 at which members of the public were afforded an opportunity to comment on this Ordinance, the recommendations of staff, and public testimony.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COACHELLA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The City Council hereby adopts the foregoing recitals as its findings in support of the following regulations and further finds that the following regulations are necessary and appropriate to protect the health, safety and welfare of the residents and businesses of Coachella from the identified adverse impacts of cannabis cultivation, processing, dispensing, delivery, and distribution within the City limits.

SECTION 2. Amendment to the Coachella Municipal Code. Section 17.34.020 of the Coachella Municipal Code is hereby amended, adding 17.34.020(C)(7) (see underlined text), to read as follows:

“17.34.020 - Permitted uses.

- A. Primary Uses.
 - 1. All uses permitted by Section 17.32.030(A) of the M-H zone;
- B. Accessory Uses. The following buildings, structures, and uses are permitted when clearly incidental and accessory to a primary permitted use.
 - 1. Those uses permitted by Section 17.32.020(B) of the M-H zone.

C. Conditional Uses. The following uses may be permitted in the M-W zone subject to obtaining a conditional use permit pursuant to Chapter 17.74 of this code.

1. Those conditional uses allowed by Section 17.32.020(C) in the M-H zone;
2. Automobile dismantling or wrecking yard;
3. Automobile impounding yard;
4. Community recycling collection facilities, pursuant to Chapter 17.90;
5. Construction and demo material recycling facilities pursuant to Chapter 17.90;
6. Wood and green waste recycling facilities, pursuant to Chapter 17.90.
7. Medical cannabis cultivation, manufacturing, distribution, testing, and transportation facilities, pursuant to Chapter 17.85.

D. The following uses may be permitted in the M-W zone subject to obtaining a specific plan adoption pursuant to Chapter 17.36 of this code.

1. Transfer station, large scale, pursuant to Chapter 17.90.”

SECTION 3. Amendment to the Coachella Municipal Code. Chapter 17.84 of the Coachella Municipal Code is hereby amended in its entirety to read as follows:

“Chapter 17.84 – MEDICAL CANNABIS DISPENSARIES

17.84.010 Purpose and intent.

A. It is the purpose and intent of this Chapter, pursuant to the City’s constitutional authority to promote and protect the health, safety, and general welfare of the residents and businesses within the City by prohibiting the distribution and delivery of medical cannabis.

B. Nothing in this Chapter shall be construed to (1) permit persons to engage in conduct that endangers others or causes a public nuisance, (2) permit the use of cannabis for non-medical purposes, or (3) permit any activity relating to the dispensing, delivery, or distribution of cannabis that is illegal under state or federal law.

17.84.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

A. “Cannabis” 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. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

B. “Cannabis dispensary” means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment or business that delivers cannabis and cannabis products as part of a retail sale, otherwise known as a mobile dispensary.

C. “Delivery” means the commercial transfer of cannabis or cannabis products from dispensary to patient and includes origination or termination within the City as well as a delivery business. “Delivery” does not include transfer of cannabis or cannabis products by and between cultivator, distributor, testing lab, transporter, and dispensary.

17.84.030 Prohibited activities.

Cannabis dispensaries and delivery of cannabis from dispensary to patient, as defined herein, shall be considered prohibited uses in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of dispensaries or delivery of cannabis as defined herein in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

17.84.040 Prohibited activities declared a public nuisance.

Any use or condition caused or permitted to exist in violation of this Chapter shall be and is hereby declared a public nuisance that may be abated by the City and/or subject to all available legal remedies, including but not limited to civil injunctions.

17.84.050 Penalties for violations.

A. Violations of this Chapter constitute an infraction or misdemeanor and may be enforced by any applicable law. Notwithstanding any other provision of this Code, a violation of this Chapter is subject to civil and criminal penalties.

B. Each person is guilty of a separate offense each day a violation is allowed to continue and every violation of this chapter shall constitute a separate offense and shall be subject to all remedies.”

SECTION 4. Addition to the Coachella Municipal Code. Chapter 17.85 of the Coachella Municipal Code is hereby added to read as follows:

“Chapter 17.85 – MEDICAL CANNABIS CULTIVATION FACILITIES

17.85.010 Purpose and intent.

Medical cannabis cultivation, manufacturing, distribution, testing, or transportation facilities shall be permitted, in accordance with the criteria and procedures set forth in this code, upon application and approval of a conditional use permit pertaining to the location of the facility and a regulatory permit pertaining to the operation of the facility.

17.85.020 Medical cannabis cultivation facilities.

Medical cannabis cultivation facilities permitted under this Chapter include facilities where medical cannabis is planted, grown, harvested, dried, cured, graded, trimmed, manufactured into cannabis products, tested, distributed, or transported, or that does all or any combination of those activities, that holds a valid conditional use permit pursuant to this Chapter, and a regulatory permit as required by this Code, subject to the provisions of the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code Sections 11362.7 through 11362.83), the California Attorney General’s Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008, the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643), and any other state laws pertaining to cultivating medical marijuana.

17.85.030 Number of permitted medical cannabis cultivation, manufacturing, distribution, transportation, and testing facilities.

The number of permitted medical cannabis cultivation, manufacturing, distribution, transportation, and testing facilities permitted in the City shall be determined by resolution of the City Council.

17.85.040 Application period.

Applications may be submitted during those application periods designated from time to time by resolution of the City Council and the applications will be prioritized for processing based on the number of points assigned to each application that has been submitted and deemed complete by the City during the application period.

17.85.050 Priority point system.

Each application submitted and deemed complete by the City during the application period will be evaluated for priority for processing based on certain criteria set forth in a Priority Point System approved by resolution of the City Council.

17.85.060 Medical cannabis cultivation facilities—Permitted locations and standards.

A. Medical cannabis cultivation facilities may be located in any Wrecking yard zone (M-W) in the City, upon issuance of a conditional use permit and a regulatory permit.

B. Medical cannabis cultivation facilities should be restricted to a site having a minimum of five acres in size, with a minimum paved street frontage of 250 feet.

C. Medical cannabis cultivation facilities must be served by municipal water and sewer services.

D. Medical cannabis cultivation facilities shall be located a minimum distance of 1,000 feet away from any residential zone. The distance requirement shall be measured from the cultivation facility structures to the zoning district boundary.

E. Medical cannabis cultivation facilities may not be established on a multi-tenant industrial park or business park site that is existing on the effective date of this ordinance. A conditional use permit to develop a new stand-alone medical cannabis cultivation facility or a multi-tenant cultivation facility within a minimum site area of five acres may be pursued.

F. Medical cannabis cultivation facilities shall not result in the creation of any odors detectable from anywhere off the property boundaries. The use of carbon filtration systems and other mitigation measures shall be used on all cultivation facilities and operations.

17.85.070 – Prohibited operations.

All medical cannabis cultivation facilities that do not have both the conditional use and regulatory permits required under this Chapter are expressly prohibited in all city zones and are hereby declared public nuisances that may be abated by the City and/or subject to all available legal remedies, including but not limited to civil injunctions.

17.85.080 Cultivation—Interior only.

All medical cannabis cultivation shall be conducted only in the interior of enclosed structures, facilities and buildings and all cultivation operations including all marijuana plants at any stage of growth shall not be visible from the exterior of any structure, facility or building containing the cultivation of medical cannabis. All medical cannabis cultivation must take place indoors, within a permanent structure that is enclosed on all sides. Outdoor medical cannabis cultivation shall be prohibited. Portable greenhouses and/or non-permanent enclosures shall not be used for cultivation unless they are placed inside of a permanent structure that is enclosed on all sides.

17.85.090 Conditional use permit required.

A. Prior to initiating operations and as a continuing requisite to operating a medical cannabis cultivation, manufacturing, distribution, testing, or transportation facility, the legal representative of the persons wishing to conduct these activities shall obtain and maintain a validly issued conditional use permit from the City, which shall include the condition that the permit holder shall also obtain and maintain a medical cannabis cultivation, manufacturing, distribution, testing, or transportation facility regulatory permit required by this code.

B. The initial conditional use permit application period for medical cannabis cultivation, manufacturing, distribution, testing, or transportation facilities will not begin until either the City Council approves a Development Agreement for the site or until after the effective date of an approved ballot measure authorizing the taxation of commercial cannabis cultivation in the City.

17.85.100 Penalties for violations.

A. Violations of this Chapter constitute an infraction or misdemeanor and may be enforced by any applicable law. Notwithstanding any other provision of this Code, a violation of this Chapter is subject to civil and criminal penalties.

B. Each person is guilty of a separate offense each day a violation is allowed to continue and every violation of this chapter shall constitute a separate offense and shall be subject to all remedies.

17.85.110 Definitions.

Words and phrases not specifically defined in this municipal code shall have the meanings ascribed to them as defined in the following sources:

A. The Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5);

B. The Medical Marijuana Program Act (California Health and Safety Code Sections 11362.7 through 11362.83); and

C. The California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008; and

D. The Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643).”

SECTION 5. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

If for any reason any portion of this Ordinance is found to be invalid by a court of competent jurisdiction, the balance of this Ordinance shall not be affected.

SECTION 7. Certification. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be entered in the book of original ordinances of said City; shall make a minute passage and adoption thereof in the records of the meeting at which time the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published as required by law, in a local newspaper of general circulation and which is hereby designated for that purpose.

SECTION 8. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.


ORDINANCE PASSED AND APPROVED at a regular meeting of the City Council of the City of Coachella this 27th day of January 2016 by the following vote:

AYES: Councilmember Bautista, Councilmember Sanchez and Mayor Hernandez.

NOES: None.

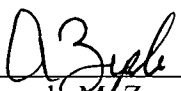
ABSENT: Councilmember Perez and Mayor Pro tem Martinez.

ABSTAIN: None.



Steven A. Hernandez, Mayor

ATTEST:



Angela M. Zepeda, City Clerk

APPROVED AS TO FORM:



Carlos Campos, City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF COACHELLA)

I, Angela M. Zepeda, City Clerk of the City of Coachella, California, hereby certify that Ordinance No. 1083 was duly and regularly introduced at a meeting of the City Council on the 13th day of January, 2016 and that thereafter the said ordinance was duly and regularly adopted duly passed and adopted at a regular meeting of the City Council on the 27th day of January, 2016.



Angela M. Zepeda, City Clerk