

ORDINANCE NO. 1152

AN ORDINANCE OF THE CITY OF LOS BANOS AMENDING ARTICLE 35, OF TITLE 9, CHAPTER 3 OF THE LOS BANOS MUNICIPAL CODE TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA IN THE CITY OF LOS BANOS

WHEREAS, California Government Code section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, on March 1, 2006 the City adopted Ordinance 1046 banning medical marijuana dispensaries in any zoning district within the City of Los Banos; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the " Medical Marijuana Regulation and Safety Act" ("MMRSA"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law; and

WHEREAS, the Act became effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c));
4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)); and

WHEREAS, on January 20, 2016, in response to the MMRSA the City amended Article 35, of Title 9, Chapter 3, of the Los Banos Municipal Code pertaining to Medical Marijuana (Marijuana Ordinance). The Marijuana Ordinance places a complete ban on marijuana cultivation, processing, deliveries, and dispensaries in the City based upon various health, safety and welfare and land use findings relating to marijuana cultivation, dispensing, and consumption, which findings are incorporated herein by reference; and

WHEREAS, the City of Los Banos has identified a number of health, safety, and welfare concerns associated with marijuana activities. These concerns are set forth in the original reports accompanying the Marijuana Ordinance, and are incorporated herein by reference. These concerns continue and have been exemplified throughout Merced County and the State as evidenced by numerous area agency police reports and news articles and stories. Some of the continued documented problems include

offensive odors, trespassing, theft, violent encounters, fire hazards and problems associated with mold, fungus, and pests; and

WHEREAS, the City desires to continue to prohibit or regulate all marijuana activities within the City to the extent allowed by California law. This Ordinance updates the Municipal Code to effectuate that aim; and

WHEREAS, on June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), for the November 8, 2016 ballot; and

WHEREAS, on November 8, 2016 AUMA passed by a majority of the electorate votes and is now law with many of its provisions taking effect on November 9, 2016; and

WHEREAS, the AUMA regulates, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

WHEREAS, to regulate personal use of marijuana the AUMA adds Section 11362.1 to the Health and Safety Code, which makes it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana not in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis including as contained in marijuana products; and

WHEREAS, the AUMA makes it lawful for persons 21 years of age or older to "possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants; and

WHEREAS, the AUMA makes it lawful for persons 21 years of age or older to smoke or ingest marijuana or marijuana products; and

WHEREAS, to regulate commercial use of marijuana, the AUMA adds Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies "the exclusive authority to create, issue, renew, discipline, suspend, or revoke" licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana; and

WHEREAS, the AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, the AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

WHEREAS, the AUMA authorizes cities to "reasonably regulate" without completely prohibiting personal cultivation of marijuana inside a private residence or inside an "accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure"; and

WHEREAS, the AUMA authorizes cities to completely prohibit outdoor personal cultivation on the grounds of a private residence, up to and until a "determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law"; and

WHEREAS, the AUMA authorizes cities to completely prohibit the establishment or operation of one or more marijuana business licensed under Division 10 within its local jurisdiction; and

WHEREAS, absent appropriate local regulation authorized by the AUMA, state regulations will control; and

WHEREAS, the indoor cultivation of marijuana 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

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 cultivation, processing, and distribution uses; and

WHEREAS, the subject Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, the Planning Commission held a public hearing on November 9, 2016 and recommended approval of the Zoning Ordinance amendment with findings of General Plan consistency, and

WHEREAS, while the City Council believes that all marijuana activities are prohibited by the City's existing regulations, it desires to adopt this Ordinance to make it absolutely clear that all marijuana activity, including, but not limited to, dispensing, distribution, cultivation, delivery and manufacturing are prohibited in all zoning districts in the City; and

WHEREAS, this Ordinance would amend Chapter 3, Title 9 by Article 35 to clarify the substantive objectives of the Municipal Code regarding the City's regulation of marijuana within its City limits and to address changes to California law through the passage of Proposition 64 – AUMA on November 8, 2016; and

WHEREAS, the City Council conducted a duly noticed public hearing on the recommended changes to the Zoning Code pertaining to marijuana on December 7, 2016 and January 4, 2017 at which time all individuals desiring to comment on the proposed amendments were heard; and

WHEREAS, the City Council finds that the proposed amendments to the Zoning Code are consistent with the General Plan since they implement General Plan objectives and policies that promote the establishment and operation of land uses that maintain or enhance quality of life; that are compatible with surrounding uses; and that protect and maintain public health, safety, peace, morals, comfort, and general welfare. The proposed amendments prohibit land uses that are contrary to such objectives and policies.

THE CITY COUNCIL OF THE CITY OF LOS BANOS DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Los Banos hereby finds that the above recitals are true and correct and are incorporated into the substantive portion of this Ordinance.

Section 2. The City Council hereby repeals Article 35 of the Los Banos Municipal Code in its entirety and reenacts Article 35 "Marijuana Regulation" to read as follows:

Article 35

MARIJUANA REGULATION Part One General

9-3.3501. Legislative Findings and Statement of Purpose.

A. The City Council finds that the regulation of medical and non-medical marijuana activities, specifically prohibitions on all commercial marijuana activity, marijuana dispensaries, marijuana processing, marijuana delivery, outdoor marijuana cultivation, and the regulation of indoor cultivation for personal use are necessary for the preservation and protection of the public health, safety, and welfare for the City and its residents. The City Council's prohibition and regulation of such activities is within the authority conferred upon the City Council by state law.

B. The City Council finds that this Article exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its residents by; (1) prohibiting all commercial non-medical marijuana land uses in all zoning districts within the City; (2) prohibiting medical marijuana dispensary and related land uses in all zoning districts within the City; (3) prohibiting the outdoor cultivation of marijuana for personal use in all zoning districts within the City; and (4) reasonably regulating the indoor cultivation of marijuana for personal use in all zoning districts within the City.

9-3.3502. Definitions.

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

"Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, dispensing, distribution, delivery or sale of marijuana and marijuana products as provided for in Division 10 of the Business and Professions Code.

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

"Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under Division 10 of the Business and Professions Code that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

"Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities licensed pursuant to Division 10 of the Business and Professions Code.

"Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

"Marijuana" means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated 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, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include medical marijuana as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

"Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

"Marijuana Dispensary" or "Marijuana Dispensaries" means any business, office, store, facility, location, retail storefront or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business & Professions Code section 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or for the purposes set forth in California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

"Marijuana Processing" means any method used to prepare marijuana or its byproducts for commercial retail and/ or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

"Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

"Medical marijuana collective" or " cooperative or collective" means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

"Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

"Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.

9-3.3503. Prohibited Use and Activities.

(a) All Commercial Marijuana Uses and Activities Prohibited. The establishment or operation of any business of commercial marijuana activity is expressly prohibited in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation in any zoning district of the City, and no person or entity shall otherwise establish such businesses or operations in any zoning district of the City. Such businesses or operations may include, but are not limited to:

1. The transportation, delivery, storage, distribution, dispensing or sale of marijuana, marijuana products, or marijuana accessories;
2. The cultivation of marijuana;

3. The manufacturing, processing, or testing of marijuana, marijuana products, or marijuana accessories; or
4. Any other business licensed by the state or other government entity under Division 10 of the California Business and Professions Code, as it may be amended from time to time.

(b) Medical Marijuana Dispensaries Prohibited. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, processing operation, or provider is expressly prohibited in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, processing operation, or provider in any zoning district of the City, and no person or entity including primary caregivers and qualified patients, collectives, cooperatives or dispensaries shall otherwise establish or conduct such activities in any zoning district of the City.

1. Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements set forth in section 9-3.3504 of this Article.

(c) Outdoor Cultivation of Marijuana Prohibited. Outdoor cultivation of marijuana is expressly prohibited in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the outdoor cultivation of marijuana in the City, and no person or entity including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, shall otherwise conduct such activity in the City.

(d) Indoor Cultivation of Marijuana for Non Personal Use Prohibited. Indoor cultivation of marijuana for non-personal uses is expressly prohibited in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the indoor cultivation of marijuana for non-personal uses in the City, and no person or entity including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, shall otherwise conduct such activity in the City.

1. Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements set forth in section 9-3.3504 of this Article.

9-3.3504. Regulation of Indoor Cultivation of Marijuana for Personal Use.

(a) When authorized by state law, an authorized grower (a person 21 years of age or older) shall be allowed to cultivate marijuana only in a private residence in a residential zone, only indoors, and only for personal use, subject to the restrictions set forth in Section 11362.2 of the Health and Safety Code and the local following regulations:

1. No authorized grower shall cultivate marijuana until and unless they first register with the City and provide written permission of the property owner or an authorized property management company to cultivate marijuana on the premises.
2. The marijuana cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting. Cultivation in a greenhouse on the property of the residence but not physically part of the home is permitted, as long as it is fully enclosed, secure, not visible

from a public right-of-way, a public place, or adjacent residence and meeting all requirements in this Article.

3. Marijuana cultivation lighting shall not exceed one thousand two hundred watts in total for the total cultivation area within the residence.

4. The use of gas products such as but not limited to CO₂, butane, methane, or any other flammable or non-flammable gas for marijuana cultivation or processing is prohibited.

5. There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence from the public right-of-way, a public place, or adjacent residence including but not limited to any marijuana plants, equipment used in the growing and cultivation operation, and any light emanating from cultivation lighting.

6. The authorized grower shall reside full-time in the residence where the marijuana cultivation occurs.

7. The authorized grower shall not participate in marijuana cultivation in any other location within the City.

8. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for marijuana cultivation.

9. The marijuana cultivation area shall be in compliance with the current adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

10. The building official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

11. The marijuana cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

12. No more than 6 marijuana plants, mature or immature, are permitted for indoor personal cultivation under this Article.

13. Marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation under this Article must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

(b) It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces:

1. Odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.

2. Repeated responses to the parcel by law enforcement personnel.

3. A repeated disruption to the free passage of persons or vehicles in the neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.

4. Any other impacts on the neighborhood which are disruptive of normal activity in the area including, but not limited to, grow lighting visible outside the dwelling, excessive vehicular traffic or parking occurring at or near the dwelling, and excessive noise emanating from the dwelling.

5. Outdoor growing and cultivation of marijuana.

9-3.3505. Personal Use and Consumption of Marijuana.

(a) For purposes of this Article, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the City to the extent it is unlawful under State law. No person shall smoke, ingest, or otherwise consume marijuana or marijuana products, whether recreational or medical, in the City of Los Banos to the extent it is unlawful under State law. No person shall smoke, ingest, or otherwise consume marijuana or marijuana products, whether recreational or medical, on any property owned, leased, used, rented or controlled by the City including but not limited to public streets and sidewalks, parks, City facilities, open space, bike and walking trails, plazas, recreation and sports facilities.

(b) All smoking, ingesting, and consumption of marijuana or marijuana products to the extent that it is allowed under State law shall be done in a manner so as to not cause a nuisance to nearby residents or persons with noxious odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.

9-3.3506. Public Nuisance. Any violation of this Article is hereby declared to be a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure 731 or any other remedy available to the City.

9-3.3507. Administrative Penalties. In addition to any other remedy or penalty set forth in this Article or this Code, administrative penalties may be imposed pursuant to applicable provisions of Chapter 11 Title 4 of this Code against any responsible party, in violation of any of the provisions of this Article. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to Chapter 11 Title 4 of this Code.

9-3.3508. Remedies. The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the Los Banos Municipal Code. None of the penalties or remedies authorized by, or set forth in, the Los Banos Municipal Code shall prevent the City from using any other penalty or remedy under state statute which may be available to enforce this section or to abate a public nuisance. Violation of this Article shall constitute a crime punishable as a misdemeanor or infraction in the discretion of the City Attorney.

Section 3. To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 4. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions 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 subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 5. The proposed amendments to the Los Banos Municipal Code do not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that this ordinance amendment is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines section 15601(b)(3) and is not subject to environmental review.

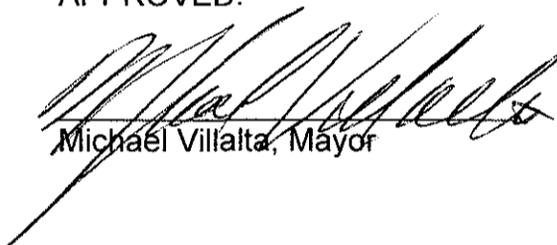
Section 6. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Lewis and seconded by Council Member Faria on the 7th day of December, 2016.

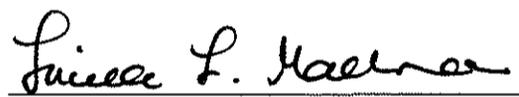
Passed on the 4th day of January, 2017 by the following vote:

AYES: Council Members Faria, Johnson-Santos, Lewis, Silveira,
Mayor Villalta
NOES: None
ABSENT: None

APPROVED:


Michael Villalta, Mayor

ATTEST:


Lucille L. Mallonee, City Clerk