



**CITY OF ELK GROVE  
CITY COUNCIL STAFF REPORT**

**AGENDA TITLE:** Introduce and waive the full reading, by substitution of title only, 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)

**MEETING DATE:** April 27, 2016

**PREPARED BY**  
**DEPARTMENT HEAD:** Robert Lehner, Chief of Police  
Jonathan P. Hobbs, City Attorney

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**RECOMMENDED ACTION:**

Staff recommends that the City Council introduce and waive the full reading, by substitution of title only, an ordinance amending Chapter 9.31 of the Elk Grove Municipal Code to prohibit medical marijuana dispensary delivery within the City of Elk Grove (CEQA Exempt).

**BACKGROUND:**

In 1996, California voters adopted the Compassionate Use Act (“CUA”) as a ballot initiative codified at Health and Safety Code section 11362.5. The CUA provides a limited defense from prosecution for cultivation and possession of marijuana. (*City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153.) In 2003, the California Legislature adopted the Medical Marijuana Program Act (“MMPA”), codified at Health and Safety Code sections 11362.5 to 11362.83. The MMPA provides qualified persons, primary caregivers, and holders of valid identification cards a defense to certain enumerated marijuana-related crimes. (*City of Claremont v. Kruse, supra.*)

The California courts have found that neither the CUA nor the MMPA provide medical marijuana patients with an unrestricted right to obtain, cultivate, or dispense marijuana for medical purposes. (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729; *Maral v. City of*

*Live Oak* (2013) 221 Cal.App.4th 975.) Rather, the statutes set up limited defenses to criminal prosecution.

In May 2013, the California Supreme Court confirmed a city's ability to prohibit medical marijuana dispensaries within its boundaries. (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729.) The Supreme Court found that neither the CUA nor the MMPA preempt a city's local regulatory authority.

In November 2013, a California Court of Appeal decided the case of *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975. *Maral* held that cities have authority to prohibit cultivation of all medical marijuana city-wide. Like the Supreme Court's decision in the *City of Riverside* case, the *Maral* court similarly found that the CUA and MMPA do not preempt a city's regulatory authority to prohibit all cultivation in the city, if the city so chooses. Both cases constitute binding, precedential court decisions in the State of California.

In October 2015, the State of California enacted a series of statutes through Assembly Bill 266 known as the Medical Marijuana Regulation and Safety Act ("Act"). The Act became effective January 1, 2016. The Act establishes a comprehensive dual regulatory scheme for cities and counties to regulate medical marijuana in conjunction with the newly created California Bureau of Medical Marijuana Regulation. Under the Act, medical marijuana dispensary and cultivation activity would require both a local (city) permit, as well as a state permit. Therefore, the Act preserves local land use control of cities and counties. Currently, and consistent with state law, the City prohibits both medical marijuana dispensaries and cultivation within City limits. (EGMC § 23.27.020 [Use Table 23.27-1, prohibiting medical marijuana dispensaries and cultivation in all zones]; EGMC, Chapter 9.31 [defining and prohibiting medical marijuana dispensaries].)

The Act also permits cities and counties to prohibit the delivery of medical marijuana from dispensaries to qualified patients or testing labs. Under the Act, medical marijuana dispensaries licensed by the state will be authorized to make commercial deliveries of medical marijuana to qualified patients and testing labs within any local jurisdiction which does not have an ordinance explicitly prohibiting such deliveries. (Bus. & Prof. Code § 19340(a).) There is currently no specific deadline for when the state will start issuing licenses. The League of California Cities has indicated that the state estimates that it will begin issuing dispensary licenses around January 2018, but it could happen sooner. The City's code is silent as to medical marijuana delivery.

## **ANALYSIS:**

Consistent with the newly enacted Medical Marijuana Regulation and Safety Act, the proposed ordinance expressly prohibits commercial medical marijuana delivery within the City. The ordinance also revises certain definitions consistent with the Act, without substantive change in the terminology.

Currently, the City's code does not prohibit delivery of medical marijuana from dispensaries operating lawfully in nearby jurisdictions to consumers in the City of Elk Grove. While the extent of any such delivery services in the City, if any, is not tracked or known, this ability to deliver medical marijuana undermines the City's stated intent to prohibit the commercial distribution and dispensation of medical marijuana as set forth in Elk Grove Municipal Code section 9.31.010 and the prohibitions set forth in the City's Zoning Code.

With the enactment of the Medical Marijuana Regulation and Safety Act, the Legislature clarifies the law and expressly grants cities the ability to prohibit the delivery of medical marijuana from dispensaries located outside the City limits. By explicitly prohibiting the delivery of medical marijuana within the City, as authorized by the Act, the City will close a gap in its existing ordinance which passively permits the commercial delivery of medical marijuana within the City.

Note that the Act does not establish a deadline for cities to act to prohibit deliveries. The City could choose to pass a delivery ban after the issuance of licenses by the state. However, if the City chooses to prohibit deliveries, such a prohibition would be easier to enforce before any delivery services start under the new law, as opposed to attempting to halt established delivery services.

In summary, the City Council has the following options:

1. Adopt the proposed ordinance prohibiting the delivery of medical marijuana in the City.
2. Decline to adopt the proposed ordinance, thereby passively permitting the commercial delivery of medical marijuana in the City once state licenses are issued.
3. Provide staff with further direction.

## **ENVIRONMENTAL REVIEW**

The proposed ordinance will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. This action, 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).)

## **FISCAL IMPACT:**

Prohibiting medical marijuana delivery is not expected to have a negative fiscal impact on the City.

## **ATTACHMENTS:**

1. Ordinance
2. Existing EGMC Chapter 9.31 (provided for reference)

**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).

INTRODUCED: April 27, 2016  
ADOPTED:  
EFFECTIVE:

\_\_\_\_\_  
GARY DAVIS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

\_\_\_\_\_  
JONATHAN P. HOBBS  
CITY ATTORNEY

Date signed: \_\_\_\_\_



**Chapter 9.31  
MEDICAL MARIJUANA DISPENSARIES**

Sections:

**9.31.010 Purpose and authority.**

**9.31.020 Definitions.**

**9.31.030 Dispensaries prohibited.**

**9.31.040 Punishment.**

**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 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. 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. [Ord. 19-2010 §1, eff. 10-8-2010]

**9.31.020 Definitions.**

When used in this chapter, the following words shall have the meanings ascribed to them in this section:

A. "Identification card" means a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

B. "Medical marijuana" 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.

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.

D. "Person with an identification card" shall have the meaning given that term by Health and Safety Code Section 11362.7.

E. "Primary caregiver" shall have the meaning given that term by Health and Safety Code Section 11362.7.

F. "Qualified patient" shall have the meaning given that term by Health and Safety Code Section 11362.7, but who does not have an identification card issued by the State Department of Health Services. [Ord. 19-2010 §1, eff. 10-8-2010]

#### **9.31.030 Dispensaries prohibited.**

Medical marijuana dispensaries are prohibited and it shall be unlawful for any person to operate or permit to be operated a medical marijuana dispensary in or upon any premises in the City. [Ord. 19-2010 §1, eff. 10-8-2010]

#### **9.31.040 Punishment.**

Each failure to comply with any provision of this chapter or any regulation promulgated under this chapter is unlawful and constitutes a public nuisance and shall be enforced in accordance with procedures set out in EGMC Chapters 1.04 and 16.18. Additionally, any person who violates this chapter shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04. [Ord. 19-2010 §1, eff. 10-8-2010]