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**AGENDA**  
**KERMAN PLANNING COMMISSION**  
**REGULAR MEETING**  
**Kerman City Hall**  
**Monday, January 25, 2016**  
**6:30 PM**

AGENDA PACKET AVAILABLE FOR  
REVIEW 72 HOURS PRIOR TO  
THE PLANNING COMMISSION  
MEETING AT THE PLANNING DEPT.  
AND ON THE CITY WEBSITE  
ITEMS RECEIVED AT THE  
MEETING WILL BE AVAILABLE  
FOR REVIEW AT THE CITY  
PLANNING OFFICE

Chairman Robert Epperson, Vice-Chairman Kevin Nehring  
Commissioners Robert Bandy, Charlie Jones, Leopoldo Espino, Mario Nunez, Katie Wettlaufer

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ALL MEETING ATTENDEES ARE ADVISED THAT ALL PAGERS, CELLULAR TELEPHONES AND ANY OTHER COMMUNICATION  
DEVICES SHOULD BE POWERED OFF UPON ENTERING THE COUNCIL CHAMBERS,  
AS THESE DEVICES INTERFERE WITH OUR AUDIO EQUIPMENT.

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**OPENING CEREMONIES**

Call to Order – Chairman, Robert D. Epperson

Roll Call – Secretary, Olivia Pimentel

Pledge of Allegiance

**AGENDA APPROVAL/ADDITIONS/DELETIONS**

1. PRESENTATIONS - None offered

**REQUEST TO ADDRESS THE COMMISSION**

This portion of the meeting is reserved for members of the public to address the Commission on items of interest that are not on the Agenda and are within the subject matter jurisdiction of the Commission. Speakers shall be limited to (3) three minutes. It is requested that no comments be made during this period on items on the Agenda. Members of the public wishing to address the Commission on items on the Agenda should notify the Chairman when that Agenda item is called, and the Chairman will recognize your discussion at that time. It should be noted that the Commission is prohibited by law from taking any action on matters discussed that are not on the Agenda. Speakers are asked to please use the microphone, and provide their name and address.

**2. APPROVAL OF MINUTES**

A. January 11, 2016, Regular meeting

B. January 12, 2016, Special meeting

3. PUBLIC HEARING

- A. Resolution of the Planning Commission of the City of Kerman Recommending Approval of Zone Ordinance Amendment to Add Chapter 17.96 to Tile 17 of the Kerman Municipal Code to Prohibit Marijuana Cultivation and Dispensaries in All Zone Districts in the City.

In accordance with Section 17.26.020 subsection D of the Municipal Code, A Petition of Amendment was filed by a city planner with the Planning Commission at a special meeting on January 12, 2015 and a public hearing date was scheduled for January 25, 2016. The Petition requests that the Planning Commission consider amendment to Prohibit Marijuana Cultivation and Dispensaries in All Zone Districts in the City.

4. PETITIONS/RESOLUTIONS

5. ADMINISTRATIVE REPORTS

COMMUNICATIONS

- A. Informational: Public Hearings scheduled for February 8, 2016 for 2015-2023 Multi-Jurisdictional Housing Element, Initial Study and Mitigated Negative Declaration

ADJOURNMENT

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In compliance with the American with Disabilities Act (ADA), if you need special assistance to participate at this meeting, please contact the City Clerk at (559) 846-9380. Notification of 48 hours prior to the meeting will enable the City Clerk to make reasonable arrangement to ensure accessibility to this meeting. Pursuant to the ADA, the meeting room is accessible to the physically handicapped.

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AGENDA POSTING CERTIFICATION

I, OLIVIA G. PIMENTEL, Planning Secretary for the City of Kerman, do hereby declare under penalty of perjury that I caused the above agenda to be posted at City of Kerman Planning & Development office at 850 So. Madera Avenue, and at Kerman Community/Teen Center, 15100 Kearney Plaza, and emailed to interested parties on .Friday January 22, 2016

/s/ Olivia G. Pimentel  
Secretary to the Planning Commission

**MINUTES**  
**KERMAN PLANNING COMMISSION**  
**REGULAR MEETING**

Kerman City Hall 850 S. Madera Avenue  
Monday, January 11, 2016 6:30 PM

Chairman Robert Epperson, Vice-Chairman Kevin Nehring  
Commissioners Robert Bandy, Leopoldo Espino, Charlie Jones, Mario Nunez, Katie Wettlaufer

**OPENING CEREMONIES**

Call to Order – Chairman, Robert D. Epperson, called meeting to order at 6:30p.m.

Roll Call – Secretary, Olivia Pimentel

Commissioners Present: Bandy, Nehring, Epperson, Nunez, Espino, Jones

Commissioners Absent: Wettlaufer (excused)

Guest: Eric Kehler (outgoing Commissioner)

Staff: David Brletic, Contract Planner, Collins & Associates

Pledge of Allegiance - performed

**AGENDA APPROVAL/ADDITIONS/DELETIONS** None

**1. PRESENTATIONS**

- A.** Staff Introduced and welcomed back new and returning Planning Commissioners for a three year terms starting January 1, 2016 to December 31, 2018. Returning Robert Epperson and Kevin Nehring and New to the Commission Mr. Leopoldo Espino. All were sworn in by Deputy City Clerk, Olivia Pimentel.

Certificate of appreciation was presented to Eric Kehler for his years of service to the Commission and the Commission offered words of appreciation to Mr. Kehler.

There was discussion regarding voting for reorganization of the Commission Chairman and Vice-Chairman positions, it was decided to schedule for the January 25, 2016 meeting when all Commissioners are present.

**REQUEST TO ADDRESS THE COMMISSION** – None offered

**2. APPROVAL OF MINUTES**

- A.** Commissioner Nehring made a motion to approve minutes of December 14, 2015, second by Commissioner Jones, unanimously approved as presented.

**3. PUBLIC HEARING**

- A.** Resolution recommending that the City Council adopt amendment to section 17.92.030 of Title 17 of the Kerman Municipal Code Relating to Transitional and Supportive Housing Zones

A petition of amendment was filed by city planner on December 14, 2015 and public hearing scheduled for this evening for Commission consideration

Staff explained that earlier in the year the Planning Commission and City Council considered and approved Ordinance 15-01, to comply with SB2's requirements relating Emergency Shelters, Transitional Housing, and Supportive Housing to ensure the City would comply with the Housing Element Update.

The City was notified by the consultants preparing the City of Kerman's multijurisdictional housing element, that there was a minor inconsistency relating to the zones because Kerman listed Section 17.92.030 Transitional and Supportive Housing – Zones, as "residential use of property in the multifamily zone district, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone."

The restriction to only the multifamily zone district is considered inconsistent with State law requirements and therefore has to be amended to read, "residential use of property in all zones that allow residential uses. Staff was notified that this must be corrected in order for the HCD to certify the City's Housing Element that is being scheduled for the Planning Commission's consideration and recommendation in February and final adoption by City Council in March to meet the State mandated deadline.

Staff noted that upon recommendation of the Commission this amendment would be presented to the City Council for introduction on February 3, 2016 and second reading and adoption on February 17, 2016 to meet the deadline.

No Commissioner comments received

Opened Public Hearing at 6:43 p.m.

No comments

Closed Public Hearing at 6:44 p.m.

Commissioner Jones by motion to approved resolution to recommend that the City Council adopt amendment to section 17.92.030 of Title 17 of the Kerman Municipal Code Relating to Transitional and Supportive Housing Zones, second Commissioner Nehring. Approved by following vote:

Ayes: Bandy, Nehring, Epperson, Nunez, Espino, Jones

Noes: None

Absent: Wettlaufer

Abstain: None

**4. PETITIONS/RESOLUTIONS** - None offered

**5. ADMINISTRATIVE REPORTS** - None offered

**COMMUNICATIONS**

Staff made a request for a special meeting for Tuesday January 12, 2016 for the Planning Commission to formally set a public hearing for January 25, 2016.

Staff explained that an item was not included on the agenda regarding a petition of amendment relating to a proposed Marijuana Ordinance and was requesting a special meeting for January 12, 2016 to formally file a petition of amendment with the Planning Commission to set a public hearing for January 25,2015. Commission unanimously agreed to meet at 7:00 p.m. the following day on January 12, 2016 for a special meeting, to consider petition of amendment. Agenda was posted 24 hours prior to the meeting as required.

Next Meeting, Special Meeting Tuesday January 12, 2016 at 7:00 p.m.

**ADJOURNMENT AT 6:52 P.M.**



/s/ Olivia G. Pimentel  
Secretary to the Planning Commission

**MINUTES**  
**PLANNING COMMISSION**

CITY COUNCIL CHAMBERS 850 S. MADERA AVENUE KERMAN CA

**Special Meeting Tuesday January 12, 2016 7:00 p.m.**

Chairman – Robert Epperson, Vice-Chairman – Kevin Nehring

Commission Members: Robert Bandy, Leopoldo Espino, Charlie Jones, Mario Nunez, Katie Wettlaufer

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The sole business conducted is as follows:

Call to order, Chairman Epperson called special meeting to order at 7:00 p.m.

Commissioners Present: Bandy, Nehring, Epperson, Nunez, Jones, Espino

Petition of Amendment to Prohibit Marijuana Cultivation and Dispensaries In All Zone Districts in the City and set public hearing for January 25, 2016

*Staff noted that this special meeting was necessary because the petition of amendment was not included in the agenda for the regular planning commission meeting of January 11, 2016, it was left out by mistake. Therefore, staff was directed to request a special meeting of the Planning Commission to file a petition of amendment to formally request that the Commission set a public hearing for January 25, 2016. The public notice was sent to the local newspaper. The agenda for the special meeting was posted 24 hours prior as required.*

Staff gave a brief summary of the request for a petition of amendment relating to a proposed amendment to Prohibit Marijuana Cultivation and Dispensaries In All Zone Districts in the City of Kerman. Staff requested that the Planning Commission set a public hearing for January 25, 2016.

On October 9, 2015, Governor Jerry Brown signed into law, three (3) bills – AB 243, AB 266 and SB 643 – which together form the Medical Marijuana Regulation and Safety Act (“MMRSA”). The MMRSA, which became effective January 1, 2016, creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis.

The proposed ordinance addresses the MMRSA legislation which includes a provision that impacts local governments by pre-empting them from enacting cultivation regulations if they do not have such regulations in effect as of March 1, 2016. The provision states:

If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

Because of the limited time to conduct detailed studies, the proposed ordinances bans cultivation and dispensaries in all jurisdictions.

The Draft Ordinance includes detailed findings for the Planning Commission to consider.

There were not questions from the Commission.

Commission unanimously approved the Petition of Amendment to the zoning ordinance by the city planner to add Chapter 17.96 to Title 17 of the Kerman Municipal Code Relating to the Prohibition of Marijuana Cultivation and Dispensaries In All Zone Districts in the City hereafter Proposed "Marijuana Ordinance"; and set a public hearing for January 25, 2016.

Yes: Bandy, Nehring, Epperson, Nunez, Jones, Espino  
Noes: None  
Absent: Wettlaufer (excused)  
Abstain: None

Date: January 12, 2016  
7:00pm



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Olivia Pimentel, Planning Commission Secretary



# City of Kerman

*A Place Where "Community Comes First"*

CHAIRMAN  
Robert Epperson

VICE-CHAIRMAN  
Kevin Nehring

COMMISSIONERS  
Robert Bandy Leopoldo Espino Charlie Jones  
Mario Nunez Katie Wettlaufer

DEPARTMENT: PLANNING & DEVELOPMENT  
STAFF REPORT  
PLANNING COMMISSION MEETING  
MEETING DATE: JANUARY 25, 2016

To: Chairman and Commissioners  
From: Olivia Pimentel, Planning Technician  
Subject: Public Hearing Recommending Zoning Ordinance Amendment Adding Chapter 17.96 To Title 17 of the Kerman Municipal Code Relating to the Prohibition of Marijuana Cultivation and Dispensaries In All Zone Districts in the City

## RECOMMENDATION

Planning Commission open public hearing, conduct the public hearing, close public hearing and move adoption of resolution which makes findings and recommends that the City Council adopt Zoning Ordinance Amendment To Add Chapter 17.96 Of Title 17 of the Kerman Municipal Code Relating to the Prohibition of Marijuana Cultivation and Dispensaries In All Zone Districts in the City.

## EXECUTIVE SUMMARY

At a special meeting on January 12, 2016 the Planning Commission received a Petition of Amendment to the zoning ordinance by the city planner to add Chapter 17.96 to Title 17 of the Kerman Municipal Code Relating to the Prohibition of Marijuana Cultivation and Dispensaries In All Zone Districts in the City hereafter Proposed "Marijuana Ordinance"; and set a public hearing for January 25, 2016.

On October 9, 2015, Governor Jerry Brown signed into law, three (3) bills – AB 243, AB 266 and SB 643 – which together form the Medical Marijuana Regulation and Safety Act ("MMRSA"). The MMRSA, which became effective January 1, 2016, creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis.

The proposed ordinance addresses the MMRSA legislation which includes a provision that impacts local governments by pre-empting them from enacting cultivation regulations if they do not have such regulations in effect as of March 1, 2016. The provision states:

If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

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Because of the limited time to conduct detailed studies, the proposed ordinances bans cultivation and dispensaries in all jurisdictions.

The Draft Ordinance includes detailed findings for the Planning Commission to consider.

## FISCAL IMPACTS

There is no anticipated fiscal impact

### Attachments:

- A. Resolution of the Planning Commission of the City of Kerman Recommending Adoption of Zoning Ordinance Amendment To Add Chapter 17.96 Of Title 17 of the Kerman Municipal Code Relating to the Prohibition of Marijuana Cultivation and Marijuana Dispensaries In All Zone Districts in the City.
- B. Proposed Ordinance Amendment Adding Chapter 17.96 Of Title 17 of the Kerman Municipal Code Relating to the Prohibition of Marijuana Cultivation and Marijuana Dispensaries In All Zone Districts in the City.

Attachment 'A'

RESOLUTION NO. 16-\_\_

BEFORE THE PLANNING COMMISSION  
CITY OF KERMAN, STATE OF CALIFORNIA

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF KERMAN RECOMMENDING  
ADOPTION OF ZONING ORDINANCE AMENDMENT TO ADD CHAPTER 17.96 OF TITLE 17 OF THE  
KERMAN MUNICIPAL CODE RELATING TO PROHIBITION OF MARIJUANA CULTIVATION AND  
DISPENSARIES IN ALL ZONE DISTRICTS IN THE CITY

*WHEREAS*, at a regular meeting of the Planning Commission of the City of Kerman (the "Planning Commission") duly called and held on January 25, 2016, at 6:30 p.m., it was moved by Commission member \_\_\_\_\_ second by Commission member \_\_\_\_\_ and carried that the following resolution be adopted:

*WHEREAS*, at a special meeting on January 12, 2016 the Planning Commission has received a Petition of Amendment to the zoning ordinance to add Chapter 17.96 to Title 17 of the Kerman Municipal Code Relating to the Prohibition of Marijuana Cultivation and Dispensaries In All Zone Districts in the City hereafter Proposed "Marijuana Ordinance"; and set a public hearing for January 25, 2016.

*WHEREAS*, the Proposed Marijuana Ordinance, is attached hereto as Attachment 'A' and incorporated by this reference; and

*WHEREAS*, the Planning Commission pursuant to chapter 17.26, Zoning Ordinance Amendments, section 17.26.030 conducted a duly noticed public hearing on January 25, 2016, to consider the zoning ordinance amendments and additions; and

*WHEREAS*, the Planning Department has determined that the Proposed Ordinance is statutorily exempt from environmental review pursuant to Title 14, California Code of Regulations, Section 15378(a)(l) of the California Environmental Quality Act (CEQA).

*NOW, THEREFORE, BE IT RESOLVED* by the Planning Commission, after considering all the evidence presented at the public hearing as follows:

1. , The foregoing recitals are incorporated by reference as if fully set forth.
2. The following findings are hereby made:
  - a. The proposed zoning ordinance amendments as set forth in the Proposed Ordinance are consistent and compatible with other goals, policies and implementation programs set forth in the General Plan.

b. That the Proposed Ordinance amendments will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the community.

c. The Proposed Ordinance is statutorily exempt from the California Environmental Quality Act as set forth above.

3.. Based on the foregoing, the Planning Commission recommends that the City Council adopt the Proposed Ordinance.

The foregoing resolution was adopted at a regular meeting of the Kerman Planning Commission held on this 25<sup>th</sup> day of January 2016, by the following vote.

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED BY:

\_\_\_\_\_  
Chairman, Robert D. Epperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary, Olivia Pimentel

\_\_\_\_\_  
Date

Attachment 'B'

**ORDINANCE NO. 16-\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KERMAN  
ADDING CHAPTER 17.96 TO TITLE 17 OF THE KERMAN MUNICIPAL CODE  
RELATING TO THE PROHIBITION OF MARIJUANA CULTIVATION AND  
MARIJUANA DISPENSARIES IN ALL ZONE DISTRICTS**

**THE CITY COUNCIL OF THE CITY OF KERMAN DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Chapter 17.96 is added to Title 17 of the Kerman Municipal Code to read as follows:

***MARIJUANA CULTIVATION AND DISPENSARIES PROHIBITED***

Sections:

17.96.010	Purpose and Intent.
17.96.020	Findings.
17.96.030	Relationship to Other Laws.
17.96.040	Definitions.
17.96.050	Prohibition of Marijuana Cultivation.
17.96.060	Consumption of Medical Marijuana.
17.96.070	Medical Marijuana Cultivation Regulations.
17.96.080	Prohibited Medical Marijuana Cultivation Declared a Public Nuisance.
17.96.090	Violation and Penalty.
17.96.100	Severance.

**SECTION 17.96.010 PURPOSE AND INTENT.** The purpose of this chapter is to expressly prohibit the cultivation of marijuana and marijuana dispensaries in all zone districts in order to protect the public peace, health, safety, and general welfare of the citizens of the city.

**SECTION 17.96.020 FINDINGS.**

- A. The Council hereby finds that the cultivation of marijuana significantly impacts, or has the potential to significantly impact, the city's jurisdiction. These impacts include damage to buildings in which cultivation occurs, including improper and dangerous electrical alterations and use, inadequate ventilation, increased occurrences of home-invasion robberies and similar crimes and nuisance impacts to neighboring properties from the strong and potentially noxious odors from the plants, and increased crime.
- B. According to the Chief of Police, marijuana grows have been operating in the surrounding cities and the County of Fresno for several years and have been the subject of armed robberies

with shots fired, incidents with juveniles and young adults, trespass, theft, and arrests for violation of both state and federal laws, including seizure of illegal firearms. There has been some cultivation within the city and cultivation is likely to increase as surrounding cities and the county have banned or are banning cultivation. Marijuana cultivation attracts crime and associated violence and is harmful to the safety and welfare of the city and its residents and constitutes a public nuisance.

- C. Marijuana cultivation in the city poses a threat to the public peace, health and safety. Many marijuana grows have emerged in the city which are very visible to the public, and easily accessible to the public, including children and youths. There is a threat of violent crime due to the size, location, and monetary value of these mature marijuana grows.
- D. It is acknowledged that the voters of the State of California have provided a limited criminal defense to the cultivation, possession and use of marijuana for medical purposes through the adoption of the Compassionate Use Act in 1996 pursuant to Proposition 215 and codified as Health and Safety Code section 11362.5. The Compassionate Use Act (CUA) does not address the land use or other impacts that are caused by the cultivation of marijuana.
- E. The CUA is limited in scope, in that it only provides a defense from criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers. The scope of the Medical Marijuana Program Act (MMPA) commencing with Health and Safety Code section 11362.7, is also limited in that it establishes a statewide identification program and affords qualified patients, persons with identification cards and their primary caregivers, an affirmative defense to certain enumerated criminal sanctions that would otherwise apply to transporting, processing, administering or distributing marijuana.
- F. Neither the CUA and MMPA, nor the California Constitution create a right to cultivate medical marijuana.
- G. It is critical to note the CUA and MMPA do not abrogate the city's powers to regulate for public health, safety, and welfare. Health and Safety Code 11362.5(b)(2) provides that the CUA does not supersede any legislation intended to prohibit conduct that endangers others. In addition, Health and Safety Code 11352.83 authorizes cities and counties to adopt and enforce rules and regulations consistent with MMPA.
- H. The Council finds that neither the CUA nor the MMPA preempts the city's exercise of its traditional police powers in enacting land use and zoning regulations, as well as legislation for preservation of public health, safety, and welfare, such as this zoning ordinance prohibiting marijuana cultivation and dispensaries in all zone districts.
- I. Marijuana remains an illegal substance under the Federal Controlled Substances Act, 21 U.S.C. 801, et seq., and is classified as a "Schedule I Drug," which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for its use under medical supervision. Furthermore, the Federal Controlled Substances Act makes it unlawful for any person to cultivate, manufacture, distribute, dispense, or possess with intent to

manufacture, distribute, or dispense marijuana. The Controlled Substances Act contains no statutory exemption for the possession of marijuana for medical purposes. The city does not wish to be in violation of federal law.

- J. In 2013, the California Supreme Court confirmed that cities have the authority to ban medical marijuana land uses (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729).
- K. 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.
- L. On October 9, 2015, Governor Jerry Brown signed into law, three (3) bills – AB 243, AB 266 and SB 643 – which together form the Medical Marijuana Regulation and Safety Act (“MMRSA”). The MMRSA, which became effective January 1, 2016, creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis.
- M. In addition to creating these State controls, the MMRSA preserves the city’s authority to prohibit, regulate and/or license medicinal marijuana uses within its jurisdiction, as it expressly provides that the Act. (Bus. & Prof. Code § 19315(a); Bus. & Prof. Code § 19316(c); Bus. & Prof. Code §19316.)
- N. The MMRSA further expressly allows 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)).
- O. The MMRSA requires a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300. 5(m), from operating within the local government’s boundaries to enact an ordinance affirmatively banning such delivery activity (Bus. & Prof. Code § 19340(a)).
- P. Under the dual licensing system created by the Act, before any kind of medical marijuana license will be issued by the State, the applicant must have obtained the necessary local license and/or permit for the requested marijuana-related use.
- Q. Pursuant to the following statutes created by the Act, local jurisdictions that adopt a ban on medicinal marijuana dispensaries, and/or cultivation will effectively have a veto over whether a state license for the locally regulated activities can be issued. (Business & Professions § 19320(b); Health & Safety Code § 11362.777(b)(1); and Business & Professions Code § 19312)
- R. The City hereby re-affirms and confirms that the City’s Zoning Code is adopted and operates under the principles of permissive zoning, meaning that any land use not specifically authorized or identified in the zoning code is prohibited. California Health & Safety Code

Section 11362.777(b)(3) expressly provides that the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under the principles of permissive zoning. Notwithstanding this, and without waiving any rights pursuant to its permissive zoning, the adoption of prohibitions of marijuana cultivation and dispensaries is in the interest of the City.

- S. Several California cities have reported negative impacts of marijuana cultivation, processing and delivery and/or distribution activities, including but not limited to offensive odors, the illegal sale and distribution of marijuana, and public health concerns including fire hazards and problems associated with mold, fungus, and pests.
- T. Due to the value of marijuana plants and their strong smell (which alerts others to their locations), marijuana cultivation creates an increased risk to public safety and/or an “attractive nuisance.”
- U. The indoor cultivation of marijuana has potential adverse effects to the structural integrity of the buildings in which it is cultivated, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire, which presents a clear and present danger to the building and its occupants.
- V. The Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.
- W. Based on the experiences of other cities, the foregoing negative effects on the public health, safety, and welfare would be likely to occur in the City due to marijuana cultivation and dispensaries and their associated activities.
- X. The City Council held a public hearing on \_\_\_\_\_, and duly considered staff reports, Planning Commission recommendations, and public comments.
- Y. The city has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses and in preserving the peace and quiet of the neighborhoods in which marijuana is currently grown.

**SECTION 17.96.030 RELATIONSHIP TO OTHER LAWS.** This chapter is not intended to, not shall it be construed or given effect in a manner that cause it to apply to, any activity that is regulated by federal or state law to the extent that application of this chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. This chapter shall be interpreted to be compatible and consistent with federal, county and state enactments and in furtherance of the public purposes which those enactments express. This chapter will supersede any other provisions of this code found to be in conflict therewith.

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**SECTION 17.96.040 DEFINITIONS.** For purposes of this chapter, unless the particular provision or the context otherwise clearly requires, the definitions in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

- A. “Cultivation” means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.
- B. “Marijuana” means all parts of the plant *Cannabis sativa* L., whether growing or not, and includes medical marijuana.
- C. “Medical Marijuana” means marijuana used for medical purposes in accordance with California Health and Safety Code section 11362.5.
- D. “Collective, cooperative or dispensary” means a collective, cooperative, dispensary, operator, establishment, provider, association or similar entity that cultivates, distributes, deliver, or processes marijuana for medical purposes relating to a qualified patient or primary caregiver, pursuant to the Compassionate Use Act and the Medical Marijuana Program Act.
- E. “Primary caregiver” means a primary caregiver as defined in Health and Safety Code section 11362.7.
- F. “Qualified patient” means a qualified patient as defined in Health and Safety Code section 11362.7.

**SECTION 17.96.050 PROHIBITION OF MARIJUANA CULTIVATION.** Marijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, is prohibited in all zone districts within the city.

**SECTION 17.96.060 CONSUMPTION OF MEDICAL MARIJUANA.** No on-site consumption of medical marijuana shall occur except by a qualified patient or person with an identification card who lives on the property as their principal place of residence.

**SECTION 17.96.070 DISPENSARY AS A PROHIBITED USE.** A dispensary is a prohibited use in all zone districts in the city.

**SECTION 17.96.080 PUBLIC NUISANCE DECLARED.** Any use or condition caused or permitted to exist within any zone district of the city in violation of the provisions of this chapter is hereby declared a public nuisance. The City will avail itself of all available legal remedies to abate the nuisance.

**SECTION 17.96.090 VIOLATION AND PENALTY**

- A. A violation of this chapter may be prosecuted by the City Attorney through the civil enforcement process, including injunctive relief, as set forth in this code and state law.
- B. Each day a person is in violation of this chapter shall be considered a separate violation.
- C. The administrative citation penalty for each and every marijuana plant cultivated in violation of this chapter shall be one thousand dollars (\$1,000) per plant.

- D. Any property upon which a violation of this chapter is found shall be subject to immediate abatement by the city.
- E. In addition to any administrative penalty assessed for violation of this chapter, any person found in violation of this chapter will be charged abatement costs and enforcement costs as defined in this code, calculated to recover the total costs incurred by the city in enforcing this chapter.

**SECTION 17.96.100 SEVERANCE** If any section, subsection, phrase, or clause of this chapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this chapter.

**SECTION 2. CEQA.** The City Council finds this ordinance is not a project under the California Environmental Quality Act because it can be seen with certainty that it will not have a significant effect or physical change to the environment. See Title 14, California Code of Regulations, Section 15061 (b) (3).

**SECTION 3. Publication.** This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

**SECTION 4. Emergency Findings.** The findings set forth in this ordinance constitute a declaration of facts constituting an immediate preservation of public health and safety.

**SECTION 5. Effective Date.** This ordinance is an emergency ordinance for the immediate preservation of the public peace, health, and safety and shall become effective immediately per Government Code Section 36397.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Kerman held on \_\_\_\_\_, 2016, and was passed and adopted at a regular meeting of the City Council held on \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing ordinance is hereby approved.

\_\_\_\_\_  
Stephen B. Hill  
Mayor

ATTEST:

\_\_\_\_\_  
Marci Reyes  
City Clerk