

ORDINANCE NO. 1910

AN ORDINANCE OF THE PEOPLE OF THE CITY OF UPLAND, CALIFORNIA, REPEALING CHAPTER 9.48 OF TITLE 9 OF THE CITY OF UPLAND MUNICIPAL CODE AND REPLACING IT WITH A NEW CHAPTER 9.48 PROHIBITING MARIJUANA-RELATED USES AND ACTIVITIES, AND AMENDING RELATED PROVISIONS OF TITLE 17 (THE ZONING CODE) PROHIBITING THE DEVELOPMENT OF MARIJUANA RELATED USES

THE PEOPLE OF THE CITY OF UPLAND DO ORDAIN AS FOLLOWS:

SECTION 1: Title 9 of the Upland Municipal Code is hereby amended with the repeal of Chapter 9.48 (Mobile Marijuana Dispensaries) in its entirety and adding a new Chapter 9.48 to read as follows:

Chapter 9.48 Marijuana-Related Uses and Activities Prohibited

9.48.010. Purpose.

The People of the City of Upland hereby find and determine that it is the purpose and intent of this Chapter to prohibit certain marijuana-related uses and activities, in order to promote the health, safety, and general welfare of the residents, businesses, and visitors to the City. Except when preempted by state law, this prohibition includes marijuana related uses and activities, including marijuana dispensing, cultivation, transporting, distributing, processing, delivering, manufacturing, labeling, and/or testing, whether for recreational, medical, or any other use, except that this prohibition does not apply to prohibit qualified patients and persons with identification cards to cultivate indoors, possess, and use marijuana for their own personal medical purposes only, as permitted by state law. Nothing herein shall be construed to authorize qualified patients to engage in the collective cultivation of marijuana as described by Health and Safety Code section 11362.775, nor are they permitted to cultivate marijuana above limits established by state law and guidelines for their own personal use. Nor shall anything herein be construed as permitting primary caregivers to cultivate marijuana indoors or outdoors anywhere in the City.

9.48.020. Applicability

- A. Nothing in this Chapter is intended, nor shall it be construed, to burden any defense to criminal prosecution under the State law.
- B. All the provisions of this Chapter shall apply to all property, public, and private, within the City.
- C. All the provisions of this Chapter shall apply indoors and outdoors.
- D. Nothing in this Chapter shall authorize criminal prosecution or abatement for violations of this Chapter or any other provision of the Upland Municipal Code inconsistent with the holding of Kirby v. County of Fresno 242 Cal.App.4th 940 (2015).

9.48.030. Definitions

The following definitions apply to this Chapter:

- A. "Marijuana" shall have the same definition as that set forth in California Health & Safety Code Section 11018. "Marijuana" shall include: "cannabis" as defined in California Business & Professions Code section 19300.5(f); "cannabis concentrate" as defined in California Business & Professions Code section 19300.5(g); "edible cannabis product" as defined in California Business & Professions Code section 19300.5(s); "manufactured cannabis" as defined in California Business & Professions Code section 19300.5(ae); "medical cannabis," "medical cannabis product," or "cannabis product" as defined in California Business & Professions Code section 19300.5(ag); and "topical cannabis" as defined in California Business & Professions Code section 19300.5(al).
- B. "Caregiver" or "primary caregiver" shall have the same definition as that set forth in California Health and Safety Code section 11362.7 (d) and (e).
- C. "Person" shall mean any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer and/or salesperson.
- D. "Marijuana related use and activity" includes dispensing, cultivation, manufacture, processing, storing, testing, labeling, relabeling, packaging, repackaging, transporting, delivery, distribution, provision, or sale, or any combination thereof, of marijuana, except as set forth in California Business and Professions Code section 19319, related to qualifying patients. "Marijuana-related use and activity" also has the same meaning as "commercial cannabis activity" set forth in California Business and Professions section 19300.5 (j.).
- E. "Cultivation" shall mean any activity involving the germinating, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- F. "Delivery" shall have the same definition as set forth in California Business and Professions Code 19300.5 (m). "Delivery" shall also have the same definition as set forth in California Health and Safety Code section 26001(h), if enacted. "Delivery" shall not include transportation of marijuana or marijuana products by a licensed transporter traveling through the City on public roads to and from locations outside of the City where marijuana-related activities or uses are permitted.
- G. "Dispensary" shall mean any location where marijuana or devices for the use of marijuana are offered, either individually, or in combination, and includes retail sales. "Dispensary" includes delivery services, mobile dispensing and distribution.
- H. "Dispensing" shall mean any activity involving the provision of marijuana for any purpose.
- I. "Distribution" shall mean the provision and transport of marijuana between persons.

- J. "Manufacturer" shall mean a person that conducts the production, preparation, propagation, or compounding of marijuana, either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by any combination thereof, and includes packaging, repackaging, labeling, and/or relabeling.
- K. "Qualified Patient" or "Qualifying Patient" shall mean qualified patient and persons with identification cards as those terms are defined by the Health and Safety Code section 11362.7.
- L. "Testing Site" shall mean any facility, entity, or site in the City that offers or performs tests of marijuana.

9.48.040. All Marijuana-Related Use and/or Activity Prohibited

To the extent not preempted by State law, all marijuana related use and activity is prohibited in the City of Upland. This prohibition includes those marijuana related uses and activities set forth herein.

9.48.050. Declaration of public nuisance

Any use, structure, or property that is altered, enlarged, erected, established, maintained, moved, or operated contrary to the provisions of this Chapter, is hereby declared to be unlawful and a public nuisance and may be abated by the city through civil and/or administrative proceedings by means of a restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances.

9.48.060. Violations

- A. Violations of this Chapter shall be punishable as provided in this Code.
- B. This Chapter is not the exclusive means for the abatement of marijuana-related uses or activities within the City of Upland. The remedies set forth pursuant to this Section shall be in addition to any other existing remedies for violations of the Zoning Code, including but not limited to, any action at law or equity.
- C. Violations of this Chapter are hereby declared a public nuisance.

ZONING REGULATIONS AND LAND USE

SECTION 2: The land use matrices located in the amended Zoning Code for Residential (17.04), Mixed-Use (17.05), Commercial (17.06), Industrial (17.07), and Special Purpose Zones (17.08), and any other land use matrices in the Zoning Code which use the term "Medical Marijuana Dispensary or Clinic," shall replace "Medical Marijuana Dispensary or Clinic" with "Marijuana Related Use and Activity."

SECTION 3: Section 17.10.020(J) (1) of the Zoning Code shall be amended as follows:

1. Marijuana-related use and activity shall be prohibited in all zoning districts and areas that are regulated by Specific Plans or planned unit developments.

SECTION 4: The term “Medical Marijuana Dispensary or Clinic” and the definition thereof set forth in the Definitions of the Zoning Code shall be amended and replaced by the term “Marijuana-Related Use and Activity,” which shall be defined as follows:

“Marijuana-Related Use and Activity” means dispensing, cultivation, possession, manufacture, processing, storing, testing, labeling, relabeling, packaging, repackaging, transporting, delivery, distribution, provision, or sale, or any combination thereof, of marijuana, and as defined in Title 9.48 of the Upland Municipal Code.

SECTION 5: Any provision of the City of Upland Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 6: Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable. The City Council of the City of Upland declare that it would have adopted all the provisions of this ordinance that remain valid if any provisions of this ordinance are declared invalid.

SECTION 7: This ordinance shall take effect immediately upon adoption by the voters of the City of Upland.