

ORDINANCE NO. 3077-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND CHAPTER 9.86 OF TITLE 9 (PUBLIC PEACE, SAFETY OR WELFARE) AND VARIOUS SECTIONS OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO AN EXPRESS PROHIBITION ON MEDICAL MARIJUANA CULTIVATION, COMMERCIAL ACTIVITY, DISTRIBUTION AND DELIVERY

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code § 11362.5 and entitled “The Compassionate Use Act of 1996” or “CUA”); and

WHEREAS, the intent of the CUA was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use when deemed beneficial for health by a physician. The CUA specifically provides that the law shall not be construed to allow individuals to engage in conduct that endangers others, or to condone the use of marijuana for non-medical purposes; and

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as California Health & Safety Code § 11362.7 et seq. and referred to as the “Medical Marijuana Program” or “MMP”) to permit qualified patients and primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to prosecution under specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly authorize and cities to adopt local ordinances regulating cooperatives or collectives; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that cities have the authority to ban medical marijuana land uses and that the CUA and MMP do not preempt local ordinances; and

WHEREAS, under the Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., the use, possession, and cultivation of marijuana are currently unlawful and subject to federal prosecution without regard to medical need or use.

WHEREAS, on October 9, 2015, Governor Brown signed 3 bills (AB 266, AB 243, and SB 643), collectively known as the Medical Marijuana Regulation and Safety Act (“MMRSA”), which governs cultivation, processing, transporting, testing, and distribution of medical marijuana to qualified patients.

WHEREAS, Sunnyvale Municipal Code Chapter 9.86 currently contains an express prohibition on fixed and mobile medical marijuana dispensaries in all zones of the City. Further, the City has interpreted its zoning regulations, which disallow uses not specifically articulated, to prohibit other medical marijuana activities, including cultivation, processing and delivery; and

WHEREAS, commercial medical marijuana activities as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. According to the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity, including but not limited to loitering or crime.

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests;

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This condition also creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery; and

WHEREAS, when marijuana is grown and/or processed indoors, growing and processing equipment can have the potential to cause harm to persons or property by creating fire hazards. Many cities in the state have reported or responded to fires resulting from marijuana activity. Indoor cultivation operations are frequently unattended and utilize high wattage grow lamps, generators, or other equipment, or may be illegally wired to allow such equipment to function. This excessive energy use can overload electrical systems and cause fires. Notable recent fires associated with marijuana related activities include a December 2015 explosion at a home in Petaluma associated with production of marijuana oil, an October 2015 fire at a home with an indoor grow in Rialto started by an electrical panel that burst, a May 2015 fire at a commercial building in Sun Valley with an indoor marijuana grow house, and an explosion/fire in April 2015 at a Silver Lake home caused by an indoor marijuana operation; and

WHEREAS, criminal activity is also associated with mobile marijuana dispensaries and deliveries, which are targets for armed robbery; 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 if marijuana cultivation, processing, distribution, and other commercial activities are permitted to operate or if permits, licenses, or similar entitlements were issued for such operation, and that such operation poses a current threat to the public health, safety, and welfare in the City due to the negative impacts of such activities as described above;

WHEREAS, the limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA requires the city to prohibit cultivation uses, either expressly or otherwise under the principles of permissive zoning, or the State will become the licensing authority. The MMRSA also requires delivery services to be expressly prohibited by local ordinance, if the City desires to prohibit delivery. The MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities; and

WHEREAS, while the City Council believes that cultivation and all commercial medical marijuana uses are prohibited under the City's permissive zoning regulations, it desires to enact this ordinance to express its intent to prohibit commercial medical marijuana activity consisted with the MMRSA, expressly make clear that all such uses are prohibited in all zones throughout the City, preserve local control over such uses, and protect the public from the health and safety risks described above; and

WHEREAS, the Planning Commission held a duly noticed public hearing on January 11, 2016, at which time it considered all evidence presented, both written and oral and at the end of the hearing recommended that the Council adopt the recommended changes to the City's zoning code; and

WHEREAS, the City Council held a duly noticed public hearing on this ordinance on _____, 2016, at which time it considered all evidence presented, both written and oral.

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

SECTION 1. CHAPTER 9.86 AMENDED. Chapter 9.86 (Medical Marijuana Distribution Facilities) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code is hereby amended and renumbered to read as follows:

Chapter 9.86.

MEDICAL MARIJUANA.

- 9.86.010. Purposes**
- 9.86.020. Definitions.**
- 9.86.030. Prohibited activities.**
- 9.86.040. Violation – Penalty.**
- 9.86.050. Public Nuisance.**
- 9.86.060. Severability.**

9.86.010. Purpose.

The purpose of this chapter is to reflect the intent of the City of Sunnyvale to (1) expressly prohibit cultivation, delivery, distribution and other commercial

activity related to medical marijuana; (2) not administer a conditional permit program for marijuana cultivation under the Medical Marijuana Regulation and Safety Act (Health & Safety Code §11362.777); (3) exercise its local authority to regulate and enforce commercial activities related to medical marijuana, including prohibitions on cultivation and delivery; and (4) exercise its police power to enact and enforce regulations to benefit the health, safety and welfare of the Sunnyvale community.

9.86.020. Definitions.

(a) “Commercial cannabis activity” means and includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical marijuana or a medical marijuana product, and as provided in California Business & Professions Code §19300.5(k) as may be amended.

(b) “Cooperative” means two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.

(c) “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming or processing of marijuana.

(d) “Delivery” shall have the same meaning as provided in California Business & Professions Code §19300.5(m) as may be amended.

(e) “Distribution” means the procurement, sale and transport of medical marijuana or medical marijuana products between entities licensed pursuant to the Medical Marijuana Regulation and Safety Act.

(f) “Marijuana” or “Cannabis” shall have the same definition as set forth in Business & Professions Code § 19300.5(f), as may be amended from time to time.

(g) “Medical marijuana dispensary” shall have the same definition as set forth in Business & Professions Code § 19300.5(n), as may be amended from time to time. For purposes of this Chapter, “dispensary” shall also include a cooperative. “Dispensary” shall not include the following uses, so long as such uses comply with this Code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

(1) - (5) [Text unchanged]

(h) “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, or extracting active ingredients to create marijuana related products or concentrates, including but not limited to edible or topical products.

9.86.030. Prohibited activities.

Marijuana cultivation, marijuana processing, marijuana delivery or distribution, marijuana dispensaries, and any other commercial cannabis activities, as defined in this chapter, are prohibited activities and uses in all zoning districts in the city of Sunnyvale. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall

be approved or issued for the activities of marijuana cultivation, marijuana processing, marijuana delivery or distribution, establishment or operation of a marijuana dispensary, or any other commercial cannabis activity, and no person shall otherwise establish or conduct such activities in the City, except as otherwise expressly allowed by federal or state law.

9.86.040. Violation—Penalty.

(a) – (b) [Text unchanged]

(c) In addition to any other enforcement remedies described in this code, the City Attorney may bring a civil action for injunctive relief and civil penalties pursuant to Chapter 1.20 of this code against any person or entity that violates this Chapter. In any civil action brought pursuant to this Chapter, a court of competent jurisdiction may award reasonable attorney’s fees and costs to the prevailing party.

9.86.050. Public nuisance.

[Renumbered text unchanged]

9.86.060. Severability.

[Renumbered; text unchanged]

SECTION 2. TABLE 19.18.030 AMENDED. TABLE 19.18.030 of Chapter 19.18 (Residential Zoning Districts) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**Table 19.18.030
Permitted, Conditionally Permitted and Prohibited Uses in Residential
Zoning Districts**

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- MPP** = Miscellaneous Plan Permit required
- UP** = Use Permit required
- SDP** = Special Development Permit required
- N** = Not permitted, prohibited

RESIDENTIAL ZONING DISTRICTS	R-0/R-1	R-1.5	R-1.7/PD	R-2	R-3	R-4	R-5	R-MH
1. – 6. [Text unchanged.]								
7. Other uses.								
A. – M. [Text unchanged.]								
N. Medical Marijuana.	N	N	N	N	N	N	N	N
O. [Text unchanged]								

¹⁻⁶ [Text unchanged.]

SECTION 3. TABLE 19.20.030 AMENDED. Table 19.20.030 of Chapter 19.20 (Commercial Zoning Districts) of the Sunnyvale Municipal Code is hereby amended to read as follows:

Table 19.20.030
Permitted, Conditionally Permitted and Prohibited Uses in Commercial Zoning Districts

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- UP** = Use permit required
- MPP** = Miscellaneous plan permit
- N** = Not permitted, prohibited

COMMERCIAL ZONING DISTRICTS	C-1	C-2	C-3	C-4
<i>1. – 9. [Text unchanged.]</i>				
10. Other				
<i>A. – J. [Text unchanged.]</i>				
K. Medical Marijuana.	N	N	N	N
<i>L. [Text unchanged.]</i>				

¹⁻⁹ [Text unchanged.]

SECTION 4. TABLE 19.22.030 AMENDED. TABLE 19.22.030 of Chapter 19.22 (Industrial Zoning Districts) of the Sunnyvale Municipal Code is hereby amended to read as follows:

Table 19.22.030
Permitted, Conditionally Permitted and Prohibited Uses in Industrial Districts

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- MPP** = Miscellaneous plan permit required
- UP** = Use permit required
- N** = Not permitted, prohibited
- FAR** = Floor area ratio restrictions
- >** = Greater than
- N/A** = FAR does not apply

Use Regulations by Zoning District USE	M-S Zoning Districts FAR³	M-S Zoning Districts	M-S/POA Zoning Districts	M-3 Zoning Districts FAR³	M-3 Zoning Districts
<i>1. – 5. [Text unchanged.]</i>					
6. Other					
<i>A. – Q. [Text unchanged.]</i>					
R. Medical Marijuana	N/A	N	N	N/A	N

Use Regulations by Zoning District USE	M-S Zoning Districts FAR ³	M-S Zoning Districts	M-S/POA Zoning Districts	M-3 Zoning Districts FAR ³	M-3 Zoning Districts
S. [Text unchanged; renumbered.]					

¹⁻⁴ [Text unchanged.]

SECTION 5. TABLE 19.24.030 AMENDED. TABLE 19.24.030 of Chapter 19.24 (Office and Public Facilities Zoning Districts) of the Sunnyvale Municipal Code is hereby amended to read as follows:

Table 19.24.030

Permitted, conditionally permitted and prohibited uses in office, public facilities and civic center zones.

In the table, the letters and symbols are defined as follows:

- P = Permitted use
- UP = Use permitted required
- MPP = Miscellaneous plan permit required
- N = Not permitted, prohibited

OFFICE AND PUBLIC FACILITIES ZONING DISTRICTS	O	P-F
1. – 5. [Text unchanged.]		
6. Other		
A. – L. [Text unchanged.]		
M. Medical Marijuana Activities	N	N
N. [Text unchanged.]		

¹⁻² [Text unchanged.]

SECTION 6. TABLE 19.28.070 AMENDED. TABLE 19.28.070 of Chapter 19.28 (Downtown Specific Plan Districts) of the Sunnyvale Municipal Code is hereby amended to read as follows:

Table 19.28.070

Permitted, Conditionally Permitted and Prohibited Uses in Mixed Use, Commercial and Office DSP Blocks

In the table, the letters and symbols are defined as follows:

- P = Permitted use
- SDP = Special development permit required
- MPP = Miscellaneous plan permit required
- UP = Use permit required
- N = Not permitted, prohibited

DSP MIXED USE, COMMERCIAL AND OFFICE BLOCKS	1	1a	2	3	7	13	18	20	21	22

DSP MIXED USE, COMMERCIAL AND OFFICE BLOCKS	1	1a	2	3	7	13	18	20	21	22
<i>1. – 6. [Text unchanged.]</i>										
<i>7. Other Uses</i>										
<i>A. – M. [Text unchanged.]</i>										
<i>N. Medical Marijuana Activities.</i>	N	N	N	N	N	N	N	N	N	N
<i>O. [Text unchanged.]</i>										

¹⁻³ [Text unchanged.]

SECTION 7. TABLE 19.28.080 AMENDED. TABLE 19.28.080 of Chapter 19.28 (Downtown Specific Plan Districts) of the Sunnyvale Municipal Code is hereby amended to read as follows:

Table 19.28.080
Permitted, Conditionally Permitted and Prohibited Uses in Residential DSP Blocks

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- SDP** = Special development permit required
- MPP** = Miscellaneous plan permit required
- UP** = Use permit required
- N** = Not permitted, prohibited

DSP RESIDENTIAL BLOCKS	4, 5, 14, 15, 16, 23	6, 10a	8, 9, 10, 11, 12, 17	8a	8b, 9a
<i>1. – 5. [Text unchanged.]</i>					
<i>6. Other Uses</i>					
<i>A. – K. [Text unchanged.]</i>	N	N	N	N	N
<i>L. Medical Marijuana Activities.</i>					

¹⁻³ [Text unchanged.]

SECTION 8. TABLE 19.29.050 AMENDED. TABLE 19.29.050 of Chapter 19.29 (Moffet Park Specific Plan District) of the Sunnyvale Municipal Code is hereby amended to read as follows:

Table 19.29.050
Permitted, Conditionally Permitted and Prohibited Uses in MPSP Subdistricts

In the table, the letters and symbols are defined as follows:

P = Permitted use. A Moffett Park Design Review Permit is required pursuant to Section 19.29.050(c). Development exceeding the standard FAR limit must be reviewed through a major permit.

SDP = Special development permit. A Moffett Park Special Development Permit is required.

MPP = Miscellaneous Plan Permit. A Miscellaneous Plan Permit is required.

N = Not permitted. Prohibited.

Use			Specific Plan Subdistrict		
			MP-TOD	MP-I	MP-C
I. – 7.		<i>[Text unchanged.]</i>			
8.		<i>Other</i>			
	A. – S.	<i>[Text unchanged.]</i>			
	T.	<i>Medical Marijuana Activities.</i>	N	N	N
	U.	<i>[Text unchanged.]</i>			

SECTION 9. TITLE of CHAPTER 19.62 AMENDED. Chapter 19.62 (Distribution of Medical Marijuana) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

CHAPTER 19.62. MEDICAL MARIJUANA.

SECTION 10. SECTION 19.62.010 AMENDED. Section 19.62.010 of Chapter 19.62 (Distribution of Medical Marijuana) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.62.010. Medical marijuana.

All medical marijuana activities, as defined in Chapter 9.86 and described in section 9.86.030, are prohibited uses in all zoning districts in the city of Sunnyvale.

SECTION 11. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15060(c)(2), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and section 15061(b)(3) because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 12. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection,

sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 13. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 14. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on April 12, 2016, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM:

City Attorney