

ORDINANCE NO. 802

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY CALIFORNIA AMENDING SECTION 13.80.240 OF THE CATHEDRAL CITY MUNICIPAL CODE RELATED TO CANNABIS-RELATED PUBLIC NUISANCES

WHEREAS, in 1996, California voters enacted Proposition 215, which was entitled the Compassionate Use Act (the "CUA") of 1996, and was codified in California Health and Safety Code Section 11362.5, which decriminalized the possession and cultivation of medicinal marijuana for limited personal medicinal purposes; and

WHEREAS, in 2004, the California legislature enacted Senate Bill 420, the Medicinal Marijuana Program (the "MMP"), which, as codified in California Health and Safety Code Section 11362.7 *et seq.*, was intended to clarify the CUA's scope and immunize from criminal prosecution, under specified state laws, certain activities and conduct related to the provision of medicinal marijuana to qualified patients; and

WHEREAS, on October 9, 2015, Assembly Bills 243 and 266 and Senate Bill 643 (collectively, the "Medical Cannabis Regulation and Safety Act" or "MCRSA") were enacted to create a state regulatory and licensing system governing the cultivation, testing, and distribution of medicinal cannabis, the manufacturing of medicinal cannabis products, and physician recommendations for medicinal cannabis; and

WHEREAS, on November 8, 2016, the voters of the State of California approved Proposition 64, entitled the "Control, Regulate and Tax Adult Use of Marijuana Act" (the "AUMA"), which legalizes and regulates the adult use of non-medicinal marijuana in California; and,

WHEREAS, on June 27, 2017, the Governor signed Senate Bill 94, which repealed MCRSA and included certain provisions from MCRSA regarding medicinal marijuana in the AUMA; and

WHEREAS, Senate Bill 94 renamed the AUMA as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"); and

WHEREAS, Article XI, Section 7 of the California Constitution provides a city may make and enforce within its limits all police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, Cathedral City licenses and regulates cannabis businesses as permitted by state law;

WHEREAS, Cathedral City desires to amend its existing public nuisance regulations to enhance the City's ability to address nuisances stemming from the operation of cannabis businesses and the consumption of cannabis and cannabis products;

WHEREAS, nothing in this ordinance shall be construed to allow persons to engage in conduct that endangers others or or allow any activity that is otherwise illegal under California state law.

THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY DOES ORDAIN AS FOLLOWS:

SECTION 1. Amendment of Section 13.80.240.

Chapter 5.88 of the Cathedral City Municipal Code is hereby amended in its entirety to read as follows:

"13.80.240 Cannabis.

It is unlawful and it shall be a public nuisance subject to the provisions of Chapter 13.90 of this code, to:

A. Establish, maintain, or operate a cannabis business, as such term is defined in Section 5.88.025 of this code, within the city without having received a local license pursuant to Chapter 5.88 and, when required, a conditional use permit pursuant to Chapters 9.108 and 9.72 of this code.

B. Maintain or operate a cannabis business, as such term is defined in Section 5.88.025 of this code, within the city in violation of the applicable operational requirements in Chapter 5.88 of this code.

C. Possess, plant, cultivate, harvest, dry, or process seven or more living cannabis plants within a single private residence, or upon the grounds of that private residence, at one time, except that a qualified patient or primary caregiver may possess more plants consistent with Health and Safety Code section 11362.77.

D. Possess, plant, cultivate, harvest, dry, or process cannabis plants in an unenclosed and unsecured outdoor area on the grounds of a private residence.

E. Possess, plant, cultivate, harvest, dry, or process cannabis plants within a private residence or on the grounds of a private residence in an area that is visible by normal unaided vision from any public place, including but not limited to streets, sidewalks, parks, or any common areas within a residential development, including but not limited to private streets and sidewalks, common parking areas, parks or other spaces maintained by an homeowners or property owners association and accessible to residents of the development.

F. Smoke, as such term is defined in Health & Safety Code section 11362.3(b), or ingest cannabis or cannabis products in a public place, including but not limited to streets, sidewalks, parks, or any common areas within a residential development, including but not limited to private streets and sidewalks, common parking areas, parks or other spaces maintained by an homeowners or property owners association and accessible to residents of the development.

G. Smoke, as such term is defined in Health & Safety Code section 11362.3(b), cannabis or cannabis products in a location where smoking tobacco is prohibited.

H. Possess, smoke or ingest cannabis or cannabis products in or upon the grounds of a school, day care center, or youth center while children are present; or smoke cannabis or cannabis products within 1,000 feet of a school, day care center, or youth center while children are present, except in or upon the grounds of a private residence and only if such smoking is not detectable by others on the grounds of the school, day care center, or youth center. For the purposes of this subsection, the definitions of "smoke," "day care center," and "youth center" contained in Health and Safety Code section 11362.3(b) shall apply.

I. Manufacture concentrated cannabis using a volatile solvent without a local license under Chapter 5.88 of this code and a conditional use permit pursuant to Chapter 9.108 and 9.72 of this code, and the appropriate state license.

J. To cause or permit persistent cannabis odors that are offensive to individuals of normal sensitivity and which adversely impact or unreasonably interfere with the use and enjoyment of property, to:

1. emanate across any property line.
2. emanate across a common wall or otherwise be detectable within an adjacent or nearby unit in a multi-tenant building or in a multi-family residential building that is occupied by another.

For the purposes of this subsection J, cannabis odors shall be presumed to be persistent, offensive to individuals of normal sensitivity, and adversely impacting or unreasonably interfering with the use and enjoyment of property, if the city receives three or more verified complaints from individuals representing separate residences or places of business within the city of a persistent cannabis odor emanating from the subject property within a one-month time span. Nothing in this subsection shall be deemed to require three complaints before the city may initiate enforcement action. The City may determine that a public nuisance exists under this subsection J if less than three complaints are received or even if no complaints are received but City officials or employees notice odor conditions that violate this subsection J."

SECTION 2. Effective Date.

This Ordinance shall be effective 30 days from and after its final passage.

SECTION 3. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, then such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Cathedral City hereby declare they would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that anyone or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. Publication.

The City clerk is authorized and directed to cause this Ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation and circulated within the City in accordance with Government Code Section 36933(a) or, to cause this Ordinance to be published in the manner required by law using the alternative summary and pasting procedure authorized under Government Code Section 39633(c).

INTRODUCED at the regular meeting of Cathedral City City Council on the 11th day of October, 2017.

APPROVED AND ADOPTED this 25th day of October, 2017, by the following vote:

- Ayes: Council Members Aguilar, Carnevale and Kaplan; Mayor Pro Tem Pettis and Mayor Henry
- Noes: None
- Abstain: None
- Absent: None


Stanley E. Henry, Mayor

ATTEST:



Gary F. Howell, City Clerk

APPROVED AS TO FORM:



Eric S. Vail, City Attorney