CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 702-2016

ORDINANCE AMENDING TITLE 9, CHAPTER 9.36, "MARIJUANA" OF THE CLOVERDALE MUNICIPAL CODE, SECTION 9.36.020, "DEFINITIONS," AND SECTION 9.36.050, "OUTDOOR CULTIVATION OF MARIJUANA PROHIBITED" TO REFERENCE THE CLOVERDALE ZONING ORDINANCE FOR DEFINITIONS AND REGULATIONS RELATED TO CULTIVATION OF MARIJUANA

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

WHEREAS, the primary purpose of the CUA was to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that 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 illness for which marijuana provides relief; and

WHEREAS, in 2004, the State of California also enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 et seq. and referred to as "The Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010), and Assembly Bill 1300 (2011), amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

WHEREAS, despite voter approval of the CUA, various problems and uncertainties in the Act impeded law enforcement's ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medical purposes; and

WHEREAS, the CUA is limited in scope, in that it only provides a defense from state criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities cultivating, distributing, or processing medical marijuana; and

WHEREAS, in 2008, the City Council adopted Ordinance 660-2008, adding Chapter 9.36 to the City of Cloverdale's Municipal Code, which prohibited outdoor cultivation within the City limits of Cloverdale. Chapter 9.36 was adopted to promote the public health, safety and welfare by protecting City residents from the offensive odor and unreasonable risk of crime from outdoor cultivation of marijuana. Chapter 9.36 also prohibited dispensaries within the City limits of Cloverdale. The Ordinance was written to protect citizens from the secondary impacts associated with medical marijuana dispensaries, including, but not limited to, increased public consumption of marijuana and

the potential for increased marijuana DUIs, illegal resale of marijuana obtained at low cost from dispensaries, loitering, fraud in obtaining or using medical marijuana identification cards, robbery, assaults, and other crimes; also preventing increased demands for police response resulting from activities at medical marijuana dispensaries and parcels where outdoor marijuana cultivation occurs, thereby avoiding reduction of the ability of the City's public safety officers to respond to other calls for service; 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 "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land…". Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App. 4th 975, the Court of Appeal held that "there is no right-and certainly no constitutional right-to cultivate medical marijuana…". The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, in October of 2015, the State of California enacted Assembly Bill ("AB") 243, AB 266, and Senate Bill 643 in 2015 (commonly and collectively referred to as the Medical Marijuana Regulation and Safety Act or the "MMRSA"). The MMRSA establishes regulation of medical cannabis cultivation, manufacturing, and transportation, as well as create local and State-level licensing systems in California. The MMRSA allows a city to prohibit, through land use regulations or ordinances, the cultivating, delivering, distributing, or processing of medical marijuana; and

WHEREAS, the City Council finds that commercial medical marijuana (cannabis) activities, as well as cultivation for personal medical use as allowed by the CUA, MMP and the MMRSA can adversely affect the health, safety, and well-being of City residents. Citywide prohibition of commercial cultivation and regulation of personal cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by 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 or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, the limited immunity from specified State marijuana laws provided by the CUA and MMP does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA contains language that requires a city to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if a city wishes to prohibit deliveries; and

WHEREAS, as a result of the MMRSA, City staff drafted proposed a Zoning Ordinance entitled an "Ordinance of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to Add "Article III. Marijuana," Section 18.09.300, "Medical Marijuana ," Prohibiting Commercial Marijuana (Cannabis) Activities and Regulating the Cultivation of Medical Marijuana By Qualified Patients and Primary Caregivers and the Delivery of Medical Marijuana Within the City."

WHEREAS, the Planning Commission held a duly noticed public hearing on December 16, 2015, at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt the Ordinance with recommendations for changes to Section 18.09.300 E (d) (allow cultivation in R-3 zones on parcels with detached single-family dwelling) and 18.09.300 F(1) (cultivation of three (3) plants per parcel) and 18.09.300 F(3)(allow cultivation in R-3 zones on parcels with detached single-family dwelling); and

WHEREAS, on January 12, 2016, the City Council will hold a duly noticed public hearing to consider the adoption of the proposed Zoning Ordinance entitled an "Ordinance of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to Add "Article III. Marijuana," Section 18.09.300, "Medical Marijuana ," Prohibiting Commercial Marijuana (Cannabis) Activities and Regulating the Cultivation of Medical Marijuana By Qualified Patients and Primary Caregivers and the Delivery of Medical Marijuana Within the City." . Portions of that Zoning Ordinance conflict with Title 9, Chapter 9.36 of the Cloverdale Municipal Code; and

WHEREAS, it is necessary to amend Title 9, Chapter 9.36 so as to avoid any conflict and to harmonize those portions of the Municipal Code that address marijuana. This Ordinance makes minor amendments to Chapter 9.36 of the Cloverdale Municipal Code, referencing the new Zoning Ordinance provisions regulating the cultivation of medical marijuana.

NOW, THEREFORE, the City Council of the City of Cloverdale does ordain as follows:

SECTION 1. Amendment to Section 9.36.020. Chapter 9.36, "Marijuana," Section 9.36.020, "Definitions," of the Cloverdale Municipal Code is hereby amended to read as follows:

"9.36.020. Definitions.
The Definitions that shall be utilized in this Chapter shall be the same Definitions set forth in Title 18, Section 18.09.300(B) that relate to marijuana."

SECTION 2. Amendment to Section 9.36.050. Chapter 9.36, "Marijuana," Section 9.36.050, "Outdoor Cultivation of Marijuana Prohibited," of the Cloverdale Municipal Code is hereby retitled "Cultivation of Marijuana Prohibited," and amended to read as follows:

"9.36.050. Cultivation of Marijuana prohibited.
All cultivation of marijuana and medical marijuana, both indoor and outdoor, is prohibited in all zoning districts, planned developments and all specific master plan areas in the City, except as authorized under Section 18.09.300(E) and Section 18.09.300(F) of the Cloverdale Municipal Code for qualified patients and primary caregivers."

SECTION 3. California Environmental Quality Act ("CEQA").

The City Council hereby finds that the adoption of this Ordinance is exempt from California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new large structures or other physical changes resulting in impacts to the environment. This Ordinance would also limit the number of outdoor plants to a limited amount so there will be no potential for significant water impacts and pesticide application impacts. The larger amounts would need to be in

a detached structure and therefore, would also not result any water impacts or pesticide application impacts. Further, cultivation in detached structures would not be visible and would not result in significant odor issues.

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, agent, employee or volunteer, thereof a mandatory duty of care towards persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 5. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date.

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on November 8, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 8th day of November, 2016 by the following roll call vote: (Ayes-5; Noes-0; Absent-0)

AYES:	Councilmember Palla, Vice Mayor Wolter, Councilmember Russell, Councilmember Cox, and Mayor Brigham
NOES:	None
ABSENT:	None
ABSTAIN:	None

Approved:

Mary Ann Brigham, Mayor

Attested:

Linda Moore, Deputy City Clerk