

TOWN OF ROSS

ORDINANCE NO. 670

AN ORDINANCE OF THE TOWN OF ROSS AMENDING MUNICIPAL CODE SECTIONS 18.12.223 (MEDICAL MARIJUANA DISPENSARY) AND 18.40.210 (MEDICAL MARIJUANA DISPENSARIES PROHIBITED) TO EXPRESSLY PROHIBIT CULTIVATION OF MEDICAL MARIJUANA, INCLUDING CULTIVATION BY QUALIFIED PATIENTS, PRIMARY CAREGIVERS, AND PERSONS WITH IDENTIFICATION CARDS, PROHIBITING COMMERCIAL MEDICAL MARIJUANA ACTIVITY IN ALL ZONES IN THE TOWN AND PROHIBITING THE DELIVERY OF MEDICAL MARIJUANA AND MOBILE MARIJUANA DISPENSARIES

The Town Council of the Town of Ross does ordain as follows:

SECTION 1: Purpose.

- (a) Under principles of permissive zoning, the Town of Ross has prohibited medical marijuana dispensaries. In 2015, the Town Code was clarified to expressly prohibit medical marijuana dispensaries.
- (b) On October 9, 2015 Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively are known as the Medical Marijuana Regulation and Safety Act (hereinafter "MMRSA"). The MMRSA establishes a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license.
- (c) The MMRSA becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The MMRSA also contains new statutory provisions that:
 - (1) Allow local governments to enact ordinances by March 1, 2016 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));
 - (2) Expressly provide that the MMRSA does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
 - (3) Expressly provide that the MMRSA does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and

(4) Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the MMRSA, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)).

(d) The Town of Ross desires to expressly prohibit cultivation, including cultivation by qualified patients, primary caregivers, and persons with identification cards, and all commercial medical marijuana activity anywhere in the Town and to prohibit the delivery of medical marijuana and mobile marijuana dispensaries in the Town of Ross.

SECTION 2: Section 18.12.223 "Medical Marijuana Dispensary" of the Ross Municipal Code Chapter 18.12 ("Definitions") is hereby repealed.

SECTION 3: Ross Municipal Code, Section 18.40.210, is amended to read in its entirety as follows:

"18.40.210 Medical marijuana dispensaries and commercial medical marijuana activity.

(a) Definitions.

"Commercial medical marijuana activity" shall have the same meaning as "commercial cannabis activity" that is set forth in California Business and Professions Code Section 19300.5(k), as the same may be amended from time to time, and shall include the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical marijuana or a medical marijuana product, except as set forth in California Business and Professions Code Section 19319, related to qualified patients and primary caregivers.

"Cultivation" shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(l), as the same may be amended from time to time, and shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

"Delivery" shall have the same meaning as set forth in the Medical Marijuana Regulation and Safety Act, Business and Professions Code Section 19300.5(m), as the same may be amended from time to time, and shall include the commercial transfer of medical marijuana or medical marijuana products from a dispensary, up to an amount determined by the bureau to a primary caregiver, qualified patient, or person with an identification card as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary or any technology platform owned and controlled by the dispensary or independently licensed that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

"Identification card" is a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any, as set forth in California Health and Safety Code Section 11362.7.

“Marijuana” shall have the same meaning as “cannabis” as set forth in California Business and Professions Code Section 19300.5(f), as the same may be amended from time to time, and shall include all parts of the plant *cannabis sativa linnaeus*, *cannabis indica*, or *cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” also means the separated resin, whether crude or purified, obtained from marijuana. “Marijuana” also means marijuana as defined by Health and Safety Code Section 11018. For the purpose of this Section, “marijuana” does not mean “industrial hemp” as defined by California Food and Agricultural Code Section 81000 or California Health and Safety Code Section 11018.5.

“Medical marijuana dispensary” means any location, structure, business, office, store, vehicle, co-op, residence, or similar facility used, in full or in part, as a place at or in which marijuana, medical marijuana products, or devices for the use of medical marijuana or medical marijuana products are offered, sold, traded, exchanged, bartered for in any way. “Medical marijuana dispensary” shall include but not be limited to facilities which make available and/or distribute marijuana in accordance with California Health and Safety Code Section 11362.5 et seq. “Medical marijuana dispensary” shall also include “dispensary” as defined in the Medical Marijuana Regulation and Safety Act, Business and Professions Code Section 19300.5(n), as the same may be amended from time to time. “Medical marijuana dispensary” shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a pharmacy regulated by Chapter 9, Division 2 of the Business and Professions Code and/or the Federal Controlled Substances Act of 1970 and its implementing regulations, a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice licensed pursuant to Chapter 8.5 of Division 2 of the Health & Safety Code, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code, as long as any such use complies strictly with applicable law, including; but not limited to, Health & Safety Code Sections 11362.5 et seq.

“Medical marijuana product” shall have the same meaning as “cannabis product” or “medical cannabis product” as set forth in Business and Professions Code Section 19300.5(ag), as the same may be amended from time to time, and shall include marijuana, including, concentrates and extractions, intended to be sold for use by medical marijuana patients pursuant to the Compassionate Use Act of 1996 (Proposition 215).

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall collectively mean the Medical Marijuana Regulation and Safety Act as contained, codified, and enacted as California Business and Professions Code Chapter 3.5.

“Mobile marijuana dispensary” shall mean the use of a motor vehicle that in any way involves growing, distributing, delivering, selling or making available to persons, with or without financial payment or consideration, marijuana or medical marijuana products, including

marijuana for medical purposes as described in California Health and Safety Code Section 11362.5.

“Person with an Identification Card” shall have the same meaning as set forth in California Health and Safety Code Section 11362.7.

“Primary caregiver” is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as set forth in California Health and Safety Code Section 11362.7.

“Qualified patient” is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services, as set forth in California Health and Safety Code Section 11362.7.

(b) Prohibitions.

(1) Medical marijuana dispensaries are prohibited in all zones in the Town.

(2) Commercial medical marijuana activity of any type or nature is expressly prohibited in all zones in the Town. No person shall establish, operate, maintain, conduct or allow commercial medical marijuana activity anywhere within the Town. This section is meant to prohibit all activities for which a State license is required pursuant to the MMRSA. Accordingly, the Town shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MMRSA.

(3) To the extent that it is not already prohibited by subsections 1 and 2 above, cultivation of marijuana for commercial or non-commercial purposes, including cultivation by a qualified patient, primary caregiver, or person with identification card is expressly prohibited in all zones in the Town. No person, including a qualified patient, primary caregiver or person with identification card, shall cultivate any amount of marijuana in the Town, even for medical purposes.

(4) In addition to subsections (1)-(3) above, all delivery of marijuana or medical marijuana products to or from the Town of Ross is expressly prohibited within the Town. No person shall conduct or perform any delivery of any marijuana or medical marijuana product, which delivery either originates or terminates within the Town. Mobile marijuana dispensaries are also prohibited from operating in the Town.

(c) Public Nuisance; Civil Penalties.

A violation of this section is a public nuisance and subject to all remedies available at law. In addition to any other enforcement permitted by Municipal Code Chapters 9.04 and 18.64, the Town Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Section. In any civil action brought pursuant to this section, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party. No provision of this section shall authorize a criminal prosecution or arrest prohibited by the Medical Marijuana Program, Health and Safety Code, Section 11362.7 et seq.

(d) Construction with state law.

Nothing in this chapter is intended to conflict with the provisions of state law concerning the regulation of marijuana. In the event of a direct and express conflict between state law and any provision of this chapter, state law, as applicable, shall control.”

SECTION 3. CEQA. The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and the prohibitions established hereby, may have a significant effect on the environment, because the Ordinance will only impose greater limitations on activities in the Town, and will thereby serve to eliminate potentially significant adverse environmental impacts. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. A Notice of Exemption will be prepared.

SECTION 4. Severability. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentence, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the Town, or within the territory comprising the Town, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

SECTION 6. Certification. The Town Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 7: Effective Date. This Ordinance shall go into effect on thirty (30) days from its adoption, and shall be posted in three public places in Town.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Ross Town Council on the 14th day of January, 2016, and was adopted at a regular meeting of the Ross Town Council on the 11th day of February, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Kathleen Hoertkorn, Mayor

ATTEST:

Linda Lopez, Town Clerk