

ORDINANCE NO. 1255

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SIMI VALLEY APPROVING CITY-INITIATED SIMI VALLEY MUNICIPAL CODE TEXT AMENDMENT TO AMEND TITLE 9 TO INCLUDE LAND USE REGULATIONS TO PROHIBIT MEDICAL MARIJUANA CULTIVATION, PROCESSING, DISTRIBUTION, DELIVERIES, COLLECTIVES, AND COOPERATIVES WITHIN THE CITY, ESTABLISH DEFINITIONS FOR MEDICAL MARIJUANA USES, AND A DETERMINATION THAT THE ACTION IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the City of Simi Valley has initiated Municipal Code Text Amendment Z-S-726 for the purpose of prohibiting marijuana cultivation, processing, distribution, and delivery land uses and marijuana collective or cooperative uses within the City (Z-S-726); and

WHEREAS, California Constitution, Article 11, Section 7 authorizes a City Council to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the City-initiated Municipal Code Text Amendment Z-S-726 is exempt from review under the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) ("CEQA") and CEQA regulations (Title 14, California Code of Regulations Section 15000 et seq.) because this Amendment is covered by the general rule that CEQA only applies to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3)), and the ordinance does not create a significant effect on the environment because it would prohibit medical marijuana cultivation, processing, distribution, and delivery land uses and collective or cooperative uses within the City; and

WHEREAS, California voters enacted Proposition 215, "The Compassionate Use Act of 1996," which allows medical marijuana use by qualified patients upon a physician's recommendation. That the intent of this Act was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under California law once a physician has deemed the use beneficial to a patient's health; and

WHEREAS, the California Legislature adopted Senate Bill SB 420 in 2003 (Health & Safety Code Section 11362.7 et seq.), which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code; and

WHEREAS, neither the California Compassionate Use Act of 1996 or the Medical Marijuana Program require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in 2011, Assembly Bill 1300 was adopted and codified as Health and Safety Code Section 11362.83 to clarify that counties and cities may adopt and enforce local ordinances that regulate or prohibit the location, operation, or establishment of medical marijuana cooperatives or collectives; and

WHEREAS, the U.S. Congress has enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to use, possess, import, manufacture, distribute, or cultivate marijuana; and

WHEREAS, on June 6, 2005, the United States Supreme Court issued its decision in the case of *Gonzales vs. Raich* which held that Congress, under the Commerce Clause of the United States Constitution, has the authority, and under the Federal Controlled Substances Act (21 USC Section 841) the power to, prosecute the local cultivation and use of marijuana, even if such use is in compliance with California law; and

WHEREAS, the City Council adopted Ordinance No. 1106, which became effective on January 18, 2007, to prohibit medical marijuana dispensaries within all zoning districts of the City of Simi Valley; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al.*, holding that cities have the authority to prohibit or ban medical marijuana land uses; and

WHEREAS, in *Maral v. City of Live Oak* (2013) 221 Cal. App. 4<sup>th</sup> 975, the Court of Appeal held that an ordinance which prohibited the cultivation of marijuana for any purpose was within the City's police power and not preempted by the California Compassionate Use Act of 1996 or the California Medical Marijuana Program; and

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, the California Medical Marijuana Regulation and Safety Act, which became effective on January 1, 2016, and contains provisions that create a comprehensive State licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical marijuana (cannabis). Under this Act, no person shall engage in said commercial activities without both a State license or permit or other authorization from their local City or County government (dual-licensing requirement). This Act also contains statutory provisions that:

- A. Allow local governments to enact ordinances 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)); and

- B. Expressly provide that the Act 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)); and
- C. Expressly provide that the Act 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
- D. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code Section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)); and

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; and

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; and

WHEREAS, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large number of plants could be cultivated on the same legal parcel, or parcels, within the City; and

WHEREAS, the strong smell of marijuana 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, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, as the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants; and

WHEREAS, there is potential for exposure to or increased usage by school aged children from non-secured areas used for either indoor or outdoor cultivation of any marijuana; and,

WHEREAS, the limited right of qualified patients and their primary caregivers under the California Compassionate Use Act of 1996 and California Health and Safety Code Section 11362.777 to cultivate marijuana plants for medical purposes for the patient does confer upon them the right to grow or maintain the plants or otherwise be exempt from local land use regulations; and,

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; 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 due to the establishment and operation of marijuana cultivation, processing and distribution activities; and

WHEREAS, at the public hearings held on January 25, 2016, and February 22, 2016, the City considered all evidence, including the Planning Commission recommendation, staff reports, attachments, exhibits, correspondence, and public testimony regarding the proposed Municipal Code Text Amendment Z-S-726 on the establishment of land use regulations to expressly prohibit medical marijuana cultivation, processing, distribution, and deliveries in all zoning districts within the City and definitions of medical marijuana uses, and directed that an ordinance be brought back for adoption to additionally include without limitation a prohibition on cultivation of marijuana by a qualified patient or their primary caregiver.

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

SECTION 1. The findings, for approval, for Municipal Code Text Amendment Z-S-726 contained in the Planning Commission Staff Report dated December 9, 2015, and the City Council Staff Reports dated January 25, 2016, and February 22, 2016, and incorporated herein by reference, are approved.

SECTION 2. Municipal Code Text Amendment Z-S-726 to amend Title 9 of the Simi Valley Municipal Code, as specified in Exhibit A attached hereto, or as amended by the City Council, is hereby adopted.

SECTION 3. Severability. If any provision of this Ordinance is declared invalid by a court of competent jurisdiction, adjudicated to a final determination, the City Council finds that said voided part is severable, that the City Council would have adopted the remainder of this Ordinance without the severed and voided part, and that the remainder of this Ordinance shall remain in full force and effect.

SECTION 4. The City Clerk shall cause this ordinance or a summary hereof to be published in a newspaper of general circulation, published in the County of Ventura and circulated in the City, and if applicable, to be posted, in accordance with Section 36933 of the California Government Code; shall certify to the adoption of this ordinance and shall cause a certified copy of this ordinance, together with proof of publication, to be filed in the Office of the Clerk of this City.

SECTION 5. This ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31<sup>st</sup>) day after its passage.

PASSED and ADOPTED this 14<sup>th</sup> day of March 2016.

**Attest:**

/s/  
Ky Spangler, Deputy Director/City Clerk

/s/  
Robert O. Huber, Mayor of the City of Simi Valley, California

**Approved as to Form:**

**Approved as to Content:**

/s/  
Lonnie J. Eldridge, City Attorney

/s/  
Eric J. Levitt, City Manager

/s/  
Peter Lyons, Director  
Department of Environmental Services

**EXHIBIT A**

**SIMI VALLEY MUNICIPAL CODE TEXT AMENDMENT (Z-S-726)**  
(new text underlined)

1. Amend SVMC Section 9-24.030 and Table 2-2 as follows:

**9-24.030 – Residential and Open Space District Land Uses and Permit Requirements**

A. Table 2-2 identifies the uses of land allowed by this Development Code in the residential and open space zoning districts, and the land use permit required to establish each use, in compliance with Chapter 9-22 (Land Use Permit Requirements). Regardless of the permit requirement established by Table 2-2, Planned Development Permit (Section 9-52.050) approval is also required for all construction of new residential units.

**Note:** where the last column in the tables ("Specific Use Regulations") includes a section number, the regulations in the referenced section apply to the use; however, provisions in other sections of this Development Code may also apply.

B. **Specific Plan (SP) Land Use Designations and Zoning Districts:** Allowable land uses within Specific Plans shall be determined by the applicable specific plan, except that Medical Marijuana Cultivation, Processing, Distribution, and Delivery are prohibited uses (refer to Chapter 5-41 for Medical Marijuana Dispensaries).

TABLE 2-2 Allowed Uses and Permit Requirements for Residential and Open Space Zoning Districts		P Permitted Use <sup>(2)</sup> CUP Conditional Use Permit required HP Home Occupation Permit required — Use not allowed									
		PERMIT REQUIRED BY DISTRICT									
LAND USE <sup>(1)</sup>	OS	RE	RVL	RL	RM	Rmod	RH	RVH	MH		
<b>AGRICULTURE, RESOURCE, <u>MEDICAL MARIJUANA</u> &amp; OPEN SPACE USES</b>											
Crop production, horticulture, orchards & vineyards	P	P	P	P	P	P	P	P	P	P	
Farm animal <sup>(4)</sup>	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	9-44.060 <sup>(3)</sup>
<u>Medical marijuana cultivation, processing, distribution, delivery, or dispensaries</u>	—	—	—	—	—	—	—	—	—	—	<u>5-41</u>
<u>Medical marijuana collectives cooperatives</u>	—	—	—	—	—	—	—	—	—	—	<u>5-41</u>
Oil and gas exploration and extraction	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	
Produce stands	P	P	P	P	P	P	P	P	P	P	
Quarries, surface mining, mining	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	9-44.190

Notes:

- (1) See Article 8 for land use definitions. Medical marijuana uses are prohibited (refer to Chapter 5-41 for medical marijuana dispensaries).
- (2) A Planned Development Permit (Section 9-52.050) is also required for all new development.
- (3) Administrative Conditional Use Permit required.
- (4) CUP not required for farm animals in A, L or H Overlay Zones.
- (5) Wireless Telecommunications Facilities shall not be subject to the CUP requirement for Telecommunications Facilities, as set forth in the above Table, and instead shall be subject to the permit requirements of Chapter 35 of Title 5 of the Simi Valley Municipal Code.

Amend SVMC Section 9-26.030 and Table 2-5 as follows:

**9-26.030 – Commercial, Industrial, Business Park Overlay, and Mixed-Use Overlay District Land Uses and Permit Requirements**

A. **General requirements.** Table 2-5 identifies the uses of land allowed by this Development Code in the Commercial, Industrial, Business Park Overlay, and Mixed-Use Overlay Districts, and the Land Use Permit required to establish each use, in compliance with Chapter 9-22 (Land Use Permit Requirements). Regardless of the permit requirement established by Table 2-5, Planned Development Permit approval (Section 9-52.050) is also required for all new construction.

**Note:** Where the last column in the tables ("Specific Use Regulations") includes a section number, the regulations in the referenced section apply to the use; however, provisions in other sections of this Development Code may also apply.

B. **RCC and BP districts.** Allowable land uses within the RCC and BP zoning districts shall be determined by the applicable Specific Plan.

C. **Specific Plan (SP) Land Use Designations and Zoning Districts:** Allowable land uses within Specific Plans shall be determined by the applicable specific plan, except that Medical Marijuana Cultivation, Processing, Distribution, and Deliveries or uses are prohibited (refer to Chapter 5-41 for Medical Marijuana Dispensaries).

TABLE 2-5 Allowed Uses and Permit Requirements for Commercial and Industrial Zoning Districts, and Mixed-Use and Business Park Overlay Districts							P Permitted Use <sup>(2)</sup> CUP Conditional Use Permit required HP Home Occupation Permit required — Use not allowed					
LAND USE <sup>(1)</sup>	PERMIT REQUIRED BY DISTRICT										Specific Use Regulations	
	MU <sup>(9)</sup>	CO	CN	CR	CC	CPD	CI	BP <sup>(9)</sup>	LI	GI		
<b>AGRICULTURE, RESOURCE, <u>MEDICAL MARIJUANA</u> &amp; OPEN SPACE USES</b>												
Agricultural services	—	—	—	—	—	P	—	—	—	—		
Crop production, horticulture, orchards and vineyards	—	P	P	P	P	P	P	P	P	P		
Farm animals - Accessory to nonconforming dwelling	—	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	9-44.060	
<u>Medical marijuana cultivation, processing, distribution, delivery, or dispensaries</u>	—	—	—	—	—	—	—	—	—	—	<u>5-41</u>	
<u>Medical marijuana collectives cooperatives</u>	—	—	—	—	—	—	—	—	—	—	<u>5-41</u>	
Oil and gas exploration and extraction	CUP	CUP	—	CUP	CUP	CUP	CUP	CUP	CUP	CUP		
Quarries, surface mines, mining	CUP	CUP	—	CUP	CUP	CUP	CUP	CUP	CUP	CUP	9-44.160	

**Notes:**

- (1) See Article 8 for land use definitions. Medical marijuana uses are prohibited (refer to Chapter 5-41 for Medical Marijuana Dispensaries).
- (2) A Planned Development Permit (Section 9-52.050) is also required prior to any construction.
- (3) See Section 9-10.070(B) for industrial district land use limitations.
- (4) May require a CUP depending on location (see Section 9-44.040).
- (5) Allowed if located within the Sexually Oriented Business Overlay District, with the approval of a sexually oriented business site plan review application and a zoning clearance. Refer to Section 5-41.01 for Medical Marijuana.

- (6) Administrative Conditional Use Permit.
- (7) Wireless Telecommunications Facilities shall not be subject to the CUP requirement for Telecommunications Facilities, as set forth in the above Table, and instead shall be subject to the permit requirements of Chapter 35 of Title 5 of the Simi Valley Municipal Code.
- (8) Must be located on a property that does not abut a primary or secondary arterial street as defined by Appendix D of the General Plan.
- (9) Overlay District.

2. *Amend SVMC Section 9-80.020(M) (Definitions of Specialized Terms and Phrases) to include the following additions:*

**Medical Marijuana Cultivation, Processing, Distribution, Delivery, or Dispensaries.**  
Land uses primarily engaged in the distribution or furnishing of medical marijuana in the City of Simi Valley as follows:

- 1. **Marijuana.** Any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated 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, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).
- 2. **Marijuana Cultivation.** The growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana either indoors or outdoors. Cultivation is prohibited by any and all groups, individuals, collectives, corporations partnerships, and any and all other business organizations or methods in all zoning districts, including without limitation prohibiting cultivation otherwise permitted for a qualified patient and their primary caregiver in accordance with California Health and Safety Code Sections 11362.5 et seq.
- 3. **Marijuana Processing.** Any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.
- 4. **Marijuana Dispensary or Marijuana Dispensaries.** See Chapter 5-41.
- 5. **Marijuana Deliveries.** Commerical delivery of marijuana to and from locations within the City of Simi Valley for and not for profit, except transportation by a qualified patient and their primary caregiver only for the qualified patients' medical use pursuant to California Business and Professional Code Section 19319.

**Medical Marijuana Collective or Cooperative.** Any profit or not-for-profit group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes is a prohibited land use in the City of Simi Valley. This collective or cooperative is also any profit or not-for-profit, including those group that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the State of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).