

AGENDA
SPECIAL MEETING OF THE CITY OF SUISUN CITY
PLANNING COMMISSION
7:00 P.M., DECEMBER 17, 2015

COUNCIL CHAMBERS
701 CIVIC CENTER BOULEVARD
SUISUN CITY, CALIFORNIA 94585

Next Resolution No. PC15-22

1. ROLL CALL:

Chairperson Clemente
Vice-Chair Pal
Commissioner Adeva
Commissioner Holzwarth
Commissioner Osborne
Commissioner Ramos
Commissioner Smith

Pledge of Allegiance
Invocation

2. ANNOUNCEMENTS:

None

3. MINUTES:

Approval of Planning Commission minutes of November 10, 2015 and December 8, 2015.

4. AUDIENCE COMMUNICATIONS:

This is a time for public comments for items that are not listed on this agenda. Comments should be brief. If you have an item that will require extended discussion, please request the item be scheduled on a future agenda.

CONFLICT OF INTEREST NOTIFICATION

(Any items on this agenda that might be a conflict of interest to any Commissioner should be identified at this time.)

5. PUBLIC HEARINGS:

For each of the following items, the public will be given an opportunity to speak. After a Staff Report, the Chair will open the Public Hearing. At that time, the applicant will be allowed to make a presentation. Members of the public will then be allowed to speak. After all have spoken, the applicant is allowed to respond to issues raised by the public, after which the Public Hearing is normally closed. Comments should be brief and to the point. The Chair reserves the right to limit repetitious or non-related comments. The public is reminded that all decisions of the Planning Commission are appealable to the City Council by filing a written Notice of Appeal with the City Clerk within ten (10) calendar days.

A. A Resolution of the City of Suisun City Planning Commission Recommending the City Council to Adopt an Ordinance Repealing Chapter 18.47 in its Entirety and Adding 18.47 of the Suisun City Code Relating to Regulation on Medical Marijuana

- Adoption of Resolution No. PC15-__-.

7. COMMUNICATION:

A. Staff

B. Commission

C. Agenda Forecast

8. ADJOURN.

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MINUTES
REGULAR MEETING OF THE CITY OF SUISUN CITY
PLANNING COMMISSION
7:00 P.M., NOVEMBER 10, 2015

COUNCIL CHAMBERS
701 CIVIC CENTER BOULEVARD
SUISUN CITY, CALIFORNIA 94585

Next Resolution No. PC15-18

1. ROLL CALL:

Chairperson Clemente
Vice-Chair Pal
Commissioner Adeva
Commissioner Holzwarth
Commissioner Osborne
Commissioner Ramos
Commissioner Smith

Pledge of Allegiance
Invocation

2. ANNOUNCEMENTS:

None

3. MINUTES:

Commissioner Smith moved to approve the Planning Commission minutes of October 13, 2015. Commissioner Adeva seconded the motion. Motion passed 7-0.

4. AUDIENCE COMMUNICATIONS:

None.

CONFLICT OF INTEREST NOTIFICATION

Vice-Chair Pal stated that he had a conflict with Item 5A regarding the day care facility and excused himself.

5. PUBLIC HEARINGS:

A. Request for Granting a Conditional Use Permit to Increase the Capacity for a Daycare Facility to a Maximum of 14 Children at 408 Pearce Court.

John Kearns presented the staff report. He explained that the applicant currently operates a small family daycare and has requested to expand the capacity to a maximum of 14 children.

Chairperson Clemente opened the Public Hearing.

Basha Armstrong applicant, 408 Pearce Street

Commissioner Osborne asked Ms. Armstrong if she had spoken with the neighbors about the expansion. Ms. Armstrong stated that she knew some of the neighbors but had not talked to them about the expansion.

Commissioner Adeva asked if the 14 children included any of her children. Ms. Armstrong indicated that it did include her children as well as her helper and that was one of the reasons for asking for the expansion.

David Foley, 1048 Potrero Circle, voiced concerns about additional traffic in the neighborhood and in the past has asked the Police Department to monitor the traffic for speeding. He does not feel that the large daycare is appropriate for the area.

Debi Foley, 1048 Potrero Circle, asked how many adults will be supervising the children.

Ms. Armstrong stated that she follows State law which requires two adults.

Mr. Kearns explained that along with City requirements in obtaining the Conditional Use Permit the State will conduct its own inspections and will not issue a license unless all State requirements are met.

Mr. Michel Grant, 408 Pearce Court, commented that he has witnessed a lot of speeding by teenagers in the neighborhood but not any additional traffic from the business on their Court.

There being no further comments Chairperson Clemente closed the Public Hearing.

Mr. Foley was concerned about arrival times changing once the permit is received which he feels it would affect the traffic.

Mr. Kearns stated that it was Ms. Armstrong's desire in the future to locate a commercial location for her business.

Commissioner Ramos moved to adopt PC15-18 Approving Conditional Use Permit Application No. UP15-6-004 to Increase the Capacity of a Daycare Facility to a Maximum of 14 Children at 408 Pearce Court (APN 0173-804-080). Commissioner Adeva seconded the motion. Motion passed by a Roll Call vote of 6-0-1 with Vice-Chair Pal abstaining.

B. Request to Establish the Sunset Center Special Sign Overlay District at the Northeast Corner of Highway 12 and Sunset Avenue and to Approve a Pylon Sign at the Sunset Center Shopping Center.

Mr. Kearns presented the staff report. He explained that the City Council on September 3, 2013 amended the Zoning Code to include Special Sign Overlay District regulations that allow the establishment of up to five Special Districts along Highway 12. He further explained the applicant was requesting the establishment of a Special Sign Overlay District (SSOD) for the Sunset Center Shopping Center and that approval of a SSOD is granted through adoption of an Ordinance by the City Council.

Mr. Kearns stated that based on key provisions of the SSOD the applicant is requesting the establishment of the district and the design of a 60 foot tall pylon sign concurrently. The specific design elements and features of the proposed highway-oriented sign include:

- The sign, including its decorative elements, shall not exceed 60' in height;
- The maximum width of the sign shall be 23'2".
- The total number of panels shall be 12 per side (6 sign panels and 6 logos). 4 Sign panels shall be 4'6" x 17' and 2 panels shall be 3'6" x 17'. Each of the logos shall be 5' x 5';
- All of the signage panels on the sign shall be internally illuminated;

- The sign may be designed to accommodate internal cellular or other communications antennas and equipment. No exterior cellular or other communications antennas will be allowed; and
- No electronic message boards or digital signage of any type shall be permitted.

Mr. Kearns stated that Staff and the applicant have worked to establish the types of businesses that would be allowed within the district and certainly will take into consideration others in the future as warranted.

Chairperson Clemente opened the Public Hearing

Becky Hall, Hall Equity Group, 1855 Olympic Blvd., Walnut Creek. Ms. Hall explained that the owner of the sign just owns the shopping center but not the individual pads but this district will pull in those individuals to create one district.

The Commission discussed individual businesses illuminated signage, A-frame signage, maintenance of the new sign, existing businesses in the center that are listed in the not allowed businesses, how the new district effects existing monument signs for individual businesses, no banners allowed on base of new sign, costs to individual businesses,

Vice-Chair Pal made a motion to approve Resolution No. PC15-19 but after further Commission discussion rescinded his motion.

Commissioner Holzwarth moved to approve Resolution No. PC 15-19 Recommending the City Council Establish the Sunset Center Special Sign Overlay District at the Northeast Corner of Highway 12 and Sunset Avenue (APNs 0173-390-010; 030, 040, 050, 060, 070, 100, 130, 140, 150, 160, 170, and 180). Commissioner Smith seconded the motion. Motion passed by a Roll Call vote of 7-0.

Vice Chair Pal moved to approve Resolution No. PC15-20 Recommending the City Council Approve a 60 Foot Tall Pylon Sign at the Sunset Center Shopping Center (APNs 0173-390-150) with the following additional changes: the language that businesses not on the pylon sign can have an A frame sign, and/or a grand opening sign/banner for 30 days, along with removing the language on Page 34 Item 3 from prohibited to not recommended, adding Suisun City to the pylon sign if possible, changing language from business not allowed to businesses not recommended. Commissioner Holzwarth seconded the motion. Motion passed by a Roll Call vote of 7-0.

8. GENERAL BUSINESS

Discussion and Direction Regarding Title 18 “Zoning” Policies.

Mr. Kearns explained that since the last comprehensive update, there have been many changes in terms of land use, changes in state laws, and procedural process changes. He stated that the three topic matters: Front Yard Landscaping, Signage, and Smoke-Free Environments and “Healthy” Store Policies are specific areas additional direction is needed to complete a draft Zoning Ordinance Update and explained each in some detail the staff recommendations.

The Commission discussed the front yard parking percentages and how the restrictions are going to be enforced with the limited code enforcement staff; realtor sign exemptions; schools and non-profit special event signage; and temporary signs and banners and the length of time.

The Commission agreed with staff recommendations and also agreed to limitations on future smoke shops and liquor stores, the locations of them and use permit requirements.

7. COMMUNICATION:

A. Staff

Mr. Kearns thanked the Commission for their comments.

B. Commission

None

C. Agenda Forecast

Mr. Kearns stated the next meeting would be December 8, 2015. Commissioner Ramos reminded the Commission he would be out of town.

8. ADJOURN.

There being no further business the meeting was adjourned at 10:10 pm

Anita Skinner, Commission Secretary

MINUTES
REGULAR MEETING OF THE CITY OF SUISUN CITY
PLANNING COMMISSION
7:00 P.M, DECEMBER 8, 2015

COUNCIL CHAMBERS
701 CIVIC CENTER BOULEVARD
SUISUN CITY, CALIFORNIA 94585

Next Resolution No. PC15-21

1. ROLL CALL:

Chairperson Clemente
Vice-Chair Pal
Commissioner Holzwarth
Commissioner Osborne

Absent
Commissioner Adeva
Commissioner Ramos
Commissioner Smith

Pledge of Allegiance
Invocation

2. ANNOUNCEMENTS:

None

3. AUDIENCE COMMUNICATIONS:

None

CONFLICT OF INTEREST NOTIFICATION

None

5. GENERAL BUSINESS:

John Kearns gave a brief introduction explaining the item before them is asking the Commission to adopt a Resolution of Intent to initiate an Ordinance to handle the new laws on medicinal marijuana. He further stated that Katrina Lapira would be making the presentation as she has been the staff person attending the League of California Cities briefings.

Ms. Lapira presented the staff report. Ms. Lapira gave a brief background starting with the 1996 Compassionate Use Act, the 2003 Medical Marijuana Program Act and the 2013 California Supreme Court Decision leading up to the new laws signed by Govern Brown on October 9, 2015. Ms. Lapira explained that AB266 established a dual licensing structure requiring state and local licenses or permits to establish marijuana businesses; AB 243 includes a provision stating that cities that do not have an ordinance regulating or prohibiting cultivation by March 1, 2016, will lose the authority to regulate or ban cultivation with their city limits. Ms. Lapira further stated that delivery is permitted with a State license unless a city adopts an express prohibition on delivery.

Ms. Lapira explained that the current City code prohibits marijuana dispensaries but does not expressly prohibit deliveries or cultivation in relation to all commercial cannabis activities.

The Commission expressed concerns on how deliveries to the home would be monitored by the City and Police Department.

Ms. Lapira stated that the draft ordinance could be written to include specifics on deliveries and commercial cannabis activities.

The Commission asked that a representative from the Police Department be present at the next meeting to answer any questions regarding enforcement.

Commissioner Holzwarth moved to adopt Resolution No. PC-21 A Resolution of the City of Suisun City Planning Commission Approving a Resolution of Intention to Initiate an Ordinance Repealing and Replacing Chapter 18.47 of the Suisun City Code. Vice-Chair Pal seconded the motion. Motion passed by a 4-0 vote.

7. COMMUNICATION:

- A. Staff:** Mr. Kearns confirmed the next meeting would be on Thursday, December 17, 2015.
- B. Commission:** Vice-Chair Pal asked for a moment of silence for the San Bernadino victims and their families.

Chairperson Clemente stated that he appreciated the quick response by the Police Department on a situation that occurred earlier in the day.

8. ADJOURN.

There being no further business the meeting was adjourned at 7:29 pm.

Anita Skinner, Commission Secretary

a&m/151208.pcm

AGENDA TRANSMITTAL

MEETING DATE: December 17, 2015

PLANNING COMMISSION AGENDA ITEM: PUBLIC HEARING Resolution PC15 ___:
A Resolution of the City of Suisun City Planning Commission Recommending the City Council to Adopt an Ordinance Repealing Chapter 18.47 in its Entirety and Adding 18.47 of the Suisun City Code Relating to Regulation on Medical Marijuana.

ENVIRONMENTAL IMPACT: The consideration of resolution of intention is not subject to the California Environmental Quality Act (CEQA). Staff will provide environmental analysis for any future ordinance that is developed regarding this topic.

BACKGROUND: On October 9, 2015, Governor Brown signed into law **AB 266** (Bonta, Cooley, Jones-Sawyer, Lackey, Wood), **AB 243** (Wood), and **AB 643** (McGuire). Known collectively as the **Medicinal Marijuana Regulation and Safety Act** (MMRSA), these bills are designed to impose additional regulatory mechanisms related to medical marijuana. For example, there will be a dual licensing structure which requires a state and local license or permit in order to cultivate, dispense or transport medical marijuana. The legislation allows cities that wish to ban these land use activities to continue to do so; however, there are critical time constraints.

Cultivation

Per **AB 243** Cities may prohibit or regulate medical marijuana businesses within their jurisdictions, as local authority remains intact under the new law. In order to maintain local authority concerning medicinal marijuana commercial activities, the municipalities must adopt a land use ordinance regulating or prohibiting the cultivation of medical marijuana. An ordinance must be adopted on, or before **January 29, 2016** to come in effect by the **March 1, 2016** deadline. Though legislators suggest a “clean-up” of AB 243 will occur in the next legislative session, perhaps striking this time sensitive provision, action is not guaranteed.

Deliveries and Mobile Dispensaries

Per **AB 266** Delivery is permitted with a State license unless a city adopts an express prohibition on delivery. Although the State will not be issuing licenses for this particular commercial cannabis activity until **January 1, 2018**, this date is still subject to change.

Current Code

Although *Chapter 18.47- Prohibited Businesses* of Suisun City’s Municipal Code prohibits marijuana dispensaries, it does not expressly prohibit deliveries, mobile deliveries, or cultivation in relation to all medical marijuana.

During the regular Planning Commission meeting on Tuesday, December 8, 2015, the Planning Commission approved Resolution PC15-21: A Resolution of The City of Suisun City Planning

PREPARED BY:
REVIEWED BY:
APPROVED BY:

Katrina Lapira, Planning Specialist
John Kearns, Associate Planner
Jason Garben, Development Services Director

Commission Approving a Resolution of Intention to Initiate an Ordinance Repealing and Replacing Chapter 18.47 of the Suisun City Code. As part of that action, staff was directed to draft an ordinance to address time-sensitive provisions pertaining to cultivation and deliveries and mobile deliveries in the recently enacted Medical Marijuana Regulation and Safety Act.

STAFF REPORT: In order to for the City to *maintain local authority* concerning the regulation of medical marijuana, and all commercial cannabis activities within its jurisdiction, the City must pass a land use ordinance specifically addressing cultivation and deliveries by **January 29, 2016**, in order to adhere to the effective deadline of **March 1, 2016**. Otherwise, the State will be the *sole licensing* authority for such matters, with State law superseding local law.

Upon review of *Chapter 18.47- Prohibited Business* (“the Chapter”) of the Suisun City Municipal Code, staff has determined that the Chapter be repealed and replaced in its entirety, to better address the recently enacted regulations related to the cultivation, deliveries, mobile deliveries, as well as other activities concerning medical marijuana.

The new Chapter, titled *Chapter 18.47- Medical Marijuana Regulations*, specifically addresses deficiencies in existing code, prohibiting the cultivation of marijuana, and mobile delivery or distribution of marijuana in addition to the establishment of marijuana and medical dispensaries within City limits.

18.47.020- Definitions

Existing code only defines “marijuana” and “marijuana dispensaries”. The following terms have been added to include and clarify various commercial cannabis activities recognized by the State, and strengthens prohibitions:

- Marijuana cultivation
- Marijuana processing
- Mobile marijuana dispensary
- Operation

Additionally, the following terms are included to further delineate participatory roles and personal use status achieved within the new section of code:

- Person
- Primary caregiver
- Qualified patient

18.47.030- Prohibition

Marijuana Dispensaries- Existing code prohibits marijuana dispensaries as a use in all zoning districts in the city, and by definition, allows for uses permitted by the Code and state laws included in Healthy and Safety Code Section 11362.5. As this provision is written in the amended code, it upholds the prohibition on marijuana dispensaries and the “delivery of marijuana” in all zones throughout the city. The amended provision includes prohibitions reflecting the existing code and satisfies the requirement of stating an express prohibition of deliveries, if desired, per **AB 266**.

Marijuana Cultivation- Existing code does not specifically address the cultivation of marijuana. With the exception of personal individual cultivation for personal use by the cultivator of medical

marijuana, as permitted by the Compassionate Use Act of 1996, this provision expressly prohibits the commercial marijuana cultivation in all zones throughout the city, satisfying the requirement of affirming so via land-use ordinance per **AB 243**.

Mobile Marijuana Dispensaries- Existing code does not address the regulation of mobile marijuana dispensaries. This new section further expounds on the prohibition of deliveries as set forth in the provision of *Marijuana Dispensaries*, expressly prohibiting the various operations of mobile deliveries and the forms in which marijuana products are delivered. Again, his new provision further adheres to the expressed prohibition required of municipalities per **AB 266**.

Marijuana-Related Licenses and Permits- This new section of the amended code reaffirms the City's ability to exert local control over the issuance of administrative or discretionary licenses concerning of marijuana cultivation, deliveries, and dispensaries, and any other related activities. Essentially, this provision states the *maintenance of local authority* regarding commercial cannabis activities within Suisun City's limits.

Overall, by replacing Chapter 18.47 of the Code, the City addresses the deficiencies in existing code regarding commercial cannabis activities before the **March 1, 2016** deadline and serves to maintain municipal authority.

RECOMMENDATION: Staff recommends the Planning Commission:

- Open public hearing;
- Take public comment;
- Close public hearing;
- Adopt Resolution PC15-___: A Resolution of the City of Suisun City Planning Commission Recommending the City Council to Adopt an Ordinance Repealing Chapter 18.47 in its Entirety and Adding 18.47 of the Suisun City Code Relating to Regulation on Medical Marijuana.

ATTACHMENTS:

1. Resolution PC15 ___: A Resolution of the City of Suisun City Planning Commission Recommending the City Council to Adopt an Ordinance Repealing Chapter 18.47 in its Entirety and Adding 18.47 of the Suisun City Code Relating to Regulation on Medical Marijuana.
2. A Draft Ordinance Repealing Chapter 18.47 in its Entirety and Adding Chapter 18.47 of the Suisun City Code Relating to the Regulation of Medical Marijuana.

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RESOLUTION NO. PC 15-22

**A RESOLUTION OF THE CITY OF SUISUN CITY PLANNING COMMISSION
RECOMMENDING THE CITY COUNCIL TO ADOPT AN ORDINANCE REPEALING
CHAPTER 18.47 IN ITS ENTIRETY AND ADDING 18.47 OF THE SUISUN CITY CODE
RELATING TO THE REGULATION ON MEDICAL MARIJUANA.**

WHEREAS, on October 9, 2014, Governor Jerry Brown signed into law three (3) bills – AB 243, AB 266 and SB 643 – which together form the Medical Marijuana Regulation and Safety Act (the “Act”); and

WHEREAS, the Act, which becomes effective January 1, 2016, creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis; and

WHEREAS, the Act further expressly allows 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));

WHEREAS, the Act requires a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m), from operating within the local government’s boundaries to enact an ordinance affirmatively banning such delivery activity (Bus. & Prof. Code § 19340(a));

WHEREAS, under the dual licensing system created by the Act, before any kind of medical marijuana license will be issued by the State, the applicant must have obtained the necessary local license and/or permit for the requested marijuana-related use; and

WHEREAS, pursuant to the following statutes created by the Act, local jurisdictions that adopt a ban on medicinal marijuana dispensaries, cultivation and/or mobile delivery will effectively have a “veto” over whether a state license for the locally regulated activities can be issued:

Business & Professions § 19320(b): “A licensee shall not commence [commercial cannabis] activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.”

Health & Safety Code § 11362.777(b)(1): “A person shall not cultivate medical marijuana without first obtaining . . . A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city. . . in which the cultivation will occur.”

Business & Professions Code § 19320(b): “Revocation of a local license, permit or authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction. . . .”

Business & Professions Code § 19312: “Each licensing authority may suspend or revoke licenses. . . .”

WHEREAS, the Planning Commission at a special meeting on December 17, 2015 reviewed a draft of an ordinance with the intent to repeal and replace Chapter 18.47 in the Suisun City Code; and

WHEREAS, a public notice was published in the Daily Republic on December 5, 2015 for a special Planning Commission meeting; and

WHEREAS, the Planning Commission at a regular meeting on December 8, 2015 adopted a resolution of intent to initiate an ordinance repealing and replacing Chapter 18.47 in the Suisun City Code; and

WHEREAS, a report by the City Staff was presented and made a part of the recommendations of said meeting; and

WHEREAS, a public hearing was held affording members of the public the opportunity to speak on the proposed ordinance repealing Chapter 18.47 in its entirety and adding Chapter 18.47 of the Suisun City Code relating to regulation of medical marijuana; and

WHEREAS, the Planning Commission has duly considered all information presented to it, including written staff reports and any testimony provided at the public hearing;

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Suisun City does hereby adopt Resolution PC15-22; A Resolution of the City of Suisun City Planning Commission Recommending the City Council to Adopt an Ordinance Repealing Chapter 18.47 in its Entirety and Adding 18.47 of the Suisun City Code Relating to Regulation on Medical Marijuana.

The forgoing motion was made by Commissioner Holzwarth and seconded by Commissioner Ramos and carried by the following vote:

AYES:	Commissioners:	Adeva, Clemente, Harris, Smith, Pal, Ramos,
NOES:	Commissioners:	None
ABSENT:	Commissioners:	None
ABSTAIN:	Commissioners:	None

WITNESS my hand and the seal of said City this 17th Day of December 2015.

Anita Skinner
Commission Secretary

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY,
CALIFORNIA REPEALING CHAPTER 18.47 IN ITS ENTIRETY AND ADDING
CHAPTER 18.47 OF THE SUISUN CITY CODE RELATING TO REGULATION OF
MEDICAL MARIJUANA**

WHEREAS, in 1996, the voters of the state of California approved Proposition 215, codified at Health and Safety Code section 11362.5 et seq. and entitled “The Compassionate Use Act of 1996” (the “CUA”); and

WHEREAS, the CUA was intended to provide seriously ill Californians the ability to possess, use and cultivate marijuana for medical use once a physician has deemed the use beneficial to a patient’s health;

WHEREAS, in 2003, California Senate Bill (SB) 420 was enacted by the Legislature to clarify the scope of the CUA and to allow California cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the CUA; and

WHEREAS, these new regulations and rules became known as the Medical Marijuana Program (“MMP”), which, among other things, enhanced the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects; and

WHEREAS, neither the CUA nor the MMP 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 2009 the City Council of the City of Suisun City (“City”) adopted a prohibition on medical marijuana dispensaries city-wide by adopting Ordinance No. 712, codified in the City’s Zoning Ordinance at Chapter 18.47 Section 18.47.010 (“Marijuana Dispensaries); and

WHEREAS, in 2013, the California Supreme Court confirmed that cities have the authority to ban medical marijuana land uses (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729); 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, on October 9, 2014, Governor Jerry Brown signed into law three (3) bills – AB 243, AB 266 and SB 643 – which together form the Medical Marijuana Regulation and Safety Act (the “Act”); and

WHEREAS, the Act, which becomes effective January 1, 2016, creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis; and

WHEREAS, in addition to creating these State controls, the Act preserves the City's authority to prohibit, regulate and/or license medicinal marijuana uses within its jurisdiction, as it expressly provides that the Act:

- Is not intended “to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements” (Bus. & Prof. Code § 19315(a));
- 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 (Bus. & Prof. Code § 19316(c));
- Authorizes local jurisdictions like the City with the power to “adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity” (Bus. & Prof. Code § 19316); and

WHEREAS, the Act further expressly allows 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));

WHEREAS, the Act requires a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m), from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Bus. & Prof. Code § 19340(a));

WHEREAS, under the dual licensing system created by the Act, before any kind of medical marijuana license will be issued by the State, the applicant must have obtained the necessary local license and/or permit for the requested marijuana-related use; and

WHEREAS, pursuant to the following statutes created by the Act, local jurisdictions that adopt a ban on medicinal marijuana dispensaries, cultivation and/or mobile delivery will effectively have a “veto” over whether a state license for the locally regulated activities can be issued:

Business & Professions § 19320(b): “A licensee shall not commence [commercial cannabis] activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.”

Health & Safety Code § 11362.777(b)(1): “A person shall not cultivate medical marijuana without first obtaining . . . A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city. . . in which the cultivation will occur.”

Business & Professions Code § 19320(b): “Revocation of a local license, permit or authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction. . . .”

Business & Professions Code § 19312: “Each licensing authority may suspend or revoke licenses. . . .”

WHEREAS, California Health & Safety Code Section 11362.777(b)(3) expressly provides that the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under the principles of permissive zoning; and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities, including but not limited to offensive odors, criminal activity – including trespassing, theft, violent robberies and robbery attempts, and the illegal sale and distribution of marijuana, and public health concerns including 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, due to the value of marijuana plants and their strong smell (which alerts others to their locations), marijuana cultivation has been linked to break-ins, robbery, armed robbery, theft and attendant violence and injury, creating an increased risk to public safety and/or “attractive nuisance”; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the buildings in which it is cultivated, and 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, 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, based on the findings set forth above and herein, the potential establishment of the cultivation, processing and distribution of medical marijuana in the City without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative impacts of such activities as described above; and

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation, processing, delivery, and/ or distribution will result in the aforementioned threat to public health, safety, and welfare; and

WHEREAS, pursuant to the above-described express statutory authority and its police power, the City has determined that, in addition to the existing prohibition on the establishment of medicinal marijuana dispensaries codified in the Ordinance, an express prohibition on the cultivation and delivery of marijuana is needed to protect the public health, safety and welfare; and

WHEREAS, in light of the findings and determinations set forth herein and further advanced during the public hearing on this matter, the City now desires to amend the City of Suisun City Municipal Code to further prohibit cultivation and mobile dispensaries pursuant to the new state law requirements (AB 266 and AB 243); and

WHEREAS, the provisions of this ordinance would affect all properties city-wide; and

WHEREAS, at a properly noticed public hearing held on December 17, 2015, the Planning Commission considered this issue and adopted Resolution No. 15-__ recommending that the City Council adopt this ordinance; and

WHEREAS, the City Council, after notice duly given as required by law, held a public hearing on ____, 2016 in the City Hall council chamber located at _____, California, to consider the Planning Commission's recommendation as set forth in its Resolution No. __ to establish ban marijuana cultivation, marijuana delivery, and marijuana dispensaries within the city; and

WHEREAS, the City Council has duly considered all information presented to it, including the Planning Commission findings, Planning Commission Resolution No. __, written staff reports, and any testimony provided at the public hearing; and

WHEREAS, all legal prerequisites to the adoption of this ordinance have occurred.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUISUN CITY as follows:

SECTION 1. Recitals. The City Council of Suisun City finds that the above recitals are true and correct.

SECTION 2. Purpose & Authority. The City Council finds that this ordinance: (1) expressly prohibits the delivery of marijuana in the City, (2) expresses its intent to prohibit the cultivation of marijuana in the City and to not administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana in the City; (3) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by the enactment of Chapter 18.47; and (4) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community. The City Council of Suisun City enacts this ordinance in accordance with the authority granted to cities by the California Constitution and California State Law.

SECTION 3. Findings. The recitals set forth above are hereby incorporated by reference. Additionally, the City Council finds as follows:

1. The cultivation and dispensing of marijuana, both fixed and mobile, has significant impacts or the potential for significant impacts on the City. These impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, and the nuisance of strong and noxious odors. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with medical marijuana dispensaries, cultivation and the mobile delivery of same.
2. The proposed repeal and enactment will further the public health, safety and general welfare. The proposed repeal and enactment to the Municipal Code will prohibit marijuana and medical marijuana dispensaries, cultivation and the mobile delivery of same within the City limits and will help protect the public health, safety and general welfare of the City and its residents. They will also mitigate or reduce the crime-related secondary impacts associated with medical marijuana dispensaries, cultivation and the mobile delivery of same, which is contrary to policies that are intended to promote and maintain the public's health, safety and welfare. These prohibited services will help preserve the City's law enforcement services, in that monitoring and addressing the negative secondary effects and adverse impacts will likely burden the City's law enforcement resources.
3. The repeal and enactment will not adversely affect adjoining property as to value, precedent or be detrimental to the area. The proposed repeal and enactment will further solidify the City's stance on prohibiting medical marijuana dispensaries, cultivation, and the mobile delivery of same. The prohibition of these uses will help protect property values in the City and discourage a wide range of illicit activities associated with the sale, cultivation and dispensing of marijuana and/or medical marijuana.

4. The proposed repeal and enactment are consistent with the General Plan and is in compliance with all applicable provisions of the Zoning Code and other ordinances and regulations of the City.
5. The proposed repeal and enactment are consistent with Federal Law. The possession, cultivation, use, and dispensing of marijuana continues to be illegal under Federal law. The Federal Controlled Substances Act classifies marijuana as “Schedule I Drug,” which is defined as a drug or other substance that has a high potential for abuse, and makes it unlawful for any person to cultivate or dispense marijuana. The Controlled Substance Act contains no statutory exemption for the possession of marijuana for medical purposes. The cultivation and dispensing of marijuana has significant impacts or the potential for significant impacts on the City.
6. These impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, increased robberies and other crimes, and the nuisance of strong and noxious odors.

SECTION 4. Repeal. Chapter 18.47 of the Suisun City Municipal Code is hereby repealed in its entirety.

SECTION 5. Enactment. Chapter 18.47 is hereby added to the Suisun City Municipal Code as follows:

**Chapter 18.47
MEDICAL MARIJUANA REGULATIONS**

18.47.010 - Purpose.

The purpose of this chapter is to prohibit the establishment of marijuana and medical marijuana dispensaries, cultivation of marijuana, and mobile delivery or distribution of marijuana, as defined herein, in any zone located within the city.

18.47.020 - Definitions.

- A. “Marijuana” means 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 authorized in strict compliance with 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).

- B. “Marijuana Cultivation” means the growing, planting, harvesting, drying, curing, grading, trimming or processing of marijuana or any part thereof.
- C. “Marijuana 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, and extraction of active ingredients to create marijuana related products and concentrates.
- D. “Marijuana Dispensary” means any for-profit or not-for-profit facility or location, whether permanent or temporary, where the owner(s) or operator(s) intends to or does possess and distribute marijuana, or allows others to possess and distribute marijuana, to more than one person, such as a qualified patient, primary caregiver or a person with an identification card issued in accordance with California Health and Safety Code Sections 11362.5 to 11362.83. A “medical marijuana dispensary” includes a “collective” or “cooperative” as described in Health and Safety Code Section 11362.775, and includes an establishment that delivers marijuana to offsite locations. A “medical marijuana dispensary” shall not include the following uses; provided, that the location of such uses is permitted by the Code and the uses comply with all applicable state laws including Health and Safety Code Section 11362.5 *et seq.*:
 - 1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;
 - 2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
 - 3. A facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
 - 4. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;
 - 5. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or
 - 6. A residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.
- E. “Mobile Marijuana Dispensary” means any business, office, store, facility, location, retail “storefront” or wholesale component of any establishment,

cooperative, collective, club or entity of that nature that transports or delivers (as defined in Business & Professions Code § 193500(m) or any successor statute thereto), or arranges the transportation or delivery of marijuana and/or medical marijuana for any purpose.

- F. "Operation" means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a marijuana dispensary, fixed or mobile.
- G. "Person" means any person, firm, corporation, association, club, society, or other organization. The term "person" shall include any owner, manager, proprietor, employee, volunteer or salesperson.
- H. "Primary caregiver" means the individual (or individuals) older than 18 years of age, designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that qualified patient.
- I. "Qualified patient" means a seriously ill person who obtains a recommendation from a physician, licensed to practice medicine in the State of California, to use marijuana for personal medical purposes. In addition, persons currently under the care of a physician for certain medical conditions including, but not limited to, HIV/AIDS, cancer, glaucoma, epilepsy or other spasticity related illnesses, migraine, anorexia, severe nausea are presumed to be "qualified patients."

18.47.030 - Prohibition.

- A. Marijuana Dispensaries. The establishment or operation of a medical marijuana dispensary, as defined in this chapter, is prohibited in all zones throughout the city. The delivery of marijuana within city limits by any means is further prohibited.
- B. Marijuana Cultivation. With the exception of personal individual cultivation for personal use by the cultivator of medicinal marijuana, as permitted by the Compassionate Use Act of 1996, marijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives and dispensaries, is prohibited in all zones throughout the city.
- C. Mobile Marijuana Dispensaries. The establishment or operation of a mobile marijuana dispensary as defined in this chapter, shall be prohibited within city limits. No person shall locate, operate, own, suffer, allow to be operated or aid, abet, or assist in the operation of any mobile marijuana dispensary within the city.
 - 1. No person shall deliver and/or dispense marijuana and/or medical marijuana to any location within the city from a mobile marijuana dispensary or any other vehicle or method, regardless of where the mobile

marijuana dispensary or vehicle is located, or engage in any operation for this purpose.

2. No person shall deliver and/or dispense any marijuana-infused product such as tinctures, baked goods or other consumable products, to any location within the city from a mobile marijuana dispensary, or any other vehicle or method, regardless of where the mobile marijuana dispensary or vehicle is located, or engage in any operation for this purpose.

D. Marijuana-Related Licenses and Permits. No permit or any other applicable license or entitlement for use, whether administrative or discretionary, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a marijuana dispensary within the city limits, the establishment or operation of a mobile marijuana dispensary within the city limits, marijuana cultivation, marijuana processing or marijuana delivery, and no person shall otherwise establish or conduct such activities in the city, except as otherwise expressly required by federal or state law.

18.47.040 - Use Or Activity Prohibited By State Or Federal Law.

Nothing contained in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

18.47.050 - Enforcement.

- A. Public Nuisance. The violation of any provision in this Chapter shall be and is declared to be a public nuisance and contrary to the public interest and shall, in addition to any other remedy and, at the discretion of the city, create a cause of action for injunctive relief.
- B. Penalties. The following nonexclusive remedies may be used by the City as penalties for violations of this Chapter:
 1. Criminal. Violation of the prohibition against the establishment or operation of a medical marijuana dispensary, fixed or mobile, as set forth at Section 18.47.030 of this chapter, or the causing or permitting another to violate said prohibition, is a misdemeanor.
 2. Civil. The violation of any provision of this chapter shall be and is hereby declared to be a nuisance and contrary to the public interest and shall, at the discretion of city, create a cause of action for injunctive relief as well as any other available civil remedies.
 3. Separate Offense for Each Day. Any person who violates any provision of this chapter is guilty of a separate offense for each day during any portion of

which such person commits, continues, permits, or causes a violation of this chapter and shall be penalized accordingly.

SECTION 6. CEQA. The City Council of Suisun City finds this ordinance is exempt from the California Environmental Quality Act ("CEQA") under Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The amendments to the Suisun City Municipal Code would only prohibit marijuana dispensaries and cultivation, and would not cause a significant effect on the environment.

SECTION 7. Severability. The provisions of Chapter 18.47 are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of Chapter 18.47, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not result in the invalidity of the entire chapter which can be given effect without the invalid provision or application. The City Council of Suisun City hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 8. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after its adoption following second reading.

SECTION 9. Notice. The City Clerk is hereby authorized and directed to certify as the passage of this Ordinance and to give notice thereof by causing copies of this Ordinance to be posted in three public places throughout the City, or published in a county newspaper that is circulated in the City, within 15 days after its passage, there being no newspaper of general circulation printed and published within the City.

* * * * *

PASSED, APPROVED, AND ADOPTED as an Ordinance at a regular meeting of the City Council of the City of Suisun City, California, on this 19th day of January 2016.

Pete Sanchez
Mayor

CERTIFICATION

I, Linda Hobson, City Clerk of the City of Suisun City, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council on January 5, 2016 and passed, approved, and adopted by the City Council of the City of Suisun City at a regular meeting held on the 19th day of January 2016 by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

WITNESS my hand and the seal of said City this 19th day of January 2016.

Linda Hobson, CMC
City Clerk