

ORDINANCE NO. C.S. 1170

AN ORDINANCE REPEALING AND ADOPTING CHAPTER 9.86 OF THE STANISLAUS COUNTY CODE PROHIBITING CANNABIS ACTIVITIES

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA DO ORDAIN AS FOLLOWS:

Section 1. Chapter 9.86 of the Stanislaus County Code is hereby repealed.

Section 2. Chapter 9.86 of the Stanislaus County Code is hereby adopted to read as follows:

"Chapter 9.86 REGULATION OF MEDICAL CANNABIS ACTIVITIES

9.86. 010 PURPOSE AND FINDINGS

- A. In 1996, the voters of 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").
- B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that, "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."
- C. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq., and referred to as the "Medical Marijuana Program") 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 Medical Marijuana Program 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.
- D. 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.

- E. The Medical Marijuana Regulation and Safety Act (MMRSA) comprising Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 was enacted on October 9, 2015 and became effective on January 1, 2016. MMRSA establishes a state licensing program for commercial medical cannabis related activities, including the dispensing and cultivation of cannabis. AB 266, through the addition of Chapter 3.5, Division 8 (Commencing with section 19300) of the Business and Professions Code, allows local jurisdiction to adopt and enforce local regulations and permitting requirements relating to commercial medical cannabis activities so long as they meet the minimum state licensing standards and regulations.
- F. Assembly Bill 243 adds Article 6 (commencing with section 19331) to Chapter 3.5 of Division 8 of the Business and Professions Code, which requires the Department of Food and Agriculture to promulgate regulations and standards for the cultivation of cannabis to address the associated environmental impacts. The bill further adds section 11362.777 to the Health and Safety Code, which provides that the Department of Food and Agriculture shall establish the Medical Cannabis Cultivation Program to license commercial cultivation of cannabis and that unless a local jurisdiction has a land use regulation or ordinance regulating or prohibiting the cultivation of cannabis before March 1, 2016, then the State shall be the sole licensing authority for medical marijuana cultivation applicants in that jurisdiction.
- G. The Federal Controlled Substances Act, 21 U.S.C. sections 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.
- H. Nothing in this chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 841 or to license any activity that is prohibited under the Act except as mandated by state law.
- I. Marijuana cultivation in the unincorporated area of Stanislaus County has adversely affected the health, safety, and well-being of county residents. Countywide prohibition of marijuana 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 unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.
- J. Marijuana cultivation at locations or premises within one thousand feet of schools, parks, and community centers creates unique risks that the marijuana plants may be observed by minors, and therefore be especially vulnerable to theft or recreational consumption by minors. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses

heightened risks that minors will be involved or endangered. Therefore, any amount of marijuana cultivation in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.

- K. The "street value" of a single cannabis plant is substantial. The Federal Drug Enforcement Administration reports that each marijuana plant under various planting conditions may yield an average of two hundred thirty-six (236) grams, or about one-half (½) pound, to eight hundred forty-six (846) grams, or nearly two (2) pounds in its lifetime. Pound prices for domestically produced high-grade cannabis sold illegally within Northern California can reach two thousand dollars (\$2,000.00) to five thousand dollars (\$5,000.00), and far greater amounts in other states. Thus, a single marijuana plant can yield four thousand dollars (\$4,000.00) or more in salable marijuana.
- L. Stanislaus County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preventing the establishment of nuisances, while also allowing the consumption of medical marijuana for ill residents pursuant to Compassionate Use Act of 1996 and the Medical Marijuana Program Act.
- M. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

9.86. 020 DEFINITIONS

For the purposes of this chapter, these words and phrases shall have the following meanings when used in this chapter:

- A. "Cannabis" shall have the same meaning as set forth in Business & Professions Code section 19300.5(f) as the same may be amended from time to time.
- B. "Cannabis activity" and "cannabis activities" shall mean cultivation, cultivation site, nursery, manufacturer, manufacturing site, possession, processing, storing, testing, testing laboratory, labeling, transporter, transport beginning or ending at a location within the county, delivery, dispensary, dispensing, distribution, distributor, sale of medical cannabis or medical cannabis product or cannabis product, and includes those activities of qualified patients and primary caregivers set forth in section 19319 of the Business and Safety Code.
- C. "Caregiver" or "primary caregiver" shall have the same meaning as set forth in Health & Safety Code section 11362.7 (d) as the same may be amended from time to time.
- D. "Cooperative/collective" shall mean two or more persons collectively or cooperatively engaging in any cannabis activity.
- E. "Cultivation" shall have the same meaning as set forth in Business & Professions Code section 19300.5(l) as the same may be amended from time to time.
- F. "Cultivation site" shall have the same meaning as set forth in Business & Professions Code section 19300.5(x) as the same may be amended from time to time.
- G. "Delivery" shall have the same meaning as set forth in Business & Professions Code section 19300.5(m) as the same may be amended from time to time.

- H. "Dispensary" shall have the same meaning as set forth in Business & Professions Code section 19300.5(n) as the same may be amended from time to time. For purposes of this Chapter, "Dispensary" shall also include a cooperative/collective.
- I. "Dispensing" shall have the same meaning as set forth in Business & Professions Code section 19300.5(o) as the same may be amended from time to time.
- J. "Distribution" shall have the same meaning as set forth in Business & Professions Code section 19300.5(p) as the same may be amended from time to time.
- K. "Distributor" shall have the same meaning as set forth in Business & Professions Code section 19300.5(q) as the same may be amended from time to time.
- L. "Manufacturer" shall have the same meaning as set forth in Business & Professions Code section 19300.5(y) as the same may be amended from time to time.
- M. "Manufacturing site" shall have the same meaning as set forth in Business & Professions Code section 19300.5(af) as the same may be amended from time to time.
- N. "Medical Cannabis," "medical cannabis product," or "cannabis product" shall have the same meanings as set forth in Business & Professions Code section 19300.5(ag) as the same may be amended from time to time.
- O. "Medical Marijuana Regulation and Safety Act" or "MMRSA" shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 266, and SB 643.
- P. "Nursery" shall have the same meaning as set forth in Business & Professions Code section 19300.5(ah) as the same may be amended from time to time.
- Q. "Person" shall have the same definition as set forth in Business & Professions Code section 19300.5(aj) as the same may be amended from time to time.
- R. "Qualified patient" shall have the same definition as in section 11362.7 (f) of the Health and Safety Code.
- S. "Testing" shall mean the testing of cannabis or cannabis products.
- T. "Testing laboratory" shall have the same meaning as set forth in Business & Professions Code section 19300.5(z) as the same may be amended from time to time.
- U. "Transporter" shall have the same meaning as set forth in Business & Professions Code section 19300.5(aa) as the same may be amended from time to time.
- V. "Transport" shall have the same meaning as set forth in Business & Professions Code section 19300.5(am) as the same may be amended from time to time.

9.86.030 CANNABIS ACTIVITIES PROHIBITED

Cannabis activities conducted by any person, whether mobile or at a fixed location, for any purpose, are expressly prohibited in the unincorporated areas of the county.

9.86.040 PERMISSIVE ZONING

For the purposes of section 11362.777 of the California Health and Safety Code, Title 21 "Zoning" of the Stanislaus County Code shall be construed under the principles of permissive zoning so that no cannabis activities are permitted uses except where specifically allowed. No cannabis activity shall be construed as an allowed use in any zoning district unless the words "cannabis" or "marijuana" are expressly used in the subject section.

9.86.050 CANNABIS CULTIVATION PROHIBITED

Cannabis cultivation for any purpose is prohibited in the unincorporated areas of the county.

9.86.060 CANNABIS DISPENSARY PROHIBITED

Operation of a cannabis dispensary is prohibited in the unincorporated areas of the county.

9.86.070 TESTING, MANUFACTURING, LABELING AND PACKAGING OF MARIJUANA PROHIBITED

Testing, manufacturing, packaging and labeling of cannabis products are prohibited in the unincorporated areas of the county.

9.86.080 CANNABIS COOPERATIVE/COLLECTIVE PROHIBITED

A cannabis cooperative/collective is a prohibited use in the unincorporated areas of the county.

9.86.090 CANNABIS ACTIVITIES DECLARED A NUISANCE

The establishment, maintenance, or operation of any cannabis activity, as defined in this chapter, within the unincorporated area of the county shall be and the same is declared to be a public nuisance, which is unlawful and may be enjoined, abated and prevented in the manner provided for the abatement of a public nuisance by the laws of the state or by local ordinance. Nothing in this chapter shall be construed to permit the establishment or maintenance of any use which constitutes a public nuisance.

9.86.100 REMEDIES CUMULATIVE

All remedies and penalties for the abatement of public nuisances provided for in this ordinance code shall be cumulative and not exclusive. Enforcement by use of any administrative, criminal or civil action, citation or administrative proceeding or abatement remedy does not preclude the use of additional citations or other remedies as authorized by other ordinance or law. Enforcement remedies may be employed concurrently or consecutively. Enforcement against any person hereunder shall not relieve such person from the responsibility of correcting, removing or abating a violation, nor prevent the enforced correction, removal or abatement thereof. Each and every day, or any portion thereof, during which any violation of this ordinance is committed, continued, or permitted by such person, shall be deemed a separate and distinct offense.

9.86.110 SEVERABILITY

The provisions of this chapter are declared to be severable. If any provision, clause, word, sentence or paragraph of this chapter or the application thereof to any person, establishment or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.”

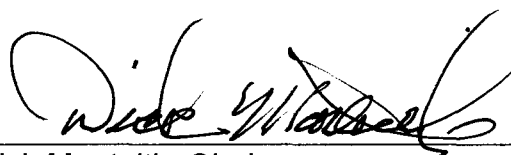
Section 3. This ordinance shall take effect 30 days from and after the date of its passage and before the expiration of 15 days after its passage it shall be published once, with the members voting for and against the same, in the Modesto Bee, a newspaper published in the County of Stanislaus, State of California.

Upon motion of Supervisor Withrow seconded by Supervisor Chiesa, the foregoing Ordinance was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, this 26th day of January, 2016, by the following-called vote:

AYES: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

NOES: Supervisors: None

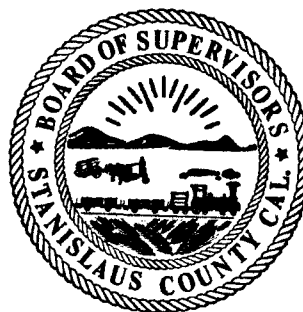
ABSENT: Supervisors: None



Dick Monteith, Chairman
of the Board of Supervisors of the
County of Stanislaus, State of California

ATTEST:

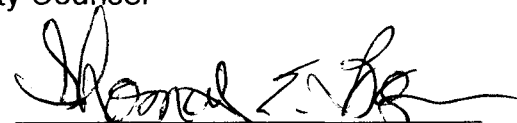
CHRISTINE FERRARO TALLMAN, Clerk of the
Board of Supervisors of the County of Stanislaus,
State of California



By 
Elizabeth A. King, Assistant Clerk

APPROVED AS TO FORM:

John P. Doering
County Counsel

By 
Thomas E. Boze
Assistant County Counsel

STANISLAUS COUNTY ORDINANCE C.S. 1170

Upon motion of Supervisor Withrow, seconded by Supervisor Chiesa, Stanislaus County Ordinance C.S. 1170 was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, this 26th day of January 2016, by the following called vote:

AYES: SUPERVISORS:	O'Brien, Chiesa, Monteith, De Martini, and Chairman Withrow
NOES:	None
ABSENT:	None
ABSTAINING:	None

Ordinance C.S. 1170 amends Stanislaus County Chapter 9.86 by repealing the entirety of the existing ordinance and adopting a new ordinance that specifically prohibits specified cannabis related activities, deems the violation of the ordinance a nuisance, and instructs that with respect to cannabis related activities, the County's zoning ordinance is to be interpreted under the principles of permissive zoning so that if a use is not specifically allowed, it is prohibited.

ADDITIONAL NOTICE IS GIVEN that this Ordinance will take effect thirty (30) days from and after the date of its passage.

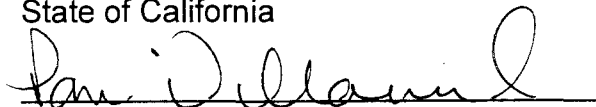
NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, contact Thomas E. Boze in the County Counsel's Office, at 209-525-6376, or at 1010 10th Street, Suite 6400, Modesto, CA.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: January 26, 2016

ATTEST: Christine Ferraro Tallman,
Clerk of the Board of Supervisors
of the County of Stanislaus,
State of California

BY:



Pam Villarreal, Deputy Clerk of the Board

ORD-55-W-1

**DECLARATION OF PUBLICATION
(C.C.P. S2015.5)**

**COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am a printer and Principal clerk of the publisher of THE MODESTO BEE, printed in the City of MODESTO, County of STANISLAUS, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of STANISLAUS, State of California, Under the date of February 25, 1951, Action No. 46453; that the notice of which the annexed is a printed copy, has been published in each issue there of on the following dates, to wit:

Feb 02, 2016

STANISLAUS COUNTY
ORDINANCE C.S. 1170
Upon motion of Supervisor Withrow, seconded by Supervisor Chiesa, Stanislaus County Ordinance C.S. 1170 was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, this 26th day of January 2016, by the following called vote: AYES: SUPERVISORS: O'Brien, Chiesa, Monteith, De Marini, and Chairman Withrow. NOES: None. ABSENT: None. ABSTAINING: None.
Ordinance C.S. 1170 amends Stanislaus County Chapter 9.86 by repealing the entirety of the existing ordinance and adopting a new ordinance that specifically prohibits specified cannabis related activities, deems the violation of the ordinance a nuisance, and instructs that with respect to cannabis related activities, the County's zoning ordinance is to be interpreted under the principles of permissive zoning so that if a use is not specifically allowed, it is prohibited.
ADDITIONAL NOTICE IS GIVEN that this Ordinance will take effect thirty (30) days from and after the date of its passage.
NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, contact Thomas E. Boze in the County Counsel's Office, at 209-525-6376, or at 1010 10th Street, Suite 6400, Modesto, CA.
BY ORDER OF THE BOARD OF SUPERVISORS. DATED: January 26, 2016. ATTEST: Christine Ferraro Tallman, Clerk of the Board of Supervisors of the County of Stanislaus, State of California. BY: Pam Villarreal, Deputy Clerk of the Board.
Pub Dates Feb 2, 2016

I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at

MODESTO, California on

February 2nd, 2016

(By Electronic Facsimile Signature)

Cynthia A. Villarreal