

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF SAN JACINTO)

ORDINANCE NO. 17-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JACINTO, CALIFORNIA APPROVING DEVELOPMENT CODE AMENDMENT DCA 17-02 AMENDING TITLE 17 OF THE SAN JACINTO MUNICIPAL CODE ARTICLE 2 (ZONES, ALLOWABLE LAND USES, AND ZONE-SPECIFIC STANDARDS), ARTICLE 4 (STANDARDS FOR SPECIFIC LAND USES), ARTICLE 6 (PERMIT PROCEDURES), ARTICLE 7 (ADMINISTRATION) AND ARTICLE 8 (DEFINITIONS), CONSISTENT WITH RECENT CHANGES IN STATE LAW CONCERNING THE ADULT USE OF MARIJUANA ACT (AUMU) PASSED BY THE CALIFORNIA VOTERS AT THE NOVEMBER 8, 2016 ELECTION, TO REGULATE THE ESTABLISHMENT OF COMMERCIAL MARIJUANA CULTIVATION IN THE IL – LIGHT INDUSTRIAL ZONE, CREATE DEVELOPMENT STANDARDS FOR COMMERCIAL MARIJUANA CULTIVATION AND AMEND THE LOSS OF NON-CONFORMING STATUS SECTION REGARDING COMMERCIAL MARIJUANA CULTIVATION AS AN AGRICULTURAL USE

WHEREAS, the City of San Jacinto, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, the City passed Ordinance No. 16-10 on November 1, 2016; and

WHEREAS, the City desires to properly regulate all commercial marijuana cultivation activities in the City to protect the health, safety, and welfare of its citizens and to reduce the potential for negative secondary effects of establishing commercial cultivation in San Jacinto; and

WHEREAS, on November 8, 2016, California voters moved to approve Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”); and

WHEREAS, the AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

WHEREAS, to regulate commercial use of marijuana, the AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies “the exclusive authority to create, issue, renew, discipline, suspend, or revoke” licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana; and

WHEREAS, the AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, the AUMA would authorize cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers, and marijuana delivery services; and

WHEREAS, absent appropriate local regulation authorized by the AUMA, state regulations will control; and

WHEREAS, the “Medical Marijuana Regulation and Safety Act” (“MMRSA”), which took effect January 1, 2016, regulates use of marijuana for medical purposes; and

WHEREAS, in May 2013, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013) that cities have the authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, the California 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, under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; 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 uses; and

WHEREAS, this Ordinance would amend the Development Code Articles 2, 4, 6, 7 and 8 in their entirety, as described in Attachment “A” attached to this Ordinance, and incorporated herein by reference, to regulate commercial marijuana cultivation to promote the health, safety, and general welfare of the citizens of the City and to reduce the risks associated with large scale marijuana cultivation to an acceptable level to allow such a use in the City; and

WHEREAS, the City of San Jacinto has filed an application for an Ordinance Amendment, as described in the title of this Ordinance. Hereinafter, the subject Ordinance Amendment request shall be referred to as “the Application”; and

WHEREAS, on the 4th day of April, 2017, the City Council of the City of San Jacinto conducted a duly noticed public hearing on the Application and concluded said hearing on that date, and introduced Ordinance Amendment; and

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

THE CITY COUNCIL OF THE CITY OF SAN JACINTO DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals. The above are true and correct and are incorporated herein by reference.

Section 2. Findings. Find that the amendment to the Development Code – Articles 2, 4, 6, 7 and 8, for consistency with State Law concerning the Adult Use of Marijuana Act (AUMU) passed by the California voters at the November 8, 2016 election is consistent with the City’s General Plan Goals, Policies and Implementation Tools and does not conflict or amend any City Specific Plans, including but not limited to consistently with the following:

LAND USE ELEMENT

Policy 1.1 – Promote a land use composition in San Jacinto that provides a balance or surplus between the generation of public revenues and the cost of providing community services and facilities.

Policy 1.3 – Attract light industry and other compatible employment generating businesses.

Goal 2: Manage and direct growth so that the community and its neighborhoods are protected and enhanced.

Policy 2.1 – Assure that new development is complementary to the existing character of the City.

Goal 6: Preserve and protect the City's cultural, historic, agricultural, and visual resources.

Policy 6.9 – Protect valuable agricultural resources and encourage the continuation of agricultural activities.

Goal 7: Capitalize on the City's many economic development opportunities to promote a strong and economically healthy community.

Policy 7.1 – Promote the economic stability of the San Jacinto Area by encouraging diversification of the City's commercial and industrial base by:

Encouraging a variety of industries to locate in San Jacinto, including retail, high technology, manufacturing, and professional services in order to promote the development of a mixed economic base; and

Encouraging the expansion of existing businesses if possible and extending efforts at business retention.

RESOURCE MANAGEMENT ELEMENT

Goal 5: Where appropriate, conserve agricultural lands and avoid the premature conversion of agricultural land to urban uses.

Policy 5.1 – Encourage continuous agricultural operations.

Policy 5.2 – Foster development techniques and agricultural practices that minimize the incompatibility of agricultural activities with urban development while maximizing agricultural production.

Policy 5.3 – Protect agricultural lands from premature conversion to urban uses.

Resource Management Implementation Tool

RM-23 –Work with property owners and agricultural operations interested in retaining agricultural land to identify feasible ways to maintain the land in agricultural production. Encourage property owners to enroll in and maintain their property in Williamson Act contracts. Apply agricultural conservation easements to land desired by the City and the property owner to remain as agricultural land;

The regulations would not be detrimental to the public interest, health, safety, convenience, or welfare as the proposed amendment will provide land use standards and permitting processes to ensure compatibility, safety and risk reduction associated with large scale marijuana cultivation to an acceptable level, while still providing for good design; and

The regulations are internally consistent with all applicable provisions of the Development Code.

Section 3. Amendment. Replace Development Code Articles 2, 4, 6, 7 and 8 in their entirety, as described in Attachment “A” attached to this Ordinance, and incorporated herein by reference;

Section 4. CEQA. Based upon the substantial evidence presented to the Planning Commission during the public hearing and contained in staff report, administrative record, and written and oral testimony, hereby recommends that the City Council find that this Ordinance is not a “project” as defined by the California Environmental Quality Act (CEQA) Guidelines Section 15378. The amendment provides consistency with State Law under the Adult Use of Marijuana Act (AUMU) and clarifies and ratifies the City’s Development Code regarding indoor and outdoor marijuana cultivation. In view of the nature of the proposed Development Code amendment, adoption of the Ordinance is a not a “project” as that term is defined by the State CEQA Guidelines and, hence, it is exempt from CEQA and CEQA’s requirements do not apply;

Determine that the Development Code Amendment would not result in a direct physical change in the environment or a reasonably foreseeable indirect change to the physical environment. The amendment simply provides greater efficiency to the Development Code and consistency with State Law. The proposed amendment does not approve a specific development proposal, and does not change any existing land use density or intensity such that physical impacts to the environment may occur. Therefore, it can be seen with certainty that the adoption of the Ordinance does not have the potential to cause a significant effect on the environment and is exempt from CEQA review pursuant to State CEQA Guidelines section 15061(b)(3) (General Rule); and

Determine that the General Plan, adopted by the City in 2006, pursuant to a certified Environmental Impact Report (“General Plan EIR”) (State Clearinghouse No. 20011111165) considered, analyzed, and disclosed the impacts associated with existing and continuing agricultural uses and existing and proposed light industrial uses, including air quality, traffic and odor impacts (General Plan EIR, § 5.3), habitat and other biological resources impacts (General Plan EIR, § 5.4), water quality and surface water impacts (General Plan EIR, § 5.8), land use and community cohesion impacts (General Plan EIR, § 5.9), and noise impacts (General Plan EIR, § 5.10). The adoption of this Ordinance does not require any substantial changes to, or major revisions of, the certified EIR’s analysis of impacts associated with existing and continued agricultural activities and existing and proposed light industrial uses, as the impacts associated with marijuana cultivation are not expected to be greater or different than those associated with existing agricultural uses or existing and proposed light industrial activities (and therefore analyzed in the General Plan EIR). Therefore, pursuant to Public Resources Code Section 21166 and State CEQA Guidelines section 15162, no further environmental review is required.

Section 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk’s office located at 595 S. San Jacinto Ave., San Jacinto, CA 92583. The custodian of these records is the City Clerk.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council of the City of San Jacinto hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 7. Effective Date. This Ordinance shall take effect and be in full force on the 30th day from and after its second reading.

Section 8. Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of San Jacinto.

Introduced at a regular meeting of said City Council on the 16th Day of May 2017, by the following vote:

MOVED, PASSED, AND ADOPTED at a regular meeting of the City Council on the 16th day of May 2017 by the following vote:

Ayes:

Nays:

Absent:

Abstain:

City of San Jacinto

By Scott Miller, Mayor

ATTEST:

Angela Walton, City Clerk

CERTIFICATION

**STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF SAN JACINTO)**

I, Angela Walton, hereby certify that the attached is a true copy of Ordinance No. _____ introduced by the City Council of the City of San Jacinto, California, at a regular meeting held May 16, 2017. Ordinance No. _____ was approved, passed and adopted at a regular meeting held the 16th day of May 2017.

Witness my hand and official seal of the City of San Jacinto this _____ day of _____, 2017.

Angela Walton, City Clerk

ATTACHMENT A – REDLINE/STRIKEOUT TEXT OF ARTICLES 2, 4, 6, 7 AND 8