

REGULAR

NUMBER: 298

TITLE: A ZONING ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING SUBSECTION XI-10-13.15 ENTITLED “CANNABIS USES” AND AMENDING SUBSECTION XI-10-13.05 ENTITLED “HOME OCCUPATION” OF THE MILPITAS MUNICIPAL CODE, TITLE XI, CHAPTER 10, SECTION 13, TO REGULATE CANNABIS CULTIVATION FOR PERSONAL USE AND TO PROHIBIT ALL COMMERCIAL CANNABIS USES, AND MAKING FINDINGS OF EXEMPTION FROM ENVIRONMENTAL REVIEW PURSUANT TO CEQA GUIDELINES SECTIONS 15060(C)(3) AND 15061(b)(3)

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas, 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, in 1996, the voters of the State of California approved the Compassionate Use Act of 1996 (“CUA”) (codified as Health and Safety Code, § 11362.5 et seq.) to enable seriously ill Californians to legally possess, use, and cultivate marijuana for personal medical use free from prosecution under enumerated provisions of State law; and

WHEREAS, in 2003, the California Legislature adopted the Medical Marijuana Program Act (“MMP”) (codified as Health and Safety Code, § 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 State law, however certain exemptions from criminal prosecution will expire on or about January 9, 2019 (Health & Safety Code, § 11362.775); and

WHEREAS, in 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that nothing in the CUA or MMP preempted cities’ authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, in 2015, the California Legislature enacted the Medical Cannabis Regulation and Safety Act (MCRSA), which for the first time in the State’s history adopted comprehensive regulations and licensing for medical marijuana businesses; and

WHEREAS, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which legalized the non-medical use of marijuana by adults over 21 years of age, and provides for State licensing of adult-use marijuana businesses; and

WHEREAS, Senate Bill 94 (“SB 94”), signed by the Governor on June 27, 2017 to take effect immediately, repealed the MCRSA, and amended AUMA to consolidate the State licensing scheme applicable to both medical and adult-use commercial cannabis activity under a new law entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and

WHEREAS, MAUCRSA recognizes, preserves and does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that regulate licensed cannabis businesses, including, but not limited to, completely prohibiting the establishment or operation of one or more types of businesses licensed under MAUCRSA within the local jurisdiction (Business and Professions Code, § 26200); and

WHEREAS, AUMA, as amended by MAUCRSA, legalizes cultivation of not more than six living cannabis plants per property by persons 21 years of age or older for personal use; and

WHEREAS, AUMA, as amended by MAUCRSA, provides that a city shall not completely prohibit personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure, but that a city may completely prohibit personal cultivation of cannabis outdoors (Health and Safety Code, § 11362.2); and

WHEREAS, on January 17, 2017, the City Council adopted Urgency Ordinance No. 291 pursuant to Government Code Section 65858, establishing a forty-five (45) day moratorium on all marijuana uses to the extent allowed by law in light of the passage of Proposition 64 in the State of California; and

WHEREAS, on February 21, 2017, the City Council adopted Urgency Ordinance No. 291.1 pursuant to Government Code Section 65858, extending the moratorium on all marijuana uses for a period of 10 months and 15 days; and

WHEREAS, in January 2017, the City Council adopted Urgency Ordinance No. 291.2 pursuant to Government Code Section 65858, extending the moratorium for an additional 12-month period for the full two years authorized under State law, to allow the City to complete its study of potential cannabis regulations; and

WHEREAS, a City Council subcommittee, City staff and the City Council have conducted numerous meetings, community outreach, polling and analysis to determine what types of regulations, if any, the City would like to impose on marijuana/cannabis uses in light of the passage of AUMA and MAUCRSA in the State of California; and

WHEREAS, as a result of that study, and in accordance with Business and Professions Code, Section 26200, this Ordinance effects zoning limitations that prohibit the physical establishment or operation of all commercial cannabis uses within Milpitas, including all commercial cultivators, manufacturers, testing laboratories, retailers/dispensaries, delivery services, distributors and microbusinesses that are or will be licensed by the State of California pursuant to the MAUCRSA, as the best course of action for the City's citizens and the community at large.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. MUNICIPAL CODE AMENDMENT

The City Council hereby adds Subsection XI-10-13.15 entitled "Cannabis Uses" to the Milpitas Municipal Code, Title XI, Chapter 10, Section 13, as set forth on Exhibit A, attached hereto and incorporated herein by this reference.

SECTION 3. MUNICIPAL CODE AMENDMENT

The City Council hereby amends and restates Subparagraph (B)(9) of Subsection XI-10-13.05 entitled "Home Occupation" of the Milpitas Municipal Code, Title XI, Chapter 10, Section 13, as follows:

"9. The occupations listed below shall not be considered incidental and secondary to the residence because they will change the residential character of the dwelling and because they change the character of the neighborhood:

- a. Barber and beauty shops or similar cosmetology establishments;
- b. Kennels and other boarding for pets;
- c. Mechanical and auto repairs;
- d. Medical and dental offices;
- e. Retail sales (excluding retail sales in which all products are sold over the phone or internet and shipped to the customer);
- f. Commercial cannabis uses. See Subsection XI-10-13.15."

All other provisions contained in Subsection XI-10-13.05 of the Milpitas Municipal Code shall remain in full force and effect.

SECTION 4. MUNICIPAL CODE AMENDMENT

The City Council hereby repeals and reserves Chapter 5 of the Milpitas Municipal Code, Title XI.

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly, and therefore is exempt from environmental review pursuant to CEQA Guidelines, Section 15060(c)(3). The City Council further finds that if this Ordinance is deemed to be a project, it is nonetheless exempt from further environmental review under the general rule stated in CEQA Guidelines, Section 15061(b)(3), that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Ordinance prohibits commercial cannabis businesses and outdoor personal cannabis cultivation from establishing or occurring in the City and therefore will maintain current development levels. Accordingly, the City Council finds that this Ordinance is categorically exempt from further CEQA review because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 6. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 7. 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 455 East Calaveras Blvd., Milpitas, CA 95305. The custodian of these records is the City Clerk.

SECTION 8. RESTATEMENT OF EXISTING LAW

The adoption of this Ordinance shall not in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof.

SECTION 9. EFFECTIVE DATE

Pursuant to Government Code, Section 36937, this Ordinance shall take effect thirty (30) days after its final passage.

SECTION 10. CERTIFICATION

The City Clerk shall certify as to the adoption of this Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

SECTION 11. FILING WITH STATE

The City Clerk shall submit a copy of this Ordinance to the Bureau of Cannabis Control as provided by Business and Professions Code, Section 26055.

EXHIBIT A

XI-10-13.15 - Cannabis Uses

- A. Purpose. The purpose of this Subsection is to prohibit the establishment and operation of all commercial cannabis uses within the City of Milpitas, including all cannabis dispensaries, cannabis retailers, cannabis manufacturers, cannabis microbusinesses, cannabis testing laboratories, cannabis distribution, cannabis cultivation, and delivery of cannabis. It is also the intent of this Subsection to regulate indoor cannabis cultivation, and to prohibit all outdoor cultivation, for personal use, including by qualified patients and primary caregivers.
- B. Definitions. For purposes of this Subsection, the following definitions shall apply:
1. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” includes “cannabis” as defined in Business and Professions Code, Section 26001 and in Section 11018 of the Health and Safety Code.
 2. “Cannabis cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
 3. “Cannabis delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Cannabis delivery” also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
 4. “Cannabis distribution” means the procurement, sale, and transport of cannabis and cannabis products and any other activity allowed under the State distributor license(s), including, but not limited to, cannabis storage, quality control and collection of State cannabis taxes.
 5. “Cannabis manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. Cannabis manufacture includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
 6. “Cannabis microbusiness” means a commercial cannabis business that must engage in at least three of the following commercial cannabis activities: cultivation, manufacturing using nonvolatile solvents, distribution, and/or retail.
 7. “Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products include “cannabis products” as defined in Business and Professions Code, Section 26001.
 8. “Cannabis retailer” means a facility where cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale or conducts sales exclusively by delivery. The term “cannabis retailer” includes any nonprofits that may be licensed under Business and Professions Code, Section 26070.5. For purposes of this Chapter, “cannabis retailer” also includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to operate, pursuant to the Compassionate Use Act (Health and Safety Code, § 11362.5) and/or the Medical Marijuana Program (Health and Safety Code, § 11362.7 et seq.), as may be amended.
 9. “Cannabis testing laboratory” means a facility, entity, or site in the State that offers or performs tests of cannabis

or cannabis products.

10. “Commercial cannabis use” includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis microbusinesses, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes “commercial cannabis activity” as defined in Business and Professions Code, Section 26001, and includes any activity that requires, or may require in the future, a license from a State licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended. Commercial cannabis use does not include those activities allowed for personal use by persons 21 years of age or older, without any compensation whatsoever, in strict accordance with Health and Safety Code, Section 11362.1 and does not include the activities of a qualified patient or a primary caregiver that are exempt from State licensure pursuant to Business and Professions Code, Section 26033.
11. “Indoor” means any location that is totally contained within a fully enclosed and secure private residence or accessory building located on the grounds of the private residence.
12. “Personal cultivation” means cannabis cultivation for a natural person’s own personal use and possession in accordance with this Code and state law, including but not limited to Health and Safety Code Sections 11362.1 and 11362.2, as may be amended, and such person does not sell or distribute cannabis to any other person. “Personal use” also means and includes cultivation of medical cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with state law, including Health and Safety Code Sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis.
13. “Private residence” means a house, an apartment unit, accessory dwelling unit, a mobile home, or other similar dwelling occupied for residential purposes.
14. “Outdoor” means any location that is not totally contained within a fully enclosed and secure accessory building or primary residence.

C. Personal Cultivation of Cannabis.

1. Indoor Personal Cultivation. The indoor personal cultivation of cannabis is prohibited except in compliance with the following:
 - a. Cannabis cultivation shall only occur indoors at a private residence, or inside an accessory structure located upon the grounds of a private residence.
 - b. Cannabis cultivation shall be limited to six plants total per residence, whether immature or mature, regardless of how many residents reside at the private residence.
 - c. Persons engaging in indoor cultivation must comply with all State and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor cultivation, and with Health and Safety Code Sections 11362.1 and 11362.2.
 - d. The use of gas products (CO₂, butane, propane, natural gas, etc.) or generators for cultivation of cannabis is prohibited. Use of gas products shall be limited to those allowed by the California Building, Electrical, and Fire Codes as adopted and amended by the City of Milpitas.
 - e. The residence shall maintain fully functional and usable kitchen, bathroom, and bedroom areas for their

intended use by the resident(s), and the premises shall not be used primarily or exclusively for cannabis cultivation.

- f. All areas used for cannabis cultivation shall be located within a fully enclosed and secure structure. “Fully enclosed and secure structure” means a space within a building, greenhouse or other legal structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.

2. Outdoor Personal Cultivation Prohibited. Outdoor personal cultivation of cannabis is prohibited in all zoning districts in the City of Milpitas.

D. Commercial Cannabis Uses.

1. Commercial Cannabis Uses Prohibited. All medical and adult-use commercial cannabis uses as defined herein are prohibited from establishing or operating within the City of Milpitas. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of a commercial cannabis use in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.
2. Deliveries. To the fullest extent allowed by State law, the ban on commercial cannabis uses also prohibits the operation of a cannabis delivery service to customers in the City of Milpitas, including those deliveries originating from a physical location outside of the City.
3. This section shall not be construed to prohibit use of the public roads pursuant to Business and Professions Code, Section 26090 or those activities allowed by Section 26054, subdivisions (c) or (d).

E. Public Nuisance; Effect of State Law.

1. It is hereby declared to be a public nuisance for any person owning, leasing, occupying, or having charge or possession of any real property in the City to cause or allow such real property to be used for a commercial cannabis use or for the cultivation of cannabis except in strict compliance with this Chapter. Any condition caused or permitted to exist in violation of any of the provisions of this Chapter may be abated as a public nuisance as provided in this Code and/or under State law.
2. In the event of any conflict between the penalties enumerated under this Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern. The City Attorney or prosecuting attorney has the authority to declare and prosecute the violation as the maximum penalty permitted by State law, including but not limited to, those penalties prescribed by California Health & Safety Code, Section 11362.4. To the extent certain conduct is immune from arrest and criminal liability pursuant to State law, including the Compassionate Use Act of 1996 (Health and Safety Code Section 11362.5) or the Medical Marijuana Program (Health and Safety Code Section 11362.7 et seq.), criminal penalties shall not apply.

Mary Lavelle

From: Jennifer Strohfus <jenniferstrohfus@gmail.com>
Sent: Thursday, November 29, 2018 3:50 PM
To: Anthony Phan; Bob Nuñez; Marsha Grilli; Garry Barbadillo; Rich Tran
Cc: Mary Lavelle
Subject: [BULK]

Importance: Low

Dear City Councilwoman Grilli,

My family are a long term Milpitas residents and registered voters. We are thrilled to know that city has agreed on the motion to pass urgency ordinance and regular ordinance to permanently ban cannabis businesses in Milpitas city on Nov 20th 2018.

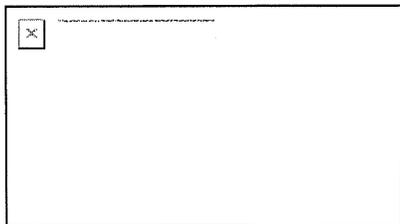
Due to the fact that the current moratorium will expire by Jan. 17, 2019, we urge you consider having all city staff return to City Council on Dec 4th 2018 to discuss the ban cannabis businesses ordinances. Thus there is enough time to pass both urgency ordinance and regular ordinance before the current moratorium expires.

Milpitas has earned the reputation of being a safe community for raising kids and doing business. We can't afford commercial marijuana bring Milpitas down to a crime and poisonous city. Cannabis businesses won't benefit the city revenue due the fact it is illegal under federal law and it will only benefit the politicians who are bribed by cannabis businesses owners. Auditing and legal investigations should be followed up immediately for the Milpitas city council-member who is suspected to received illegal financial contributions from cannabis businesses owners.

Thousands of Milpitas residents share the same voice of "NO Pot Businesses in Milpitas" here:

<https://www.change.org/p/rich-tran-petition-to-overturn-the-city-ordinance-licensing-10-marijuana-businesses-in-milpitas>

Yours sincerely
Milpitas residents and registered voters,
Dan & Jennifer Strohfus



This is an **EXTERNAL EMAIL**.

Please do not open unexpected attachments or those sent by unknown senders.

Mary Lavelle

From: Cj Tie <cuijuan@gmail.com>
Sent: Thursday, November 29, 2018 4:01 PM
To: Mary Lavelle; Bob Nuñez; Rich Tran; mgrilli@ci.milpitas.gov; Anthony Phan; Garry Barbadillo
Subject: [BULK] NO NO NO Pot Shops in Milpitas
Importance: Low

Dear City Clerk,

Definitely NO for Commercial Marijuana in Milpitas!!!

1. Marijuana is a banned drug in most states in US, and most cities in CA. Why Milpitas?
2. It may damage people's health system.
Impacts short-term memory,damage blood vessels,destroy brain cells,triple your risk of death from hypertension,make you more vulnerable to Alzheime.....

3 Milpitas's safety will be greatly affected.

Pot shop will attract more drug dealers and the people using marijuana will appear more in Milpitas that other cites that are not allowed for Pot shops, which will increase the crime rate and make the neighborhood not safe any more.

We live here and we love Milpitas, we want a better future for Milpitas, not a worse one!!!

Best,

Cuijuan (Joyce) Tie

This is an **EXTERNAL EMAIL**.

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Mary Lavelle

From: Ed Jone <edk_doc@yahoo.com>
Sent: Thursday, November 29, 2018 4:24 PM
To: Anthony Phan; Bob Nuñez; Garry Barbadillo; Marsha Grilli; Rich Tran; Mary Lavelle
Subject: [BULK] No Marijuana in our Milpitas

Importance: Low

My family are a long term Milpitas residents and registered voters. We are thrilled to know that city has agreed on the motion to pass urgency ordinance and regular ordinance to permanently ban cannabis businesses in Milpitas city on Nov 20th 2018.

Due to the fact that the current moratorium will expire by Jan. 17, 2019, we urge you consider having all city staff return to City Council on Dec 4th 2018 to discuss the ban cannabis businesses ordinances. Thus there is enough time to pass both urgency ordinance and regular ordinance before the current moratorium expires.

Milpitas has earned the reputation of being a safe community for raising kids and doing business. We can't afford commercial marijuana bring Milpitas down to a crime and poisonous city. Cannabis businesses won't benefit the city revenue due the fact it is illegal under federal law and it will only benefit the politicians who are bribed by cannabis businesses owners. Auditing and legal investigations should be followed up immediately for the Milpitas city council-member who is suspected to received illegal financial contributions from cannabis businesses owners.

Thousands of Milpitas residents share the same voice of "NO POT SHOP in Milpitas" here:

<https://www.change.org/p/rich-tran-petition-to-overturn-the-city-ordinance-licensing-10-marijuana-businesses-in-milpitas>

Yours sincerely Milpitas residents and registered voters,

Edward Jones

This is an **EXTERNAL EMAIL**.
Please do not open unexpected attachments or those sent by unknown senders.

DEC 04 2018

RECEIVED

Hello Esteemed Council members,

My name is Martha Lamdin. I am a lifelong Milpitas resident. I also work as a substance abuse counselor. I have a degree in alcohol and drug studies, I am a nationally certified alcohol and drug counselor (CADC-II) with 13 years' experience in the field and 23 years' experience in the recovery world. I literally teach the class on marijuana.

I am FOR medical dispensaries as a source of revenue in Milpitas. I am also FOR delivery, and for outdoor growing as opposed to indoor, as indoor growing is a waste of resources because the sun is FREE.

Recently California voters, along with 10 other states voted to legalize marijuana, for recreational use. 23 other states have legalized it for medical use. According to the 10th amendment, states can make their own laws regarding such things. Since other countries laws have recently been brought into the debate (as if that is relevant, because this is America), I will also add that the entire country of Canada recently legalized recreational marijuana. Cannabis is not going anywhere, despite a minority of peoples disapproval. A recent poll by the Pew Research Center found that 62% of Americans, including 74% of millennials, said they supported legalizing marijuana. Hopefully, federal laws which are archaic will soon be changed as well.

That being said, I wasn't going to get involved in this debate about cannabis dispensaries in Milpitas. San Jose made 2.2 million dollars in revenue for the tax on cannabis sales last year. San Jose is walking distance of my house. As long as people can grow it or have it delivered, I didn't think it mattered, though it would be an excellent source of revenue for Milpitas as well.

I wasn't going to get involved, Until I heard about the fiasco at the council meeting last week. To hear about adults acting worse than the children they brought with them angered me. Then I saw the pictures in the Milpitas Post of children used like poster children for the DARE program, holding up signs they obviously didn't understand. I was going to go to the Planning commission at that point, maybe share some knowledge. But then I got this flyer taped to my door. This poorly written extremely biased piece of 1930's style Reefer Madness propaganda was enough to get me to this council meeting to let you know that there are many people in Milpitas who find this ridiculous.

I am FOR medical dispensaries as a source of revenue in Milpitas. I am also FOR delivery, and for outdoor growing as opposed to indoor, as indoor growing is a waste of resources because the sun is FREE. I am FOR keeping the conversation going AS ADULTS, to open some cannabis clubs. Maybe not 10, maybe 2 or 3, but some anyway.

People are using scare tactics, cute children and emotional responses to try and shout down something that is potentially a good idea.

Here are some things I can tell you are facts. The people that wrote this have never been to a cannabis club. They are clean well maintained, they have security, they check IDs. They do not want to sell drugs to your children. There are no shady people lurking outside wanting to sell weed or heroin to your

children. I think we can all agree that RECREATIONAL CANNABIS IS FOR ADULTS. Your child has a better chance of being offered marijuana at school, or in the parking lot at McDonalds or 7-11.

Marijuana has many health benefits. It can treat physical problems and help with pain management, fibromyalgia, insomnia, seizures, Parkinson's, cancer, increase appetite, help with depression, PTSD and other mental health issues. But that is also irrelevant because it's legal for recreational use. People can use it just because it's fun if they want to, that's what we voted for.

As far as marijuana being a gateway drug, many things are a gateway, including but not limited to: peers, cigarettes, alcohol, prescription drugs, cough syrup, inhalants, gambling, music, sugar, caffeine, video games, cell phones(very addicting) and endless other behaviors and substances. Addictive behaviors affect the pleasure centers of your brain and your brain cares not what they are.

Statistics that "pot shops" increase crime, car crash rates, traffic congestion and decrease neighborhood safety are skewed. I don't have time to get into those statistics right now but I think the info they have is based on old evidence which has since been re-examined. "POT SHOPS" as they flyer said do not increase those things. Marijuana is already here. All studies suggest that alcohol is the number one offender in car crashes. In Colorado where car accidents initially increased 3% for example, fatal car accidents actually decreased probably because people were smoking weed instead of drinking, they were probably driving slower and being more cautious) but these facts also are irrelevant. Because we are not talking about people USING marijuana, it's ALREADY legal. And it's ALREADY not a good idea to drive under the influence of anything. We are talking about clubs. And Cannabis Clubs do not increase ACCIDENTS.

As for the last concern marijuana being harmful to(as the flyer states) minors. I don't think anyone is proposing cannabis being sold in vending machines at your child's school. We are talking about ADULT CLUBS, for adults over 21. Your child is not allowed in a cannabis club, just like they aren't allowed in a bar. (oh wait, Dave and Busters. Alcohol and video games, but I digress) So lets talk about harm for a minute. Lets weigh the harmful effects of marijuana against other drugs.

According to the National Institute on Drug Abuse Last year, aprox 73,000 people died of drug overdoses. I'm not even talking about harmful long term effects or accidents, Im just talking overdose deaths. Every day, more than 115 Americans die after overdosing on opioids. Every year 44,000 people died from opiates alone 14,721 from cocaine, 10,721 from methamphetamines. We are having an opiate epidemic in this country and 80% of those addicted to heroin started out taking prescription pain killers, then got addicted.

22,000 people in the United States died of overdoses involving prescription drugs in 2013. According to statistics from 2013 benzodiazepine prescription increased by 67%, from 8.1 million to 13.5 million. That's 13.5 million people who take valium and Xanax, which can kill you, and if a person becomes addicted, the withdrawals can kill you.

80,000 people die from alcohol-related deaths each year, and 6 people every day die from alcohol poisoning(that's 2,190 a year) in the US . Alcohol continues to be one of the nation's most preventable

causes of death, second only to cigarettes and poor diet and sedentary lifestyle. Alcohol, readily available for purchase at stores and restaurants all over Milpitas to adults 21 and over, can kill you if you drink too much of it, you can die from overdose. For a person physically addicted to alcohol, the withdrawals, CAN KILL you. When you purchase this deadly substance, you are expected and encouraged to use it responsibly.

Cigarette smoking, according to the Centers for Disease Control, is responsible for more than 480,000 deaths in the United States, 41,000 of those from second hand smoke. Yet they are sold widely at various locations all over Milpitas and adults 21 and over are expected to use them responsibly, though I don't know how that's even possible. Every weekend, as I walk by the tennis courts by my house I am forced to walk through plumes of cigarette smoke, and to look at the hundreds of cigarette butts littering the park on a weekly basis. If you want to jump on a Milpitas health bandwagon, jump on that one. It's disgusting. Side note; No one by the way, throws the remains of their marijuana cigarettes on the ground when they are done with it. They generally take it with them.

As many as 24,000 people a year with diabetes are dying unnecessarily. And the CDC lists heart disease as the number one cause of death, killing nearly 598,000 people a year. The majority of those deaths being preventable with some simple lifestyle changes.

There is an expectation that when you take a drink, or take a recreational or prescription or even an illicit drug, that you will do so as responsibly as you can. So, as you can see Milpitas already sells many, many substances that can kill you, sometimes quickly, sometimes slowly.

I have one more interesting statistic for you regarding how many people have died from marijuana overdose: ZERO. No person in the history of the world has ever ingested so much marijuana that they died. Marijuana does not affect the areas of your brain that are responsible for keeping you alive and breathing and your heart beating, like other drugs do, like alcohol and opiates and benzos and cocaine and meth. You CANNOT DIE FROM MARIJUANA OVERDOSE. This is called harm reduction. If people are going to use something for medicine or recreationally, let it be something that they cannot overdose on or die from withdrawals of.

So unless they plan to shut down every liquor store, every store that sells alcohol, forbid every restaurant from selling alcohol, close every bar, every smoke shop, forbid stores from selling tobacco, and close every fast food establishment that gives people heart disease when they eat too much of it. Unless they plan on doing all that, I am not convinced that the anti-pot people actually care about the health of Milpitas and its children. I think that they just for some reason hate marijuana.

Allow cannabis stores. They are not any worse than anything else.

Thank you, Martha Lamdin, CADC-II

Milpitas Ca

Mary Lavelle

From: kenneth yan <kenneth.c.yan@gmail.com>
Sent: Thursday, December 06, 2018 10:09 AM
To: Mary Lavelle
Subject: [BULK] Comment Regarding Zoning Text Amendment P-ZA18-0002

Importance: Low

Honorable Members of the City Council,

I would like to express my disappointment around the false anti-cannabis rhetoric that has been spread via flyers and social media by some members of the community. Introducing commerce involving cannabis is a delicate subject and needs to be approached with thoughtfulness and community involvement. I believe that opening the dialogue within the community would be a good first step, but those who are circulating propaganda have made it clear that they don't want a dialogue. They want marijuana banned in this city. I urge you to not let a vocal minority steamroll the democratic process. A ban due to fear mongering is short sighted and ignores modern research and statistics. I think opening a proper dialogue will protect our liberties and help us determine the correct course to move the city forward with cannabis to the benefit of both our citizens and businesses.

Thank You,
Kenneth Yan
831 De Anza Ct.
Milpitas, CA 95035

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Mary Lavelle

From: Paul Kwan <paulttkwan@hotmail.com>
Sent: Monday, December 10, 2018 9:25 PM
To: Rich Tran
Cc: Bob Nuñez; Marsha Grilli; Garry Barbadillo; Christopher Diaz; Susan Barrett; Mary Lavelle; Anthony Phan
Subject: Finalizing Milpitas ordinances for the permanent ban of commercial marijuana

Dear Mayor, Council Members and City Attorney,

Thank you for your approval to permanently ban the commercialization of marijuana in the 11/20/18 council members' meeting. This will certainly benefit our city prosperity and image.

Please assure and accelerate the setting up of local ordinances to offer adequate and complete protection for Milpitas citizens in banning commercial marijuana before the current temporary ban expires on 1/17/19.

Furthermore, I appreciate Council Member Anthony Phan's recusation from discussing / voting on this issue in the November 20th meeting. I want him to continue recusing himself from discussing / voting on the marijuana issue especially the proposed ordinances. In addition to being the principal of a marijuana consulting firm, Pinnacle Strategy, Phan received contributions from marijuana and related businesses this year. He has still been zealously pushing for commercial marijuana after the bill to tax cannabis businesses was defeated, reflecting his interest and compassion for the cannabis industry. Regardless of whether Phan resigned from the above-mentioned firm recently and whether there is any criminal offence, I am very concerned. Please ensure that he recuses himself from discussing / voting on this issue continuously.

Again, please certainly follow through on your approved permanent ban on commercial marijuana and finalize the law in this before the current temporary ban expires on 1/17/19.

Thanks you very much.

Sincerely,

Paul Kwan
Milpitas CA

City Clerk's Office
DEC 11 2018
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=====

Mary Lavelle

From: esther tsang <tsangesther@hotmail.com>
Sent: Wednesday, December 12, 2018 8:53 PM
To: Rich Tran; Marsha Grilli; Bob Nuñez; Garry Barbadillo; Christopher Diaz; Susan Barrett; Mary Lavelle; Anthony Phan
Subject: Anthony Phan to recuse himself from future discussions/voting on the marijuana issue

Dear Mayor, Council Members and City Attorney,

I am writing to request Council Member Anthony Phan's continue recusation from discussing/voting on the marijuana issue.

While I appreciate Anthony Phan's recusation from voting on the marijuana issue in the November 20th meeting, I want him to continue to recusing himself from the marijuana issue especially on the proposed ordinances. Given the fact that Anthony Phan was the principal of a marijuana consulting firm, Pinnacle Strategy, and he received contributions from marijuana and related businesses this year; I am very concerned regardless of whether Phan resigned from the above-mentioned firm recently and whether there is any criminal offence. Please ensure that he recuses himself from discussing / voting on the marijuana issue continuously.

Finally, I would like to take this opportunity to thank you and the Council Members for approving the permanent ban on the commercialization of marijuana in the Nov 20th, 2018 meeting. This certainly will enhance our city as a safe, drug free and be among one of those honored cities for good neighborhood such as Sunnyvale, Fremont, Cupertino, and Palo Alto.

Thank you for your attention.

Sincerely,
Esther Tsang



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Mary Lavelle

From: Paul Kwan <paulttkwan@hotmail.com>
Sent: Wednesday, December 12, 2018 8:07 PM
To: Marsha Grilli
Cc: Rich Tran; Bob Nuñez; Garry Barbadillo; Christopher Diaz; Susan Barrett; Mary Lavelle; Anthony Phan
Subject: Re: Finalizing Milpitas ordinances for the permanent ban of commercial marijuana

Hi Marsha

Thanks for your official response on my questions.

Regards

Paul Kwan
Milpitas, CA

From: Marsha Grilli <mgrilli@ci.milpitas.ca.gov>
Sent: Tuesday, December 11, 2018 4:36 PM
To: Paul Kwan
Subject: Re: Finalizing Milpitas ordinances for the permanent ban of commercial marijuana

Thank you for you message. Because of the legal requirements in approval of a permanent ban and an urgency ordinance there is no ability to accelerate the process.
There is a special meeting scheduled for Dec 19 for the first reading of an ordinance.
It will be finalized in January if the Council approves it.

As it will be a new council reviewing and approving the ordinance I can not assure you of the vote.

Councilmember Phan out of respect for the community concerns and abundance of caution has recused himself from the cannabis vote. He separated his employment with Pinnacle in May, 2017 . He has requested a written ruling from the FPPC and will share with the community when it is available which will probably be several months out. He will not be involved in the discussions or votes.

You referenced a failed bill for a cannabis tax. I just wanted to clear up any confusion. There was never a bill for a cannabis tax. Only the voters of Milpitas can approve such a tax and the Mayor and another Councilmember blocked the process for placing it on the ballot for a vote of the people. In my opinion that was a huge mistake.

In your focus on campaign contributions from cannabis and related businesses , please take the time to review all candidate statements not just Councilmember Phan. You will find that he isn't the only one receiving campaign contributions so I'm confused on the focus on only him.

It's been an honor serving as you Councilwoman over the last 4 years.

Marsha Grilli

Vice Mayor
City of Milpitas

On Dec 10, 2018, at 9:25 PM, Paul Kwan <paulttkwan@hotmail.com<mailto:paulttkwan@hotmail.com>> wrote:

Dear Mayor, Council Members and City Attorney,

Thank you for your approval to permanently ban the commercialization of marijuana in the 11/20/18 council members' meeting. This will certainly benefit our city prosperity and image.

Please assure and accelerate the setting up of local ordinances to offer adequate and complete protection for Milpitas citizens in banning commercial marijuana before the current temporary ban expires on 1/17/19.

Furthermore, I appreciate Council Member Anthony Phan's recusation from discussing / voting on this issue in the November 20th meeting. I want him to continue recusing himself from discussing / voting on the marijuana issue especially the proposed ordinances. In addition to being the principal of a marijuana consulting firm, Pinnacle Strategy, Phan received contributions from marijuana and related businesses this year. He has still been zealously pushing for commercial marijuana after the bill to tax cannabis businesses was defeated, reflecting his interest and compassion for the cannabis industry. Regardless of whether Phan resigned from the above-mentioned firm recently and whether there is any criminal offence, I am very concerned. Please ensure that he recuses himself from discussing / voting on this issue continuously.

Again, please certainly follow through on your approved permanent ban on commercial marijuana and finalize the law in this before the current temporary ban expires on 1/17/19.

Thanks you very much.

Sincerely,

Paul Kwan

Milpitas CA

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Mary Lavelle

From: Chia-Ling Kong <chialingkong@gmail.com>
Sent: Thursday, December 13, 2018 9:11 PM
To: Anthony Phan; Mary Lavelle; Rich Tran; Bob Nuñez
Subject: [BULK] Cannabis Ordinance No. 298 -- Support

Importance: Low

City Clerk's Office
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Honorable Members of Milpitas City Council,

I urge you to fully support Ordinance No. 298 on Dec 19 special meeting. This is our last chance to ensure a new ordinance is in place before the moratorium expires on January 17, 2019. The risk of opening the flood gate for state bureau to license unlimited number of cannabis retailers, manufacturing, distribution, micro businesses and test labs would be detrimental to Milpitas. Case in point, San Jose once had 130+ dispensaries causing social and public safety impacts. It took years for City of San Jose to regain local control through cannabis tax ballot measure, strict regulatory and zoning ordinance, and the formation of police cannabis regulatory division, which subsequently reduced to 16-regulated dispensaries in existence today. Milpitas cannot afford to repeat San Jose's costly mistakes. Please recognize that California cannabis regulation is still in its infancy and operating on temporary regulation. State Bureau of Cannabis Control (BCC) just released its proposed cannabis regulations last Friday and currently pending review (<https://www.bcc.ca.gov>). The League of California Cities, California Police Chiefs Association and law enforcement groups have opposed cannabis delivery component in the proposal and the dispute could end up in court. Let's not forget, cannabis remains illegal under federal law. Given the many uncertainties, Milpitas would be wise to err on the side of caution. Within Santa Clara County, only 2 cities (San Jose and Mountain View) have allowed cannabis dispensaries. All others have a moratorium or permanent commercial ban in place. Milpitas should follow the majority of California cities by waiting until state regulations are finalized and the industry is better settled before permitting commercial cannabis activities. Ordinance No 298 is a conscientious and sensible local policy by allowing only cannabis uses explicitly sanctioned by current state law, and retain local control for future amendments.

Please uphold your duty to protect Milpitas public welfare by voting YES on Ordinance No. 298.

Sincerely,
Chia Ling Kong
Milpitas Resident

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Mary Lavelle

From: Paul Kwan <paulttkwan@hotmail.com>
Sent: Thursday, December 13, 2018 10:44 AM
To: Marsha Grilli
Cc: Rich Tran; Bob Nuñez; Garry Barbadillo; Christopher Diaz; Susan Barrett; Mary Lavelle; Anthony Phan
Subject: Re: Finalizing Milpitas ordinances for the permanent ban of commercial marijuana

Mayor, City Attorney, and Anthony Phan,

According to Marsha response regarding Anthony Phan, "He has requested a written ruling from the FPPC and will share with the community when it is available which will probably be several months out. He will not be involved in the discussions or votes." My understand is that Anthony Phan is continuously recusing himself from discussing / voting on the marijuana issue especially the proposed ordinances, and will not be involved in the marijuana ban discussions or votes. If I am wrong, correct me.

Please ensure Anthony Phan will not be involved in the commercial marijuana ban discussions or votes. If I do not receive any objection from you guys by 12/14/18, I will assume this is the Milpitas City Council official final decision that Anthony Phan will not be involved in the marijuana issue and proposed marijuana ordinances in coming several months. Please confirm.

Regards
Paul Kwan
Milpitas, CA

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From: Paul Kwan <paulttkwan@hotmail.com>
Sent: Wednesday, December 12, 2018 8:07 PM
To: Marsha Grilli
Cc: rtran@ci.milpitas.ca.gov; bnunez@ci.milpitas.ca.gov; gbarbadillo@ci.milpitas.ca.gov; cdiaz@ci.milpitas.ca.gov; sbarrett@ci.milpitas.ca.gov; mlavelle@ci.milpitas.ca.gov; aphan@ci.milpitas.ca.gov
Subject: Re: Finalizing Milpitas ordinances for the permanent ban of commercial marijuana

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Regards

Paul Kwan
Milpitas, CA

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Vice Mayor
City of Milpitas

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continuously.

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Thanks you very much.

Sincerely,

Paul Kwan

Milpitas CA

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