

CITY OF RIVERBANK

ORDINANCE NO. 2020-009

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, AMENDING TITLE XI: BUSINESS REGULATIONS; CHAPTER 120: CANNABIS REGULATIONS; SECTION 120.61: PENALTIES, BY REPEALING SECTION §120.61 IN ITS ENTIRETY AND SUBSTITUTING IT WITH A NEW SECTION 120.61, TO THE RIVERBANK MUNICIPAL CODE OF ORDINANCES

WHEREAS, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”). MCRSA establishes a statewide regulatory system for medical cannabis cultivation, manufacturing, delivery, testing, and dispensing; and

WHEREAS, in 2016, the voters of California approved Proposition 64 entitled the “Control, Regulate and Tax Adult Use of Marijuana” (“AUMA”). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which created a single regulatory scheme for both medical and adult-use cannabis. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over which cannabis activities may operate in a particular jurisdiction; and

WHEREAS, in the last two years, the City has discovered several large unpermitted cannabis cultivations in residential areas of the City and as Code Enforcement and the Sheriff’s Department move forward to abate these sites, they are finding the penalty section of the City’s cannabis ordinance is inadequate in deterring these activities; and

WHEREAS, the City Council adoption of Riverbank Ordinance #2017-007 included Section §120.61 PENALTIES for the enforcement of the ordinance, which Council desires to amend with this ordinance; and

WHEREAS, the City Council of the City of Riverbank finds that this ordinance with its proposed penalties is consistent with the city’s current

prohibition of outdoor cultivation and the State's limit of six mature cannabis plants per residence, which is in the best interest of the health, welfare and safety of the public.

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

SECTION 1: Chapter 120: Cannabis Regulations, Section §120.61 Penalties of the Riverbank Municipal Code shall be repealed in its entirety and replaced with a new Chapter 120: Cannabis Regulations, Section §120.61 Penalties, which shall read as follows:

CHAPTER 120: CANNABIS REGULATIONS.

§ 120.61 PENALTIES.

(A) Any use or condition caused, or permitted to exist, in violation of any provision of this chapter shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Cal. Code of Civil Procedure § 731 or any other remedy available to the City.

(B) In addition to any other enforcement permitted by this chapter, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party.

(C) Violations of this chapter shall be subject to an administrative penalty. The amount of the administrative penalty shall be two hundred and fifty dollars (\$250) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000.00) for any subsequent offense.

(D) In addition to any other enforcement permitted by this Chapter, violations of this Chapter shall be subject to an administrative penalty. Any responsible party violating any provision of this Chapter may be issued an administrative citation by a public official in accordance with this Chapter. The administrative citation penalty for each and every cannabis plant cultivated in violation of this Chapter shall be: (1) One Thousand Dollars (\$1,000) per plant; plus (2) One Hundred Dollars (\$100) per plant per day that the plant remains uncorrected past the deadline set forth in the administrative citation.

(E) Notwithstanding the other provisions of this Section, the City may immediately assess fines for violations of the City's building, plumbing, electrical,

or other similar structural, health and safety, or zoning requirements if the violation exists as a result of or to facilitate, the cultivation of cannabis, without first providing an opportunity to correct the violation, unless any of the following are true:

1. A tenant is in possession of the property that is the subject of the administrative action;
2. The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis; or
3. The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.

(F) Each and every day a violation of the provisions of this Chapter exists constitutes a separate and distinct offense and shall be subject to citation.

(G) Neither imposition nor payment of an administrative penalty shall relieve the responsible party from their obligation to correct the violation, nor shall it bar further enforcement action.

SECTION 2: If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 3: This Ordinance shall become effective thirty (30) days from and after its final passage June 23, 2020, provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on June 9, 2020. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the 28th day of July, 2020; motioned by Councilmember District 4 Darlene Barber-Martinez, seconded by Councilmember District 2 Cindy Fosi; moved said ordinance by a City Council vote of 5-0:

AYES: Barber-Martinez, Campbell, Fosi, Uribe, and Mayor O'Brien
NAYS: None
ABSENT: None
ABSTAINED: None


ATTEST:


Annabelle H. Aguilar, CMC
City Clerk

APPROVED:


Richard D. O'Brien
Mayor

APPROVED AS TO FORM:


Tom P. Hallinan, City Attorney