

## **VISTA DEVELOPMENT CODE PROHIBITS MARIJUANA-RELATED LAND USES**

### **PURPOSE**

To inform the public that the Vista Development Code prohibits marijuana-related land uses in the City of Vista, including dispensaries, collectives, cooperatives, cultivation for distribution, storage for distribution or delivery, and similar uses, whether the use is primary or accessory.

### **GENERALLY**

Use of land for marijuana dispensaries, collectives, cooperatives, sales, distribution or otherwise making marijuana available, cultivation for distribution, preparation, extraction, storage, distribution, delivery, and similar uses ("Marijuana-Related Land Uses") are unlawful land uses and may not be established, maintained or operated in the City of Vista, whether as a primary or accessory land use. Marijuana includes any products containing THC or cannabidiol, irrespective of the form or ultimate intended use.

### **BACKGROUND**

Persons have periodically inquired whether Marijuana-Related Land Uses may be established within the City of Vista. These persons have been informed that such uses are prohibited by the Vista Development Code.

### **VISTA'S LAND USE CONTROLS**

Multiple provisions of the Vista Development Code operate, independently, to prohibit Marijuana-Related Land Uses:

1. The Vista Development Code provides that "no...land, building, structure or premises" may "be used for any purpose or in any manner other than is permitted in the zone in which such land, building, structure or premises is located." § 18.06.100.A. Each zone provides a list of allowed uses, and Marijuana-Related Land Uses are not included in any such list.<sup>1</sup> Since only uses included in the list are permitted, Marijuana-Related Land Uses are prohibited because they are not included.
2. Marijuana-Related Land Uses are prohibited under two additional provisions of the Vista Development Code:
  - a. "Under no circumstances will a use or an accessory use be classified as a lawful permitted, special, or conditional use under this Code if its maintenance or operation would constitute, produce, or result in a violation of Federal or State law." VDC § 18.06.100.B.
  - b. "An accessory use does not include any use which would constitute, produce, or result in a violation of Federal or State law. VDC § 18.02.055.C.

## Vista Administrative Policy

3. Given that maintenance of a Marijuana-Related Land Use would conflict with Federal law, such a use cannot be lawfully established under the Vista Development Code. Specifically, Federal law prohibits the manufacture, distribution, or dispensing of marijuana. 21 USC §§ 802(c) & 841. Those terms, as defined by Federal law, extend to all forms of dispensaries, collectives, cultivation, and similar uses. 21 USC § 802.

### **CONSISTENCY WITH OTHER LAWS**

Vista's land use regulations properly harmonize with other laws and represent an essential attribute of its sovereign home rule zoning controls. As the California Supreme Court observes, these zoning controls are constitutionally premised:

"Land use regulation in California historically has been a function of local government under the grant of police power contained in article XI, section 7 of the California Constitution." *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4<sup>th</sup> 1139, 1151.

The Development Code does not conflict with the Health and Safety Code (§§ 11362.5 et seq.) since no portion of that law directs itself to local land use authority. Further, California law does not preempt local bans on Marijuana-Related Land Uses. *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4<sup>th</sup> 72. The Vista Development Code is also consistent with Federal law because it avoids uses which conflict with that law.

### **ENFORCEMENT**

The City may enforce its zoning ordinances prohibiting Marijuana-Related Land Uses through civil action and criminal prosecutions where warranted.



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<sup>1</sup> For example, see VDC § 18.28.010 describing the uses permitted in the R-1 zone "by right," with a minor use permit and with a special use permit.