

ORDINANCE NO. 884

AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CUCAMONGA PROHIBITING ALL COMMERCIAL CANNABIS USES IN THE CITY, INCLUDING DELIVERIES, PROHIBITING ALL MEDICAL MARIJUANA CULTIVATION, INCLUDING CULTIVATION FOR MEDICAL USE BY A QUALIFIED PATIENT OR PRIMARY CAREGIVER, AND DECLARING THE URGENCY THEREOF

A. Recitals.

1. 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" or the "CUA"). The intent of Proposition 215 was to allow persons to use medical cannabis for medical purposes without fear of criminal prosecution. It provides, however, 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."

2. In 2004, the Legislature enacted the Medical Marijuana Program ("MMP") (codified as California Health and Safety Code Section 11362.7 *et seq.*) to clarify the scope of Proposition 215. Amendments to the MMP in 2010 and 2011 confirm that cities and counties have the authority to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to enforce such ordinances.

3. On October 9, 2015, Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively are known as the Medical Marijuana Regulation and Safety Act (hereinafter "MMRSA"). The MMRSA sets up a State licensing scheme for commercial medical marijuana uses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MMRSA allows the City to completely prohibit commercial medical marijuana activities, but requires cities to adopt regulations or prohibitions on the cultivation of cannabis either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority effective March 1, 2016. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if a city wishes to do so.

4. Marijuana nevertheless remains a Schedule 1 Drug under the Federal Controlled Substances Act, 21 U.S.C. § 801 *et seq.* A Schedule 1 Drug is one that has a high potential for abuse, has no accepted medical use in treatment, and is not accepted as safe under medical supervision. Because it is classified as a Schedule 1 Drug, Marijuana (also known as cannabis) is unlawful without exemptions under federal law for any person to cultivate, manufacture, distribute, dispense, or possess with intent.

5. The limited immunity from specified state marijuana laws provided by the CUA and MMP does not confer a land use right or the right to create or maintain a public nuisance. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4th 729 (2013), 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. Furthermore, in *Kirby v. County of Fresno*, No. F070056 (Cal. Ct. App. Dec. 1, 2015), the Court of Appeal held that the CUA and the MMP do not preempt local land use authority to ban the operation of marijuana dispensaries and the cultivation and storage of medical marijuana.

6. Some California cities have reported negative effects of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests.

7. Marijuana cultivation requires the use of limited water resources. In a study released March 18, 2015, California Department of Fish and Wildlife scientists noted that the amount of water used to cultivate cannabis plants is unknown but that it is considered a high water-use plant. Marijuana cultivators also often use fertilizers, pesticides, and other chemical or killing agents that would negatively impact natural resources in the City.

8. The indoor growing and cultivation of marijuana, often unattended, has potential to cause harm to persons and property in that the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a distinct risk of harm to the building and its occupants. Furthermore, as marijuana plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging theft by alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery, or armed robbery of the plants and creating the potential for violent acts related to such criminal activity.

9. Commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP, can adversely affect the health, safety, and well-being of City residents. The unlawful sale, use, or both of marijuana in the vicinity of lawful medical marijuana dispensaries occasionally occurs. Because large amounts of cash are often present at such dispensaries, they can also become the target of violent criminal activity.

10. Mobile dispensaries and delivery services are targets for armed robbery because they carry cash and cannabis that can be sold on the black market. Recent reports of armed robberies include: On August 20, 2015, police in the City of Monterey reported that a man held a medical marijuana delivery driver at gunpoint and fled with marijuana and cash. On December 22, 2014, police in the City of San Bernardino reported that a customer robbed a mobile dispensary driver at gunpoint, which led to an hours-long standoff with police. Cannabis delivery services also increase the risk that children and minors will gain access at the point of delivery.

11. Prohibiting commercial cannabis activities, including but not limited to cultivation and deliveries for medical purposes, is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, noxious smells and indoor electrical fire hazards that may result from such activities. Commercial cannabis activities in the City of Rancho Cucamonga would require the City to use limited resources to monitor and prevent their negative effects.

12. Section 17.30.020.C of the Rancho Cucamonga Municipal Code currently provides that all land uses that are not listed in the zoning district tables are not allowed, except as

otherwise provided for in this title. Commercial cannabis activities, including but not limited to cultivation and delivery of cannabis are not listed in the zoning district tables. Commercial cannabis activities, including but not limited to cultivation and delivery, are therefore currently prohibited under the City's permissive zoning regulations. The City Council nevertheless finds it necessary to expressly prohibit such uses in all zones throughout the City to prevent possible confusion in light of the recent enactment of the MMRSA and the establishment and operation of commercial cannabis activities.

13. Based upon the facts set forth in the Recital above, the City Council finds that there is a current and immediate threat to the public health, safety and welfare presented by the recent enactment and January 1, 2016 effective date of the MMRSA, the potential establishment and operation of commercial cannabis activities, including but not limited to deliveries and cultivation of marijuana for personal medical use, and the March 1, 2016 deadline under the MMRSA. Therefore, the City Council finds that the immediate preservation of the public health, safety, and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 65858 and take effect immediately upon adoption, and its urgency is hereby declared.

14. All legal prerequisites to the adoption of this Ordinance have occurred.

B. Ordinance.

NOW, THEREFORE, the City Council hereby ordains as follows:

Section 1. The City Council finds that the facts set forth in the Recitals, Part A, of this Ordinance are true and correct.

Section 2. Definitions.

Hereinafter in this Ordinance the following words shall have the meanings set forth below, unless the context otherwise requires:

"Cannabis" shall have that meaning set forth in the MMRSA, as the same may be amended from time to time, and shall include 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" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Ordinance, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

"Commercial cannabis activity" shall have that meaning set forth in the MMRSA, as the same may be amended from time to time, and shall include cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, or distribution, as those terms are

defined or used in the MMRSA, and/or sale, of medical cannabis or a medical cannabis product, except as provided in Section 7 of Senate Bill No. 643 (2015-2016).

“Cooperative” shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering, or making available medical cannabis, with or without compensation.

“Cultivation” shall have the same set forth in the MMRSA, as the same may be amended from time to time, and shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Delivery” shall have the same meaning as set forth in the MMRSA, as the same may be amended from time to time, and shall include the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. “Delivery” also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under the MMRSA, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

“Dispensary” shall have the same meaning as set forth in the MMRSA, as the same may be amended from time to time, and shall include any facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale. “Dispensary” shall also include “dispensary” as defined in Rancho Cucamonga Municipal Code Section 19.1304.020, and a cooperative as defined herein.

“Medical cannabis,” “medical cannabis product,” or “cannabis product” shall have the same meanings as set forth in the MMRSA, as the same may be amended from time to time.

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall collectively mean the Medical Marijuana Regulation and Safety Act as contained, codified, enacted, and signed into law on October 9, 2015, as Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643, as the same may be amended from time to time.

“Primary caregiver” shall have the same meaning as set forth in Health and Safety Code § 11362.7, as the same may be amended from time to time.

“Qualifying patient” or “Qualified patient” shall have the same meaning as set forth in Health and Safety Code § 11362.7, as the same may be amended from time to time.

Section 3. Prohibition.

a. Commercial cannabis activities of any type or nature are expressly prohibited in all zones and all specific plan areas in the City. No person shall establish, operate, maintain, conduct or allow a commercial cannabis activity anywhere within the City. No application for a building permit, conditional use permit, business license, or any other entitlement authorizing the establishment, operation, maintenance, development, or construction any commercial cannabis activity, shall be approved during the term of this Ordinance.

b. To the extent not already prohibited by subsection A above, delivery of medical cannabis and/or medical cannabis products originating in the City, terminating in the City, or both is expressly prohibited everywhere in the City of Rancho Cucamonga. No person shall conduct or perform any delivery of any medical cannabis or medical cannabis product, which delivery either originates in the City, terminates in the City, or both.

c. This section is intended to prohibit all activities for which a State license is required pursuant to the MMRSA. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MMRSA.

d. Cultivation of cannabis for commercial or non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones and all specific plan areas in the City of Rancho Cucamonga. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes.

e. Nothing in this Ordinance, or its adoption, shall be deemed to affect any other prohibitions or regulations relating to marijuana contained in the Rancho Cucamonga Municipal Code. In the event of any conflict between said Chapter and this Ordinance, the most restrictive provision shall govern. Nothing in this Ordinance shall be deemed to affect or excuse any violation of the Municipal Code.

Section 4. Nothing in this Ordinance shall be interpreted to the effect that the City's permissive zoning scheme allows any use not specifically listed as permitted therein. The City Council hereby finds that notwithstanding any provision of the Rancho Cucamonga Municipal Code to the contrary, commercial cannabis activities, including but not limited to cultivation and manufacture, are not allowed land uses under Title 17 or any other provision of this Code. For example and without any limitation, the terms "agriculture" and "manufacturing" in Title 17 have always excluded and shall continue to exclude cannabis cultivation and manufacture, respectively, as those terms are defined and used in Title 17.

Section 5. Public Nuisance. Any use or condition caused, or permitted to exist, in violation of any provision of this Ordinance shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure Section 731 or by any other remedy available to the City.

Section 6. Penalty. Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. Notwithstanding the foregoing, nothing in this Ordinance shall authorize a criminal prosecution or arrest prohibited by Health and Safety Code section 11362.71, et seq.

Section 7. Civil Penalties. In addition to any other enforcement permitted by this Ordinance, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Ordinance. In any civil action brought pursuant to this Ordinance, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party.

Section 8. CEQA. This Ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15305, minor alterations in land use, and section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the

environment, and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. Provisions of the City's permissive zoning ordinance already prohibit all uses that are being expressly prohibited by this Ordinance. Therefore, this Ordinance has no impact on the physical environment as it will not result in any changes.

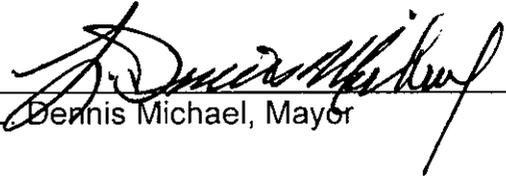
Section 9. Severability. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions 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 10. Term. This Ordinance is adopted as an urgency, interim ordinance and shall take effect immediately. This Ordinance shall expire, and the prohibition established hereby shall terminate, forty-five (45) days after the date of adoption unless extended by the City Council pursuant to California Government Code Section 65858.

Section 11. The City Clerk shall certify as to the adoption of this Ordinance.

PASSED, APPROVED, AND ADOPTED this 16th day of December 2015.

AYES: Alexander, Kennedy, Michael, Spagnolo, Williams
NOES: None
ABSENT: None
ABSTAINED: None



Dennis Michael, Mayor

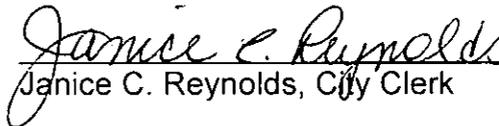
ATTEST:



Janice C. Reynolds, City Clerk

I, **JANICE C. REYNOLDS, CITY CLERK** of the City of Rancho Cucamonga, California, do hereby certify that the foregoing urgency Ordinance was adopted at a Regular Meeting of the Council of the City of Rancho Cucamonga held on the 16th day of December 2015.

Executed this 17th day of December 2015, at Rancho Cucamonga, California.



Janice C. Reynolds, City Clerk