

CITY COUNCIL ORDINANCE NO. 16-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA ADDING CHAPTER 3-39 TO THE IRVINE ZONING CODE TO PROHIBIT ALL CANNABIS RELATED USES, COMMERCIAL CANNABIS ACTIVITIES, AND THE DELIVERY AND CULTIVATION OF CANNABIS IN THE CITY

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health & Safety Code § 11362.5, and entitled "The Compassionate Use Act of 1996" or "CUA"); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for legitimate medical purposes to use it without fear of criminal prosecution under limited, specific circumstances; and

WHEREAS, Proposition 215 further provides that "nothing in this section shall be construed or supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes;" and

WHEREAS, the ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere;" and

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as California Health & Safety Code § 11362.7 *et seq.* and referred to as the Medical Marijuana Program Act or "MMPA") to clarify the scope of the CUA and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specific state criminal statutes; and

WHEREAS, Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMPA to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729, the California Supreme Court confirmed the ability of local entities to ban and/or regulate medical marijuana cooperative and collectives, holding that "[n]othing in the CUA or MMP[A] expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land..."; and

WHEREAS, 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..." and thus confirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, the Federal Controlled Substances Act (21 U.S.C. § 801 *et seq.*) classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, no currently accepted medical use for treatment in the United States, and which has not been accepted as safe for use under medical supervision; and

WHEREAS, the Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with an intent to manufacture, distribute or dispense marijuana; and

WHEREAS, the Federal Controlled Substances Act contains no exception for medical purposes; and

WHEREAS, on October 9, 2015, Governor Brown signed three (3) bills into law (AB 266, AB 243, and SB 643), which collectively are known as the Medical Marijuana Regulation and Safety Act ("MMRSA"); and

WHEREAS, 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 in addition to a State license in order to operate; and

WHEREAS, the MMRSA also allows cities to completely prohibit all commercial medical marijuana activities; and

WHEREAS, the City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMPA can adversely affect the health, safety and well-being of City residents; and

WHEREAS, citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities; and

WHEREAS, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, the limited immunity from specified state marijuana laws provided by the CUA and MMPA does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA contains language that requires cities to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority; and

WHEREAS, the MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so; and

WHEREAS, the MMRSA is silent as to how the City must prohibit these or other types of commercial medical marijuana activities; and

WHEREAS, while the City believes that cultivation, dispensaries, and deliveries and all other types of marijuana uses are already prohibited under the City's permissive zoning regulations, it desires to enact this ordinance to expressly make clear that such activities are prohibited throughout the City; and

WHEREAS, the Planning Commission held a duly noticed public hearing on December 3, 2015 at which time it considered all evidence presented, both written and oral, and at the of the hearing, voted to adopt a resolution recommending that the City Council adopt this ordinance; and

WHEREAS, the City Council held a duly noticed public hearing on this Ordinance on January 12, 2016 at which it considered all evidence presented, both written and oral.

NOW, THEREFORE, the City Council of the City of Irvine, California DOES HEREBY ORDAIN as follows:

SECTION 1. Recitals. The foregoing recitals are true and correct and are incorporated herein as though set forth in full.

SECTION 2. Authority. This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the CUA, the MMPA, and the MMRSA.

SECTION 3: Adoption. Chapter 3-39 is hereby added to read in its entirety as follows:

Chapter 3-39

CANNABIS RELATED USES, COMMERCIAL CANNABIS ACTIVITIES, DELIVERIES, AND CULTIVATION PROHIBITED

Sec. 3-39-1 Definitions

"Cannabis" shall 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" also means "marijuana" as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. The term "Cannabis" shall also have the same meaning as set forth

in Business & Professions Code § 19300.5(f), as may be amended from time to time. "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 chapter, "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.

"Caregiver" or "Primary Caregiver" shall have the same meaning as set forth in Health & Safety Code § 11362.7, as may be amended from time to time.

"Commercial Cannabis Activity" shall have the same meaning as set forth in Business & Professions Code § 19300.5(k), as may be amended from time to time.

"Cooperative" shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering, or making available marijuana, with or without cultivation.

"Cultivation" or "Cultivate" shall have the same meaning as set forth in Business & Professions Code § 19300.5(I), as may be amended from time to time.

"Delivery" shall have the same meaning as set forth in Business & Professions Code § 19300.5(m), as may be amended from time to time.

"Dispensary" shall have the same meaning set forth in Business & Professions Code § 19300.5(n), as may be amended from time to time. For purposes of this Chapter, Dispensary shall also include a Cooperative. Dispensary shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health & Safety Code; (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (3) a residential care facility for persons with chronic life threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

"Medical Cannabis" or "Cannabis" shall have the same meaning as set forth in Business & Professions Code § 19300.5(ag), as may be amended from time to time.

"Medical Marijuana Regulation and Safety Act" or "MMRSA" shall mean and refer to the following three bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, SB 643.

"Qualifying Patient" or "Qualified Patient" shall have the same meaning as set forth in Health and Safety Code section 11362.7 as may be amended from time to time.

Sec. 3-39-2 Prohibition.

All Cannabis related uses, including dispensaries, cultivation, and all other Commercial Cannabis Activities for which a State license is required under the MMRSA are prohibited in all zones throughout the City. Accordingly, the City shall not issue any permit, or process any license or other entitlement for any Cannabis related use or any other activity for which a State license is required under the MMRSA.

A. Cannabis Related Uses. All Cannabis related uses, including cultivation, dispensaries, and deliveries are expressly prohibited in all zones and all specific plan areas in the City, regardless of whether the Cannabis is used for medicinal purposes or whether such uses qualify as Commercial Cannabis Activities under the MMRSA. No person shall establish, operate, conduct, permit or allow any Cannabis related use anywhere within the City.

B. Medical Cannabis Uses. All Medical Cannabis related uses, including cultivation, dispensaries, and deliveries are expressly prohibited in all zones and all specific plan areas in the City, regardless of whether such uses qualify as Commercial Cannabis Activities under the MMRSA. No person shall establish, operate, conduct, permit or allow any Medical Cannabis related land use anywhere within the City.

C. Commercial Cannabis Activities. All Commercial Cannabis Activities, including but not limited to Cooperatives, Dispensaries, Cultivation, and Deliveries, are expressly prohibited in all zones and all specific plan areas in the City. No person shall establish, operate, conduct, permit or allow a Commercial Cannabis Activity anywhere within the City.

D. Cannabis Deliveries. All Deliveries of Cannabis and Medical Cannabis are expressly prohibited in the City. No person shall conduct any Deliveries of Cannabis or Medical Cannabis that either originate or terminate at any location within the City.

E. Cannabis Cultivation. The Cultivation of Cannabis, regardless of whether for commercial or non-commercial purposes, and including Cultivation by a Qualified Patient or Primary Caregiver is expressly prohibited in all zones and all specific plan areas in the City. No person, including but not limited to a Qualified Patient or Primary Caregiver, shall Cultivate any amount of Cannabis in the City, regardless of whether or not the Cannabis is intended to be used for medical purposes.

Sec. 3-39-3 Public Nuisance

Any use or condition cause, or permitted to exist, in violation of any provision of this Chapter 3-39 shall be, and is hereby declared to be, a public nuisance and may be summarily abated by the City pursuant to

California Code of Civil Procedure Section 731 or any other remedy available at law.

Sec. 3-39-4 Civil Penalties

In addition to any other enforcement permitted by the City's Zoning and/or Municipal Codes, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this Chapter. In any civil action that is brought pursuant to this Chapter, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.

SECTION 4: No Changes to Permitted Uses. Nothing in this Ordinance shall be interpreted to allow any land use which is not expressly listed as permitted or conditionally permitted within the City's Zoning Code.

SECTION 5: CEQA Determination. In adopting this Ordinance, the City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations Sections 15061(b)(3) and 15378, in that it can be seen with certainty that the adoption of the Municipal Code amendments propose no activity that may have a significant effect on the environment and will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

SECTION 6: 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 and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared unconstitutional.

SECTION 7. Effective Date. This Ordinance shall become effective thirty (30) days after its passage and adoption. Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

SECTION 8. The City Clerk shall certify to the passage of this Ordinance and this Ordinance shall be published as required by law and shall take effect as provided by law.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 26 day of January 2016.

MAYOR OF THE CITY OF IRVINE

ATTEST:

CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF IRVINE)

I, Molly McLaughlin, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on the 12th of January, 2016, and duly adopted at a regular meeting of the City Council of the City of Irvine held on the 26th day of January 2016.

AYES:	5	COUNCILMEMBERS:	Krom, Lalloway, Schott, Shea and Choi
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

CITY CLERK OF THE CITY OF IRVINE