

ORDINANCE NO. 2332

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF ARCADIA, CALIFORNIA AMENDING SECTIONS
9220.45.1.3 AND 9213 OF THE ARCADIA MUNICIPAL
CODE TO PROHIBIT CANNABIS DISPENSARIES,
CANNABIS MANUFACTURERS, CULTIVATION, AND
DELIVERY OF CANNABIS IN THE CITY

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

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 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 the Penal Code; and

WHEREAS, neither the Compassionate Use Act ("CUA") nor the MMP requires or imposes an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in May 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 cities have the authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“Act”) into law; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder; and

WHEREAS, the Act contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the Act, unless local governments have “land use regulations or ordinances regulating or prohibiting the cultivation of marijuana...” (Health and Safety Code §11362.777(c)(4); and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing, and distribution uses, 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; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor which is detectable far beyond property boundaries if grown outdoors; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery, or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants, including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

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

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing, and distribution uses; and

WHEREAS, the Arcadia Municipal Code ("Code") does not fully address the cultivation, processing, delivery and distribution of medical cannabis; and

WHEREAS, based on the findings above, the potential establishment of cannabis dispensaries, cultivation, cannabis manufacturers and delivery of cannabis uses in the City without regulation poses a current and immediate threat to the public health, safety and welfare in the City due to the negative land use and other impacts of such uses as described above; and

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for cannabis

dispensaries, cultivation, cannabis manufacturers and delivery of cannabis will result in the aforementioned threat to public health, safety, or welfare.

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

SECTION 1. Section 9220.45.1.3 of Part 2 of Chapter 2 of Article IX of the Arcadia Municipal Code is hereby amended in its entirety to read as follows:

“9220.45.1.3. MEDICAL MARIJUANA USES.

For purposes of this Code, the following definitions shall apply:

A. “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” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

B. “Cannabis dispensary” means a facility where cannabis, cannabis products, or devices for the use of 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.

C. “Cannabis manufacturer” means a person that conducts 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

D. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

E. "Delivery" means the commercial transfer of cannabis or cannabis products, and includes origination or termination within the City as well as a delivery business."

SECTION 2. Section 9213 of Part 1 of Chapter 2 of Article IX of the Arcadia Municipal Code is hereby amended in its entirety to read as follows:

"9213. OMISSION OR AMBIGUITY; MEDICAL MARIJUANA USES PROHIBITED.

A. If any "use" is for any reason omitted from the lists of those specified as permissible in each of the various zones herein designated, or if ambiguity arises concerning the appropriate classification of a particular use within the meaning and intent of this Chapter, or if ambiguity exists with reference to matters of height, yard requirements or area requirements as set forth herein and as they may pertain to unforeseen circumstances, it shall be the duty of the Planning Commission to ascertain all pertinent facts concerning said use and by resolution of record set forth its findings and the reasons therefor. Such findings and resolutions shall be referred to the City Council and, if approved by the Council, thereafter such interpretation shall govern.

B. Cannabis dispensaries, cultivation, cannabis manufacturers, and delivery of cannabis, as defined in Section 9220.45.1.3, shall be considered prohibited uses in all zoning districts of the City. 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 dispensaries, cannabis cultivation, cannabis manufacturers, and delivery of cannabis as defined herein in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.”

SECTION 3. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

SECTION 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrases be declared unconstitutional.

SECTION 5. Effective Date. This Ordinance shall become effective upon the thirty-first (31st) day following its adoption by a majority vote of the City Council.

SECTION 6. The City Clerk shall certify to the adoption of this Ordinance and shall cause a copy of the same to be published in the official newspaper of said City within fifteen (15) days after its adoption. This Ordinance shall take effect thirty-one (31) days after its adoption.

Passed, approved and adopted this 19th day of January, 2016.

/s/ Gary A. Kovacic
Mayor of City of Arcadia

ATTEST:

/s/ Gene Glasco
City Clerk

APPROVED AS TO FORM:

/s/ Stephen P. Deitsch
Stephen P. Deitsch
City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF ARCADIA)

I, GENE GLASCO, City Clerk of the City of Arcadia, hereby certifies that the foregoing Ordinance No. 2332 was passed and adopted by the City Council of the City of Arcadia, signed by the Mayor and attested to by the City Clerk at a regular meeting of said Council held on the 19th day of January, 2016 and that said Ordinance was adopted by the following vote, to wit:

AYES: Council Member Beck, Chandler, Segal, Tay, Kovacic

NOES: None

ABSENT: None

/s/ Gene Glasco
City Clerk of the City of Arcadia