

ORDINANCE NO. 15-955

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA AMENDING SECTION 11.10.030 OF THE MONTCLAIR MUNICIPAL CODE PROHIBITING MEDICAL MARIJUANA DISPENSARIES, CULTIVATION OF MARIJUANA AND ALL COMMERCIAL MEDICAL MARIJUANA USES IN THE CITY

THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1.** Findings and Purpose. The City Council finds and declares as follows:

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

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides 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." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

C. 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" or "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program 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.

D. On March 5, 2007, the Montclair City Council unanimously adopted Ordinance No. 07-891 to prohibit medical marijuana dispensaries within any zone within the corporate boundaries of the City of Montclair.

E. In City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4<sup>th</sup> 729, 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.4<sup>th</sup> 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.

F. 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, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes, although there is recent case law that raises a question as to whether the Federal Government may enforce the Act where medical marijuana is allowed.

G. On October 9, 2015, Governor Brown signed three bills into law (AB 266, AB 243, and SB 643), which collectively are known as the Medical Marijuana Regulation and Safety Act (hereafter "MMRSA"). The MMRSA set 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.

H. The City Council finds that 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. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, high water usage, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, 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.

I. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

J. The MMRSA contains language that requires the City 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. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. The MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.

K. While the City Council believes that cultivation and all commercial medical marijuana uses are prohibited under the City's permissive zoning regulations, it desires to enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City.

L. This Ordinance is consistent with the City's General Plan and each element thereof.

M. The Planning Commission conducted a duly noticed public hearing on November 23, 2015, at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt this Ordinance.

N. The City Council held a duly noticed public hearing on this Ordinance on December 21, 2015, at which time it considered all evidence presented, both written and oral.

**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 Compassionate Use Act, the Medical Marijuana Program, and the Medical Marijuana Regulation and Safety Act.

**SECTION 3.** Section 11.10.030 of the Montclair Municipal Code is hereby repealed and replaced in its entirety as follows:

**11.10.030 Prohibited uses.**

A. Unlawful Uses. Uses that are unlawful under federal or state law shall not be treated as permitted uses, and shall not be determined to be similar to any uses permitted pursuant to this Title.

B. Dispensaries prohibited. No medical marijuana or cannabis dispensary as defined in Section 11.02.010 of the Montclair Municipal Code or Business & Professions Code §19300.5(n), as the same may be amended from time to time, shall be permitted in any zone within the City of Montclair. For purposes of this Section, "Dispensary" shall also include a cooperative or a mobile distribution facility. "Dispensary" shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and 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; or (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

C. Commercial marijuana activities prohibited. Commercial cannabis activities of all types, including the cultivation, delivery, dispensing, possession, manufacture, processing, storing, laboratory testing, labeling, transport, distribution, transfer, or sale of medical cannabis or a medical cannabis product all as defined under Business & Professions Code §19300.5, as the same may be amended from time to time, are expressly prohibited in all zones and all specific plan areas in the City of Montclair. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City.

D. Deliveries of medical marijuana prohibited. To the extent not already covered by subsection C above, all deliveries of medical cannabis, as defined under Business & Professions Code §19300.5, as the same may be amended from time to time, are expressly prohibited within the City of Montclair, including the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed, 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. No person shall conduct any deliveries that either originate or terminate within the City.

E. Cultivation of marijuana prohibited. To the extent not already covered by subsection C above, all cultivation of cannabis or marijuana 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 Montclair. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes. Cultivation shall include any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

F. Intent. This Section is meant to prohibit all medical marijuana or commercial cannabis activities, including, but not limited to, those for which a State license is required. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the Medical Marijuana Regulation and Safety Act.

**SECTION 4.** Nothing in this Ordinance shall be interpreted to mean that the City's permissive zoning scheme allows any other use not specifically listed therein.

**SECTION 5.** CEQA. This ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations in areas with an average slope of less than 20% that do not result in any changes in land use or density, 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. The City's permissive zoning provisions 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.

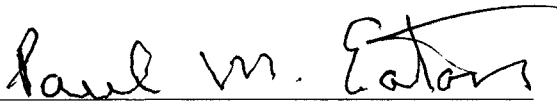
**SECTION 6.** If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this 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 7.** To the extent the provisions of the Montclair Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as they read immediately prior to the adoption of this Ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

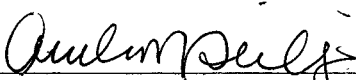
**SECTION 8.** This Ordinance shall be in full force and effect thirty (30) days after passage.

**SECTION 9.** The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

**APPROVED AND ADOPTED** this 4th day of January, 2016.

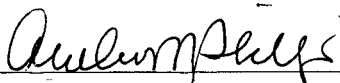
  
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Mayor

ATTEST:

  
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Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 15-955 of said City, which was introduced at a regular meeting of the City Council held on the 21st day of December, 2015, and finally passed not less than five (5) days thereafter on the 4th day of January, 2016, by the following vote, to-wit:

AYES: Martinez, Dutrey, Raft, Eaton  
NOES: None  
ABSTAIN: None  
ABSENT: Ruh

  
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Andrea M. Phillips  
Deputy City Clerk