

ORDINANCE NO. 3017

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF WHITTIER, CALIFORNIA, REPEALING AND  
REPLACING CHAPTER 18.45 (MEDICAL MARIJUANA  
REGULATIONS) OF TITLE 18 (ZONING) OF THE  
WHITTIER MUNICIPAL CODE REGARDING MEDICAL  
MARIJUANA DISPENSARIES

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution the City of Whittier has the authority to enact and enforce ordinances for the protection of the health, safety and welfare of its residents;

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 *et seq.*), which makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana use;

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5, the "CUA") to allow the medical use of marijuana by qualified patients;

WHEREAS, the California Legislature enacted Senate Bill 420 in 2003, the Medical Marijuana Program Act (codified at Health and Safety Code Section 11362.7 *et seq.*, the "MMPA"), which created a state-wide identification card scheme for qualified patients and primary caregivers;

WHEREAS, notwithstanding the CUA and the MMPA, marijuana remains a schedule I substance pursuant to Cal. Health & Saf. Code § 11054 (d)(13);

WHEREAS, marijuana also remains a schedule I substance pursuant to federal law, 21 U.S.C. § 812, Schedule 1 (c)(10), and federal law does not provide for any medical use defense or exception;

WHEREAS, the California Supreme Court has established that neither the CUA nor the MMPA preempt local regulation in the case of City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal. 4th 729 (2013);

WHEREAS, the City Council of the City of Whittier finds that it is in the interest of the health, safety and welfare of the City to make explicit that medical marijuana dispensaries are prohibited anywhere in the City and are a public nuisance per se;

WHEREAS, the City Council finds that there is substantial evidence to show that medical marijuana dispensaries are commonly large money-making operations that sell marijuana to anyone who provides a doctor's recommendation for its medical use; and that these recommendations can be obtained by paying unscrupulous physicians a fee

and claiming to have a condition, including anxiety and headaches, that might be alleviated by the consumption of marijuana; and that while dispensaries claim to receive only donations, no marijuana or marijuana products will change hands without an exchange for money; and that these operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million dollar profit centers; and

WHEREAS, the City Council finds that because dispensaries are repositories of large amounts of valuable marijuana crops and large amounts of cash, a number of dispensary operators have been attacked and murdered by armed robbers, both at the storefronts and at their homes, and such places have been regularly burglarized; and that common secondary effects of the operation of dispensaries are drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers outside the dispensaries;

WHEREAS, the City Council finds that medical marijuana dispensaries are sometimes linked to large grow operations or encourage home grows by buying marijuana for resale; and that just as destructive fires and unhealthy mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations;

WHEREAS, the City Council also would like to make explicit its desire to prohibit all businesses and uses, generally, that are in violation of any local, state and federal law or regulation, in order to permit and allow only those businesses and uses that are in compliance with all the laws and regulations in furtherance of the health, safety and welfare of the citizens, residents and visitors to the City of Whittier;

WHEREAS, the City Council finds that prohibiting such facilities will not interfere with the CUA's stated intent to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes," pursuant to the CUA and the MMPA;

WHEREAS, the City Council finds that the limitations as to the applicability of the City's prohibition on medical marijuana dispensaries are necessary due to the urban and highly suburban nature of the City of Whittier, and in order to fully preserve the health, safety, welfare and general well-being of the residents, businesses and visitors to the Whittier;

WHEREAS, the City of Whittier, California, pursuant to the provisions of the California Environmental Quality Act ( "CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) has determined that the Ordinance is exempt pursuant to Sections 15061(b)(1) and 15035, Class 5 (Minor Alterations in Land Use Limitations) of Title 14 of the California Code of Regulations, and pursuant to Section 15061(b)(3) of Title 14 the California Code of Regulations;

WHEREAS, this Ordinance will not adversely affect property values and will not be detrimental to the City;

WHEREAS, the City Council finds that the publication of the entire text of this ordinance in a newspaper of general circulation would cost significantly more than the cost of publishing other ordinances and it is infeasible to prepare a fair and accurate summary of the ordinance; and

WHEREAS, pursuant to subdivision (c) of Section 36933 of the California Government Code, the City Council may publish a summary of the ordinance in lieu of the entire text.

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

SECTION 1. Chapter 18.45 (Medical Marijuana Regulations) of Title 18 (Zoning), of the Whittier Municipal Code is hereby repealed and replaced in its entirety with the following:

18.45.010 Purpose and Findings.

The City Council of the City of Whittier hereby finds and determines that it is the purpose and intent of this article to prohibit medical marijuana dispensaries, including mobile and delivery services, in order to promote the health, safety, morals and general welfare of the residents and the businesses within the City.

18.45.020 Definitions.

A. "Medical marijuana dispensary" means a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5, and shall include mobile marijuana dispensaries.

B. "Marijuana" shall have the same definition as that set forth in California Health & Safety Code Section 11018.

C. "Mobile marijuana dispensary" means any clinic, cooperative, club, business or group that transports or delivers, or arranges the transportation or delivery, of medical marijuana to a person.

D. "Person" means any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer or salesperson.

E. "Operation" means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a medical marijuana dispensary.

#### 18.45.030 Medical marijuana dispensaries prohibited.

Medical marijuana dispensaries are prohibited anywhere within the City of Whittier. No person shall operate, allow to be operated, or aide, abet or assist in the operation of any medical marijuana dispensary.

#### 18.45.040 Declaration of public nuisance.

Any use, structure, or property that is altered, enlarged, erected, established, maintained, moved, or operated contrary to the provisions of this article, is hereby declared to be unlawful and a public nuisance and may be abated by the city through civil proceedings by means of a restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances, including but not limited to the remedies provided for in Section 18.45.050 of this Code.

#### 18.45.050 Violations.

A. Violations of this Chapter shall be punishable pursuant to Chapters 1.08 and/or 1.09 of this Code.

B. This Chapter is not the exclusive means for the abatement of medical marijuana dispensaries within the City of Whittier. The remedies set forth pursuant to this section shall be in addition to any other existing remedies for violations of the Zoning Code, including but not limited to, any action at law or equity.

SECTION 2. Any provision of the Whittier Municipal Code or appendices thereto inconsistent with the provisions of the Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 3. If any section, subsection, 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 of the City of Whittier hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause a display advertisement of at least one-quarter of a page to be published once in the official newspaper within 15 days after the adoption of the Ordinance, which advertisement indicates the general nature of the Ordinance and information about the Ordinance, including how to obtain copies of the complete text of the Ordinance. This Ordinance shall become effective 30 days from its adoption.

APPROVED AND ADOPTED this 28th day of January 2014.

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BOB HENDERSON, Mayor

ATTEST:

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KATHRYN A. MARSHALL  
City Clerk-Treasurer

CITY OF WHITTIER        )  
                                  ) SS  
STATE OF CALIFORNIA    )

I, Kathryn A. Marshall, City Clerk-Treasurer in and for the City of Whittier, California, hereby certify that the foregoing ordinance was duly introduced at a regular meeting of the City Council of the City of Whittier on the 14th day of January 2014, and adopted at a regular meeting of the City Council of the City of Whittier on the 28th day of January 2014 by the following roll call vote:

AYES:       J.A. Vinatieri       F. Dutra       C. Warner

              R.L. Henderson

NOES:       O. Newcomer

ABSENT:     None

WITNESS my hand and the official seal of the City of Whittier, California, this  
\_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
KATHRYN A. MARSHALL  
City Clerk-Treasurer

Published as required by law: February 11, 2014