

ORDINANCE NO. 15-0037U

AN URGENCY ORDINANCE OF THE MANHATTAN BEACH CITY COUNCIL ADDING CHAPTER 4.01 TO TITLE 4 OF THE MANHATTAN BEACH MUNICIPAL CODE TO PROHIBIT THE DELIVERY OF MEDICAL MARIJUANA AND MOBILE MARIJUANA DISPENSARIES IN THE CITY

RECITALS

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

2. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code § 11362.7, *et seq.*, and sometimes referred to herein as the "Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215 and to provide qualified 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 cities and counties 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.

3. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 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. . ."

4. 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 State, 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.

5. 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 establishes 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 also requires a local government that wishes to prevent marijuana delivery activity, as defined by Business & Professions Code section 19300.5(m) of the MMRSA, from operating within the local

government's boundaries, to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code section 19340(a)).

6. The Manhattan Beach Municipal Code Section 10.60.160 currently prohibits medical marijuana dispensaries in all zones of the City. The Municipal Code does not prohibit the delivery of medical marijuana or mobile marijuana dispensaries.

7. The number of medical marijuana delivery services operating in the State of California that would service the City is unknown because the State does not maintain a registry of mobile marijuana dispensaries or medical marijuana delivery services and their service areas.

8. Successful enforcement of regulations against storefront medical marijuana dispensaries has been found to coincide with an increase in mobile marijuana dispensaries and marijuana deliveries. In recent weeks, the City is aware of at least one advertisement for medical marijuana delivery services to cities in the South Bay.

9. Mobile marijuana dispensaries and marijuana deliveries have resulted in criminal activity, as delivery drivers are targets for armed robbery. As a result, drivers choose to carry weapons to protect themselves. There are a number of recent reports of armed robberies of marijuana delivery services in California: 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. On March 13, 2014, there was an armed robbery of a medical marijuana delivery vehicle that occurred in Long Beach that resulted in a physical fight between the medical marijuana employee and two suspects. In April 2015, a delivery driver for a medical marijuana dispensary was robbed at gunpoint in the Western Addition area of San Francisco. 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 September 25, 2015, a medical marijuana delivery man was robbed of the marijuana, cash and his car in the City of Altadena. Thus, the delivery of medical marijuana and the operation of mobile marijuana dispensaries both to and from the City would require the City to use its limited resources to monitor and prevent unintended negative consequences of those activities.

10. The delivery of medical marijuana to residences in the City also increases the risk that children and minors will gain access to medical marijuana at the point of delivery.

11. Based on the foregoing, the City Council finds that in order to more fully protect the public health, safety and welfare, prohibiting mobile marijuana dispensaries and the delivery of medical marijuana in the City is proper and necessary to avoid the risks of criminal activity that may result from such activities.

12. Based upon the Recitals 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 of the MMRSA, and the potential for deliveries of medical marijuana

to occur prior to effective date of an ordinance prohibiting mobile marijuana dispensaries and the delivery of medical marijuana in the City.

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

NOW, THEREFORE, the City Council of the City of Manhattan Beach 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. Urgency Declaration. This Ordinance is for the immediate preservation of the public peace, health or safety and shall take effect immediately pursuant to California Government Code Section 36937(b). The urgency ordinance must be adopted and must become effective immediately in order to protect City residents from imminent harm due to the risk of criminal activity associated with mobile marijuana dispensaries and the delivery of medical marijuana. Successful enforcement of regulations against storefront medical marijuana dispensaries has been found to coincide with an increase in mobile marijuana dispensaries and marijuana deliveries. This increase in deliveries exposes the City's residents to the increase of secondary effects related to the delivery of medical marijuana. The regulations included in this Ordinance will preserve, protect, the public health, safety and welfare.

Section 3. Code Amendment. Manhattan Beach Municipal Code Title 4 (Public Welfare Morals and Conduct) is hereby amended to add a new Chapter 4.136 (Medical Marijuana) as follows:

"Chapter 4.136

MEDICAL MARIJUANA DELIVERY

- 4.136.010 Definitions**
- 4.136.020 Prohibitions**
- 4.136.030 Civil Penalties**

4.136.010 Definitions

"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 marijuana or medical marijuana products from a dispensary, up to an amount determined by the bureau to a primary caregiver, qualified patient, or person with an identification card as defined in Health and Safety Code Section 11362.7, 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 marijuana or medical marijuana products.

Identification card” shall have the same meaning as set forth in Municipal Code Section 10.60.160(A)(1).

“Marijuana” shall have the same meaning as “cannabis” as 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. “Marijuana” also means the separated resin, whether crude or purified, obtained from marijuana. “Marijuana” also means marijuana as defined by Health and Safety Code Section 11018. For the purpose of this Ordinance, “marijuana” does not mean “industrial hemp” as defined by Food and Agricultural Code Section 81000 or Health and Safety Code Section 11018.5.

“Medical marijuana product” shall have the same meaning as “cannabis product” or “medical cannabis product” as set forth in the MMRSA, as the same may be amended from time to time, and shall include marijuana, as well as concentrates and extractions, intended to be sold for use by medical marijuana patients pursuant to the Compassionate Use Act of 1996 (Proposition 215).

“Mobile marijuana dispensary” shall mean the use of a motor vehicle that in any way involves growing, distributing, delivering, selling or making available to persons, with or without financial payment or consideration, marijuana or medical marijuana products, including marijuana for medical purposes as described in California Health and Safety Code Section 11362.5.

“Primary caregiver” shall have the same meaning as set forth in Municipal Code Section 10.60.160(A)(4).

“Qualified patient” shall have the same meaning as set forth in Municipal Code Section 10.60.160(A)(5).”

4.136.020 Prohibitions

In addition to the provisions of Municipal Code Section 10.60.160, all delivery of marijuana or medical marijuana products to or from the City of Manhattan Beach is expressly prohibited within the City of Manhattan Beach. No person shall conduct or perform any delivery of any marijuana or medical marijuana product, which delivery either originates or terminates within the City. Mobile dispensaries are also prohibited from operating in the City.

4.136.030 Civil Penalties

In addition to any other enforcement authorized by Chapter 1.04 of the Municipal Code, 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 4. CEQA. The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and the prohibitions established hereby, may have a significant effect on the environment, because the Ordinance will only, at most, impose greater limitations on activities in the City, and will thereby serve to eliminate potentially significant adverse environmental impacts. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. A Notice of Exemption will be prepared.

Section 5. Severability. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentence, clauses or phrases be declared unconstitutional or otherwise invalid.

Section 6. Termination. This Ordinance shall expire on the date an ordinance goes into effect prohibiting the delivery of medical marijuana and mobile marijuana dispensaries.

Section 7. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the City, or within the territory comprising the City, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

Section 8. Urgency. This Ordinance is adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code section 36937(b), and therefore shall be passed immediately upon its introduction and shall become effective immediately upon its adoption by a minimum 4/5 vote of the City Council.

Section 9. Certification. The City Clerk shall certify as to the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED by the Manhattan Beach City Council on December 1, 2015.

AYES:
NOES:
ABSENT:
ABSTAIN:

MARK BURTON
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:



QUINN M. BARROW
City Attorney