

ORDINANCE NO. ~~15-0036~~16-000

**AN ORDINANCE OF THE CITY OF MANHATTAN BEACH
AMENDING THE MANHATTAN BEACH MUNICIPAL CODE TO
EXPRESSLY PROHIBIT CULTIVATION OF MEDICAL MARIJUANA
~~SUBJECT TO CERTAIN EXEMPTIONS~~ AND PROHIBIT
COMMERCIAL MEDICAL MARIJUANA ACTIVITY**

RECITALS

1. Manhattan Beach Municipal Code Section 10.60.160 prohibits medical marijuana dispensaries, which are defined as any facility or location where medical marijuana is cultivated or made available to a qualified patient, a person with an identification card, or a primary caregiver as those terms are defined by state law.
2. In 2015, the California State Legislature enacted the Medical Marijuana Regulation and Safety Act which reinforces that cities may prohibit dispensaries, but requires a city to adopt local land use regulations by March 1, 2016, if that city wants to prohibit or regulate the cultivation of medical marijuana.
3. On December 1, 2015, the City Council adopted Urgency Ordinance 15-0036-U, expressly prohibiting, *inter alia*, the cultivation of medical marijuana.
4. To ensure that such regulations are effective throughout the City, including the City's coastal zone, prior to March 1, 2016, this ordinance will also amend Title 4 (Public Welfare Morals and Conduct) to prohibit ~~or regulate~~ the cultivation of medical marijuana.

NOW THEREFORE, THE MANHATTAN BEACH CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

Section 1. Municipal Code Section 10.60.160 (Medical Marijuana Dispensaries) is amended in its entirety to read as follows:

“10.60.160 Medical marijuana dispensaries.

A. Definitions.

1. “Commercial medical marijuana activity” shall have the same meaning as “commercial cannabis activity” that is set forth in California Business and Professions Code Section 19300.5(k), as the same may be amended from time to time, and shall include the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical marijuana or a medical marijuana product for commercial purposes.

2. “Cultivation” shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(l), as the same may be amended from time to time, and shall include any activity involving the planting, growing, harvesting,

drying, curing, grading, or trimming of marijuana.

3. “Dispensary” shall mean any business, facility, location, office, store or establishment where medical marijuana, medical marijuana products, or devices for the use of medical marijuana or medical marijuana products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical marijuana and medical marijuana products as part of a retail sale. “Dispensary” shall also mean any facility, residence, location, or site where medical marijuana is cultivated or made available to and/or distributed by any of the following: a qualified patient, a person with an identification card, or a primary caregiver. Each of these terms is defined herein and shall be interpreted in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 *et seq.*, as such sections may be amended from time to time.

4. “Identification card” is a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.

5. “Marijuana” shall have the same meaning as “cannabis” as set forth in California Business and Professions Code section 19300.5(f), 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 Section, “marijuana” 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 Section, “marijuana” does not mean “industrial hemp” as defined by California Food and Agricultural Code Section 81000 or California Health and Safety Code Section 11018.5.

6. “Medical Marijuana Regulation and Safety Act” or “MMRSA” shall collectively mean the Medical Marijuana Regulation and Safety Act as contained, codified, and enacted as California Business and Professions Code Chapter 3.5.

7. “Medical marijuana product” shall have the same meaning as “cannabis product” or “medical cannabis product” as set forth in Business and Professions Code Section 19300.5(ag), as the same may be amended from time to time, and shall include marijuana, including, concentrates and extractions, intended to be sold for use by medical marijuana patients pursuant to the Compassionate Use Act of 1996 (Proposition 215).

8. “Primary caregiver” is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

9. "Qualified patient" is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

B. Prohibition.

1. Medical marijuana dispensaries are prohibited.

2. Commercial medical marijuana activity of any type or nature is expressly prohibited. No person shall establish, operate, maintain, conduct or allow commercial medical marijuana activity anywhere within the City. This Section is meant to prohibit all activities for which a State license is required pursuant to the MMRSA. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MMRSA.

3. To the extent that it is not already prohibited by subsections 1 and 2 above, indoor and outdoor cultivation of marijuana for commercial or non-commercial purposes is expressly prohibited.

~~a. Cultivation Exemptions.~~

~~(i) A Qualified patient or person with an identification card may cultivate small amounts of marijuana cultivation for his or her own personal use, provided the cultivation:~~

~~a. Occurs indoors on the property where the qualified patient/person with identification card resides.~~

~~b. Occurs indoors in a legally permitted one-family detached dwelling.~~

~~c. Does not exceed twelve marijuana plants.~~

~~d. Is not visible from the exterior of the dwelling.~~

~~e. Shall not adversely affect the health or safety of other persons by creating dust, excessive light, noise, noxious gases, odor, smoke, or other negative impacts.~~

~~f. Shall not occur on any property containing a day care small family home or day care large family home (as defined in Section 40.08.030).~~

~~g. Shall not occur on any premises located within 1,000 linear feet of any school, religious establishment, community center or park.~~

C. Civil Penalties.

In addition to any other remedies provided by state law, any violation of this Section may be enforced by civil action brought by the City, including but not limited to:

1. Injunctive relief.
2. Civil penalties.
3. Nuisance abatement.
4. Recovery of costs and attorney fees incurred in enforcing this Section.”

Section 2. Chapter 4.136 of Manhattan Beach Municipal Code Title 4 (Public Welfare Morals and Conduct) is hereby amended by adding Section 4.136.040 Cultivation to read as follows:

“4.136.040 Cultivation

Indoor and outdoor cultivation of marijuana for commercial or non-commercial purposes is expressly prohibited, ~~subject to any exemptions set forth in Section 10.60.160 B 3 a of this Code.~~”

Section 3. Sunset Clause of Section 2 of this Ordinance. Section 2 of this ordinance will expire 30 days after the Coastal Commission approves Ordinance No. 16-0001.

Section 4. CEQA. Pursuant to the California Environmental Quality Act (“CEQA”), and the City’s local CEQA Guidelines, staff has determined that the proposed code amendments are exempt from the requirements of CEQA. It can be seen with certainty that there is no possibility that the adoption of the code amendments, and the zoning provisions established hereby, may have a significant effect on the environment, because the code amendments will only impose greater limitations on uses allowed in the City, and will thereby serve to eliminate potentially significant adverse environmental impacts. The City Council has reviewed the staff’s determination of exemption and based on its own independent judgment, concurs in staff’s determination that the proposed code amendments are exempt from CEQA. The adoption of the code amendments is therefore not subject to CEQA 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 sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

Section 6. 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 7. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

Section 8. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

PASSED, APPROVED AND ADOPTED by the Manhattan Beach City Council on _____, 2016.

AYES:
NOES:
ABSENT:
ABSTAIN:

MARK BURTON
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:

QUINN M. BARROW
City Attorney