

ORDINANCE NO. 15-0036U

**AN INTERIM ORDINANCE OF THE CITY OF MANHATTAN BEACH
PROHIBITING THE CULTIVATION OF MARIJUANA IN ALL ZONES
IN THE CITY, INCLUDING THE CULTIVATION BY QUALIFIED
PATIENTS, PRIMARY CAREGIVERS AND PERSONS WITH
IDENTIFICATION CARDS AND DECLARING THE URGENCY
THEREOF**

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” (“CUA”)).

2. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code § 11362.7, *et seq.*, and 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. In *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, the California Court of Appeal found that the CUA does not confer a right to cultivate marijuana and that an ordinance limiting the number of medical marijuana plants that may be grown outside, precluding marijuana cultivation within 1000 feet of schools, parks and churches, and requiring that an opaque fence of at least six feet to be installed around all marijuana grows was not preempted by state law. Further, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that the CUA and the MMP do not preempt a city’s police power to completely prohibit the cultivation of all marijuana within that city because “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .”

5. 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.

6. 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 ("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 expressly allows local governments to enact ordinances prohibiting the cultivation of medical marijuana. The MMRSA requires that a City 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 for the cultivation of medical marijuana.

7. While the City Council believes that medical marijuana cultivation is already prohibited under the City's permissive zoning regulations, the Council nevertheless intends to expressly prohibit such uses in all zones throughout the City on an interim basis.

8. Manhattan Beach Municipal Code Section 10.60.160 currently prohibits medical marijuana dispensaries in all zones of the City. A medical marijuana dispensary is defined therein as "any facility or location 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." The City wishes to clarify that all cultivation of medical marijuana, including for personal medical use as allowed by the CUA and MMP, is prohibited. This urgency ordinance establishes a moratorium on all cultivation of medical marijuana in the City, including cultivation for personal medical use as allowed by the CUA and MMP.

9. 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. The limited immunity from specified state marijuana laws provided by the CUA, MMP and the MMRSA does not confer a land use right or the right to create or maintain a public nuisance.

10. The moratorium prohibiting the cultivation of medical marijuana will preserve and protect the public health, safety and welfare. The justification for temporarily banning marijuana cultivation pursuant to the City's police power includes, without limitation: 1) the increased risk to public safety, based on the value of marijuana plants and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; 2) the strong "skunk like" malodorous fumes emitted from mature plants that can interfere with the use and enjoyment of neighboring properties by their occupants; and 3) the risk of electrical fire hazards caused by medical marijuana cultivation.

11. Criminal activity is often associated with medical marijuana activities. As marijuana plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. Aside from being offensive, this odor can have the effect of encouraging theft by alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery of the plants and creating the potential for violent acts related to such criminal activity.

12. Furthermore, indoor cultivation of marijuana, often unattended, has potential to cause harm to persons and property in that the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a distinct risk of harm to the building and its occupants. Buildings where marijuana is cultivated are often illegally wired and have overloaded electrical systems that result in fires. In 2015 alone, there were a number of reported incidents of indoor marijuana cultivation sites causing fires. On February 9, 2015, there was a fire in a residence in Sacramento that was caused by the indoor cultivation of marijuana. On February 19, 2015, there was an electrical fire in Arcadia caused by an indoor marijuana cultivation operation. On April 24, 2015 there was an explosion in a Silver Lake home that leveled the house and destroyed several cars that was caused by an indoor marijuana cultivation operation. In May 2015, a fire erupted in a commercial building in Sun Valley that was caused by indoor marijuana grow house. In that same month, there was a fire in an Elk Grove home caused by an overheated illegal electrical power connection used to power an indoor marijuana grow house. In June 2015, there was a fire in a Sacramento residence caused by an indoor marijuana grow house. In July 2015, there was a fire in a Baldwin Park home caused by grow house. In September 2015, there was a fire in the garage of a Sun Valley residences that was caused by an indoor marijuana grow house. On October 23, 2015, there was a fire in a Rialto home that was caused by an indoor marijuana grow, started by an electrical panel that burst.

13. Based on the foregoing, the City Council finds that in order to more fully protect the public health, safety and welfare, prohibiting all cultivation of medical marijuana is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, noxious smells and indoor electrical fire hazards that may result from such activities.

14. Based upon the Recitals above, the City Council finds that this urgency ordinance is necessary for the immediate preservation of the public health, safety and welfare. The facts constituting the emergency are that the City must adopt a land use regulation prohibiting the cultivation of medical marijuana that is in effect by March 1, 2016, or the State will become the sole licensing authority for the cultivation of medical marijuana. Pursuant to Government Code Section 65853, *et seq.*, the Planning Commission must first consider and recommend the adoption of a zoning code amendment before the City Council considers an ordinance amending the zoning code. The City is adopting this urgency ordinance so that a moratorium is in effect prohibiting the cultivation of medical marijuana everywhere in the City while staff prepares and processes a permanent ordinance which may prohibit or regulate all types of cultivation of medical marijuana within the City.

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

NOW, THEREFORE, the Manhattan Beach City Council ordains as follows:

Section 1. The City Council finds that the facts set forth in the Recitals of this Ordinance are true and correct.

Section 2. Urgency Declaration. 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 cultivation of marijuana, to occur prior to the establishment of zoning regulations under normal planning and zoning processes of the City. If in the interim time necessary to complete the processing of an ordinance regulating or prohibiting cultivation of medical marijuana cultivation is allowed to occur, such cultivation may be inconsistent with the purposes and goals of a permanent ordinance prohibiting or regulating this activity. Moreover, as discussed above, the cultivation of medical marijuana poses a serious fire risk to the residents of the community. The City Council finds that the immediate preservation of the public health, safety and welfare requires that this interim Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 65858 and take effect immediately upon adoption, and its urgency is hereby declared.

Section 3. Definitions. The following words shall have the meanings set forth below, unless the context otherwise permits or requires.

“Cultivation” shall have the same meaning set forth in the MMRSA, 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.

“Identification card” shall have the same meaning as set forth in Manhattan Beach 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 Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this Ordinance, “marijuana” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

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

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

Section 4. Moratorium.

A. Cultivation of marijuana for commercial or non-commercial purposes, including cultivation by a qualified patient, primary caregiver, or person with identification card is expressly prohibited in all zones and all specific plan areas in the City. No person, including a qualified patient, primary caregiver or person with identification card, shall cultivate any amount of marijuana in the City, even for medical purposes.

B. Nothing in this Ordinance, or its adoption, shall be deemed to affect any other prohibitions or regulations relating to marijuana contained in the Manhattan Beach Municipal Code, including, but not limited to, the provisions of Section 10.60.160 of the Manhattan Beach Municipal Code. In the event of any conflict between Section 10.60.160 and this Ordinance, the most restrictive provision shall govern. Nothing in this Ordinance shall be deemed to affect or excuse any violation of Section 10.60.160.

Section 5. Nothing in this Ordinance shall be interpreted to the effect that the City’s permissive zoning scheme allows any other use not specifically listed therein.

Section 6. Public Nuisance. Any violation of this Ordinance is hereby declared to be a public nuisance. Any use or condition caused, or permitted to exist, in violation of any provision of this Ordinance shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure Section 731 or by any other remedy available to the City.

Section 7. Penalties. Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$1,000 or by imprisonment for a period not to exceed 6 months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance.

Section 8. Civil Penalties. In addition to any other enforcement permitted by this Ordinance, 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 9. 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 zoning provisions established hereby, may have a significant effect on the environment, because the Ordinance will, at most, only impose greater limitations on uses allowed in the City, and will thereby serve to eliminate potentially significant adverse environmental impacts. Provisions of the City’s permissive zoning ordinance 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. 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 10. 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 11. Termination. This Ordinance shall expire, and the prohibition established hereby shall terminate, on the earlier of the following: (1) the date an ordinance goes into effect prohibiting the cultivation of marijuana, or (2) forty-five days from its adoption, unless extended by the City Council at a regularly noticed public hearing pursuant to Government Code section 65858(a).

Section 12. 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 13. Effective Date. 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 65858(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 14. 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.

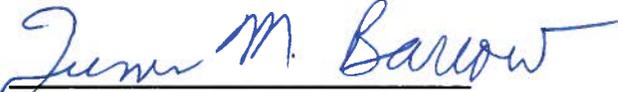
AYES:
NOES:
ABSENT:
ABSTAIN:

MARK BURTON
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:



QUINN M. BARROW
City Attorney