

ORDINANCE NO. 2299

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, REPEALING AND REPLACING DIVISION 27, SECTIONS 26-685.9100 – 26-685.9300 (“MEDICAL MARIJUANA DISPENSARIES”) AND AMENDING DIVISION 28, SECTIONS 26-685.10000 - 26-685.10300 (“MARIJUANA CULTIVATION”) OF CHAPTER 26 (“ZONING”) OF ARTICLE 12 (“SPECIAL REGULATION FOR UNIQUE USES”) RELATING TO CULTIVATION OF MARIJUANA AND CERTAIN MARIJUANA RELATED USES.

WHEREAS, the City of West Covina, pursuant to its police power, may adopt regulations to protect the health, safety and welfare of the public, Cal. Const. art. XI, § 7, Cal. Govt. Code § 37100, and thereby is authorized to declare what use and condition constitutes a public nuisance; and

WHEREAS, Government Code Section 38771 authorizes the City through its legislative body to declare actions and activities that constitute a public nuisance; and

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, 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 possession, cultivation and distribution; and

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 et seq.) (the “CUA”), which exempts qualified patients and their primary caregivers from criminal prosecution under enumerated Health and Safety Code sections for use of marijuana for medical purposes; and

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”), as amended, which created a state-wide identification card scheme for qualified patients and primary caregivers; and

WHEREAS, on October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act (“MMRSA”), effective January 1, 2016, which established a state licensing system for medical marijuana cultivation, manufacturing, delivery, and dispensing, regulating these activities with licensing requirements and regulations that are only applicable if cities and counties also permit marijuana cultivation, manufacturing, dispensing, and delivery within their jurisdictions. Under the MMRSA, cities and counties may continue to regulate and/or prohibit medical marijuana cultivation, manufacturing, dispensing, and delivery, consistent with their respective police powers, in which case the new law would not allow or permit these activities within the cities and counties where such activities are not otherwise permitted; and

WHEREAS, the City of West Covina enacted Ordinance 2265 on September 16, 2014 which prohibited the operation of medical marijuana dispensaries or marijuana transport businesses, and Ordinance 2288 in 2016, which prohibited cultivation of marijuana; and

WHEREAS, on February 3, 2016, Assembly Bill 21 (Wood) was signed by the Governor, amending provisions of MMRSA pertaining to cultivation licenses by eliminating a March 1, 2016 deadline for local jurisdictions for the promulgation of cultivation regulations or cultivation bans other local jurisdictions would lose the ability to regulate to the State. Assembly Bill 21 also modified language in Health & Safety Code section 11362.777(g), which pertained to exemptions from licensing requirements for qualified patients and caregivers. The prior language, which specifically stated that local governments retained the right to prohibit cultivation without exception, was revised to state: "Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from exercising its police authority under Section 7 of Article XI of the California Constitution."; and

WHEREAS, notwithstanding the CUA, the MMPA, and the MMRSA as amended, marijuana remains a schedule I substance pursuant to California Health & Safety Code § 11054 (d) (13); and

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 (Gonzales v. Raich, 545 U.S. 1 (2005); United States v. Oakland Cannabis Buyers' Coop., 532 U.S. 483 (2001)); and

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); and

WHEREAS, the MMRSA expressly allows cities and counties to ban marijuana cultivation consistent with current state law including the Maral v. City of Live Oak, 242 Cal.App.4th 940 (2013); and

WHEREAS, on November 8, 2016, the electorate of the State of California will vote on Proposition 64 ("Prop 64"), to approve or not approve the Adult Use of Marijuana Act ("AUMA"), to be codified in California Health and Safety Code at various sections and in California Business and Professions Code at various sections. The AUMA, if enacted, will allow adults 21 and over to use, possess, and cultivate limited amounts of marijuana, establishes a state licensing and regulatory scheme for marijuana businesses serving the recreational market; and will expressly allow local jurisdictions to prohibit outdoor cultivation of marijuana for personal use, to regulate indoor cultivation of marijuana for personal use, and to prohibit all non-medical and recreational marijuana businesses from locating and operating within their jurisdictions; and

WHEREAS, this Ordinance shall only become effective if Prop 64 is passed by a majority of the electorate at the November 8, 2016 statewide election. If Prop 64 passes, this Ordinance shall become effective immediately, and the regulations contained herein shall take full force and effect immediately. If Prop 64 does not pass, then this Ordinance shall be automatically revoked on the date the official election results of the State of California have been certified.

WHEREAS, possession of marijuana and concentrated marijuana is governed by State law. California Health and Safety Code, Section 11357 sets forth the criminal punishment or adjudication for possession of marijuana and concentrated cannabis in violation of State law; and

WHEREAS, the City Council of the City of West Covina finds that it is in the interest of the health, safety and welfare of the City to make explicit that, to the extent allowable under state

law, all marijuana related use and activity of any kind as set forth herein, whether medical, recreational, or otherwise, is prohibited everywhere in the City and is a public nuisance per se, consistent with State law, and

WHEREAS, the City Council of the City of West Covina finds and clarifies this prohibition does not apply to prohibit qualified patients and persons with identification cards to cultivate indoors, possess, and use marijuana for their own personal medical purposes only, as permitted by state law; but that nothing herein shall be construed to authorize qualified patients to engage in the collective cultivation of marijuana as described by Health and Safety Code section 11362.775, nor are they permitted to cultivate marijuana above limits established by State law and guidelines for their own personal use; and

WHEREAS, the City of West Covina, 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 Section 15061(b)(3) of Title 14 the California Code of Regulations; and

WHEREAS, the City Council finds that the provisions of this Ordinance are consistent with the City of West Covina's General Plan; and

WHEREAS, the City Council recognizes that there is a need to enact the restrictions contained in this ordinance immediately to protect the public health and safety; and

WHEREAS, all legal prerequisites prior to the adoption of this ordinance have occurred.

THE WEST COVINA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds that this Ordinance is necessary as an emergency measure for preserving the public peace, health and safety.

SECTION 2. The City Council finds that all the facts, findings, and conclusions set forth above in this Ordinance are true and correct.

SECTION 3. Sections 26-685.9100 – 26-685.300 ("MEDICAL MARIJUANA DISPENSARIES") of Division 27, Chapter 26 ("ZONING") of Article 12 ("SPECIAL REGULATION FOR UNIQUE USES") of the West Covina Municipal Code are hereby repealed and replaced as follows:

DIVISION 27. - MARIJUANA DISPENSARIES

Sec. 26-685.9100. - Definitions.

For purposes of this division, the following definitions shall apply:

Commercial cannabis activity includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of: 1) marijuana and marijuana products, including medical marijuana, medical cannabis and medical cannabis products within the meaning of California Business and Professions Code Section 19300, et seq., and 2) non-medical marijuana, marijuana products, cannabis and cannabis products, (also referred to as recreational marijuana, recreational marijuana products, recreational cannabis and recreational cannabis products), except for personal cultivation as permitted in section Sec. 26-685.10300. A.2. of the West Covina Municipal Code.

Marijuana transport dispensary means any person or entity that transports or offers to transport marijuana in any vehicle or by any other means. A person who is transporting marijuana to a qualified patient for whom he or she is the primary caregiver shall not be a "marijuana transport business."

Marijuana dispensary means any association, business, facility, use, establishment, location, cooperative, collective, or provider that possesses, cultivates, distributes, makes available, provides, gives away, donates, or otherwise facilitates the distribution of marijuana to or for more than three (3) persons or to or for any person who is not a qualified patient or primary caregiver.

Primary caregiver is an 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 as is further defined in California Health and Safety Code section 11362.7.

Qualified patient is a person who is entitled to the protections of the California Health and Safety Code section 11362.5, inclusive of a person with an identification card as that term is defined in California Health and Safety Code section 22362.7.

Sec. 26-685.9200. - Marijuana dispensaries—Prohibited.

Marijuana dispensaries are prohibited in the City of West Covina, and no marijuana dispensary shall operate, locate, or otherwise be permitted or established within the city, even if located within or associated with an otherwise permitted use, and neither the city council nor city staff shall approve any use, interpretation, permit, license certificate of occupancy, zoning code or general plan amendment allowing the operation and/or establishment of a marijuana dispensary.

Sec. 26-685.9300. - Additional prohibitions.

(a) No person shall own, operate, or manage a marijuana dispensary in the City of West Covina. No person shall lease or offer to lease any facility or any location as a marijuana dispensary in the City of West Covina. No person shall employ any person or be employed at a marijuana dispensary in the City of West Covina, whether or not such employment is on a paid or volunteer basis.

(b) No person shall own, operate, or manage a marijuana transport dispensary in the City of West Covina. No person shall lease or offer to lease any facility or any location as a marijuana transport dispensary, or as a distribution center for any marijuana transport dispensary, in the City of West Covina. No person shall employ or be employed at a marijuana transport business or a distribution center therefor in the City of West Covina, whether or not such employment is on a paid or volunteer basis.

(c) No person shall engage in Commercial Cannabis Activity in the City of West Covina.

SECTION 4. Except as provided herein, the remaining provisions of Division 27 of Article 12 of Chapter 26 of the West Covina Municipal Code shall remain in full force and effect.

SECTION 5. Division 28, Sections 26-685.10000 – 26-685.10300 of Article 12 of Chapter 26 of the West Covina Municipal Code are hereby amended to read as follows:

DIVISION 28 – MARIJUANA CULTIVATION

Sec. 26-685.10000. -- Purpose

The city council of the City of West Covina hereby finds and determines that it is the purpose and intent of this article to restrict marijuana cultivation, in order to promote the health, safety, morals and general welfare of the residents and the businesses within the City of West Covina.

Sec. 26-685.10100. -- Applicability.

(a) Nothing in this article is intended, nor shall it be construed, to burden any defense to criminal prosecution under the CUA.

(b) All the provisions of this article shall apply to all property, public and private, within the city.

Sec. 26-685.10200. -- Definitions.

For purposes of this division, the following definitions shall apply:

Marijuana shall have the same definition as that set forth in California Health and Safety Code section 11018.

Medical marijuana shall mean marijuana used for medical purposes in accordance with California Health and Safety Code section 11362.5.

Marijuana cultivation shall mean the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof for any purpose, including medical marijuana and non-medical recreational marijuana, and shall include both indoor and outdoor cultivation.

Person shall mean any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer and/or salesperson.

Sec. 26-685.10300. -- Cultivation of marijuana

A. Marijuana Cultivation:

1. Outdoor Cultivation. Outdoor marijuana cultivation by any person, including primary caregivers, qualified patients, and dispensaries, for any purpose including medical or non-medical (recreational) purposes is prohibited in all zoning districts within the City of West Covina.

2. Indoor Cultivation. Cultivation of marijuana indoors, as authorized by state law for personal recreational use or intended for personal medical marijuana use, but not for Commercial Cannabis Activity, shall be permitted as follows:

a) for medical marijuana for personal use by persons aged 21 or older within private residences;

b) for non-medical marijuana (personal recreational use) by persons aged 21 and older within private residences which are occupied exclusively by persons age 21 or older;

provided that the cultivation is conducted in compliance with state law. No person shall cultivate more marijuana plants indoors than is expressly authorized by Health and Safety Code section 11362.2.

B. The cultivation of marijuana by any person, including primary caregivers and qualified patients, collective, cooperatives or dispensaries, for *Commercial cannabis activity*, as defined in Section 26-685.9100 of this Code, or in excess of what is provided for in Section 26-685.10300, subsection A.2. for any purpose, is prohibited on any parcel in the city, and is expressly declared to be a public nuisance.

SECTION 6. Except as provided herein, the remaining provisions of Division 28 of Article 12 of Chapter 26 of the West Covina Municipal Code shall remain in full force and effect.

SECTION 7. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 8. Effective Date.

This Ordinance shall only become effective if Prop 64 is passed by a majority of the electorate at the November 8, 2016 statewide election. If Prop 64 passes, this Ordinance shall become effective immediately, and the regulations contained herein shall take full force and effect immediately. If Prop 64 does not pass, then this Ordinance shall be automatically revoked on the date the official election results of the State of California have been certified.

SECTION 9: Certification and Publication.

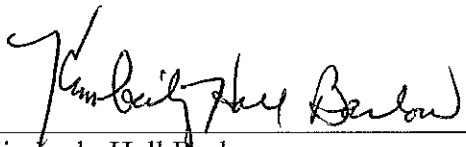
The City Clerk shall certify the adoption of this Ordinance and shall cause the same to be posted or published in the manner as required by law.

PASSED, APPROVED AND ADOPTED on this 20th day of September, 2016.



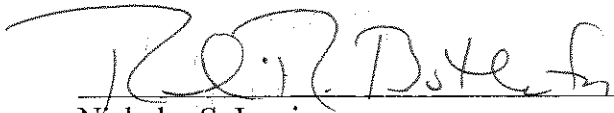
James Toma
Mayor

APPROVED AS TO FORM:



Kimberly Hall Barlow
City Attorney

ATTEST:



Nickolas S. Lewis
City Clerk

I, NICKOLAS S. LEWIS, CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Urgency Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the 20th day of September, 2016. That thereafter said Urgency Ordinance was duly adopted and passed at a regular meeting of the City Council on the 20th day of September, 2016, by the following vote:

AYES: Johnson, Warshaw, Wu, Toma
NOES: Spence
ABSENT: None
ABSTAIN: None

A handwritten signature in black ink, appearing to read "N. S. Lewis", written over a horizontal line.

Nickolas S. Lewis
City Clerk