

ORDINANCE NO. 2288

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA CALIFORNIA AMENDING THE CITY OF WEST COVINA MUNICIPAL CODE TO PROHIBIT THE CULTIVATION OF MARIJUANA

WHEREAS, the City of West Covina (“City”) is a general law city, incorporated under the laws of the State of California;

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 or condition constitutes a public nuisance; and

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

WHEREAS, comprehensive zoning regulations lie within the police power of the City;

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.) (“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. The CUA does not address the land use or other impacts that are caused by the cultivation of medical marijuana and it does not create a constitutional right to obtain marijuana; 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.) (“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 establishes a state licensing system for medical marijuana cultivation, manufacturing, delivery, testing, and dispensing, regulating these activities with licensing requirements and regulations that are

only applicable if cities and counties also permit marijuana cultivation, manufacturing, dispensing, testing, and/or delivery within their jurisdictions. Under the MMRSA, cities and counties may continue to ban medical marijuana cultivation, manufacturing, dispensing, testing, and delivery, in which case the state new laws would not allow nor permit these activities within the cities and counties; and

WHEREAS, notwithstanding the CUA, the MMPA, and the MMRSA, 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, notwithstanding California's efforts to decriminalize the provision of marijuana for specified medicinal purposes, the Federal Controlled Substance Act classifies marijuana as a Schedule I narcotic and Congress has concluded that marijuana does not have any acceptable medical uses and under federal law the manufacture, distribution, or possession of marijuana is a criminal offense (21 U.S.C. §§ 812, 841 and 844); and

WHEREAS, in the United State Supreme Court decision of *Gonzales v. Raich*, the Court held that there is no medical necessity exception under federal law to the prohibition against the manufacture, distribution and possession of marijuana and that notwithstanding the fact that it does not violate California law in some instances to manufacture, distribute and possess marijuana for specified medicinal purposes, it still violates federal law and Congress has the authority to prohibit local cultivation and use of marijuana despite state law to the contrary; and

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

WHEREAS, the California Supreme Court declined to review an appellate court decision upholding a city's ban on the cultivation of marijuana (*Maral v. City of Live Oak*, 221 Cal.App.4th 975 (2013)), based on the same authority provided in the *City of Riverside* case; and

WHEREAS, the MMRSA expressly allows cities and counties to prohibit marijuana-related businesses, consistent with current state law, including the *City of Riverside* and *City of Live Oak* decisions; and

WHEREAS, the MMRSA provides that if a city or county does not have land use regulations or resolutions regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under the principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to the MMRSA, then commencing March 1, 2016, the state will be the sole licensing authority for medical marijuana cultivation applicants (Health & Safety Code section 11372.777(c)(4));

WHEREAS, the City intends by the adoption of this Ordinance to explicitly prohibit marijuana cultivation within the City for the express and specific purpose of preserving the City's authority to ban and/or adopt future regulations pertaining to marijuana cultivation, as required by California Health and Safety Code section 11372.777(c)(4), effective January 1, 2016, added by the MMRSA; and

WHEREAS, the City of West Covina's permissive Zoning Code does not list marijuana cultivation as a permitted use in any zone in the City; 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 finds that this Ordinance will not adversely affect property values and will not be detrimental to the City; and

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

WHEREAS, on the 10th day of November, 2015, the Planning Commission initiated a code amendment to revise standards for marijuana cultivation by adopting Resolution No. 15-5796; and

WHEREAS, the Planning Commission, upon giving required notice, did on the 24th day of November, 2015, conduct a duly advertised public hearing as prescribed by law, at which time the Planning Commission adopted Resolution No. 15-5797 recommending to the City Council approval of Code Amendment No. 15-04; and

WHEREAS, the City Council considered evidence presented by the Planning Commission, Planning Department, and other interested parties at duly advertised public hearings on the 15th of December, 2015; and

WHEREAS, studies and investigations made by this Council and in its behalf reveal the following facts:

1. Currently, the Municipal Code does not allow medical marijuana dispensaries, as they are not "lawful" businesses per Federal law.
2. It is appropriate and within the City's authority to provide specific regulations regarding the prohibition of medical marijuana dispensaries based on the citations above.
3. The proposed action is considered to be exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the proposed action consists of a code amendment, which does not have the potential for causing a significant effect on the environment.

WHEREAS, the City Council finds that the cultivation of marijuana significantly impacts, or has the potential to significantly impact, the City's jurisdiction. These impacts include the following:

- A. Public safety agencies, city residents, and other public entities have reported adverse impacts from marijuana cultivation, including disagreeable odors and release of pollen that can aggravate the respiratory system; increased risk of burglary and other property crimes; and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes.
- B. The creation of persistent strong odors as marijuana plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable marijuana plants and creating an increased risk of crime.
- C. The unregulated cultivation of marijuana can adversely affect the health, safety and well-being of the city and its residents. Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, smells and indoor electrical fire hazards that may result from unregulated marijuana cultivation, especially if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana can be cultivated in a concentrated place.
- D. The indoor cultivation of substantial amounts of marijuana also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation.
- E. Children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants has proven to be an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including hospitals, schools, church parks or playgrounds, childcare centers, recreation centers or youth centers. Cultivation of any amount of marijuana at, or near these sensitive uses presents unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.
- F. The cultivation of marijuana in other cities has resulted in calls for service to the police department, including calls for robberies thefts, and physical assaults from marijuana that is grown outdoors;
- G. Marijuana growth poses significant safety risks for surrounding neighbors, including but not limits to, risks of violent confrontation in connection with attempts to steal marijuana, risk of fire from improperly wired electrical lights within structures growing marijuana, risk of guard dogs and security measures associated with structures and properties growing marijuana;
- H. Fertilizers and pesticides, both legal and illegal, used when marijuana is grown may unreasonably increase the concentration of such chemicals in effluent and/or

storm water runoff, thereby impacting local creeks, streams, and wastewater discharge. Such pollution may negatively affect water quality for downstream users, harm ecosystems, and impact threatened or endangered species, and/or negatively affect wastewater treatment; and

- I. Staff and residents of the City have observed that the smell and pollen associated with marijuana cultivation is severe enough that it interferes with the use and enjoyment of property in the City.

WHEREAS, based on this experience it is reasonable to conclude that permitting the cultivation of marijuana at this time could have similar negative effects on the public health, safety and welfare to the residents and businesses in the City; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Covina as follows:

SECTION NO. 1: The above recitals are true and correct and are incorporated herein as if set forth herein in full.

SECTION NO. 2: Based on the evidence presented and the findings set forth, Code Amendment No. 15-04 is hereby found to be consistent with the West Covina General Plan and the implementation thereof and that the public necessity, convenience, general welfare, and good zoning practices require Code Amendment No. 15-04.

SECTION NO. 3: Based on the evidence presented and the findings set forth, the City Council of the City of West Covina approves Code Amendment No. 15-04 to amend Chapter 26 (Zoning) of the West Covina Municipal Code to read as shown on Exhibit "A."

SECTION NO. 4: The City Council finds that adoption of this Ordinance is not subject to the California Environmental Quality Act ("CEQA"), as it is an activity that will not result in a direct or reasonably foreseeable indirect physical change in the environment. Even if it were a project, it would be exempt under 14 Cal. Code Reg. section 15061(b)(3) (no possibility that the activity may have a significant effect on the environment).

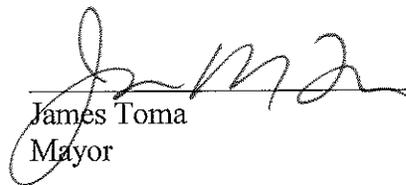
SECTION NO. 5: Any provision of the West Covina Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION NO. 6: Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable. The City Council of the City of West Covina

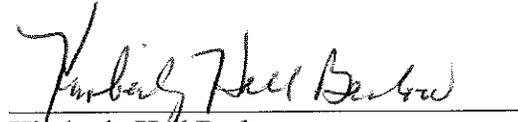
declares that it would have adopted all the provisions of this Ordinance that remain valid if any provisions of this Ordinance are declared invalid.

SECTION NO. 7: The City Clerk shall certify to the passage and adoption of this ordinance, causing it to be posted or published as required by law and it shall be effective thirty (30) days after its adoption.

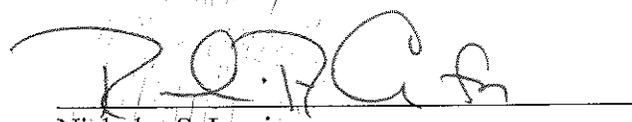
PASSED, APPROVED AND ADOPTED on this 19th day of January, 2016.


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 Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the 15th day of December, 2015. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 19th day of January, 2016, by the following vote:

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


Nickolas S. Lewis
City Clerk

Exhibit A

Article XII of Chapter 26 of the West Covina Municipal Code is hereby amended by the addition of Division 28, concerning “marijuana cultivation,” 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 prohibit 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.
- (c) All the provisions of this article shall apply indoors and outdoors.

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 & 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 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 - Prohibited.

The cultivation of marijuana by any person, including primary caregivers and qualified patients, collective, cooperatives or dispensaries, for any purpose is prohibited on any parcel in the City, and is expressly declared to be a public nuisance.

Sec. 26-685.10400. 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, criminal, and/or administrative 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.

Sec. 26-685.10500. Violations

- (a) **Violations of this article shall be punishable pursuant to Chapter 15, Article IX of the Municipal Code of this Code.**
- (b) **This article is not the exclusive means for the abatement of marijuana cultivation within the City of West Covina. 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.**