

ORDINANCE NO. 1776

AN URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA HABRA, CALIFORNIA, EXTENDING AMENDED PROVISIONS OF TITLE 18 (THE ZONING CODE) PROHIBITING THE DEVELOPMENT OF MARIJUANA RELATED USES FOR A PERIOD OF TEN (10) MONTHS AND FIFTEEN (15) DAYS.

WHEREAS, on December 12, 2016, the City Council of the City of La Habra voted 5-0 to adopt Urgency Interim Ordinance No. 1775 amending provisions of Title 18 (the Zoning Code) prohibiting the development of marijuana related uses for a period of 45 days, pending a study of zoning regulations that are needed to alleviate a current and actual threat to the public health, safety and welfare; and

WHEREAS, the City of La Habra, pursuant to its police power granted by Cal. Const. art. XI, § 7 and Cal. Govt. Code § 37100, may adopt regulations to protect the health, safety and welfare of the public, and thereby is authorized to declare what use and 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, 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, 2013, the City of La Habra enacted Ordinance 1746 adding Section 18.547, which expressly prohibited the operation of "Medical Marijuana Dispensaries", including mobile dispensaries in the City. On January 19, 2016, the City of La Habra enacted Ordinance 1765 adding Section 18.08.140 to the Zoning Code expressly prohibiting "Marijuana Cultivation" in all zoning districts throughout the City.

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 Cannabis Regulation and Safety Act (MCRSA) formerly known as (the Medical Marijuana Regulation and Safety Act), 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 MCRSA, 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, on February 3, 2016, Assembly Bill 21 (Wood) was signed by the Governor, amending provisions of MCRSA pertaining to cultivation licenses by eliminating a March 1, 2016 deadline for local jurisdictions to develop cultivation regulations or implement cultivation bans or local jurisdictions would lose the ability to regulate and defer their authority 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 MCRSA 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 MCRSA 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 voted on Proposition 64 ("Prop 64"), approving the Adult Use of Marijuana Act ("AUMA"), codified in California Health and Safety Code at various sections and in California Business and Professions Code at various sections. The AUMA allows adults 21 and over to use, possess, and cultivate limited amounts of marijuana, establishes a state licensing and regulatory scheme for marijuana businesses

servicing the recreational market; and expressly allows 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, AUMA went into effect November 9, 2016, legalizing marijuana related uses and activities that are not presently regulated or prohibited by the City. Unless a City has a ban or regulations in place, a marijuana business that has obtained a license from the State may potentially operate within the City, and this would cause an immediate harm to the public safety, health and welfare; and

WHEREAS, consistent with Government Code 65858 and without following the procedures otherwise required by a City to adopt a zoning ordinance, for the purpose of protecting the public safety, health, and welfare, a City Council may adopt an urgency measure and interim ordinance which prohibits any use that may be in conflict with a contemplated zoning proposal that the City Council, Planning Commission, or planning department is considering or studying or intends to study within a reasonable time; and

WHEREAS, the City intends to consider or study within a reasonable period of time regulations which may be in conflict with the uses which would otherwise be allowed if this ordinance were not enacted; and

WHEREAS, the Director of Community and Economic Development issued a written report describing the measures taken to alleviate the conditions which led to the adoption of the aforementioned Urgency Interim Ordinance on January 7, 2017, which date is at least ten (10) days prior to the adoption of the extension of the Urgency Interim Ordinance, in compliance with State law; and

WHEREAS, the City Council finds that prohibiting marijuana use and activity will continue to protect the public safety, health, and welfare; and

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 La Habra has passed this ordinance upon finding that it continues to be in the interest of the health, safety and welfare of the City to make explicit that 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 La Habra finds and clarifies this prohibition does not apply or 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 La Habra, California, 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's General Plan; and

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

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LA HABRA DOES ORDAIN AS FOLLOWS:

SECTION 1: Findings. The City Council finds that all the facts, findings, and conclusions set forth above in this Ordinance are true and correct.

ZONING REGULATIONS AND LAND USE

SECTION 2: Section 18.04.030 Amendment. Section 18.04.030 of the Municipal Code is amended by adding the following term, defined as follows:

"Marijuana related use and activity" includes dispensing, cultivation, manufacture, processing, storing, testing, labeling, relabeling, packaging, repackaging, transporting, delivery, distribution, provision, or sale, or any combination thereof, of marijuana, except as set forth in California Business and Professions Code section 19319, related to qualifying patients. "Marijuana-related use and activity" also has the same meaning as "commercial cannabis activity" set forth in California Business and Professions section 19300.5 (j.).

SECTION 3: Section 18.08.140 Amendment. The following paragraphs of Section 18.08.140 of the Zoning Code is amended to provide as follows (Paragraphs "B" and "E" remain un-amended):

18.08.140

A. Purpose

The city council of the city of La Habra hereby finds and determines that it is the purpose and intent of this chapter to prohibit marijuana related use and activity, in order to promote the health, safety, and general welfare of the residents and the businesses within the city by maintaining local control over the ability to authorize and regulate marijuana-related uses and activities, including marijuana businesses engaged in prohibited marijuana use and activity.

C. Definitions.

The following definitions apply to this chapter:

1. "Caregiver" or "primary caregiver" shall have the same definition as that set forth in California Health and Safety Code section 11362.7 (d) and (e).
2. "Cultivation" shall mean any activity involving the germinating, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. Indoor cultivation of marijuana for personal use by persons twenty-one (21) years of age or older on the grounds of a private residence is permitted to the extent allowed by state law (Health and Safety Code section 11362.1, subdivision (c).) All cultivation of marijuana outdoors within the City of La Habra is prohibited.
3. "Delivery" shall have the same definition as set forth in California Business and Professions Code 19300.5 (m). "Delivery" shall also have the same definition as set forth in California Health and Safety Code section 26001(h). "Delivery" shall not include transportation of marijuana or marijuana products by a licensed transporter traveling through the City on public roads to and from locations outside of the City where marijuana-related activities or uses are permitted.
4. "Dispensary" shall mean any location where marijuana or devices for the use of marijuana are offered, either individually, or in combination, and includes retail sales. "Dispensary" includes delivery services, mobile dispensing and distribution.
5. "Dispensing" shall mean any activity involving the provision of marijuana for any purpose.
6. "Distribution" shall mean the provision and transport of marijuana between persons.
7. "Manufacturer" shall mean a person that conducts the production, preparation, propagation, or compounding of marijuana, either directly or

indirectly or by extraction methods, or independently by means of chemical synthesis or by any combination thereof, and includes packaging, repackaging, labeling, and/or relabeling.

8. "Marijuana" shall have the same definition as that set forth in California Health & Safety Code Section 11018. "Marijuana" shall include: "cannabis" as defined in California Business & Professions Code section 19300.5(f); "cannabis concentrate" as defined in California Business & Professions Code section 19300.5(g); "edible cannabis product" as defined in California Business & Professions Code section 19300.5(s); "manufactured cannabis" as defined in California Business & Professions Code section 19300.5(a-e); "medical cannabis," "medical cannabis product," or "cannabis product" as defined in California Business & Professions Code section 19300.5(a-g); and "topical cannabis" as defined in California Business & Professions Code section 19300.5(a-l); and shall also include: "marijuana" as defined in the California Business & Professions Code section 26001(s).
9. "Marijuana Businesses" shall mean marijuana businesses for any purpose (medical or non-medical) including dispensaries, cooperatives, cultivation, manufacturing, testing facilities, transporting, or distributing; all of which are prohibited from being established or operating within the City, except that licensed marijuana transporters are permitted to pass through the City on public roads as mandated by Business and Professions Code sections 19338 and 26080.
10. "Marijuana Related Use and Activity" means dispensing, cultivation, possession, manufacture, processing, storing, testing, labeling, relabeling, packaging, repackaging, transporting, delivery, distribution, provision, or sale, or any combination thereof, of marijuana; and a Marijuana Business of any kind.
11. "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.
12. "Qualified Patient" or "Qualifying Patient" shall mean qualified patient and persons with identification cards as those terms are defined by the Health and Safety Code section 11362.7. This prohibition does not apply or 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. 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

13. "Marijuana-Related Use and Activity" means dispensing, cultivation, possession, manufacture, processing, storing, testing, labeling, relabeling, packaging, repackaging, transporting, delivery, distribution, provision, or sale, or any combination thereof, of marijuana, and as defined in Title 8.42 of the Placentia Municipal Code.

14. "Testing Site" shall mean any facility, entity, or site in the City that offers or performs tests of marijuana.

D. Marijuana Related Use and Activity prohibited.

Marijuana related use and activity shall be prohibited in all zoning districts and areas that are regulated by Specific Plans or planned unit developments.

F. Violations.

(a) Violations of this chapter shall be punishable pursuant to Chapter 1.08 of the City of La Habra Municipal Code.

(b) This chapter is not the exclusive means for the abatement of marijuana related use and activity within the City. The remedies set forth pursuant to this section shall be in addition to any other existing remedies for violations of the municipal code, including, but not limited to, any action at law or equity.

SECTION 4: Repeal. Section 18.54 ("Medical Marijuana Dispensaries") is repealed in its entirety.

SECTION 5: Immediate Effect. Consistent with Government Code Section 65858, this ordinance shall take effect immediately upon the expiration of the initial 45 days from the date of adoption of the initial Urgency Interim Ordinance approved on December 12, 2016 for an additional ten (10) months and fifteen (15) days and the existing provisions of the code previously affected by this ordinance will continue in force unaffected upon the expiration of this time period unless extended by the La Habra City Council consistent with Government Code Section 65858.

SECTION 7: Interpretation. Any provision of the City of La Habra Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further valid, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

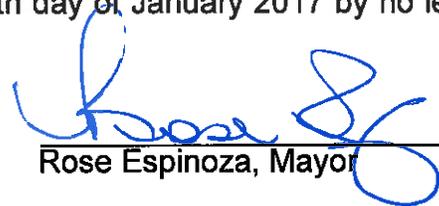
SECTION 6: Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the 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 La Habra 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 7: CEQA Exemption. This ordinance does not have the potential to cause significant effects on the environment because: (1) it essentially maintains the status quo; (2) most provisions of this ordinance do not affect the environment, but rather individual behaviors that collectively have no potential for any significant effect on the environment; and (3) the zoning provisions of this ordinance are temporary in duration and therefore will not therefore have a significant effect on the environment. Therefore, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code Regulations §15061(b)(3). There is no possibility that the proposed ordinance will have a significant effect on the environment.

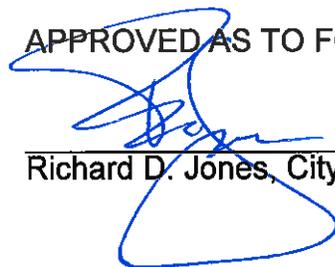
SECTION 8: Certification. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect immediately on an urgency basis after its final passage.

PASSED, APPROVED, AND ADOPTED this 17th day of January 2017 by no less than a four-fifths vote.



Rose Espinoza, Mayor

APPROVED AS TO FORM:



Richard D. Jones, City Attorney

I, Tamara Mason, Deputy City Manager/City Clerk of the City of La Habra, California, do hereby certify that the foregoing Ordinance was adopted at a regular meeting of the City Council of the City of La Habra held on the 17th day of January, 2017, by the following roll call vote:

AYES:	COUNCILMEMBERS:	GOMEZ, BEAMISH, BLAZEY, ESPINOZA
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	SHAW
ABSTAINED:	COUNCILMEMBERS:	NONE

ATTEST: 

Tamara Mason, City Clerk