

ORDINANCE NO.563

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AMENDING CHAPTER 5.25 OF TITLE 5 OF THE HAWAIIAN GARDENS MUNICIPAL CODE TO EXPRESSLY BAN MARIJUANA DISPENSARIES, CULTIVATION, PROCESSING, AND DELIVERY.

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act ("CUA") (codified in Health and Safety Code Section 11362.5, *et seq.*); and

WHEREAS, the intent of the CUA was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law once a physician has deemed the use beneficial to a patient's health; and

WHEREAS, in 2003, the California Legislature adopted Senate Bill 420, the Medical Marijuana Program Act ("MMPA") (codified in California Health and Safety Code Section 11362.7 *et seq.*), to permit qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes and provide a limited affirmative defense for that activity, and which also recognized the right of cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA; and

WHEREAS, neither the CUA nor the MMPA require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate, process, or distribute marijuana within its jurisdiction; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, et al. holding that cities have the authority to ban marijuana related land uses; and

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 *et seq.*, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act"), which is comprised of state legislative bills known as AB 243, AB 266, and SB 643, into law; and

WHEREAS, the Act becomes effective January 1, 2016, and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains new statutory provisions that:

- Allow local governments to enact ordinances expressing their intent to

prohibit the cultivation of marijuana and their intent not to administer a conditional use permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11356.777(c)(4)); and

- Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a)); and
- Expressly provide that the Act does not limit the authority or remedies of a local government under any provisions of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and
- Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)); and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing, and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large number of plants could be cultivated on the same parcel or parcels within the City of Hawaiian Gardens; and

WHEREAS, the cultivation of marijuana, the presence of marijuana dispensaries, and delivery of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery, or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights, chemical substances, and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security of Non-

Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as crime or loitering; and

WHEREAS, based on the experiences of other cities, those negative effects on the public health, safety, and welfare are likely to occur in the City due to the establishment and operation of marijuana cultivation, processing, and distribution activities; and

WHEREAS, prior to the effective date of this ordinance, the City specifically banned medical marijuana dispensaries and the cultivation, processing, and distribution of marijuana was prohibited in the City to the extent such activities were not permitted uses under the City's Zoning Code regulations, and such activities were further prohibited by the Federal Controlled Substances Act or other law; and

WHEREAS, based on the above findings, the potential establishment of the cultivation, processing, and distribution of marijuana in the City without an express ban on such activities poses a current and immediate threat to public health, safety, and welfare in the City due to the negative impacts of such activities; and

WHEREAS, the issuance or approval of licenses or permits for marijuana cultivation, processing, delivery, and/or distribution will result in the aforementioned threat to public health, safety, and welfare; and

WHEREAS, it is in the interest of the City, its residents, and its lawfully permitted businesses that the City adopt this ordinance to expressly prohibit the establishment and operation of marijuana cultivation, processing, delivery, and dispensary activities as well as the issuance of any license or permit for any such activity, except where the City is preempted by federal or state law from enacting a prohibition on any such activity or a prohibition on the issuance of any license or permit for any such activity; and

WHEREAS, the City Council wishes to amend Chapter 5.25 of the Municipal Code ("Medical Marijuana Dispensaries") in its entirety and adopt regulations banning marijuana cultivation, processing, delivery, and distribution in the City of Hawaiian Gardens.

NOW THEREFORE, The City Council of the City of Hawaiian Gardens does ordain as follows:

SECTION 1. Chapter 5.25 of Title 5 of the Hawaiian Gardens Municipal Code is hereby amended in its entirety to read as follows:

Chapter 5.25 MARIJUANA DISPENSARIES

5.25.010 Intent and Purpose.

- A. The intent and purpose of this Chapter is to preserve and protect the public

health, safety, and welfare of the City community by prohibiting marijuana cultivation, marijuana processing, marijuana delivery, and marijuana distribution and dispensaries. The City Council's prohibition of such activities is within the authority conferred upon the City Council by State law.

- B. This Chapter expresses the intent of the City Council to (1) prohibit the cultivation of marijuana in the City; (2) prohibit the delivery of marijuana in the City; (3) prohibit the processing of marijuana in the City; (4) prohibit the distribution of marijuana in the City; (5) exercise its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this Chapter; and (6) exercise its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community.

5.25.020 Definitions.

- A. "Marijuana" means 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, whether crude or purified, including marijuana infused in foodstuff or any other ingestible, topical, or consumable product containing marijuana. "Marijuana" also means marijuana as defined in California Health and Safety Code section 11018. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the California Attorney General or as used by the Compassionate Use Act of 1996, the Medical Marijuana Program Act, or the Medical Marijuana Regulation and Safety Act.
- B. "Marijuana Cultivation" means any activity involving growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana in any way.
- C. "Marijuana Processing" means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, curing, packaging or repackaging, extraction of active ingredients, compounding, encapsulating, labeling or relabeling of marijuana or its derivatives, whether alone or mixed with any amount of any other substance to create marijuana related products, and concentrates.
- D. "Marijuana Delivery" means the commercial transfer of marijuana from a dispensary to any location within the City. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently owned and/or directed by a dispensary, that enables recipients to arrange for or facilitate the commercial transfer by a dispensary of marijuana.

- E. "Marijuana Dispensary" or "Marijuana Dispensaries" means any business, office, store, facility, location, retail storefront, or wholesale component of any establishment, cooperative, or collective that delivers (as defined by Business Professions Code section 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells, or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use as may be amended from time to time, that was issued by the office of the California Attorney General, or for the purposes set forth in the Compassionate Use Act of 1996, the Medical Marijuana Program Act, or the Medical Marijuana Regulation and Safety Act.
- F. "Medical marijuana collective" or "cooperative or collective" means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes or otherwise that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use as may be amended from time to time that was issued by the office of the California Attorney General, or for the purposes set forth in the Compassionate Use Act of 1996, the Medical Marijuana Program Act, or the Medical Marijuana Regulation and Safety Act.

5.25.030 Prohibited Activities.

- A. No person or entity shall cultivate, process, deliver, or distribute marijuana in the City. The City shall not issue, approve, or grant any permit or license for the establishment and/or operation of marijuana cultivation, processing, delivery, and dispensary activities.
- B. It shall be unlawful for any person or entity to own, manage, conduct, establish, operate or facilitate the establishment and/or operation of marijuana cultivation, processing, delivery, and dispensary activities, or to participate as an employee, contractor, agent, or volunteer, or in any other manner or capacity, in the operation of marijuana cultivation, processing, delivery, and dispensary activities. The term "facilitate" shall include, but not be limited to, the leasing, renting or otherwise providing any real property or other facility that will in any manner be used or operated for the purpose of the operation of marijuana cultivation, processing, delivery, and dispensary activities.

5.25.040 Public Nuisance.

The establishment, maintenance, operation, facilitation, of, or participation in marijuana cultivation, marijuana processing, marijuana delivery, or marijuana distribution within the City limits of the City of Hawaiian Gardens is declared a public nuisance.

SECTION 2. The Mayor or presiding officer of the City Council is hereby authorized to affix his/her signature to this Ordinance signifying its adoption by the City Council.


SECTION 3. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen (15) days after passage and adoption as required by law, or in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and, within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of City Clerk.

SECTION 4. If any chapter, section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, section, subsection, subdivision, paragraph, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional.

PASSED AND ADOPTED at a regular meeting of the City Council on the 19th day of January, 2016.


Barry Bruce, Mayor

ATTEST:


Suzanne Underwood, City Clerk

**CITY OF HAWAIIAN GARDENS
CITY CLERK'S OFFICE
CERTIFICATION**

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF HAWAIIAN GARDENS)

I, Suzanne Underwood, City Clerk of the City of Hawaiian Gardens, do hereby certify that **Ordinance No. 563**, was duly and regularly introduced and placed upon its first reading at a Regular meeting of the City Council on **JANUARY 5, 2016**, and that thereafter, said Ordinance was duly adopted and passed at a Regular meeting of the City Council on this **19TH day of JANUARY 2016** by the following votes as the same appears on file and of record in the Office of the City Clerk.

AYES: BRUCE, RODRIGUEZ, MARAVILLA, TRIMBLE, RIOS
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE


SUZANNE UNDERWOOD
CITY CLERK/RECORDS MANAGER