

Agenda Report



Date: January 12, 2016
To: Jeffrey W. Collier, City Manager
From: Conal McNamara, Director of Community Development
Subject: Zoning Code Amendment No. 15-003 – Marijuana Cultivation

RECOMMENDATION

The Planning Commission recommends the City Council introduce an ordinance to approve Zoning Code Amendment 15-003 to amend Chapter 18.45 (Medical Marijuana Regulations) of the Whittier Zoning Code by prohibiting the cultivation of all forms of marijuana within the City of Whittier; and authorize staff to do a summary publication of the ordinance.

BACKGROUND

The laws governing medical marijuana cultivation, sale, and use in California have evolved rapidly, and are presently in flux at the state level. As has been widely reported in the media, the State of California is attempting to create a new statewide framework to regulate medical marijuana cultivation, sale, and use (see AB 243 (Wood), AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood), and SB 643 (McGuire)). These efforts are partially an acknowledgment of the confusion and lack of uniform regulation created in the wake of Proposition 215 (1996), which enacted the Compassionate Use Act, and passage of the Medical Marijuana Program Act of 2003. All three of these bills have been passed by the Legislature and were signed by Governor Brown on October 9, 2015. Their passage significantly affects the City's regulation of this subject.

Generally, the new laws continue to recognize the power of local governments to regulate marijuana cultivation. However, under AB 243, the State Department of Food and Agriculture will establish a 'Medical Cannabis Cultivation Program,' which will be administered by the Department's secretary "except as specified in subdivision (c)" and will administer the new state laws pertaining to the cultivation of medical marijuana. Under subdivision (c):

If a city does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the State Department of Food and Agriculture shall be the sole licensing authority for medical marijuana cultivation applicants in that city. (Health & Safety Code § 11362.777(c)(4).)

Since this new framework has been signed into law, it is appropriate that the City ensure its prohibition on the cultivation of marijuana is clear, so there is no question of the need for the State to act as the only licensing authority under the new laws¹.

On December 9, 2015, the Planning Commission considered the final draft text for Zoning Code Amendment 15-003. The Planning Commission subsequently voted 4-0 (Commissioner Hernandez was absent) to adopt P.C. Resolution No. 15-42 recommending approval of Zoning Code Amendment 15-003 to the City Council, as drafted.

DISCUSSION

Currently, under Chapter 18.45 of the Whittier Municipal Code, medical marijuana dispensaries are prohibited anywhere in the City. Despite this prohibition, the City is informed that outdoor marijuana cultivation occurs within the City and has a negative effect on the community. However, the outdoor cultivation of marijuana is not found among the land use classifications approved by the City. Therefore, the proposed ordinance prohibiting marijuana cultivation will make the prohibition explicit.

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.

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.

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

¹ Notwithstanding the foregoing, it should be noted that this new legislation could be overturned by the voters. The Secretary of State has recently announced that an initiative to amend the California Constitution with regard to medical marijuana issues has been cleared for circulation. According to the State Attorney General's summary, if passed, the initiative would, among other things, bar "state and local laws that restrict patients' ability to obtain, *cultivate*, or transport medical marijuana, including concentrated cannabis, in any way that does not apply equally to other plants." (Emphasis added.) A second marijuana initiative to amend the State Constitution ("The Control, Regulate and Tax Cannabis Act of 2016") was just submitted to the state Attorney General on October 5th and would likewise impact local regulation of cultivation. While there is no way of predicting whether either of these initiatives (or another that has not yet surfaced) might pass, it is certain the City will need to continue to monitor and revise regulations governing marijuana.

cultivated on a single premises is not regulated and substantial amounts of marijuana can be cultivated in a concentrated place.

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.

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.

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.

Marijuana growth poses significant safety risks for surrounding neighbors, including but not limited 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.

The smell associated with marijuana cultivation is believed to be severe enough that it interferes with the use and enjoyment of property in the City.

Furthermore, the United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.). The use of pesticides is therefore inadequately regulated due to these omissions in federal law, and cannabis cultivated in California can and often does contain pesticide residues. These substances can run off of outdoor cultivation sites onto neighboring properties and/or leach into the groundwater.

There are thus serious nuisance impacts associated with the outdoor cultivation of marijuana. Cultivation bans in other cities have been reviewed by the courts and have been upheld in a variety of forms, including complete bans on cultivation within city limits (see *Maral v. City of Live Oak* (2014)).

GENERAL PLAN CONSISTENCY

The prohibition of marijuana cultivation in the City of Whittier as described under Zoning Code Amendment No. ZCA15-003 can be supported based on the following findings of fact:

1. The new ordinance would clarify the existing prohibition on cultivation of marijuana. More clearly regulating this activity will better limit neighborhood effects such as odor and help to limit potential theft associated crime that could have a detrimental effect on surrounding properties.
2. Reducing odor and potential criminal activities associated with outdoor marijuana cultivation would provide for, and maintain, a positive city image that reflects a high quality of life by decreasing the likelihood of violent crime, precluding uses that give off noxious odors, and avoiding increased traffic associated with cultivation activities.
3. Prohibiting outdoor marijuana cultivation will preserve and maintain high quality police service by minimizing the amount of time needed by the Police Department to respond to complaints about odors and theft and other criminal activities that may be associated with outdoor cultivation of marijuana.

PROPOSED AMENDED TEXT UNDER ZCA15-003

Under Zoning Code Amendment No. ZCA15-003, staff is recommending to delete the language shown with a “~~striketrough~~” and add the language shown in “**bold face type**” to Chapter 18.45 (Medical Marijuana Dispensaries) of the Whittier Zoning Code as follows:

18.45.010 – Purpose and findings.

The City Council of the City of Whittier hereby finds and determines that it is the purpose and intent of this article to prohibit medical marijuana dispensaries, **including all marijuana cultivation and** mobile and delivery services, in order to promote the health, safety, morals and general welfare of the residents and the businesses within the City.

18.45.020 – Applicability.

- A. **Nothing in this article is intended, nor shall it be construed, to burden any defense to criminal prosecution under the Compassionate Use Act.**
- 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.**

~~18.45.020 - Definitions~~

18.45.030 - Definitions.

~~A. "Medical marijuana dispensary" means a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5, and shall include mobile marijuana dispensaries.~~

~~B. "Marijuana" shall have the same definition as that set forth in California Health and Safety Code Section 11018.~~

~~C. "Mobile marijuana dispensary" means any clinic, cooperative, club, business or group that transports or delivers, or arranges the transportation or delivery, of medical marijuana to a person.~~

~~D. "Person" means any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer or salesperson.~~

~~E. "Operation" means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a medical marijuana dispensary.~~

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

B. "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.

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

D. "Marijuana dispensary" means a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5, and shall include mobile marijuana dispensaries.

E. "Mobile marijuana dispensary" means any clinic, cooperative, club, business or group that transports or delivers, or arranges the transportation or delivery, of marijuana to a person.

F. "Operation" means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a medical marijuana dispensary.

G. "Person" means any person, firm, corporation, association, club, society, or

other organization. The term person shall include any owner, manager, proprietor, employee, volunteer or salesperson.

~~15.45.030 Medical marijuana dispensaries prohibited.~~

15.45.040 – Medical marijuana dispensaries **and marijuana cultivation** prohibited.

A. Medical marijuana dispensaries are prohibited anywhere within the City of Whittier. No person shall operate, allow to be operated, or aide, abet or assist in the operation of any medical marijuana dispensary.

B. Marijuana cultivation by any person, including primary caregivers, qualified patients and dispensaries, is prohibited in all zone districts within the City of Whittier.

~~18.45.040 – Declaration of public nuisance.~~

18.45.050 – 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 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, including but not limited to the remedies provided for in Section 18.45.050 of this Code.

~~18.45.050 – Violations.~~

18.45.060 – Violations

A. Violations of this Chapter shall be punishable pursuant to Chapters 1.08 and/or 1.09 of this Code.

B. This chapter is not the exclusive means for the abatement of medical marijuana dispensaries **and marijuana cultivation sites** within the City of Whittier. 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.

CONCLUSION

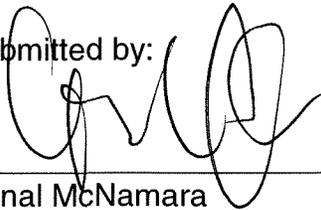
The proposed amendments under Zoning Code Amendment No. 15-003 were reviewed by the City Attorney's office. It is anticipated that prohibiting the cultivation of all forms of marijuana is necessary by March 1, 2016. Otherwise, the State Department of Food and Agriculture shall become the sole licensing authority for medical marijuana cultivation applicants in the City of Whittier.

FISCAL IMPACT

Prohibiting the cultivation of all forms of marijuana will be consistent with the City's current ban on the establishment of medical marijuana dispensaries. Therefore, Zoning Code Amendment 15-003 will not have any fiscal impact on the City.

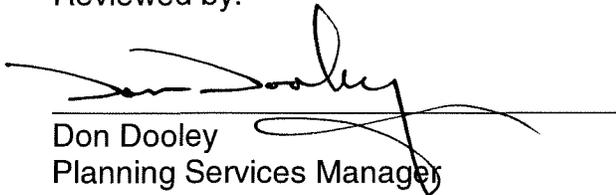
The estimated cost to publish the entire ordinance under Zoning Code Amendment 13-001 is approximately \$1,500. It is recommended the City Council authorize a summary publication of the ordinance, rather than publish it entirely, due to its lengthy content. An estimated cost savings of \$500 would be realized if a summary publication is authorized.

Submitted by:



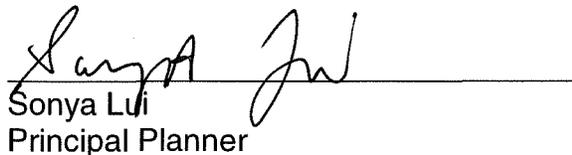
Conal McNamara
Director of Community Development

Reviewed by:



Don Dooley
Planning Services Manager

Prepared by:



Sonya Lui
Principal Planner

Attachments:

- A. Draft City Council Ordinance for Zoning Code Amendment 15-003
- B. Planning Commission Staff Analysis dated December 9, 2015

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DETERMINING THAT ZONING CODE AMENDMENT NO. ZCA15-003 IS EXEMPT UNDER SECTION 15061(B)(3) OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND APPROVING ZONING CODE AMENDMENT NO. ZCA15-003 TO AMEND CHAPTER 18.45 OF THE CITY OF WHITTIER MUNICIPAL CODE BY EXPLICITLY PROHIBITING THE CULTIVATION OF ALL FORMS OF MARIJUANA IN THE CITY OF WHITTIER

WHEREAS, the City of Whittier, 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;

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;

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;

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;

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;

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, 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 ban medical marijuana cultivation, manufacturing, dispensing, and delivery, in which case the new law would not allow or permit these activities within the cities and counties;

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

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));

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);

WHEREAS, the MMRSA expressly allows cities and counties to ban marijuana cultivation consistent with current state law including the City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal. 4th 729 (2013);

WHEREAS, the MMRSA provides that if a city, county, or city and county does not have land use regulations or ordinances 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 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 is required by California Health and Safety Code section 11372.777(c) (4), effective January 1, 2016, added by the MMRSA;

WHEREAS, the City of Whittier's permissive Zoning Code does not list marijuana cultivation as a permitted use in any zone in the City;

WHEREAS, the City Council of the City of Whittier finds that it is in the interest of the health, safety and welfare of the City to make explicit that marijuana cultivation is prohibited anywhere in the City and is a public nuisance per se;

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, interferes with the use and enjoyment of

property, 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 limited 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;

WHEREAS the City Council finds that sanctioning the cultivation of marijuana would be inconsistent with federal law;

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

WHEREAS, the City Council finds that Zoning Code Amendment No. ZCA15-003 will not adversely affect property values and will not be detrimental to the City;

WHEREAS, the City Council finds that Zoning Code Amendment No. ZCA15-003 would clarify the existing prohibition on cultivation of marijuana and thereby resulting in better limiting neighborhood effects such as odor and help to limit potential theft associated crime that could have a detrimental effect on surrounding properties;

WHEREAS, the City Council finds that reducing odor and potential criminal activities associated with outdoor marijuana cultivation would provide for, and maintain, a positive city image that reflects a high quality of life by decreasing the likelihood of violent crime, precluding uses that give off noxious odors, and avoiding increased traffic associated with cultivation activities;

WHEREAS, the City Council finds that prohibiting outdoor marijuana cultivation will preserve and maintain high quality police service by minimizing the amount of time needed by the Police Department to respond to complaints about odors and theft and other criminal activities that may be associated with outdoor cultivation of marijuana;

WHEREAS, the Planning Commission conducted a duly noticed public hearing on Zoning Code Amendment No. ZCA15-003 on December 7, 2015, and subsequently voted 4-0 (under PC Resolution 15-42) recommending to the City Council approval of Zoning Code Amendment No. ZCA15-003;

WHEREAS, the City Council conducted a duly noticed public hearing on January 12, 2016, on said Zoning Code Amendment No. ZCA15-003;

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

WHEREAS, the City Council finds that the publication of the entire text of this ordinance in a newspaper of general circulation would cost significantly more than the cost of publishing other ordinances;

WHEREAS, pursuant to subdivision (c) of Section 36933 of the California Government Code, the City Council may publish a general nature summary of this ordinance in lieu of the entire text; and

WHEREAS, the City Clerk published a summary of this ordinance in the Whittier Daily News and posted a certified copy of the full text of this ordinance in the City Clerk's Office at least five (5) days prior to the date of the City Council meeting at which time this ordinance was adopted.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITTIER DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. On January 12, 2016, in compliance with the California Environmental Quality Act (CEQA), the City Council has determined that Zoning Code

Amendment No. ZCA15-003 is exempt from CEQA, pursuant to Section 15061(b)(3) of CEQA.

SECTION 2. Chapter 18.45 (Medical Marijuana Regulations) of Title 18 (Zoning), of the Whittier Municipal Code is hereby repealed and replaced in its entirety with the following text:

Chapter 18.45 – MEDICAL MARIJUANA REGULATIONS

18.45.010 – Purpose and findings.

The City Council of the City of Whittier hereby finds and determines that it is the purpose and intent of this article to prohibit medical marijuana dispensaries, including all marijuana cultivation and mobile and delivery services, in order to promote the health, safety, morals and general welfare of the residents and the businesses within the City.

18.45.020 – Applicability.

- A. Nothing in this article is intended, nor shall it be construed, to burden any defense to criminal prosecution under the Compassionate Use Act.
- 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.

18.45.030 - Definitions.

- A. "Marijuana" shall have the same definition as that set forth in California Health and Safety Code Section 11018.
- B. "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.
- C. "Medical marijuana" shall mean marijuana used for medical purposes in accordance with California Health and Safety Code section 11362.5.
- D. "Marijuana dispensary" means a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5, and shall include mobile marijuana dispensaries.
- E. "Mobile marijuana dispensary" means any clinic, cooperative, club, business or group that transports or delivers, or arranges the transportation or delivery, of marijuana to a person.

- F. "Operation" means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a medical marijuana dispensary.
- G. "Person" means any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer or salesperson.

18.45.040 – Medical marijuana dispensaries and marijuana cultivation prohibited.

- A. Medical marijuana dispensaries are prohibited anywhere within the City of Whittier. No person shall operate, allow to be operated, or aide, abet or assist in the operation of any medical marijuana dispensary.
- B. Marijuana cultivation by any person, including primary caregivers, qualified patients and dispensaries, is prohibited in all zone districts within the City of Whittier.

18.45.050 – 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 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, including but not limited to the remedies provided for in Section 18.45.050 of this Code.

18.45.060 – Violations.

- A. Violations of this Chapter shall be punishable pursuant to Chapters 1.08 and/or 1.09 of this Code.
- B. This chapter is not the exclusive means for the abatement of medical marijuana dispensaries and marijuana cultivation sites within the City of Whittier. 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.

SECTION 3. The City Council hereby ordains the adoption of the provisions contained within Zoning Code Amendment No. 15-003 to be incorporated within the Whittier Zoning Code.

SECTION 4. Any provision of the Whittier Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 5. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance 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. The City Council of the City of Whittier hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 6. The Mayor shall sign and the City Clerk-Treasurer shall attest to the passage of this Ordinance. The City Clerk-Treasurer shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AND ADOPTED this _____ day of _____, 2016.

FERNANDO DUTRA, Mayor

ATTEST:

KATHRYN A. MARSHALL
City Clerk-Treasurer



STAFF ANALYSIS
WHITTIER CITY PLANNING COMMISSION
DECEMBER 7, 2015

ZONING CODE AMENDMENT NO. ZCA15-003

SUBMITTED BY: CONAL MCNAMARA, DIRECTOR OF COMMUNITY DEVELOPMENT *[Signature]*

REVIEWED BY: DON DOOLEY, PLANNING SERVICES MANAGER *[Signature]*

PREPARED BY: SONYA LUI, PRINCIPAL PLANNER *[Signature]*

PROJECT LOCATION: CITYWIDE

APPLICANT: CITY OF WHITTIER

REQUEST:

To amend Chapter 18.45 of the Whittier Municipal Code to prohibit the cultivation of all forms of marijuana in the City.

RECOMMENDATION

It is recommended that the Planning Commission adopt the attached resolution recommending to the City Council approval of Zoning Code Amendment No. ZCA15-003.

ENVIRONMENTAL REVIEW

Zoning Code Amendment No. ZCA15-003 has been deemed exempt pursuant to Section 15061(b)(3) of the California Environmental Quality Act.

BACKGROUND

The laws governing medical marijuana cultivation, sale, and use in California have evolved rapidly, and are presently in flux at the state level. As has been widely reported in the media, the State of California is attempting to create a new statewide framework to regulate medical marijuana cultivation, sale, and use (see AB 243 (Wood), AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood), and SB 643 (McGuire)). These efforts are partially an acknowledgment of the confusion and lack of uniform regulation created in the wake of Proposition 215 (1996), which enacted the Compassionate Use Act, and passage of the Medical Marijuana Program Act of 2003. All three of these bills have been passed by the Legislature and were signed by Governor Brown on October 9, 2015. Their passage significantly affects the City's regulation of this subject.

Generally, the new laws continue to recognize the power of local governments to regulate marijuana cultivation. However, under AB 243, the State Department of Food and Agriculture will establish a 'Medical Cannabis Cultivation Program,' which will be administered by the Department's secretary "except as specified in subdivision (c)" and will administer the new state laws pertaining to the cultivation of medical marijuana. Under subdivision (c):

If a city does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the State Department of Food and Agriculture shall be the sole licensing authority for medical marijuana cultivation applicants in that city. (Health & Safety Code § 11362.777(c)(4).)

Since this new framework has been signed into law, it is appropriate that the City ensure its prohibition on the cultivation of marijuana is clear, so there is no question of the need for the State to act as the only licensing authority under the new laws¹. This will also give the Council the flexibility to re-visit the issue should the need arise in the future.

Pursuant to Chapter 18.60.050 of the Whittier Zoning Code, staff is now presenting Zoning Code Amendment No. ZCA15-003 to the Planning Commission for consideration. The Planning Commission's recommendation on Zoning Code Amendment No. ZCA15-003 will then be forwarded to the City Council for final consideration.

DISCUSSION

Currently, under Chapter 18.45 of the Whittier Municipal Code, medical marijuana dispensaries are prohibited anywhere in the City. The outdoor cultivation of marijuana is not found among the land use classifications approved by the City. The proposed ordinance prohibiting marijuana cultivation, however, will make the prohibition explicit. 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. The creation of persistent strong odors as marijuana

¹ Notwithstanding the foregoing, it should be noted that this new legislation could be overturned by the voters. The Secretary of State has recently announced that an initiative to amend the California Constitution with regard to medical marijuana issues has been cleared for circulation. According to the State Attorney General's summary, if passed, the initiative would, among other things, bar "state and local laws that restrict patients' ability to obtain, *cultivate*, or transport medical marijuana, including concentrated cannabis, in any way that does not apply equally to other plants." (Emphasis added.) A second marijuana initiative to amend the State Constitution ("The Control, Regulate and Tax Cannabis Act of 2016") was just submitted to the state Attorney General on October 5th and would likewise impact local regulation of cultivation. While there is no way of predicting whether either of these initiatives (or another that has not yet surfaced) might pass, it is certain the City will need to continue to monitor and revise regulations governing 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.

To allow unregulated cultivation of marijuana could 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.

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.

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.

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;

Marijuana growth poses significant safety risks for surrounding neighbors, including but not limited 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; and

Staff believes that the smell associated with marijuana cultivation is severe enough that it interferes with the use and enjoyment of property in the City.

Furthermore, the United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.). The use of pesticides is therefore inadequately regulated due to these omissions in federal law, and cannabis cultivated in California can and often does contain pesticide residues. These substances

can run off of outdoor cultivation sites onto neighboring properties and/or leach into the groundwater.

There are thus serious nuisance impacts associated with the outdoor cultivation of marijuana. Cultivation bans in other cities have been reviewed by the courts and have been upheld in a variety of forms, including complete bans on cultivation within city limits (see *Maral v. City of Live Oak* (2014)).

GENERAL PLAN CONSISTENCY

The prohibition of marijuana cultivation in the City of Whittier as described under Zoning Code Amendment No. ZCA15-003 can be supported based on the following findings of fact:

1. The new ordinance would clarify the existing prohibition on cultivation of marijuana. More clearly regulating this activity will better limit neighborhood effects such as odor and help to limit potential theft associated crime that could have a detrimental effect on surrounding properties.
2. Reducing odor and potential criminal activities associated with outdoor marijuana cultivation would provide for, and maintain, a positive city image that reflects a high quality of life by decreasing the likelihood of violent crime, precluding uses that give off noxious odors, and avoiding increased traffic associated with cultivation activities.
3. Prohibiting outdoor marijuana cultivation will preserve and maintain high quality police service by minimizing the amount of time needed by the Police Department to respond to complaints about odors and theft and other criminal activities that may be associated with outdoor cultivation of marijuana.

PROPOSED AMENDED TEXT UNDER ZCA15-003

Under Zoning Code Amendment No. ZCA15-003, staff is recommending to delete the language shown with a “~~strike through~~” and add the language shown in “**bold face type**” to Chapter 18.45 (Medical Marijuana Dispensaries) of the Whittier Zoning Code as follows:

18.45.010 – Purpose and findings.

The City Council of the City of Whittier hereby finds and determines that it is the purpose and intent of this article to prohibit medical marijuana dispensaries, **including all marijuana cultivation and** mobile and delivery services, in order to promote the health, safety, morals and general welfare of the residents and the businesses within the City.

18.45.020 – Applicability.

- A. Nothing in this article is intended, nor shall it be construed, to burden any defense to criminal prosecution under the Compassionate Use Act.**

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.

~~18.45.020 - Definitions~~

18.45.030 - Definitions.

~~A. "Medical marijuana dispensary" means a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5, and shall include mobile marijuana dispensaries.~~

~~B. "Marijuana" shall have the same definition as that set forth in California Health and Safety Code Section 11018.~~

~~C. "Mobile marijuana dispensary" means any clinic, cooperative, club, business or group that transports or delivers, or arranges the transportation or delivery, of medical marijuana to a person.~~

~~D. "Person" means any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer or salesperson.~~

~~E. "Operation" means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a medical marijuana dispensary.~~

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

B. "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.

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

D. "Marijuana dispensary" means a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5, and shall include mobile marijuana dispensaries.

E. "Mobile marijuana dispensary" means any clinic, cooperative, club, business or group that transports or delivers, or arranges the transportation or delivery, of marijuana to a person.

F. "Operation" means any effort to locate, operate, own, lease, supply, allow to be

operated, or aid, abet or assist in the operation of a medical marijuana dispensary.

G. "Person" means any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer or salesperson.

~~15.45.030 Medical marijuana dispensaries prohibited.~~

15.45.040 – Medical marijuana dispensaries **and marijuana cultivation** prohibited.

A. Medical marijuana dispensaries are prohibited anywhere within the City of Whittier. No person shall operate, allow to be operated, or aide, abet or assist in the operation of any medical marijuana dispensary.

B. Marijuana cultivation by any person, including primary caregivers, qualified patients and dispensaries, is prohibited in all zone districts within the City of Whittier.

~~18.45.040 – Declaration of public nuisance.~~

18.45.050 – 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 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, including but not limited to the remedies provided for in Section 18.45.050 of this Code.

~~18.45.050 – Violations.~~

18.45.060 – Violations

A. Violations of this Chapter shall be punishable pursuant to Chapters 1.08 and/or 1.09 of this Code.

B. This chapter is not the exclusive means for the abatement of medical marijuana dispensaries **and marijuana cultivation sites** within the City of Whittier. 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.

Attachments:

A) Draft PC Resolution with Draft Ordinance for Zoning Code Amendment No. ZCA15-003

DRAFT RESOLUTION NO. P.C. 15-_____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WHITTIER, CALIFORNIA, DETERMINING THAT ZONING CODE AMENDMENT 15-003 IS EXEMPT UNDER SECTION 15061(b)(3) OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND RECOMMENDING TO THE CITY COUNCIL APPROVAL OF ZONING CODE AMENDMENT NO. ZCA15-003 TO AMEND CHAPTER 18.45 OF THE WHITTIER MUNICIPAL CODE TO EXPLICITLY PROHIBIT THE CULTIVATION OF ALL FORMS OF MARIJUANA IN THE CITY OF WHITTIER (APPLICANT-CITY OF WHITTIER).

THE PLANNING COMMISSION OF THE CITY OF WHITTIER, CALIFORNIA, DOES RESOLVE AS FOLLOWS:

SECTION 1. That on December 7, 2015, in compliance with the California Environmental Quality Act (CEQA), the Planning Commission has determined that Zoning Code Amendment No. ZCA15-003 constitutes an exemption under Section 15063(b)(3) of CEQA.

SECTION 2. The Planning Commission does hereby find, determine and declare as follows:

WHEREAS, the City of Whittier, 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, 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 establishes 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: ban medical marijuana cultivation, manufacturing, dispensing, and delivery, in which case the new law would not allow or 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 Cal. 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 *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013); and,

WHEREAS, the MMRSA provides that if a city, county, or city and county does not have land use regulations or ordinances 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)); and,

WHEREAS, the City intends by the adoption of this ordinance to 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 is required by California Health and Safety Code section 11372.777(c) (4), effective January 1, 2016, added by the MMRSA; and

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WHEREAS, the City of Whittier's permissive Zoning Code does not list marijuana cultivation as a permitted land use in any zone in the City; and,

WHEREAS, the Planning Commission of the City of Whittier finds that it is in the interest of the health, safety and welfare of the City to make explicit that marijuana cultivation is prohibited anywhere in the City and is a public nuisance per se; and,

WHEREAS, the Planning Commission 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, interferes with the use and enjoyment of property, 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; and,
- G. Marijuana growth poses significant safety risks for surrounding neighbors, including but not limited 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.

WHEREAS, the Planning Commission finds that Zoning Code Amendment No. ZCA15-003 will not adversely affect property values and will not be detrimental to the City; and,

WHEREAS, the Planning Commission finds that Zoning Code Amendment No. ZCA15-003 would clarify the existing prohibition on cultivation of marijuana and thereby resulting in better limiting neighborhood effects such as odor and help to limit potential theft associated crime that could have a detrimental effect on surrounding properties; and,

WHEREAS, the Planning Commission finds that reducing odor and potential criminal activities associated with outdoor marijuana cultivation would provide for, and maintain, a positive city image that reflects a high quality of life by decreasing the likelihood of violent crime, precluding uses that give off noxious odors, and avoiding increased traffic associated with cultivation activities; and,

WHEREAS, the Planning Commission finds that prohibiting outdoor marijuana cultivation will preserve and maintain high quality police service by minimizing the amount of time needed by the Police Department to respond to complaints about odors and theft and other criminal activities that may be associated with outdoor cultivation of marijuana.

WHEREAS, the Planning Commission held a duly noticed public hearing on Zoning Code Amendment No. ZCA15-003 on December 7, 2015, and based on the public testimony, staff analysis and advice of the City Attorney, the Planning Commission determined that sanctioning the cultivation of all forms of marijuana would be inconsistent with federal law and the provisions under Zoning Code Amendment No. ZCA15-003 are consistent with the City's General Plan; and,

SECTION 2. Based upon the above findings and determinations, the Planning Commission hereby recommends approval of Zoning Code Amendment No. ZCA15-003 to the City Council, as contained in attached Exhibit No. 1 of this resolution and incorporated herein by reference.

SECTION 3. Should any section, subsection, clause or provision of this Resolution for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Resolution, it being hereby expressly declared that this Resolution, and each and every section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved, adopted and/or ratified irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases of this Resolution be declared invalid or unconstitutional.

SECTION 4. The Secretary shall attest to the adoption of this resolution and shall forward a copy to the applicant, and any person requesting the same.

PASSED AND APPROVED this 7th day of December 2015, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

Conal McNamara, Secretary
WHITTIER CITY PLANNING COMMISSION

Attachment:

Exhibit "1" - Draft Ordinance for Zoning Code Amendment No. ZCA15-003

DRAFT ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DETERMINING THAT ZONING CODE AMENDMENT NO. ZCA15-003 IS CATEGORICALLY EXEMPT UNDER SECTION 15061(B)(3) OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND APPROVING ZONING CODE AMENDMENT NO. ZCA15-003 TO AMEND CHAPTER 18.45 OF THE CITY OF WHITTIER MUNICIPAL CODE BY EXPLICITLY PROHIBITING THE CULTIVATION OF ALL FORMS OF MARIJUANA IN THE CITY OF WHITTIER

WHEREAS, the City of Whittier, 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, 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 establishes 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 ban medical marijuana cultivation, manufacturing, dispensing, and delivery, in which case the new law would not allow or 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 Cal. 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 City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal. 4th 729 (2013); and

WHEREAS, the MMRSA provides that if a city, county, or city and county does not have land use regulations or ordinances 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)); and

WHEREAS, the City intends by the adoption of this ordinance to 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 is 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 Whittier's permissive Zoning Code does not list marijuana cultivation as a permitted use in any zone in the City; and

WHEREAS, the City Council of the City of Whittier finds that it is in the interest of the health, safety and welfare of the City to make explicit that marijuana cultivation is prohibited anywhere in the City and is a public nuisance per se; and

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, interferes with the use and enjoyment of

property, 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 limited 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; and

WHEREAS the City Council finds that sanctioning the cultivation of marijuana would be inconsistent with federal law; and

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

WHEREAS, the City Council finds that Zoning Code Amendment No. ZCA15-003 will not adversely affect property values and will not be detrimental to the City; and,

WHEREAS, the City Council finds that Zoning Code Amendment No. ZCA15-003 would clarify the existing prohibition on cultivation of marijuana and thereby resulting in better limiting neighborhood effects such as odor and help to limit potential theft associated crime that could have a detrimental effect on surrounding properties; and,

WHEREAS, the City Council finds that reducing odor and potential criminal activities associated with outdoor marijuana cultivation would provide for, and maintain, a positive city image that reflects a high quality of life by decreasing the likelihood of violent crime, precluding uses that give off noxious odors, and avoiding increased traffic associated with cultivation activities; and,

WHEREAS, the City Council finds that prohibiting outdoor marijuana cultivation will preserve and maintain high quality police service by minimizing the amount of time needed by the Police Department to respond to complaints about odors and theft and other criminal activities that may be associated with outdoor cultivation of marijuana.

WHEREAS, the Planning Commission conducted a duly noticed public hearing on Zoning Code Amendment No. ZCA15-003 on December 7, 2015, and subsequently voted ____ (under PC Resolution 15-____) recommending to the City Council _____ of Zoning Code Amendment No. ZCA15-003; and,

WHEREAS, the City Council conducted a duly noticed public hearing on _____ 2016, on said Zoning Code Amendment No. ZCA15-003.

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITTIER DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. That on _____, 2016, in compliance with the California Environmental Quality Act (CEQA), the City Council has determined that Zoning Code Amendment No. ZCA15-003 is categorically exempt from CEQA, pursuant to Section 15061(b)(3) of CEQA.

SECTION 2. Chapter 18.45 (Medical Marijuana Regulations) of Title 18 (Zoning), of the Whittier Municipal Code is hereby repealed and replaced in its entirety with the following:

Chapter 18.45 – MEDICAL MARIJUANA REGULATIONS

18.45.010 – Purpose and findings.

The city council of the City of Whittier hereby finds and determines that it is the purpose and intent of this article to prohibit medical marijuana dispensaries, including all marijuana cultivation and mobile and delivery services, in order to promote the health, safety, morals and general welfare of the residents and the businesses within the City.

18.45.020 – Applicability.

- A. Nothing in this article is intended, nor shall it be construed, to burden any defense to criminal prosecution under the Compassionate Use Act.
- 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.

18.45.030 - Definitions.

- A. "Marijuana" shall have the same definition as that set forth in California Health and Safety Code Section 11018.
- B. "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.
- C. "Medical marijuana" shall mean marijuana used for medical purposes in accordance with California Health and Safety Code section 11362.5.
- D. "Marijuana dispensary" means a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5, and shall include mobile marijuana dispensaries.
- E. "Mobile marijuana dispensary" means any clinic, cooperative, club, business or group that transports or delivers, or arranges the transportation or delivery, of marijuana to a person.
- F. "Operation" means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a medical marijuana dispensary.
- G. "Person" means any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer or salesperson.

18.45.040 – Medical marijuana dispensaries and marijuana cultivation prohibited.

- A. Medical marijuana dispensaries are prohibited anywhere within the City of Whittier. No person shall operate, allow to be operated, or aide, abet or assist in the operation of any medical marijuana dispensary.
- B. Marijuana cultivation by any person, including primary caregivers, qualified patients and dispensaries, is prohibited in all zone districts within the City of Whittier.

18.45.050 – 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 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, including but not limited to the remedies provided for in Section 18.45.050 of this Code.

18.45.060 – Violations.

- A. Violations of this Chapter shall be punishable pursuant to Chapters 1.08 and/or 1.09 of this Code.
- B. This chapter is not the exclusive means for the abatement of medical marijuana dispensaries and marijuana cultivation sites within the City of Whittier. 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.

SECTION 3. The City Council hereby ordains the adoption of the provisions contained within Zoning Code Amendment No. 15-003 to be incorporated within the Whittier Zoning Code.

SECTION 4. Any provision of the Whittier Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 5. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance 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. The City Council of the City of Whittier hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 6. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the

official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AND ADOPTED this _____ day of _____, 2015.

FERNANDO DUTRA, Mayor

ATTEST:

KATHRYN A. MARSHALL
City Clerk-Treasurer

