

Introduced by Council member _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA, CALIFORNIA ADDING CHAPTER 8.77 TO THE PASADENA MUNICIPAL CODE PROHIBITING COMMERCIAL MARIJUANA ACTIVITY

SECTION 1. Ordinance No. _____, due to its length and corresponding cost of publication, will be published by title and summary as permitted by Section 508 of the Pasadena City Charter. The approved summary of this Ordinance is as follows:

“Summary

“Ordinance No. _____ will amend Chapter 8 of the Pasadena Municipal Code as follows: Chapter 8.77 (Prohibition of Commercial Marijuana Activity) will be amended to add critical definitions and to prohibit commercial cannabis activities, including operating medical marijuana dispensaries and cultivation and delivery of medical marijuana within the City of Pasadena.

Ordinance No. _____ shall take effect 30 days after publication.”

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 medical marijuana land uses;

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;

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

WHEREAS, the MMRSA becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical marijuana to qualified patients. The MMRSA 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 condition permit program pursuant to Health & Safety Code § 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4);

- Expressly provide that the MMRSA 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));
- Expressly provide that the MMRSA does not limit the authority or remedies of a local government under any provision 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 § 19300.5(m) of the MMRSA, from operating within the local government’s boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a));

WHEREAS, it is in the interest of the City, its residents, and its lawfully permitted businesses that the City adopts this ordinance to expressly prohibit the establishment and operation of marijuana cultivation, processing, delivery, and dispensary activities as well as the issuance of any entitlements, license, or permit for any such activity.

NOW THEREFORE, the People of the City of Pasadena ordain as follows:

SECTION 2. The City Council of the City of Pasadena hereby finds that the above recitals are true and correct and are incorporated into the substantive portion of this ordinance.

SECTION 3. Chapter 8.77 is hereby added to Chapter 8 of the Pasadena Municipal Code to read as follows:

“Chapter 8.77 Prohibition of Commercial Marijuana Activity

8.77.010 Definitions.

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

- A. “Marijuana” or “cannabis” means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis Indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated 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, including marijuana infused with foodstuff or any other ingestible or consumable product containing marijuana. The term “marijuana” or “cannabis” 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 Attorney General for the State of California or subject to provisions of Health & Safety Code § 11362.5 (Compassionate Use Act of 1996) or Health & Safety Code §§ 11362.7 – 11362.83 (Medical Marijuana Program Act).

- B. “Marijuana cultivation” means growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana.
- 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, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.
- D. “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 in Business & Professions Code § 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 Attorney General for the State of California or subject to provisions of Health & Safety Code § 11362.5 (Compassionate Use Act of 1996) or Health & Safety Code §§ 11362.7 – 11362.83 (Medical Marijuana Program Act).
- E. “Medical marijuana collective” or “cooperative or collective” means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes 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 Attorney General for the State of California or subject to provisions of Health & Safety Code § 11362.5 (Compassionate Use Act of 1996) or Health & Safety Code §§ 11362.7 – 11362.83 (Medical Marijuana Program Act).

8.77.020 Prohibition.

Marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries shall be prohibited activities in the City. No entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of marijuana cultivation, marijuana processing, marijuana delivery, or the establishment or operation of a marijuana dispensary in the City, and no person shall otherwise establish or conduct such activities in the City.

8.77.030 Public Nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter 8.77 shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure Section 731 or any other remedy available to the City.

8.77.040 Penalties.

- A. A violation of any provision of this Chapter shall be punishable under the procedures set forth in Chapters 1.24, 1.25 and 1.26.
- B. Each day a person is in violation of this chapter shall be considered a separate violation.
- C. Nothing in this Ordinance shall be deemed to prevent the City from instituting any appropriate legal procedures to abate, correct, enjoin or restrain any violation of this section, including civil or criminal proceedings.
- D. In any civil action for injunctive relief brought pursuant to this ordinance, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party. This includes any and all costs incurred by the City in connection with prosecuting the violation(s), including but not limited to, costs of investigation, staffing costs in preparation for the hearing and for the hearing itself, and costs for all inspections necessary to enforce any Court order(s).
- E. The remedies and relief provided in this section shall be cumulative and in addition to any and all other remedies available to the city under this code and state law.

8.77.050 Severability.

If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and this City Council hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been deleted.

SECTION 4. The City Clerk shall certify the adoption of this Ordinance and shall cause this Ordinance to be published in its entirety.

SECTION 5. This Ordinance shall take effect 30 days after publication.

Signed and approved this _____ day of _____, 20__.

Terry Tornek
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held on _____ day of _____ 20__ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Published:

Mark Jomsky, CMC
City Clerk

APPROVED AS TO FORM:



John W. Nam
Deputy City Attorney