

Introduced by: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA ADDING CHAPTER 8.88 TO TITLE 8 OF THE PASADENA MUNICIPAL CODE PERMITTING SUSPENSION OF CITY UTILITY SERVICES FOR VIOLATION OF SPECIFIED SECTIONS OF THE PASADENA MUNICIPAL CODE, AND AMENDING TITLE 14, CHAPTER 14.04, SECTION 14.04.030 (VIOLATIONS) OF THE PASADENA MUNICIPAL CODE REGARDING ADDITIONAL ENFORCEMENT PROVISIONS.

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 Titles 8 and 14 of the Pasadena Municipal Code as follows: Chapter 8.88 will be amended to permit suspension of City utility services for violation of specified sections of the Pasadena Municipal Code. Chapter 14.04.030 will be amended regarding additional enforcement provisions.

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

WHEREAS, businesses which continue to operate in violation of the Pasadena Municipal Code after being cited, create potential nuisances and additional tools are needed to ensure compliance with the Municipal Code;

WHEREAS, the City of Pasadena has historically prohibited all marijuana related activities. Prohibition is accomplished through authority of the Zoning Code. The City of Pasadena’s Zoning Code is a “permissive zoning” system which allows only those uses as specifically articulated and prohibits all other uses;

WHEREAS, the City has specifically banned medical marijuana dispensaries since 2005 and in 2015, Chapter 8 of the Pasadena Municipal Code was amended to add definitions and to prohibit commercial cannabis activities, including operating medical marijuana dispensaries and cultivation and delivery of medical marijuana within the City of Pasadena;

WHEREAS, the suspension of City utilities in specific instances is an outgrowth of the City’s desire to identify and employ alternate enforcement tools suitable for resolving Municipal Code violations;

WHEREAS, the need for expanded compliance options has been exemplified in the City's ongoing efforts to resolve noncompliant land use issues, particularly illegal marijuana dispensaries; and

WHEREAS, it is in the interest of the City, its residents, and its lawfully permitted businesses that the City adopts this ordinance to permit the suspension of City utility services for violation of specified sections of the Pasadena Municipal Code.

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

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

SECTION 3. Title 8, Chapter 8.88 is hereby added to Chapter 8 of the Pasadena Municipal Code to read as follows:

"Chapter 8.88 Utility Suspension"

8.88.010 Definitions.

(A) **The following words and phrases, when used in the context of this chapter, shall have the following meanings:**

1. **"Authorized agent" means the City Manager or his or her designee, the General Manager of the Department of Water and Power or his or her designee, and the Director of the Planning and Community Development Department or his or her designee, which shall include but not be limited to employees holding the position of "Building Official," "Code Compliance Manager," and "Code Compliance Officer."**
2. **"Building official" shall mean the certain employee of the City described in the Human Resources Department classification code 020352, or as revised thereafter.**
3. **"Building violation" shall mean violation of section 14.04.030 of this Code, or violation of section 17.71.130 of the Pasadena Zoning Code.**
4. **"City" shall mean the City of Pasadena, California.**
5. **"Code" shall mean the Pasadena Municipal Code.**

6. “Code Compliance Officer” shall mean those certain employees of the City described in the Human Resources Department classification code 055961, or as revised thereafter.
7. “Code Compliance Manager” shall mean those certain employees of the City described in the Human Resources Department classification code 037121, or as revised thereafter.
8. “Commercial use” shall mean any land use type listed in the Zoning Code “Allowed Uses and Permit Requirements” tables in Article 2 and Article 3 under "Recreation, Education & Public Assembly Uses," "Office, Professional, and Business Support Uses," "Retail Sales," "Services," and/or "Transportation Communication and Utility Uses", except those uses classified as Public, Semi-Public Uses.
9. “Day(s)” shall mean calendar days. For purposes of this chapter, any date by which an action shall occur that falls on a Sunday or a legal holiday, shall be effective the following business day.
10. “Director” shall mean the Director of the Department of Planning and Community Development.
11. “General Manager” shall mean the General Manager of the Department of Water and Power or his or her designee.
12. “Hearing officer” shall mean the person appointed to perform the duties prescribed by this chapter related to conducting hearings and making decisions associated with this chapter.
13. “Industrial use” shall mean a land use type listed in the Zoning Code "Allowed Uses and Permit Requirements" table in Article 2 and Article 3 under Industry, Manufacturing & Processing Uses.
14. “Issued” shall mean the date that a Notice of Utility Suspension is delivered to a responsible person, and shall be deemed either: (i) the date when the Notice is personally served upon the responsible person, (ii) the date it is mailed to the responsible person, or (iii) the date it is posted on the real property where a violation exists. In the event the Notice is served or delivered by more than one of the above specified methods, such date shall be deemed the earliest of such dates.
15. “Notice of decision” shall mean a form prepared by the Hearing Officer or his or her designee and used to inform a responsible

person of any decision made pursuant to any provision of this chapter.

16. “Notice of Utility Suspension” shall mean any notice issued pursuant to this chapter stating that there has been a violation of one or more provisions of this Code, which states the City’s intent to suspend utilities to the premises and which includes the process to appeal such notice.

17. “Responsible person” or “person responsible” shall mean any of the following:

(a) A person who causes any violation of this chapter to occur;

(b) A person who maintains or allows any violation of this chapter over which such person has control to continue, or by his or her action or failure to act;

(c) A person who is the owner, or lessee or sublessee, of real property upon which a violation of this chapter occurs or exists;

(d) A person who is the on-site manager of a business who normally works at the site when the business is open and is responsible for activities at such premises;

(e) A person who is the beneficiary under a deed of trust for the property upon which a violation exists, and who has not corrected the violation after being notified by an authorized agent of the City in writing that: (i) such violation exists, (ii) the trustee under the deed of trustee is no longer occupying the property, and (iii) such trustee’s whereabouts are unknown to the City.

18. “Zoning code” shall mean the Pasadena Zoning Code, Title 17 of the City of Pasadena Municipal Code.

8.88.020 Scope.

The City Council has determined that enforcement of the Pasadena Municipal Code throughout the city is an important public service and is vital to the protection of the public’s health, safety, and quality of life. The City Council has also determined that there is a need for alternative methods of achieving compliance with the City’s Codes and has resolved to adopt precise enforcement regulations that can be effectively applied. The City Council has further

determined that there is a need for an adjunct enforcement process and that the City will benefit by a procedure wherein utility services may be suspended in certain situations in order to compel compliance with pertinent sections of chapters 14 and 17 of the Pasadena Municipal Code.

8.88.030 Application.

- (A) This chapter makes any building violation as defined herein subject to the suspension of utilities as provided by the Pasadena Department of Water and Power, in a manner as set forth herein.
- (B) This chapter establishes the process for issuance, administrative review and effectuation of a Notice of Utility Suspension.
- (C) The purpose of using a Notice of Utility Suspension, and the actual suspension of utilities where necessary, is to encourage timely and complete compliance with the provisions of this chapter and shall only apply to commercial and industrial uses.
- (D) The issuance of a Notice of Utility Suspension and the actual suspension of utilities under this chapter is solely at the City's discretion and is one of the options the City has to address Code violations as described herein. By adopting this chapter, the City does not intend to limit its discretion, or the discretion of its officers and employees to use any other remedy, civil or criminal, which may be available in a particular case. The procedures set forth in this chapter may be used as an alternative to, or in conjunction with, any other available civil and/or criminal remedies.
- (E) The City shall not be required to re-establish the service until the unlawful use ceases and the fee for reconnection has been paid.

8.88.040 Suspension of utilities for violation of code.

Any person who violates any provision of, or fails to comply with section 14.04.030 of the Pasadena Municipal Code as amended (Illegal or unpermitted building occupancy or use) or section 17.71.130 of the Pasadena Zoning Code (Permits required) shall be subject to the suspension of water and electrical utilities as set forth in this Chapter.

8.88.050 Suspension of utilities not applicable to buildings with shared utilities.

Utility suspension shall affect only the responsible person and there shall be no utility suspension that directly affects persons other than the property or lease/rent space under control and dominion of the responsible person.

8.88.050 Notice of Utility Suspension

- (A) Any authorized agent, upon determining that a provision of this chapter has been violated, has the authority to issue a Notice of Utility Suspension to any person(s) responsible therefor. The Notice shall be issued on a form approved by the City Manager or his or her designee. The Notice shall state the City's intent to suspend utility service, shall state the reason for service suspension and shall indicate the date and approximate time at which utility suspension will occur. In no instance shall utility suspension occur less than ten (10) calendar days after service of the Notice of Utility Suspension.
- (B) The authorized agent shall transmit a copy of the Notice of Utility Suspension to the General Manager or his/her designee and coordinate suspension activities amongst all necessary departments.

8.88.060 Service of Notice of Utility Suspension.

- (A) A Notice of Utility Suspension issued or given pursuant to any provisions of this chapter may be served, and shall be deemed received on the date when served, in any of the following manners:
 - 1. An authorized agent may personally serve the notice on the responsible person. When personally served, the responsible person shall be requested to sign a copy of the notice showing his or her receipt thereof. If the responsible person refuses or otherwise fails to sign the notice, the authorized agent shall so indicate on the notice. Neither the refusal or failure of the responsible person to sign the notice shall affect the validity of the notice or the validity of its service.
 - 2. An authorized agent may mail the notice by first class mail, if the responsible person is not present for personal service. When served by mail, the notice shall be mailed to the responsible person's address shown on the county's last equalized property tax assessment rolls if the person responsible for the code violation is the owner of the real property, or to any address known for the responsible persons.

3. An authorized agent may post a copy of the notice in a conspicuous place on the property on which the violation exists. When served by posting, a copy of the notice shall also be mailed by first class mail to the responsible person at the address of the property where the violation exists. Failure of the responsible person to receive the posted or mailed copy of the notice shall not affect the validity of the notice or the validity of its service.

4. Any notice or order required or authorized to be given by the City Manager, the Director, or the Hearing Officer, or their designees, pursuant to provisions of this chapter shall be given in the manner provided in this section.

5. There shall be a rebuttable presumption that the record owner of a parcel according to the County of Los Angeles' latest equalized property tax assessment rolls, and any lessee or sublessee of a parcel has notice of any code violation existing on the property. For the purposes of this chapter, there may be more than one responsible person for a violation.

8.88.070 Request for administrative review.

(A) Any person receiving a Notice of Utility Suspension may contest it by filing a request for administrative review within the time provided herein. To obtain an administrative review, the responsible person shall file a signed written application in the form prescribed by the City, specifying the grounds for contesting the Notice. A responsible person may only contest the Notice on one or more of the following grounds: (1) by denying that a violation occurred, (ii) by denying that a violation was not corrected within any applicable correction period as set forth by an authorized agent, or (iii) by denying that the recipient is the person responsible for the violation.

(B) Any application request for administrative review must be received by the City within ten (10) calendar days of the date the Notice was issued. All applications shall be date stamped on the date received by the City. The General Manager or Director or their designee may reject any application that is not timely received by the City.

8.88.080 Administrative review.

(A) Hearings shall be conducted by the Hearing Officer at a time, date and location set by the Hearing Officer, which date shall be at least seven (7) days but not more than twenty one (21) days after the date upon which the responsible person requests an administrative

review. The responsible person shall be given at least ten (10) days advance notice of such hearing date.

- (B) The Code Compliance Manager shall ensure that the pertinent records which document violation(s) of the Pasadena Municipal Code are delivered to the Hearing Officer. Before the hearing the Code Compliance Manager shall also make available to the responsible person a copy of any additional reports or documentation concerning the request to suspend utilities to the Hearing Officer.
- (C) The responsible person shall be given the opportunity to testify and to present evidence relevant to the alleged violation(s) upon which the Notice to Suspend Utilities is issued and to seek dismissal of the notice.
- (D) The notice and any other reports prepared by the authorized agent(s) or prepared at his or her request concerning the building violation shall be accepted by the Hearing Officer as prima facie evidence of the code violation(s) and the facts stated in such documents.
- (E) The authorized agent or a representative on their behalf shall attend the hearing.
- (F) The Hearing Officer may continue a hearing if a request is made by a responsible person or their representative, or a representative of the city, upon a showing of good cause. All continuance requests shall either: (i) be made in person at the hearing, or (ii) be made by a written request received by the Hearing Officer at least twenty-four (24) hours before the scheduled time of the hearing. If the continuance is granted, a new hearing shall be set for a date not later than ten (10) days after the previously scheduled hearing date unless otherwise agreed by the authorized agent. If the continuance is denied, the hearing shall proceed as scheduled, and, if the responsible person is not present, the request shall be deemed abandoned in accordance with subsection "H" below. The decision on the continuance request is final, and the notice shall either be delivered personally to the responsible person or the representative if present, or be mailed. If the request for continuance is not made in person, it is the burden of the responsible person to determine whether the request is denied and the hearing is to proceed as scheduled.
- (G) The hearing shall be conducted informally and the formal rules of

evidence and discovery does not apply. Each party shall have an opportunity to present evidence and witnesses in support of his or her case. The only evidence that shall be permitted at the hearing and considered by the Hearing Officer in reaching a decision is that evidence that is relevant to the proof or disproof of:

1. Ownership of the subject property, when applicable;
 2. Whether a person noticed by the City as responsible person is, in fact, a responsible person;
 3. Whether a violation of this code occurred and/or continues to occur on the date or date specified in the Notice of Utility Suspension.
 4. Whether the responsible person has caused, maintained, or permitted a violation of this code on the date or dates specified in the Notice of Utility Suspension.
- (H) Each party shall have the opportunity to cross-examine witnesses and present evidence in support of his or her case. The City bears the burden of proof to establish a violation of the Code. The Notice is prima facie evidence of the violation. The Hearing Officer shall use the preponderance of evidence as the standard of evidence in deciding the issues. The Hearing Officer shall not have the authority to issue subpoenas.
- (I) The failure of the responsible person to appear at the hearing, unless the hearing was continued to another date pursuant to section (F) above, shall constitute an abandonment of the request for administrative review. The responsible person's failure to appear shall be noted on the notice of decision by the Hearing Officer, and it shall be mailed to the responsible person.
- (J) The Hearing Officer's continued employment and compensation shall not be linked, directly or indirectly to the number of suspension notices upheld or denied by such Hearing Officer.

8.88.090 Utility Suspension

- (A) No suspension of utilities shall occur during the period in which the notice may be appealed, or if appealed, during the period in which the notice is under appeal.
- (B) The determination of the Hearing Officer shall become effective

three days after the date of the Notice of Decision.

- (C) The determination of the Hearing Officer is final and is not subject to appeal.
- (D) A Notice of Utility Suspension not appealed shall become effective on the eleventh day after the date of issuance.

8.88.100 Financial responsibility – Disconnection and reconnection charges.

The responsible person shall be charged all actual costs for suspension of utility service, and all actual service reconnection charges and fees, and actual costs which may be incurred for ancillary service rendered by the City Attorney's Office, the Police Department, the Fire Department, the Public Works Department, the Health Department and the Pasadena Humane Society.

8.88.110 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. Title 14, Chapter 14.04, Section 14.04.030 of the Pasadena Municipal Code is amended to read as follows:

“Chapter 14.04.030 Violations.

All sections in the 2016 codes referenced in Section 14.04.010 herein pertaining to violations are amended in their entirety to read as follows:

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish, equip, use, occupy, or maintain any building or structure in the City, or cause same to be done, contrary to or in violation of any of the provisions of this chapter. Any person, firm, or corporation violating any of the provisions of this Ordinance, shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Ordinance is committed, continued, or permitted, and upon conviction of any such violation such persons shall be punished by a fine of not more than one thousand dollars (\$1,000) or double the permit fee whichever is greater or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. **Violations of this section are subject to the enforcement provisions of Chapter 8.88.**

In addition to the above penalty provisions, violation of any of the provisions of this chapter may be subject to the administrative proceedings set forth in Chapter 1.25 of this code.

SECTION 5. The City Clerk shall certify the adoption of this Ordinance and shall cause this Ordinance to be published in its entirety.

SECTION 6. This Ordinance shall take effect 30 days after publication.

Signed and approved this _____ day of _____, 2017.

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 this _____ day of _____ 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Date Published:

Mark Jomsky
City Clerk

Approved as to form:

A handwritten signature in black ink, appearing to read 'John W. Nam', is written over a horizontal line.

John W. Nam
Deputy City Attorney