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ORDINANCE NO. 16-OR0156-1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE, CALIFORNIA, AMENDING ARTICLE XIII CHAPTER 7 OF THE OCEANSIDE CITY CODE TO REGULATE MEDICAL CANNABIS DELIVERIES ORIGINATING FROM LEGAL DISPENSARIES OUTSIDE OF OCEANSIDE

WHEREAS, the City of Oceanside, 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 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 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 the 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

1 licensing system for medical marijuana cultivation, manufacturing, delivery, and dispensing,
2 regulating these activities with licensing requirements and regulations that are only applicable
3 if cities and counties also permit marijuana cultivation, manufacturing, dispensing, and delivery
4 within their jurisdictions. Under the MMRSA, cities and counties may continue to ban medical
5 marijuana cultivation, manufacturing, dispensing, and/or delivery, in which case the new law
6 would not allow or permit these activities within the cities and counties; and

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

9 WHEREAS, marijuana also remains a Schedule I substance pursuant to federal law, 21
10 U.S.C. § 812, Schedule 1 (c)(10), and federal law does not provide for any medical use defense
11 or exception (*Gonzales v. Raich*, 545 U.S. 1 (2005); *United States v. Oakland Cannabis*
12 *Buyers' Coop.*, 532 U.S. 483 (2001)); and

13 WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center,*
14 *Inc.*, 56 Cal. 4th 729 (2013), the California Supreme Court held that neither the CUA nor the
15 MMPA preempt local regulation; and

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

19 WHEREAS, the MMRSA provides that if a city, county, or city and county does not
20 have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana,
21 either expressly or otherwise under the principles of permissive zoning, or chooses not to
22 administer a conditional permit program pursuant to the MMRSA, then the state will be the
23 sole licensing authority for medical marijuana cultivation applicants (Health & Safety Code
24 section 11372.777(c)(4)); and

25 WHEREAS, the City Council adopted Ordinance 16-OR0041-1 on January 20, 2016 to
26 prohibit marijuana cultivation and delivery activities within the City of Oceanside for the
27 express and specific purpose of preserving the City's authority to ban and/or adopt future
28 regulations pertaining to marijuana cultivation and delivery as is required by California Health

1 and Safety Code section 11372.777(c)(4), effective January 1, 2016, added by the MMRSA;
2 and

3 WHEREAS, the Oceanside Police Department reports that between 2012 and 2015, at
4 least forty-six robberies were committed in Oceanside related to the sale, purchase or
5 possession of marijuana, twenty-four of which were committed using firearms, and twenty-two
6 using other types of weapons. Twelve of these forty-six incidents were related to mobile
7 marijuana dispensaries, including an incident on December 1, 2015 where two victims
8 delivering medical marijuana were assaulted and robbed by three suspects; and

9 WHEREAS, in adopting Ordinance No. 16-OR0041-1 on January 20, 2016, the City
10 Council of the City of Oceanside made findings regarding the impacts associated with
11 commercial cannabis activities and these findings are incorporated herein by reference and
12 ratified; and

13 WHEREAS, the City of Oceanside's permissive Zoning Code does not list marijuana
14 commercial cannabis activities as defined in Business and Professions Code section 19300.5(k),
15 as permitted uses in any zoning district in the City and therefore, such uses are not allowed
16 anywhere in the City; and

17 WHEREAS, the City Council has provided direction to present alternatives to allow
18 lawful dispensaries outside of the City of Oceanside to deliver medical cannabis to qualified
19 patients in Oceanside in a manner that minimizes impacts to public safety; and

20 WHEREAS, the City of Oceanside, California, pursuant to the provisions of the
21 California Environmental Quality Act (hereinafter "CEQA") (California Public Resources
22 Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) has
23 determined that the Ordinance is exempt pursuant to Section 15061(b)(3) of Title 14 the
24 California Code of Regulations;

25 NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OCEANSIDE DOES
26 ORDAIN AS FOLLOWS:

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

1 SECTION 2: Chapter 7, Article XIII. Commercial Cannabis Activities is hereby
2 amended to read as follows:

3 **Sec. 7.118 - Commercial Cannabis Activity Prohibited**

4 (a) Except as provided in Section 7.118(b), any Commercial Cannabis Activity,
5 including Marijuana cultivation requiring a state license by a licensing authority as defined in
6 Business and Professions Code section 19300.5(w), and Marijuana delivery is prohibited in the
7 City of Oceanside. Except as provided in Section 7.118(b), no permit shall be issued by the
8 City to authorize any Commercial Cannabis Activity. Any Commercial Cannabis Activity that
9 takes place in violation of this section is hereby declared a public nuisance.

10 (b) Notwithstanding the general prohibition in Section 7.118(a), Marijuana delivery may
11 be permitted from a dispensary located outside of the City of Oceanside with the issuance of a
12 business license issued by the business license division in accordance with all applicable
13 provisions of Chapter 15 of the Oceanside City Code and with the written approval of the City
14 Attorney and the Police Chief, under all of the following additional conditions:

- 15 (1) The applicant shall present proof of their permit to operate a dispensary from the city or
16 county in which the dispensary is located.
- 17 (2) Commencing on January 1, 2018, the applicant shall present proof of required state
18 license(s) issued by the state licensing authority as defined in Business and Professions
19 Code 19300.5.
- 20 (3) The business license application shall be denied if the applicant or any delivery driver
21 has a felony conviction, any other convictions involving theft, the manufacture,
22 transportation, sale or possession of a controlled substance, or within seven years prior
23 to the application, any convictions involving driving under the influence of alcohol or
24 drugs. Prior to the issuance of a business license and prior to each annual renewal, the
25 applicant shall disclose the names of all drivers to the Oceanside Police Department.
- 26 (4) The applicant shall present proof of the driver's licenses for each driver. Each driver
27 shall be twenty-one years of age or older.
- 28 (5) The applicant shall pay all applicable business license administrative fees and taxes
required by Chapter 15 of the Oceanside City Code. The business license shall be
deemed as Category II, High Level of Enforcement and shall be subject to the rules,
regulations and policies of this classification.

1 (6) In addition to the administrative fees and taxes referenced in section (5) above, the
2 applicant shall pay a \$35 processing fee for any driver requested to be added to the
3 license outside of the annual business license renewal process.

4 (7) The delivery vehicles shall not advertise any commercial cannabis activity nor shall it
5 advertise the name of the dispensary.

6 (8) Deliveries shall be directly to the residence or business address of the qualified patient
7 who possesses an identification card issued pursuant to Health and Safety Code section
8 11362.71 et seq. or that person's primary caregiver. Any other delivery or transaction is
9 prohibited. The qualified patient or primary caregiver shall maintain a copy of the
10 delivery request and make it available to law enforcement officers upon request as
11 required by Health and Safety Code section 19340(e).

12 (9) Delivery drivers shall not transport medical marijuana in excess of the limits established
13 the state Bureau of Medical Marijuana Regulation. Prior to the issuance of regulations,
14 no driver may transport more than eight ounces of medical marijuana.

15 (10) All orders shall be packaged by name of the qualified patient. The delivery driver
16 shall maintain a copy of the delivery request and make it available upon request to law
17 enforcement officers as required by Health and Safety Code section 19340(d).

18 (11) Deliveries shall occur only between the hours of 6:00 a.m. and 6:00 p.m.

19 (12) Prior to the issuance and renewal of the business license, the applicant shall present
20 proof that each delivery vehicle is properly registered with California Department of Motor
21 Vehicles.

22 (13) The applicant shall maintain automobile liability insurance from an insurance company
23 admitted by the Insurance Commissioner of the State of California to transact the business
24 of insurance in the state which shall be for a combined single limit for bodily injury and
25 property damage liability of not less than one million dollars (\$1,000,000.00).

26 (c) A business license issued by the business license division shall be subject to
27 revocation for failure to comply with any of the conditions described above in Section 7.118(b)
28 or for failure to comply with applicable provisions of Chapter 15 of the Oceanside City Code.
The revocation of a business license shall be subject to the procedures set forth in Section 15.5
of the Oceanside City Code. In addition, the city shall notify the state licensing authority of
any delivery service operating in violation of Section 7.118(b).

1 SECTION 3. The City Clerk of the City of Oceanside is hereby directed to publish
2 this Ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen
3 (15) days after its passage in a newspaper of general circulation published in the City of
4 Oceanside.

5 SECTION 4. If any section, sentence, clause or phrase of this Ordinance is for any
6 reason held to be invalid or unconstitutional by a decision of any court of competent
7 jurisdiction, such decision shall not affect the validity of the remaining portions of this
8 Ordinance. The City Council hereby declares that it would have passed this Ordinance and
9 adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the
10 fact that any one or more sections, subsections, sentences, clauses or phrases be declared
11 invalid or unconstitutional.

12 SECTION 5. This ordinance shall be effective 30 days after its adoption.

13 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,
14 California, held on the 2nd day of March, 2016, and, thereafter,

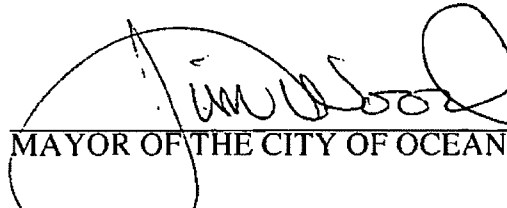
15 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
16 Oceanside, California, held on the 16th day of March, 2016, by the following vote:

17 AYES: KERN, LOWERY, SANCHEZ

18 NAYS: WOOD, FELLER

19 ABSENT: NONE


20 ABSTAIN: NONE

21 
22 MAYOR OF THE CITY OF OCEANSIDE

23 ATTEST:

24 APPROVED AS TO FORM:

25 
26 CITY CLERK

27 
28 CITY ATTORNEY