

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, CALIFORNIA, AMENDING SECTION 21.90.020 OF THE INDIAN WELLS MUNICIPAL CODE TO PROHIBIT CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS, CANNABIS CULTIVATION, AND DELIVERY OF CANNABIS IN THE CITY

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

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the Penal Code; and

WHEREAS, neither the Compassionate Use Act ("CUA") nor the MMP requires or imposes an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within their jurisdiction; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban outright medical marijuana land uses; and

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

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder; and

WHEREAS, the Act contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the Act, unless local governments have "land use regulations or ordinances regulating or prohibiting the cultivation of marijuana..." (Health and Safety Code §11362.777(c)(4); and

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

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

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

WHEREAS, the indoor cultivation of marijuana has potential adverse effects upon the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

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

WHEREAS, the Indian Wells Municipal Code ("Code") does not fully address the cultivation, processing, delivery and distribution of medical cannabis; and

WHEREAS, based on the findings above, the potential establishment of cannabis dispensaries, cannabis manufacturers, cannabis cultivation, and delivery of cannabis uses in the City without regulation poses a current and immediate threat to the public health, safety and welfare in the City due to the negative land use and other impacts of such uses as described above; and

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for cannabis dispensaries, cannabis manufacturers, cannabis cultivation, and delivery of cannabis will result in the aforementioned threat to public health, safety, or welfare; and

WHEREAS, on December 16, 2015, the Planning Commission held a duly noticed public hearing and adopted by unanimous vote Resolution No. PC 2015-10 recommending that the City Council approve Municipal Text Amendment No. 2015-01; and

WHEREAS, Municipal Text Amendment No. 2015-01 was properly noticed and a notice of the public hearing by the City Council was provided for in accordance with applicable law; and

WHEREAS, on January 7, 2016, the City Council held a duly noticed public hearing on Municipal Text Amendment No. 2015-01.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF INDIAN WELLS DOES ORDAIN AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS. The City Council hereby **FINDS** that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 2. Indian Wells Municipal Code Section 21.90.020 is hereby **AMENDED** to read in its entirety as follows:

"21.90.020 Medical marijuana uses.

(a) Purpose. The purpose of this Section is to enact and enforce a ban on all cannabis dispensaries, cannabis manufacturers, cultivation, and delivery of cannabis located within the City limits. Nothing in this Section shall preempt or make inapplicable any provision of state or federal law.

(b) Definitions. For purposes of this Section, the following definitions shall apply:

(1) "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

(2) "Cannabis dispensary" means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

(3) "Cannabis manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.

(4) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(5) "Delivery" means the commercial transfer of cannabis or cannabis products, and includes origination or termination within the City as well as a delivery business.

(c) Prohibited Use. Cannabis dispensaries, cannabis manufacturers, cannabis cultivation, and delivery of cannabis, as defined herein, shall be considered prohibited uses in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of a cannabis dispensaries, cannabis manufacturers, cannabis cultivation, and delivery of cannabis

as defined herein in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

(d) Penalty for Violation. No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this Section, shall be a misdemeanor or an infraction, at the discretion of the City Attorney or the District Attorney. In addition to the penalties provided in this Section, any condition caused or permitted to exist in violation of any of the provisions of this Section is declared a public nuisance and may be abated as provided in Chapter 1.16 and/or under state law."

SECTION 3. CEQA. The City Council **FINDS** that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15060(c) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 – Preliminary Review, as the Municipal Code amendment to prohibit cannabis activities is not a "project" as defined in Section 15378, and will not result in a direct or reasonably foreseeable indirect physical change in the environment.

SECTION 4. SEVERABILITY. If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance, which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable. This Ordinance amends, adds to and deletes (as applicable) sections of the Indian Wells Municipal Code.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect and be in force 30 days after passage.

SECTION 6. PUBLICATION. The City Clerk is directed to publish this Ordinance within the manner and in the time prescribed by law.

PASSED APPROVED, AND ADOPTED by the City Council of the City of Indian Wells, California, at an adjourned regular meeting held on this 27th day of January, 2016.

DANA W. REED
MAYOR

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STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF INDIAN WELLS)

CERTIFICATION FOR ORDINANCE NO. ____

I, Anna Grandys, City Clerk of the City Council of the City of Indian Wells, California, **DO HEREBY CERTIFY** that Ordinance No. ____, having been regularly introduced at the meeting of January 7, 2016 was again introduced, the reading in full thereafter unanimously waived, and duly passed and adopted at an adjourned regular meeting of the City Council held on this 27th day of January, 2016 and said Ordinance was passed and adopted by the following stated vote, to wit:

AYES:

NOES:

and was thereafter on said day signed by the Mayor of the City of Indian Wells

ATTEST:

APPROVED AS TO FORM:

ANNA GRANDYS
CITY CLERK

STEPHEN P. DEITSCH
CITY ATTORNEY