

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS, CALIFORNIA (MUNICIPAL CODE AMENDMENT NO. 17MCA01) TO AMEND CHAPTER 16.02.250 OF THE MUNICIPAL CODE RELATIVE TO DEFINITIONS OF MARIJUANA USES, AMEND APPENDIX A OF THE MUNICIPAL CODE RELATIVE TO MARIJUANA RELATED USES, AND ADD CHAPTER 16.92 TO THE MUNICIPAL CODE TO PROHIBIT SPECIFIC OUTDOOR AND COMMERCIAL MARIJUANA-RELATED USES AND ACTIVITIES IN ALL ZONING DISTRICTS OF THE CITY, AND FINDING MUNICIPAL CODE AMENDMENT 17MCA01 EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CITY COUNCIL OF THE CITY OF CHINO HILLS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings of fact:

- A. On November 5, 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et seq., and entitled the Compassionate Use Act of 1996 (“CUA”). The CUA exempted qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use.
- B. The intent of the CUA was to enable persons in the State of California who are in need of marijuana for medicinal purposes to obtain it and use it under limited, specified circumstances.
- C. The State enacted Senate Bill 420 in October 2003, codified at Health and Safety Section 11362.7, et seq., (“Medical Marijuana Program Act,” or “MMPA”) to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420. The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

- D. The CUA and MMPA did not “legalize” marijuana, but provided limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses.
- E. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . .” Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.
- F. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United State, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes.
- G. On September 23, 2014, the Chino Hills City Council adopted Ordinance No. 275 adding Chapter 5.28 to the Chino Hills Municipal Code (“CHMC”) and amending Title 16 and Appendix A of the CHMC to expressly prohibit medical marijuana collectives and medical marijuana cultivation throughout the City of Chino Hills.
- H. On October 9, 2015 Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (“MMRSA”). MMRSA established a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. MMRSA allowed a City to completely prohibit commercial medical marijuana activities.
- I. On November 8, 2016, the voters of the State of California passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA decriminalizes (under California law), controls and regulates the cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years of age or older. The AUMA also taxes the commercial

growth and retail sale of marijuana. It does not, and cannot, affect federal regulations regarding marijuana or its derivatives.

- J. On November 22, 2016, the City Council adopted Ordinance No. 303u, an urgency ordinance amending Chapter 5.28 of the CHMC to expressly prohibit all commercial marijuana activities, as defined, throughout the City. Ordinance No. 303u also prohibited the outdoor cultivation of marijuana throughout the City and made it clear that the only indoor cultivation of marijuana allowed in the City is that expressly authorized by the AUMA (Health & Safety Code 11362.2).
- K. Also on November 22, 2016, the City Council introduced Ordinance No. 305 amending Chapter 5.28 of the CHMC. The provisions of Ordinance No. 305 mirrored those of Ordinance No. 303u. The second reading of Ordinance No. 305 occurred on December 13, 2016.
- L. Also on November 22, 2016, the City Council adopted Ordinance No. 304u, an urgency ordinance imposing a 45-day Citywide moratorium on the issuance of permits for marijuana-related land uses in order to allow sufficient time for the City to consider related amendments to Title 16 of the CHMC (Development Code).
- M. On December 20, 2016, the City Council adopted Ordinance No. 304u extending the aforementioned moratorium for an additional 10 months and 15 days.
- N. The AUMA made it “lawful under state and local law” for persons 21 years of age or older to:
 - “(1) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis;
 - (2) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than eight grams of marijuana in the form of concentrated cannabis, including as contained in marijuana products;
 - (3) Possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants;
 - (4) Smoke or ingest marijuana or marijuana products; and
 - (5) Possess, transport, purchase, obtain, use, manufacture, or give away marijuana accessories to persons 21 years of age or older without any compensation whatsoever.” (Health & Safety Code § 11362.1.)

- O. The AUMA added Division 10 to the Business & Professions Code, which grants state agencies the exclusive authority to create, issue, renew, discipline, suspend or revoke licenses for marijuana-related businesses, including the transportation, storage, distribution sale, cultivation, manufacturing, and testing of marijuana.
- P. The AUMA expressly preserves local control over the regulation of marijuana-related businesses and marijuana-related land uses, including the authority to completely prohibit any marijuana business licensed under Division 10 within its jurisdiction. (Business & Professions Code § 26200, et seq.)
- Q. Under the AUMA, no city may completely prohibit a person 21 years of age or older from planting, cultivating, harvesting, drying, or processing up to six marijuana plants at any one time inside a private residence or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure. (Health & Safety Code § 11362.2(b)(2).) However, a city may enact and enforce reasonable regulations on indoor cultivation and may completely prohibit the outdoor cultivation of marijuana. (Health & Safety Code § 11362.2(b)(1) and (3).)
- R. Since the adoption of Ordinance No. 303u, City planning staff, working in conjunction with the City Attorney and local law enforcement, has reviewed and considered the following: (1) federal and state laws pertaining to marijuana; (2) information and data from jurisdictions in other states that have previously decriminalized recreational marijuana, including documented evidence regarding the secondary impacts associated with legalization and the proliferation of marijuana-related uses and activities; (3) ordinances of other California cities that either prohibit or regulate marijuana-related uses; (4) opinions and bulletins from law enforcement agencies in California and in other states regarding impacts associated with marijuana-related uses and activities; and (5) information regarding the effects of marijuana use.
- S. On January 17, 2017, the Planning Commission held a duly noticed public hearing and adopted Resolution No. 17-03 recommending that the City Council approve Municipal Code Amendment No. 17MCA01 to prohibit marijuana-related uses in activities in all zones and specific plan areas throughout the City.
- T. On February 14, 2017, the City Council held a duly noticed public hearing on Municipal Code Amendment No. 17MCA01 in order to receive and consider public testimony.

- U. The City Council finds that marijuana-related land uses and activities can adversely affect the health, safety, and well-being of City residents. Marijuana cultivation and distribution can attract crime, lead to fires, expose minors to marijuana, negatively impact neighborhoods, damage buildings, require dangerous electrical alterations and use, and create the nuisance of strong and noxious odors. (White Paper on Marijuana Dispensaries, California Police Chiefs Association's Task Force on Marijuana Dispensaries, April 22, 2009, p. 12.) In Colorado, where recreational marijuana is legal and commercialized, marijuana-related traffic deaths increased 92% from 2010 to 2014 while all traffic deaths increased only 8 percent during the same time period. (The Legalization of Marijuana in Colorado: The Impact, Rocky Mountain High Intensity Drug Trafficking Area, Vol. 3, September 2015, pp. 14-15.) Use of marijuana by Colorado teens ages 12-17 is at least 56% higher than the national average. (Id. at pp. 35-36.) A study released in May 2016 by AAA Foundation for Traffic Research found that fatal crashes involving drivers who recently used marijuana doubled in the state of Washington after it legalized marijuana. (Prevalence of Marijuana Involvement in Fatal Crashes: Washington, 2010-2014, May 2016, AAA Foundation for Traffic Safety.) Based on these facts and other evidence, there is a concern that the proliferation of marijuana-related uses and activities in the City would result in increased crime and other negative secondary effects like those experienced in other communities throughout California and around the country. To safeguard against these deleterious secondary effects, the City Council finds it is necessary for the City to prohibit marijuana-related uses and activities in all zones and specific plan areas to the maximum extent permissible under State law.
- V. Although marijuana-related land uses and activities are already technically prohibited pursuant to the City's permissive zoning regulations, the proposed ordinance would expressly make clear that all such uses are prohibited in all zones and specific plan areas throughout the City.

SECTION 2: CEQA. The City Council finds that the proposed ordinance does not have the potential to cause significant effects on the environment and, therefore, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code Regs. § 15061(b)(3). The ordinance amends the Development Code to make clear that marijuana-related uses and activities are not permitted in the City. The ordinance does not portend any development or changes to the physical environment. Following an evaluation of possible adverse impacts, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. In addition to the foregoing general exemption, the following categorical exemptions apply: 14 Cal. Code Regs. § 15307 (actions taken for protection of natural resources) and § 15308 (actions taken for protection of the environment).

SECTION 3: Amend Chapter 16.02.250 of Chino Hills Municipal Code as follows: Delete the definitions for “marijuana” and “medical marijuana cultivation.”

SECTION 4. Add Chapter 16.92 to the Chino Hills Municipal Code as follows:

Chapter 16.92 — MARIJUANA-RELATED USES AND ACTIVITIES

16.92.010 Definitions.

16.92.020 Prohibited uses and activities.

16.92.030 Cultivation of marijuana for personal use.

16.92.040 Interpretation.

Sections:

16.92.010 Definitions.

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

“Commercial marijuana activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery, or sale of marijuana and marijuana products.

“Cultivation” means any activity involving the planting, growing, cultivating, harvesting, drying, curing, grading, trimming or processing of marijuana.

“Delivery” means the commercial transfer of marijuana or marijuana products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

“Dispensary” means a facility or location, whether fixed or mobile, where marijuana, marijuana products, or devices for the use of marijuana are offered, made available to, or provided, either individually or in any combination, with or without remuneration, for medical, recreational, or other purposes.

“Distribution” means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

“Marijuana” means all parts of the plant *Cannabis sativa L.*, *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 in foodstuff or any other ingestible or consumable product containing marijuana. The term “marijuana” includes “medical marijuana” for the purposes set forth in the Medical Marijuana Program Act (Health & Safety Code Sections

11362.7 to 11362.83) and the Medical Marijuana Regulation and Safety Act (AB 266, AB 243, and SB 643.)

"Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

"Marijuana-related activity" means any commercial marijuana activity, cultivation of marijuana, delivery of marijuana or marijuana products, distribution of marijuana or marijuana products, dispensing of marijuana or marijuana products, manufacture of marijuana or marijuana products, sale of marijuana or marijuana products, and the operation or establishment of a marijuana or medical marijuana cooperative, dispensary, delivery service, or provider. "Marijuana-related activity" does not include the cultivation, planting, harvesting, drying, processing or possession of up to six marijuana plants at one time by a person 21 years of age or older when conducted within a single private residence and in a manner consistent with Health & Safety Code Section 11362.2 and any other applicable regulations.

"Marijuana cultivation facility" means a facility where marijuana is cultivated, prepared, and packaged for sale to marijuana dispensaries, to marijuana product manufacturing facilities, or to other marijuana cultivation facilities, but not to consumers.

"Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a marijuana dispensary.

"Marijuana product manufacturing facility" means a facility where marijuana and marijuana products are manufactured, prepared and packaged for sale to other marijuana product manufacturing facilities or to marijuana dispensaries, but not to consumers.

"Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

"Marijuana storage facility" means a facility used for the storage of marijuana, marijuana products or marijuana accessories.

"Marijuana testing facility" means a facility where marijuana is analyzed and certified for safety and potency.

"Private residence" means a house, an apartment unit, a mobile home, or other similar habitable dwelling.

16.92.020 Prohibited uses and activities.

The establishment or operation of any commercial marijuana activity, marijuana-related activity, or marijuana establishment, including any business licensed by the state or other government entity pursuant to Division 10 of the Business & Professions Code, as it may be amended from time to time, is

prohibited in all zoning districts and specific plan areas of the City. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, can be approved or issued for the establishment or operation of any such business or activity.

16.92.030 Cultivation of marijuana for personal use.

A. Outdoor Cultivation. The outdoor cultivation of marijuana is prohibited in the City of Chino Hills regardless of purpose.

B. Indoor Cultivation. Not more than six plants may be cultivated, planted, harvested, dried, processed or possessed at one time by a person 21 years of age or older when conducted within a single private residence and in a manner consistent with Health & Safety Code Section 11362.2 and any other applicable regulations.

16.92.040 Interpretation.

The intent of this chapter is to prohibit all marijuana-related uses and activities, including the personal cultivation of marijuana, whether medical or recreational in nature, to the maximum extent allowed under state law. Nothing in this chapter should be interpreted as allowing behavior otherwise prohibited by state law and nothing in this chapter should be interpreted as prohibiting conduct that the city is expressly preempted from prohibiting under state law.”

SECTION 5. Amend Appendix A of the Chino Hills Municipal Code as follows:

Medical Marijuana Collective	Not permitted in any zoning district
Medical Marijuana Cultivation	Not permitted in any zoning district
Marijuana Establishment	Not permitted in any zoning district
Marijuana-Related Activity	Not permitted in any zoning district

SECTION 6: Authority. This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program Act, the Medical Marijuana Regulation and Safety Act, and the Control, Regulate and Tax Adult Use of Marijuana Act.

SECTION 7: Construction. This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council’s intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 8: Enforceability. Repeal of any provision of the Chino Hills Municipal Code does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance’s effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective

date of this Ordinance. Upon the effective date of this Ordinance, Ordinance No. 304u shall be repealed.

SECTION 9: Severability. If any section, subsection, subdivision, 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 hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrased, or portions thereof be declared invalid or unconstitutional.

SECTION 10: The City Clerk is directed to certify the passage and adoption of this Ordinance, cause it to be entered into the city of Chino Hill's book of original ordinances, make a note of the passage and adoption in the records of this meeting, and, within fifteen days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

PASSED, APPROVED AND ADOPTED this 28th day of February, 2017

RAY MARQUEZ, MAYOR

ATTEST:

CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM

MARK D. HENSELY, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF CHINO HILLS)

I, CHERYL BALZ, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that Ordinance No. _____ was duly introduced at a regular meeting held _____; and adopted at a regular meeting of the City Council held on the ___ day of _____, 2017 by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

CHERYL BALZ, CITY CLERK

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Chino Hills City Council at their regular meeting held on _____ and that summaries of the Ordinance were published on _____ and _____ in the Chino Hills Champion newspaper.

CHERYL BALZ, CITY CLERK