

**ORDINANCE NO. 2352**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VICTORVILLE, CALIFORNIA, AMENDING THE VICTORVILLE MUNICIPAL CODE TO PROHIBIT MARIJUANA CULTIVATION, MARIJUANA PROCESSING, MARIJUANA DELIVERY, MARIJUANA MOBILE DISPENSING AND MARIJUANA DISPENSARIES IN THE CITY WITH AN ENVIRONMENTAL EXEMPTION AND DECLARING THE URGENCY THEREOF PURSUANT TO GOVERNMENT CODE SECTION 36937**

**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" referred to herein as the "CUA");

**WHEREAS**, the intent of the CUA was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law once a physician has deemed the use beneficial to a patient's health;

**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 California Penal Code;

**WHEREAS**, neither the CUA nor the MP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its 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., et al., holding that cities have the authority to ban medical marijuana land uses; and

**WHEREAS**, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801et 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"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law; and

**WHEREAS**, on December 9, 2015, the Planning Commission, by a vote of 3-0, approved Resolution No. P-15-061, recommending approval of the attached ordinance prohibiting marijuana; and

**WHEREAS**, the Act becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act 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 conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
- Expressly provide that the Act 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 Act 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 section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)); and

**WHEREAS**, several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities, 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, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and

**WHEREAS**, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large number of plants could be cultivated on the same legal parcel, or parcels, within the City of Victorville ("City"); 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 to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants; 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, mobile dispensing and distribution activities; 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, mobile dispensing and distribution activities; and

**WHEREAS**, prior to the effective date of this ordinance, the cultivation, processing and distribution of medical marijuana is prohibited in the City to the extent such activities are prohibited by the Federal Controlled Substances Act or other law; and

**WHEREAS**, based on the findings above, the potential establishment of the cultivation, processing and distribution of medical marijuana in the City without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative impacts of such activities as described above; and

**WHEREAS**, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation, processing, delivery, mobile dispensing and/or distribution will result in the aforementioned threat to public health, safety, and welfare; and

**WHEREAS**, Government Code section 36937 provides that the City may adopt an ordinance that takes effect immediately when adopted for the immediate preservation of the public peace, health, or safety, providing the ordinance contains a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council; and

**WHEREAS**, under the Act if a City wishes to prohibit medical marijuana activities in its jurisdiction as authorized, such ordinance must go into effect prior to March 1,

2016, and this deadline creates an urgency to enact this ordinance to protect the public health, safety and welfare; and

**WHEREAS**, it is in the interest of the City, its residents, and its lawfully permitted businesses that City adopts this ordinance to expressly prohibit the establishment and operation of marijuana cultivation, processing, delivery, mobile dispensing and dispensary activities in the City as well as the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity, except where the City is preempted by federal or state law from enacting a prohibition on any such activity or a prohibition on the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity.

**NOW THEREFORE**, the City Council of the City of Victorville does ordain as follows:

**Section 1.** The City Council of the City of Victorville hereby finds that the above recitals are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 2.** The City Council hereby adds Chapter 13.150 entitled "Medical Marijuana Prohibited" to the City of Victorville Municipal Code to read as follows:

**13.150.010 Legislative Findings and Statement of Purpose.**

A. The City Council finds that the prohibitions on marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council's prohibition of such activities is within the authority conferred upon the City Council in its Charter and state law.

B. The City Council finds that this chapter: (1) expresses its intent to prohibit the cultivation of marijuana in the City and to not administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana in the City; (2) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; (3) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; and (4) expressly prohibits the delivery of marijuana in the City.

**13.150.020 Definitions**

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

A. "Marijuana" 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 in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" 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 the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 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 section 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 for the purposes set forth in California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 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 the provisions of California Health and Safety Code Section 11362.5

(Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

### **13.150.030 Prohibited Activities.**

Marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries shall be prohibited activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other 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, except where the city is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

### **Section 3. California Environmental Quality Act**

The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

### **Section 4. Repeal of Conflicting Provisions.**

All the provisions of the Victorville Municipal Code as heretofore adopted by the City that are in conflict with the provisions of this Ordinance are hereby repealed.

### **Section 5. Severability.**

The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

ORDINANCE NO. 2352

THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT ON MARCH 3, 2016.

PASSED, APPROVED AND ADOPTED THIS 2<sup>nd</sup> DAY OF FEBRUARY 2016.

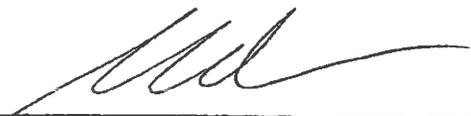
  
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MAYOR OF THE CITY OF VICTORVILLE

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

2-3-16  
\_\_\_\_\_  
DATE

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

I, CAROLEE BATES, City Clerk of the City of Victorville and ex-officio Clerk to the City Council of said City, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2352 which was duly adopted at a meeting held on the 2<sup>nd</sup> day of February 2016 by the following roll call vote, to wit:

AYES: Councilmembers Garcia, Cox, Kennedy, McEachron and Negrete

NOES: None

ABSENT: None

ABSTAIN: None

  
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CITY CLERK OF THE CITY OF VICTORVILLE

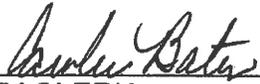
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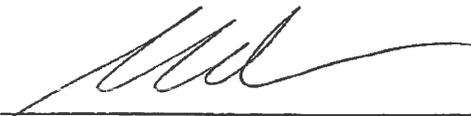
  
\_\_\_\_\_  
MAYOR OF THE CITY OF VICTORVILLE

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

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ABSENT: None

ABSTAIN: None

  
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CITY CLERK OF THE CITY OF VICTORVILLE