

ORDINANCE NO. 17-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING SECTIONS 13.08.010, 13.10.020, 13.12.020, 13.13.020, AND 13.26.025 AND ADDING A NEW SECTION 13.26.027 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO MEDICAL AND NON-MEDICAL MARIJUANA DISPENSARIES AND DELIVERY SERVICES

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5, and entitled “The Compassionate Use Act of 1996” or “CUA”); and

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as Health and Safety Code Section 11362.7 et seq., and referred to as the “Medical Marijuana Program Act” or “MMPA”) to clarify the scope of the CUA and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specific state criminal statutes; and

WHEREAS, in 2008, the City adopted a regulatory process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which potentially allows medical marijuana dispensaries in the City’s community commercial (CC) and professional and administrative office (PA) zoning districts; and

WHEREAS, to date, the City does not have any medical marijuana dispensaries operating within its jurisdiction; and

WHEREAS, under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City’s regulatory process for issuance of a permit to operate a medical marijuana dispensary calls for the City’s Police Chief (provided under contract with the Orange County Sheriff’s Department) to approve components of the applicant’s “security plan”, make a determination as to the “acceptability” of the applicant’s background, and make a determination as to the “suitability” of the proposed location of the dispensary; and

WHEREAS, in a letter dated August 24, 2015, the Orange County Sheriff’s Department advised the City that it does not believe that the tasks assigned to it under the City’s medical marijuana dispensary permitting ordinance are included within

the City’s law enforcement services contract, and except as to limited background investigations specifically called for under such contract, the Orange County Sheriff declines to perform such services, for the reasons stated in the letter; and

WHEREAS, the Orange County Sheriff Department’s letter also advised that, in its experience, medical marijuana dispensaries have numerous “adverse secondary effects” on communities, many of which, should they be legitimately ascribed to the presence of medical marijuana dispensaries, would present an immediate threat to public health, safety, or welfare; and

WHEREAS, in October of 2015, the Governor of California signed three bills into law (collectively titled the “Medical Marijuana Regulation and Safety Act” or the “MMRSA”) that substantially reworked existing State laws relating to medical marijuana (i.e., the CUA and the MMPA); and

WHEREAS, although the MMRSA took effect January 1, 2016, the State anticipates that it will need until January of 2018 to set up the necessary agencies, information systems, and regulations to implement and administer many aspects of the MMRSA (such as issuing State licenses for dispensary and cultivation operations); and

WHEREAS, in November of 2016, California voters approved Proposition 64 (Control, Regulation, and Tax Adult Use of Marijuana Act) which, among other things, decriminalized certain forms of non-medical marijuana-related activities under state law, and exempted medical marijuana from sales and use tax provided that certain specified forms of identification are produced; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 738, the California Supreme Court ruled that cities can prohibit medical marijuana dispensaries in their jurisdictions as part of their “broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction’s borders”; and

WHEREAS, the MMRSA and Proposition 64 also specifically authorize cities to prohibit medical and non-medical marijuana dispensaries; and

WHEREAS, the City Council included in the Fiscal Year 2015-16 Budget and Work Plan an assessment of the compatibility of medical marijuana dispensary uses in various zoning districts of the City; and

WHEREAS, on September 10, 2015, the City Council adopted Ordinance No. 15-03 as an urgency ordinance imposing a 45-day moratorium to suspend the allowance of medical marijuana dispensaries, and any establishment, location, or operation of any such facility, in order to undertake further investigation and study various issues relating to the potential siting and operation of a medical marijuana dispensary within the city limits of Laguna Woods; and

WHEREAS, on October 13, 2015, the City Council adopted Ordinance No 15-05 extending the moratorium through September 8, 2016; and

WHEREAS, on August 17, 2016, the City Council adopted Ordinance No. 16-02 extending the moratorium through September 8, 2017; and

WHEREAS, in a letter dated January 30, 2017, after City staff conferred regarding any potential policy changes that may have occurred after the passage of Proposition 64, the Orange County Sheriff’s Department advised the City that she remains “adamantly opposed” to the issuance of any permit for marijuana dispensaries, whether for medical or recreational uses; that asserts that “...it has been demonstrated medical marijuana storefronts may have the potential to increase crime[.]”; and

WHEREAS, on April 19, 2017, the City Council received and considered a report prepared by staff, and as required pursuant to Government Code Section 65858(d), describing the measures that have been taken and progress made to date to alleviate the conditions which led to the imposition of the moratorium; and

WHEREAS, as set forth in the report prepared by staff and its exhibits, which was considered by the City Council, during the period since the imposition of the moratorium, City staff has undertaken a number of investigations of the potential public safety and land use implications related to any prospective establishment, location, or operation of medical and non-medical marijuana dispensaries in Laguna Woods, including without limitation:

- Reviewing federal law and enforcement policies;
- Analyzing the impacts of the MMRSA;
- Analyzing the impacts of Proposition 64;

- Discussing medical marijuana dispensary experiences and policies with a number of other cities;
- Meeting with the Orange County Sheriff’s Department;
- Meeting with a representative of Law Enforcement Against Prohibition (a non-profit organization that advocates for the regulation and control of marijuana and other drugs);
- Conducting research on the availability and types of testing of marijuana products for potential use in medical contexts;
- Commissioning a deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly (the “Law Enforcement Deployment Study”);
- Analyzing business-generated sources of revenue to offset new costs associated with providing law enforcement and other City services for, or as a result of, prospective medical marijuana dispensaries; and
- Analyzing whether the City has adequate financial means to provide any level of reasonable assurance that enforcement costs associated with medical or non-medical marijuana dispensaries could be accommodated within the City’s budget, absent some additional level of taxation or other financial arrangement; and

WHEREAS, on April 19, 2017, the City Council also considered proposed amendments to the Laguna Woods Municipal Code, as identified in Exhibit A attached hereto and incorporated herein by reference (“Code Amendment”), to:

1. Prohibit the establishment, location, or operation of medical and non-medical marijuana dispensaries; and
2. Allow medical marijuana deliveries otherwise consistent with state law, whether by collectives and cooperatives without dispensary presences in the City of Laguna Woods for such time as they may do so under applicable state law, or by persons or entities properly licensed by the

State of California once the state’s MMRSA and Control, Regulation, and Tax Adult Use of Marijuana Act regulations take effect; and

WHEREAS, the Community Development Director or his or her designee prepared an exhibit, including proposed language and terminology for the proposed Code Amendments and any additional information and documents deemed necessary for the City Council to take action, and such exhibit was available for public inspection at City Hall and, upon request, was supplied to all persons desiring a copy, at least ten days prior to the scheduled City Council public hearing date; and

WHEREAS, on April 19, 2017, the City Council held a duly noticed public hearing on the proposed Code Amendments at which it considered all of the information, evidence, and testimony presented, both written and oral.

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In adopting this Ordinance, the City Council finds and determines that each of the recitals to this Ordinance and Ordinances Nos. 15-03, 15-05 and 16-02 are true and correct, are adopted herein as findings.

SECTION 2. 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 CUA, the MMPA, the MMRSA, and Proposition 64.

SECTION 3. The City Council hereby finds and determines that (i) the Code Amendments comply with all applicable requirements of State law; (ii) the Code Amendments will not adversely affect the health, safety, or welfare of the residents within the community; (iii) the Code Amendments are in the public interest of the City of Laguna Woods; and, (iv) the Code Amendments are consistent with the Laguna Woods General Plan and its various elements.

SECTION 4. After reviewing the entire project record, the City Council finds and determines that the adoption of this Ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to sections 15061(b)(3), 15321, and 15378 of the CEQA Guidelines. It can be seen with certainty that the adoption of the Zoning Code amendments presents no possibility that the activity in question will pose a significant effect on the environment, since there are no commercial dispensary or cultivation facilities present within the city,

and this ordinance will continue that baseline condition; the ordinance relates to enforcement actions in connection with permits and permitted activities, and relates to general policy and procedure making of the City.

SECTION 5. Sections 13.08.010, 13.10.020, 13.12.020, 13.13.020, and 13.26.025 of the Laguna Woods Municipal Code are hereby amended, and Section 13.26.027 is hereby added, to read as set forth in Exhibit A, attached to this Ordinance and incorporated herein by this reference.

SECTION 6. Staff is directed to agendize a City Council discussion of potential regulations permitting the establishment, location, and operation of medical and/or non-medical marijuana dispensaries should Federal laws change such that marijuana is no longer a Schedule 1 controlled substance under the Controlled Substances Act.

SECTION 7. This Ordinance shall take effect and be in full force and operation thirty (30) days after adoption.

SECTION 8. If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 9. The Deputy City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

SECTION 10. All of the above-referenced documents and information have been and are on file with the City Clerk of the City.

PASSED, APPROVED AND ADOPTED this XX day of XX 2017.

SHARI L. HORNE, Mayor

ATTEST:

YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Ordinance No. 17-XX** was duly introduced and placed upon its first reading at a regular meeting of the City Council on the XX day of XX 2017, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the XX day of XX 2017 by the following vote to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

YOLIE TRIPPY, Deputy City Clerk

**EXHIBIT A
CODE AMENDMENTS**

Section 13.08.010 (“Table of permitted uses”) of Chapter 13.08 (“Residential Districts”) of Title 13 (“Zoning”) of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

| | Districts | | | |
|-----------------------------|-----------|----------|----------|------------------|
| Land Use Types | RMF | RC | RT | Code References |
| <u>Marijuana Delivery</u> | <u>P</u> | <u>P</u> | <u>P</u> | <u>13.26.027</u> |
| <u>Marijuana Dispensary</u> | <u>X</u> | <u>X</u> | <u>X</u> | <u>13.26.025</u> |

Section 13.10.020 (“Table of permitted uses”) of Chapter 13.10 (“Commercial Districts”) of Title 13 (“Zoning”) of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

| | Districts | | | |
|---|-----------|------------------------|----------|------------------|
| Land Use Types | NC | CC | PA | Code References |
| <u>Marijuana Delivery</u> | <u>P</u> | <u>P</u> | <u>P</u> | <u>13.26.027</u> |
| Medical Marijuana Dispensary | X | RP <u>X</u> | X | 13.26.025 |

Section 13.12.020 (“Table of permitted uses”) of Chapter 13.12 (“Open Space Districts”) of Title 13 (“Zoning”) of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

| | Districts | | |
|--------------------------------------|-----------|----------|---------------------------|
| Land Use Types | OS-P | OS-R | Code References |
| Marijuana Delivery | <u>P</u> | <u>P</u> | 13.26.027 |
| Marijuana Dispensary | <u>X</u> | <u>X</u> | 13.26.025 |

Section 13.13.020 (“Table of permitted uses”) of Chapter 13.13 (“Community Facilities Districts”) of Title 13 (“Zoning”) of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

| | Community Facilities | | |
|---|----------------------|----------|---------------------------|
| Land Use Types | Public/Institutional | Private | Code References |
| Marijuana Delivery | <u>P</u> | <u>P</u> | 13.26.027 |
| Medical Marijuana Dispensary | X | X | 13.26.025 |

Section 13.26.025 (“Medical marijuana dispensaries”) of Chapter 13.26 (“Special Regulations”) of Title 13 (“Zoning”) of the Laguna Woods Municipal Code is repealed in its entirety and replaced with the following:

Sec. 13.26.025. - Marijuana dispensaries.

(a) *Legislative purpose.* It is the intent of the City of Laguna Woods to prohibit the establishment and operation of marijuana dispensaries within the boundaries of the City of Laguna Woods.

(b) *Definitions.* For the purpose of this Title 13, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(05) When used in reference to marijuana, *commercial cultivation* shall mean any cultivation activity that does not qualify for the exemption set forth in subdivision (g) of Section 11362.777 of the

California Health and Safety Code or subdivision (a) of Section 11362.1 of the California Health and Safety Code, as those statutes may be amended from time to time.

(10) When used in reference to marijuana, *cultivation* or *cultivate* shall have the same meaning as set forth in subdivision (l) of Section 19300.5 and subdivision (e) of Section 26001 of the California Business and Professions Code, as those statutes may be amended from time to time.

(15) When used in reference to marijuana, *customer* shall have the same meaning as set forth in subdivision (f) of Section 26001 of the California Business and Professions Code, as amended from time to time.

(20) *Marijuana* means and includes 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. *Marijuana* also means the separated resin, whether crude or purified, obtained from marijuana.

Marijuana also means and includes: “marijuana” as defined by Section 11018 of the California Health and Safety Code, as amended from time to time; “cannabis,” “cannabis concentrate,” “manufactured cannabis” and “medical cannabis” as defined by California Business & Professions Code Section 19300.5, as amended from time to time; “marijuana products” as defined by California Health and Safety Code Section 11018.1, as amended from time to time; and “marijuana accessories” as defined by California Health and Safety Code Section 11018.2, as amended from time to time.

Marijuana does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this section, *marijuana* does not mean “industrial hemp” as defined by Section 81000 of the California

Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

(25) *Marijuana dispensary* means a premises where marijuana is offered for retail sale, regardless of whether the marijuana is used for medical or non-medical purposes.

Marijuana dispensary shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health & Safety Code; (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (3) a residential care facility for persons with chronic life threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

(30) *Marijuana delivery* means the commercial transfer of marijuana to a customer, qualified patient, or primary caregiver by a person or entity with a valid state marijuana transport license.

(35) *Medical marijuana* shall have the same meaning as “medical cannabis” as defined by California Business & Professions Code Section 19300.5.

(40) *Primary caregiver* shall have the same meaning as set forth in subdivision (d) of Section 11362.7 of the California Health and Safety Code, as amended from time to time.

(45) *Qualified patient* shall have the same meaning as set forth in subdivision (f) of Section 11362.7 of the California Health and Safety Code, as amended from time to time.

(c) *Prohibition.* Marijuana dispensaries are expressly prohibited in all zoning districts throughout the City, regardless of whether the marijuana is used for medical or non-medical purposes. No person shall establish, operate, conduct, permit or allow any marijuana dispensary use anywhere within the City. A State license for the operation of a marijuana dispensary does not entitle the licensee to establish, operate, conduct, permit or allow a marijuana dispensary within City limits.

(d) *No nonconforming uses.* Nothing in this Chapter 13.26, nor in Section 13.02.180 relating to nonconforming uses, shall be deemed to permit any marijuana dispensary, marijuana delivery service, or commercial cultivation activity to operate or continue to operate in any manner inconsistent with state law, regardless of whether that dispensary, delivery service or commercial cultivation activity predates the adoption of this section. No legal nonconforming use otherwise applicable to any such marijuana dispensary, marijuana delivery service, or commercial cultivation activity under this Title 13 shall in any way excuse or permit any operation in any way inconsistent with state law requirements, as such state law requirements may exist at the time of the adoption of this section, or as state law requirements may subsequently be adopted and amended.

(e) *Public Nuisance.* Establishing, operating, conducting, permitting or allowing any marijuana dispensary within City limits shall be, and is hereby declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure § 731 or any other remedy available at law.

(f) *Civil Penalties.* In addition to any other enforcement permitted by this section, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this section. In any civil action that is brought pursuant to this section, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.

Section 13.26.027 (“Marijuana deliveries”) of Chapter 13.26 (“Special Regulations”) of Title 13 (“Zoning”) of the Laguna Woods Municipal Code is hereby added to read as follows:

Sec. 13.26.027. - Marijuana deliveries.

(a) *Legislative purpose.* It is the intent of the City of Laguna Woods to allow marijuana delivery services by persons lawfully permitted under state law to transport and deliver marijuana within the boundaries of the City of Laguna Woods, to facilitate the medical and non-medical uses of marijuana by persons who desire to avail themselves of state law policies permitting the same, but only under strict compliance with existing state law governing marijuana dispensaries, marijuana deliveries and cultivation, and state law and regulations as they may evolve under the Compassionate Use Act (CUA), the Medical Marijuana Program Act (MMPA), the Medical

Marijuana Regulation and Safety Act (MMRSA), and the Control, Regulation, and Tax Adult Use of Marijuana Act (Proposition 64), as each of those statutes and their corresponding regulations are adopted and amended from time to time. In so doing, the City of Laguna Woods attempts to reconcile the advancing state policy regarding liberalization of marijuana cultivation, transport, distribution, and use, while still avoiding the offsite and other public impacts of permanent commercial cultivation or marijuana dispensary facilities within the City’s jurisdiction, to protect the public health, safety, and welfare of the residents.

(b) *Definitions.* All definitions set forth in Section 13.16.025 of this Title 13, as amended from time to time, shall apply under this section.

(c) *State-licensed marijuana deliveries permitted.* Marijuana delivery services lawfully operating from locations outside the City’s jurisdiction are permitted to deliver marijuana to customers, qualified patients, and primary caregivers within the City, provided the marijuana delivery service has any and all necessary state licenses and is operating in a manner consistent with state law.

(d) *Public Nuisance.* Marijuana delivery services within City limits that do not comply with state law or this Chapter shall be, and are hereby declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure § 731 or any other remedy available at law.

(e) *Civil Penalties.* In addition to any other enforcement permitted by this section, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this section. In any civil action that is brought pursuant to this section, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.