



Planning Commission **STAFF REPORT**

Ken Goldstein, Chair
Gina Frierman-Hunt, Vice Chair
Matt Buckles, Commissioner
Manish Desai, Commissioner
Leslee Hinton, Commissioner
John Hutt, Commissioner
Bob Spears, Commissioner

*Vincent Gonzalez, Director of
Planning and Community
Preservation*

DATE: December 17, 2015

TO: Planning Commission

FROM: Vincent Gonzalez, Director of Planning & Community Preservation

**SUBJECT: Municipal Code Text Amendment 15-04 (MCTA 15-04) –
Ordinance No. 1371 Amending Chapter 17.10 Regulating the
Cultivation and Dispensing of Marijuana.**

SUMMARY

On December 3, 2015, the Planning Commission conducted a public hearing, and discussed the proposed revisions described in Ordinance No. 1371, amending Title 17, Chapter 17.10 of the Municipal Code. The Planning Commission continued the hearing to December 17, 2015 to allow for further discussion. The Planning Commission directed staff to provide two alternatives to the ordinance for their consideration; one ordinance that prohibits the growing of live plants, deliveries, and dispensaries in the City of Sierra Madre, and a second ordinance that imposes land use regulations on the growing of live plants and cultivation for the personal medical use of marijuana. Attached for consideration are the alternative ordinances attached as Exhibit B: Explicitly prohibiting the growing of marijuana plants, cultivation, deliveries, and dispensaries; and Exhibit C: Establishing land use regulations for the growing of live marijuana plants and cultivation for personal medical use.

BACKGROUND

On September 11, 2015, the California Legislature passed a series of bills that together would establish California's first statewide regulatory system for medical cannabis businesses. On October 9, 2015, Governor Brown signed the Medical Marijuana Regulation and Safety Act (MMRSA) into law, which goes into effect on January 1, 2016. Assembly Bill (AB) AB 243, AB 266, and Senate Bill (SB) SB 643 each contain key provisions of the MMRSA. The Act provides a more comprehensive state licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana, while preserving many of the judicial decisions regarding local regulation of medical marijuana.

By March 1, 2016, local municipalities must adopt land use regulations or ordinances regulating or prohibiting the cultivation of marijuana. If a city does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the Department of Food and Agriculture (DFA) is in charge of State licensing and regulation of indoor and outdoor cultivation sites. (AB 243 Section 19362.777 (c)(4)).

The purpose of the proposed Municipal Code Text Amendments is to further an objective of the City's 2007 Ordinance 1266, prohibiting in all zones the cultivation of cannabis and medical marijuana dispensaries which involves the distribution of drugs or other substances which is illegal to distribute or possess under state or federal law.

Attached are two draft alternative Ordinances identified as Exhibit B and Exhibit C for the Planning Commissions Consideration:

Exhibit B – Explicitly prohibits the growing of marijuana plants, cultivation, deliveries, and dispensaries; and

Exhibit C – Establishes land use regulations of the growing of live marijuana plants for personal medical use.

ANALYSIS

AB 243 established a regulatory and licensing structure for medical marijuana cultivation under the State Department of Food and Agriculture. It prohibits the cultivation of medical marijuana without first obtaining both (1) a license, permit, or other entitlement for use and (2) a state license. A person may not apply for a state license without first receiving a local license, permit, or other entitlement for use. Thus a person may not submit an application for a state license if the proposed cultivation of medical marijuana would violate provisions of a local ordinance or regulation. Under AB 243, any city that does not have an ordinance regulating or prohibiting cultivation of medical marijuana by March 1, 2016 will lose the authority to regulate or ban cultivation within its city limits. The state will then become the sole licensing authority for the foreseeable future.

AB 266 established a dual licensing structure requiring a state license and a local license or permit for the delivery of medical marijuana. Pursuant to AB 266, the delivery of medical marijuana can only be made by a medical marijuana dispensary in a city that does not explicitly prohibit it by local ordinance. As with AB 2432, unless a local jurisdiction enacts an ordinance affirmatively prohibiting delivery of medical marijuana, once the state implements a state licensing structure for such deliveries, a local jurisdiction will forfeit forever its ability to regulate in this arena. The State has not set a firm deadline for local jurisdiction to enact local controls or authority over the delivery of medical marijuana. Consequently, if the City Council wishes to continue exercising

local authority and control over the cultivation and delivery of medical marijuana in the City, an ordinance to prohibit such must be put in place.

Staff contacted neighboring cities to determine the regulatory decisions either allowing or prohibiting the growing, cultivation, and distribution of marijuana. The following are the cities that have been polled.

City	Prohibit in All Zones	Allow Cultivation & Sales
Arcadia	Prohibit	
Glendora	Prohibit dispensaries	Regulating personal use
La Canada Flintridge	Prohibit	
Monrovia		
Pasadena	Prohibit	
South Pasadena	Prohibit	

Municipal Code Text Amendments to Chapter 17.10

Provided are two alternative Municipal Code Text Amendments as discussed above for consideration by the Planning Commission.

Exhibit B - Proposed Text Amendments to Chapter 17.10

Section 17.10.010 Marijuana Cultivation and Dispensaries

A. Definitions:

“Delivery” means the commercial delivery, transfer or transport, or arranging for the delivery, transfer or transport, or the use of any technology platform to arrange for or facilitate the commercial delivery, transfer or transport of marijuana, marijuana edibles, or any marijuana products to or from any location within the City. For purposes of this Chapter, “delivery” shall not include the transportation of marijuana by a primary caregiver to a qualified patient consistent with a physician recommendation for use of medical marijuana.

“Marijuana” is defined as that term is defined in California Health & Safety Code section 11018 as that section may be amended from time to time.

“Marijuana Cultivation” or “Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof, and any and all associated business or operational activities.

“Primary Caregiver” shall have the same definition as set forth in California Health and Safety Code section 11362.7, as it may be amended and as interpreted by the California courts, including but not limited to the California Supreme Court case *People v. Mentch* (2008) 45 Cal. 4th 274.

“Qualified Patient” shall have the same definition as set forth in California Health and Safety Code section 11362.7, as it may be amended and as interpreted by the California courts.

B. The following uses are prohibited in all zones established by this title and may not be conducted anywhere in the City:

1. Marijuana cultivation.
2. Marijuana dispensaries or any other facility or use which involves the manufacture, cultivation, or distribution of drugs or other substances which it is illegal to distribute or possess under state or federal law.
3. Delivery within the City of marijuana or any substance which is illegal under either state or federal law is prohibited, regardless of any license a dispensary or person may possess to deliver or dispense marijuana outside of the City.

C. No conduct which is protected from criminal liability pursuant to the Compassionate Use Act (Health & Safety Code, § 11362.5) and the Medical Marijuana Program Act (Health & Safety Code, §§ 11362.7 through 11362.83) shall be made criminal by this code. Conduct or uses which violate the requirements of this Section are a nuisance, and shall be subject to non-criminal remedies, including, but not limited to, administrative citations and abatement.

Exhibit C - Proposed Text Amendments to Chapter 17.10:

Section 17.10.010 Marijuana Cultivation and Dispensaries

A. Definitions:

“Delivery” means the commercial delivery, transfer or transport, or arranging for the delivery, transfer or transport, or the use of any technology platform to arrange for or facilitate the commercial delivery, transfer or transport of marijuana, marijuana edibles, or any marijuana products to or from any location within the City. For purposes of this Chapter, “delivery” shall not include the transportation of marijuana by a primary caregiver to a qualified patient consistent with a physician recommendation for use of medical marijuana.

“Marijuana” is defined as that term is defined in California Health & Safety Code section 11018 as that section may be amended from time to time.

“Marijuana Cultivation” or “Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof, and any and all associated business or operational activities.

“Primary Caregiver” shall have the same definition as set forth in California Health and Safety Code section 11362.7, as it may be amended and as interpreted by the California courts, including but not limited to the California Supreme Court case *People v. Mentch* (2008) 45 Cal. 4th 274.

“Qualified Patient” shall have the same definition as set forth in California Health and Safety Code section 11362.7, as it may be amended and as interpreted by the California courts.

B. The following uses are prohibited in all zones established by this title and may not be conducted anywhere in the City:

1. Marijuana cultivation except as set forth in paragraph C below.
2. Marijuana dispensaries or any other facility or use which involves the manufacture, cultivation, or distribution of drugs or other substances which it is illegal to distribute or possess under state or federal law.
3. Delivery within the City of marijuana or any substance which is illegal under either state or federal law is prohibited, regardless of any license a dispensary or person may possess to deliver or dispense marijuana outside of the City.

C. Personal Use Cultivation Exception – The prohibition of marijuana cultivation shall not include cultivation of marijuana for personal use by one qualified patient, consistent with a physician’s recommendation, and conducted by the patient or his or her primary caregiver.

1. Personal use cultivation shall be limited to 50% or less of the non-living area (e.g. garage) of a residence, or 100 square feet, whichever is less.
2. Personal use cultivation shall not:
 - a. Displace any space used for required on-site parking and must be conducted within a fully enclosed and secure structure which

does not permit visual or olfactory evidence of cultivation detectable from the public right of way.

- b. Utilize lighting that exceeds 1,200 watts and may not include use of a generator.
 - c. Utilize gas products including but not limited to carbon dioxide or butane.
- D. No conduct which is protected from criminal liability pursuant to the Compassionate Use Act (Health & Safety Code, § 11362.5) and the Medical Marijuana Program Act (Health & Safety Code, §§ 11362.7 through 11362.83) shall be made criminal by this code. Conduct or uses which violate the requirements of this Section are a nuisance, and shall be subject to non-criminal remedies, including, but not limited to, administrative citations and abatement.

CEQA FINDINGS

The Planning Commission hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance establishing local control measures regulating the cultivation and distribution of marijuana will have a significant effect on the environment. The adoption of this Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 1506 (b)(3) of the California Code of Regulations.

FINANCIAL REVIEW

There is no financial impact related to the proposed code text amendments to Title 17, Chapter 17.10. Staff time was incurred in the preparation of the report and draft ordinance.

PUBLIC NOTICE

This item has been noticed through the regular agenda notification process. Notice of the hearing was published consistent with the requirements of Government Code Section 65090. Copies of this report are available at the City Hall public counter, on the City of Sierra Madre website, and the Sierra Madre Public Library.

ALTERNATIVES

1. Recommend to the City Council adoption of the proposed text amendments, identified in Exhibit B, to Chapter 17.10 (Marijuana Cultivation and Marijuana Dispensary), pursuant to Resolution 15-17.

2. Recommend to the City Council adoption of the proposed text amendments, identified in Exhibit B, to Chapter 17.10 (Marijuana Cultivation and Marijuana Dispensary), pursuant to Resolution 15-17, with revisions.
3. Recommend to the City Council adoption of the proposed text amendments to Chapter 17.10 (Marijuana Cultivation and Marijuana Dispensary), identified in Exhibit C, pursuant to Resolution 15-17.
4. Recommend to the City Council adoption of the proposed text amendments to Chapter 17.10 (Marijuana Cultivation and Marijuana Dispensary), identified in Exhibit C, pursuant to Resolution 15-17, with revisions.

RECOMMENDATION

Staff recommends Alternative 1 that the Planning Commission recommend to the City Council to adopt the proposed text amendments to Chapter 17.10 prohibiting the growing of live plants, cultivation, dispensaries, and distribution of marijuana in the City of Sierra Madre, pursuant to Resolution 15-17 (Exhibit A).

Attachments (3):

Exhibit A: Planning Commission Resolution 15-17

Exhibit B: Draft City Council Ordinance No. 1371, explicitly prohibiting the growing of marijuana plants, cultivation, deliveries, and dispensing of marijuana

Exhibit C: Municipal Code Text Amendments to Chapter 17.10, Establishing land use regulations of the growing of live marijuana plants for personal medical use

EXHIBIT A

PLANNING COMMISSION RESOLUTION 15-17

RESOLUTION NO. 15-17

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SIERRA MADRE RECOMMENDING TO THE CITY COUNCIL APPROVAL OF ORDINANCE NO. 1371 TO AMEND CHAPTER 17.10 (REGULATING THE CULTIVATION AND DISPENSING OF MARIJUANA) OF THE SIERRA MADRE MUNICIPAL CODE.

WHEREAS, Congress passed the Federal Controlled Substances Act (CSA) in 1970, which prohibits the manufacture, cultivation, distribution and possession of marijuana; and

WHEREAS, California law generally makes it a crime to possess and cultivate marijuana under Health and Safety (H&S) Code Sections 11357 and 11358, respectively; and

WHEREAS, California voters approved Proposition 215 (Health and Safety Code Sections 11362.5 et seq.), entitled the Compassionate Use Act (CUA), in 1996, which exempts patients and their primary caregivers from criminal prosecution or sanctions under H&S Code Sections 11357 and 11358; and

WHEREAS, the California Legislature passed Senate Bill 420 (H&S Code Sections 11362.7 et seq.) in 2003 to create the Medical Marijuana Program (MMPA), which established a voluntary program for the issuance of medical marijuana identification cards for qualified patients, set limits on the amount of marijuana any individual could possess, and provided an exemption from State criminal liability for persons “who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes”; and

WHEREAS, the United States Supreme Court has continuously held that marijuana, including medical marijuana, violates Federal law under the CSA. In 2001, the Court held in *United States v. Oakland Cannabis Buyers Cooperative, et al.* that there was no “medical necessity” defense under the CSA, and therefore a medical marijuana dispensary could be enjoined from distribution and manufacturing. In 2005, the Court held in *Gonzalez v. Raich* that the Commerce Clause authorizes Congress to prohibit the cultivation or use of marijuana for medical purposes permitted by California law. The significance of the *Raich* decision is that Federal law enforcement agents may continue to enforce Federal drug laws against Californians who cultivate or use marijuana for medical purposes; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act (MMRSA), which goes into effect on January 1, 2016, and establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills 243 and 266 and Senate Bill 643; and

WHEREAS, according to the provisions of the MMRSA, unless local agencies have a land use ordinance in place by March 1, 2016 that expressly regulates or prohibits the

cultivation of marijuana within their jurisdictions, marijuana cultivation will be permitted and regulated by the State under the MMRSA; and

WHEREAS, prohibiting the cultivation of marijuana and the delivery of marijuana within the City as business activities and uses is necessary to protect the health, safety and welfare of the community, and to prevent adverse impacts that such activities may have on nearby properties and residents.

WHEREAS, the Planning Commission has received the report and recommendations of staff on December 3, 2015 and December 17, 2015; and

WHEREAS, notice was duly given of the public hearing on November 21, 2015, with all testimony being received being made part of the public record; and

NOW, THEREFORE, in consideration of the evidence received at the public hearing, and for the reasons discussed by the Commissioners at said hearing, the Planning Commission resolves as follows:

The Planning Commission recommends that the City Council approve the Ordinance amending Chapter 17.10, which is attached hereto as Exhibit B.

APPROVAL RECOMMENDED, this 17th day of December 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ken Goldstein
Chair, Planning Commission

ATTEST:

Vincent Gonzalez
Director of Planning & Community Preservation

RESOLUTION NO. 15-17

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SIERRA MADRE RECOMMENDING TO THE CITY COUNCIL APPROVAL OF ORDINANCE NO. 1371 TO AMEND CHAPTER 17.10 (REGULATING THE CULTIVATION AND DISPENSING OF MARIJUANA) OF THE SIERRA MADRE MUNICIPAL CODE.

WHEREAS, Congress passed the Federal Controlled Substances Act (CSA) in 1970, which prohibits the manufacture, cultivation, distribution and possession of marijuana; and

WHEREAS, California law generally makes it a crime to possess and cultivate marijuana under Health and Safety (H&S) Code Sections 11357 and 11358, respectively; and

WHEREAS, California voters approved Proposition 215 (Health and Safety Code Sections 11362.5 et seq.), entitled the Compassionate Use Act (CUA), in 1996, which exempts patients and their primary caregivers from criminal prosecution or sanctions under H&S Code Sections 11357 and 11358; and

WHEREAS, the California Legislature passed Senate Bill 420 (H&S Code Sections 11362.7 et seq.) in 2003 to create the Medical Marijuana Program (MMPA), which established a voluntary program for the issuance of medical marijuana identification cards for qualified patients, set limits on the amount of marijuana any individual could possess, and provided an exemption from State criminal liability for persons “who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes”; and

WHEREAS, the United States Supreme Court has continuously held that marijuana, including medical marijuana, violates Federal law under the CSA. In 2001, the Court held in *United States v. Oakland Cannabis Buyers Cooperative, et al.* that there was no “medical necessity” defense under the CSA, and therefore a medical marijuana dispensary could be enjoined from distribution and manufacturing. In 2005, the Court held in *Gonzalez v. Raich* that the Commerce Clause authorizes Congress to prohibit the cultivation or use of marijuana for medical purposes permitted by California law. The significance of the *Raich* decision is that Federal law enforcement agents may continue to enforce Federal drug laws against Californians who cultivate or use marijuana for medical purposes; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act (MMRSA), which goes into effect on January 1, 2016, and establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills 243 and 266 and Senate Bill 643; and

WHEREAS, according to the provisions of the MMRSA, unless local agencies have a land use ordinance in place by March 1, 2016 that expressly regulates or prohibits the

cultivation of marijuana within their jurisdictions, marijuana cultivation will be permitted and regulated by the State under the MMRSA; and

WHEREAS, prohibiting the cultivation of marijuana and the delivery of marijuana within the City as business activities and uses is necessary to protect the health, safety and welfare of the community, and to prevent adverse impacts that such activities may have on nearby properties and residents.

WHEREAS, the Planning Commission has received the report and recommendations of staff on December 3, 2015 and December 17, 2015; and

WHEREAS, notice was duly given of the public hearing on November 21, 2015, with all testimony being received being made part of the public record; and

NOW, THEREFORE, in consideration of the evidence received at the public hearing, and for the reasons discussed by the Commissioners at said hearing, the Planning Commission resolves as follows:

The Planning Commission recommends that the City Council approve the Ordinance amending Chapter 17.10, which is attached hereto as Exhibit C.

APPROVAL RECOMMENDED, this 17th day of December 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ken Goldstein
Chair, Planning Commission

ATTEST:

Vincent Gonzalez
Director of Planning & Community Preservation

EXHIBIT B

DRAFT

CITY COUNCIL ORDINANCE NO. 1371

Prohibiting the Cultivation of Marijuana and Delivery
within the City as a Business

ORDINANCE NO. 1371

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SIERRA MADRE AMENDING TITLE 17, CHAPTER 17.10 OF
THE SIERRA MADRE MUNICIPAL CODE REGULATING THE
CULTIVATION AND DISPENSING OF MARIJUANA.**

WHEREAS, Congress passed the Federal Controlled Substances Act (CSA) in 1970, which prohibits the manufacture, cultivation, distribution and possession of marijuana; and

WHEREAS, California law generally makes it a crime to possess and cultivate marijuana under Health and Safety (H&S) Code Sections 11357 and 11358, respectively; and

WHEREAS, California voters approved Proposition 215 (Health and Safety Code Sections 11362.5 et seq.), entitled the Compassionate Use Act (CUA), in 1996, which exempts patients and their primary caregivers from criminal prosecution or sanctions under H&S Code Sections 11357 and 11358; and

WHEREAS, the California Legislature passed Senate Bill 420 (H&S Code Sections 11362.7 et seq.) in 2003 to create the Medical Marijuana Program (MMPA), which established a voluntary program for the issuance of medical marijuana identification cards for qualified patients, set limits on the amount of marijuana any individual could possess, and provided an exemption from State criminal liability for persons “who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes”; and

WHEREAS, the United States Supreme Court has continuously held that marijuana, including medical marijuana, violates Federal law under the CSA. In 2001, the Court held in *United States v. Oakland Cannabis Buyers Cooperative, et al.* that there was no “medical necessity” defense under the CSA, and therefore a medical marijuana dispensary could be enjoined from distribution and manufacturing. In 2005, the Court held in *Gonzalez v. Raich* that the Commerce Clause authorizes Congress to prohibit the cultivation or use of marijuana for medical purposes permitted by California law. The significance of the *Raich* decision is that Federal law enforcement agents may continue to enforce Federal drug laws against Californians who cultivate or use marijuana for medical purposes; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act (MMRSA), which goes into effect on January 1, 2016, and establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills 243 and 266 and Senate Bill 643; and

WHEREAS, according to the provisions of the MMRSA, unless local agencies have a land use ordinance in place by March 1, 2016 that expressly regulates or prohibits the cultivation of marijuana within their jurisdictions, marijuana cultivation will be permitted and regulated by the State under the MMRSA; and

WHEREAS, prohibiting the cultivation of marijuana and the delivery of marijuana within the City as business activities and uses is necessary to protect the health, safety and

welfare of the community, and to prevent adverse impacts that such activities may have on nearby properties and residents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIERRA MADRE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and incorporated herein by reference.

SECTION 2. Chapter 17.10 of the Sierra Madre Municipal Code is hereby amended to read as follows:

Chapter 17.10 Marijuana Cultivation and Dispensaries

Section 17.10.010 Marijuana Cultivation and Dispensaries

A. Definitions:

“Delivery” means the commercial delivery, transfer or transport, or arranging for the delivery, transfer or transport, or the use of any technology platform to arrange for or facilitate the commercial delivery, transfer or transport of marijuana, marijuana edibles, or any marijuana products to or from any location within the City. For purposes of this Chapter, “delivery” shall not include the transportation of marijuana by a primary caregiver to a qualified patient consistent with a physician recommendation for use of medical marijuana.

“Marijuana” is defined as that term is defined in California Health & Safety Code section 11018 as that section may be amended from time to time.

“Marijuana Cultivation” or “Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof, and any and all associated business or operational activities.

“Primary Caregiver” shall have the same definition as set forth in California Health and Safety Code section 11362.7, as it may be amended and as interpreted by the California courts, including but not limited to the California Supreme Court case *People v. Mentch* (2008) 45 Cal. 4th 274.

“Qualified Patient” shall have the same definition as set forth in California Health and Safety Code section 11362.7, as it may be amended and as interpreted by the California courts.

B. The following uses are prohibited in all zones established by this title and may not be conducted anywhere in the City:

1. Marijuana cultivation.

2. Marijuana dispensaries or any other facility or use which involves the manufacture, cultivation, or distribution of drugs or other substances which it is illegal to distribute or possess under state or federal law.
 3. Delivery within the City of marijuana or any substance which is illegal under either state or federal law is prohibited, regardless of any license a dispensary or person may possess to deliver or dispense marijuana outside of the City.
- C. No conduct which is protected from criminal liability pursuant to the Compassionate Use Act (Health & Safety Code, § 11362.5) and the Medical Marijuana Program Act (Health & Safety Code, §§ 11362.7 through 11362.83) shall be made criminal by this code. Conduct or uses which violate the requirements of this Section are a nuisance, and shall be subject to non-criminal remedies, including, but not limited to, administrative citations and abatement.

SECTION 3. California Environmental Quality Act. The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during the public hearing on the matter held by the City Council, and hereby determines that that the text amendments will not have a significant effect on the environment. The amendments to Chapter 17.10 of this Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 1506 (b)(3) of the California Code of Regulations; and

SECTION 4. Severability; Continuation of Provisions. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the rules adopted hereby. The City Council of the City of Sierra Madre hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable. To the extent the provisions of the Sierra Madre Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as they read immediately prior to the adoption of this Ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 5. Inconsistent Provisions. Any provision of the Sierra Madre Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Urgency Ordinance.

SECTION 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Urgency Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction,

such decision shall not affect the validity of the remaining portions of this Urgency Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

SECTION 7. Publication and Effective Date. This ordinance shall take effect 30 days after final adoption. The City Clerk shall cause the same to be published once in newspaper of general circulation within fifteen (15) days after its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Sierra Madre at the regular meeting of this 12th day of January, 2016.

John Capoccia, Mayor

ATTEST:

Nancy Shollenberger, City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF SIERRA MADRE)

I, Nancy Shollenberger, City Clerk of the City of Sierra Madre, hereby certify that the foregoing Urgency Ordinance No. 1371 was approved and adopted by said Council at its regular meeting held on the 12th day of January, 2016 by the following vote, to-wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Nancy Shollenberger, City Clerk

EXHIBIT C

DRAFT

CITY COUNCIL ORDINANCE NO. 1371

Prohibiting the Cultivation of Marijuana and Delivery
within the City as a Business with the exception of
Personal Use Cultivation

ORDINANCE NO. 1371

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SIERRA MADRE AMENDING TITLE 17, CHAPTER 17.10
OF THE SIERRA MADRE MUNICIPAL CODE
REGULATING THE CULTIVATION AND DISPENSING OF
MARIJUANA**

WHEREAS, Congress passed the Federal Controlled Substances Act (CSA) in 1970, which prohibits the manufacture, cultivation, distribution and possession of marijuana; and

WHEREAS, California law generally makes it a crime to possess and cultivate marijuana under Health and Safety (H&S) Code Sections 11357 and 11358, respectively; and

WHEREAS, California voters approved Proposition 215 (Health and Safety Code Sections 11362.5 et seq.), entitled the Compassionate Use Act (CUA), in 1996, which exempts patients and their primary caregivers from criminal prosecution or sanctions under H&S Code Sections 11357 and 11358; and

WHEREAS, the California Legislature passed Senate Bill 420 (H&S Code Sections 11362.7 et seq.) in 2003 to create the Medical Marijuana Program (MMPA), which established a voluntary program for the issuance of medical marijuana identification cards for qualified patients, set limits on the amount of marijuana any individual could possess, and provided an exemption from State criminal liability for persons “who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes”; and

WHEREAS, the United States Supreme Court has continuously held that marijuana, including medical marijuana, violates Federal law under the CSA. In 2001, the Court held in *United States v. Oakland Cannabis Buyers Cooperative, et al.* that there was no “medical necessity” defense under the CSA, and therefore a medical marijuana dispensary could be enjoined from distribution and manufacturing. In 2005, the Court held in *Gonzalez v. Raich* that the Commerce Clause authorizes Congress to prohibit the cultivation or use of marijuana for medical purposes permitted by California law. The significance of the *Raich* decision is that Federal law enforcement agents may continue to enforce Federal drug laws against Californians who cultivate or use marijuana for medical purposes; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act (MMRSA), which goes into effect on January 1, 2016, and establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills 243 and 266 and Senate Bill 643; and

WHEREAS, according to the provisions of the MMRSA, unless local agencies have a land use ordinance in place by March 1, 2016 that expressly regulates or prohibits the cultivation of marijuana within their jurisdictions, marijuana cultivation will be permitted and regulated by the State under the MMRSA; and

WHEREAS, prohibiting the cultivation of marijuana and the delivery of marijuana within the City as business activities and uses is necessary to protect the health, safety and welfare of the community, and to prevent adverse impacts that such activities may have on nearby properties and residents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIERRA MADRE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

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SECTION 2. Chapter 17.10 of the Sierra Madre Municipal Code is hereby amended to read as follows:

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“Primary Caregiver” shall have the same definition as set forth in California Health and Safety Code section 11362.7, as it may be amended and as interpreted by the California courts, including but not limited to the California Supreme Court case *People v. Mentch* (2008) 45 Cal. 4th 274.

“Qualified Patient” shall have the same definition as set forth in California Health and Safety Code section 11362.7, as it may be amended and as interpreted by the California courts.

B. The following uses are prohibited in all zones established by this title and may not be conducted anywhere in the City:

1. Marijuana cultivation except as set forth in paragraph C below.
2. Marijuana dispensaries or any other facility or use which involves the manufacture, cultivation, or distribution of drugs or other substances which it is illegal to distribute or possess under state or federal law.
3. Delivery within the City of marijuana or any substance which is illegal under either state or federal law is prohibited, regardless of any license a dispensary or person may possess to deliver or dispense marijuana outside of the City.

C. Personal Use Cultivation Exception – The prohibition of marijuana cultivation shall not include cultivation of marijuana for personal use by one qualified patient, consistent with a physician’s recommendation, and conducted by the patient or his or her primary caregiver.

1. Personal use cultivation shall be limited to 50% or less of the non-living area (e.g. garage) of a residence, or 100 square feet, whichever is less.
2. Personal use cultivation shall not:
 - a. displace any space used for required on-site parking and must be conducted within a fully enclosed and secure structure which does not permit visual or olfactory evidence of cultivation detectable from the public right of way.
 - b. utilize lighting that exceeds 1,200 watts and may not include use of a generator.
 - c. utilize gas products including but not limited to carbon dioxide or butane.

D. No conduct which is protected from criminal liability pursuant to the Compassionate Use Act (Health & Safety Code, § 11362.5) and the Medical Marijuana Program Act (Health & Safety Code, §§ 11362.7 through 11362.83) shall be made criminal by this code. Conduct or uses which violate the requirements of this Section are a nuisance, and shall be subject to non-

criminal remedies, including, but not limited to, administrative citations and abatement.

SECTION 3. California Environmental Quality Act. The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during the public hearing on the matter held by the City Council, and hereby determines that that the text amendments will not have a significant effect on the environment. The amendments to Chapter 17.10 of this Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 1506 (b)(3) of the California Code of Regulations; and

SECTION 4. Severability; Continuation of Provisions. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the rules adopted hereby. The City Council of the City of Sierra Madre hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable. To the extent the provisions of the Sierra Madre Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as they read immediately prior to the adoption of this Ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 5. Inconsistent Provisions. Any provision of the Sierra Madre Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Urgency Ordinance.

SECTION 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Urgency Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Urgency Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

SECTION 7. Publication and Effective Date. This ordinance shall take effect 30 days after final adoption. The City Clerk shall cause the same to be published once in newspaper of general circulation within fifteen (15) days after its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Sierra Madre at the regular meeting of this 12th day of January, 2016.

John Capoccia, Mayor

ATTEST:

Nancy Shollenberger, City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF SIERRA MADRE) SS:

I, Nancy Shollenberger, City Clerk of the City of Sierra Madre, hereby certify that the foregoing Urgency Ordinance No. 1371 was approved and adopted by said Council at its regular meeting held on the 12th day of January, 2016 by the following vote, to-wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Nancy Shollenberger, City Clerk