



# Placentia Planning Commission Agenda

Regular Meeting  
January 10, 2017  
6:30 p.m.

City Hall Front Community Room  
401 E. Chapman Avenue

**Christine Schaefer**  
Chair

**Frank Perez**  
Vice Chair

**Heather Francine**  
Commissioner

**Dennis Lee**  
Commissioner

**James Schenck**  
Commissioner

**Vic Tomazic**  
Commissioner

**Vacant**  
Commissioner

**City of Placentia**  
401 E Chapman Avenue  
Placentia, CA 92870

**Phone: (714) 993-8124**  
**Fax: (714) 528-4640**  
**Website: [www.placentia.org](http://www.placentia.org)**

## Procedures for Addressing the Commission

Any person who wishes to speak regarding an item on the agenda or on a subject within the Planning Commission's jurisdiction during the "Oral Communications" portion of the agenda should fill out a "Speaker Request Form" and give it to the Commission Secretary BEFORE that portion of the agenda is called. Testimony for Public Hearings will only be taken at the time of the hearing. Any person who wishes to speak on a Public Hearing item should fill out a "Speaker Request Form" and give it to the Commission Secretary BEFORE the item is called.

The Commission encourages free expression of all points of view. To allow all persons the opportunity to speak, please keep your remarks brief. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of an entire group. To encourage all views, the Commission discourages clapping, booing or shouts of approval or disagreement from the audience.

**PLEASE SILENCE CELL PHONES AND OTHER ELECTRONIC  
EQUIPMENT WHILE THE COMMISSION IS IN SESSION.**

## Special Accommodations

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (714) 993-8231. Notification 48 hours prior to the meeting will generally enable City staff to make reasonable arrangements to ensure accessibility.  
(28 CFR 35.102.35.104 ADA Title II)

Copies of all agenda materials are available for public review in the Office of the City Clerk, City Planning Division Counter, Placentia Library Reference Desk and the internet at [www.placentia.org](http://www.placentia.org) under the Planning Commission page. Persons who have questions concerning any agenda item may call the City Planning Division at (714) 993-8124 to make inquiry concerning the nature of the item described on the agenda.

In compliance California Government Code Section 54957.5, any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda that are not exempt from disclosure under the Public Records Act will be made available for public inspection at the City Clerk's Office at City Hall, 401 East Chapman Avenue, Placentia, during normal business hours.

Study Sessions are open to the public and held in the City Council Chambers or City Hall Community Room.

**REGULAR MEETING**  
6:30 p.m. – City Council Chambers

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**CALL TO ORDER:**

**ROLL CALL:** Commissioner Francine  
Commissioner Lee  
Commissioner Schenck  
Commissioner Tomazic  
Vice Chair Perez  
Chair Schaefer

**PLEDGE OF ALLEGIANCE:**

**ORAL COMMUNICATIONS:**

At this time the public may address the Planning Commission concerning any agenda item, which is not a public hearing item, or on matters within the jurisdiction of the Planning Commission. There is a five (5) minute time limit for each individual addressing the Planning Commission.

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**CONSENT CALENDAR:** None

**PUBLIC HEARING:**

1. **Applicant:** City of Placentia  
**Project Location:** City-Wide

**Zone Code Amendment (ZCA) 2016-02:**

Consideration of a Zone Code Amendment whereby Chapter 23.46 of Title 23 (Zoning) of the Municipal Code shall be amended to expressly prohibit the development of Marijuana related uses.

**Recommended Actions:** It is recommended that the Planning Commission:

- a. Open the Public Hearing, Concerning Zone Code Amendment ZCA 2016-02, Receive the Staff Report and Consider All Public Testimony, and Close the Public Hearing; and
- b. Adopt Resolution PC-2017-01, A Resolution of the Planning Commission of the City of Placentia, recommending to the City Council Approval Of Zoning Code Amendment No. 2016-02 whereby Chapter 23.46 of Title 23 Shall Be Amended to Expressly Prohibit the Development of Marijuana related Uses; and; and
- c. Recommend that the City Council find that adoption of Zoning Code Amendment No. 2016-02 is exempt from environmental review pursuant to the provisions of the California Environmental Quality Act (CEQA), Section 15061(b)(3) in that the proposed Code Amendments are not expected to create a negative impact on the physical environment and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

**OLD BUSINESS:** None

**NEW BUSINESS:** None

**DEVELOPMENT REPORT:**

**DIRECTOR'S REPORT:**

**PLANNING COMMISSION REQUESTS**

Commission members may make requests or ask questions of Staff. If a Commission member would like to have formal action taken on a requested matter, it will be placed on a future Commission Agenda.

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**ADJOURNMENT**

The Planning Commissioners ADJOURN to the next regular meeting on Tuesday, February 14, 2017 at 6:30 p.m. in the Placentia City Hall City Council Chambers located at 401 East Chapman Avenue, Placentia CA, 92870.

**CERTIFICATION OF POSTING**

I, Joseph M. Lambert, Secretary to the Planning Commission of the City of Placentia, hereby certify that the Agenda for the January 10, 2017 Regular Meeting of the Planning Commission of the City of Placentia was posted on January 5, 2017.

  
\_\_\_\_\_  
Joseph M. Lambert, Secretary



# Placentia Planning Commission

## AGENDA STAFF REPORT

TO: PLANNING COMMISSION  
FROM: DEVELOPMENT SERVICES DIRECTOR  
DATE: JANUARY 10, 2017  
SUBJECT: **ZONE CODE AMENDMENT ZCA 2016-02**

### **RECOMMENDATION**

It is recommended that the Planning Commission take the following actions:

1. Open the Public Hearing, Concerning Zone Code Amendment ZCA 2016-02, Receive the Staff Report and Consider All Public Testimony, and Close the Public Hearing; and
2. Adopt Resolution PC-2017-01, A Resolution of the Planning Commission of the City of Placentia, Recommending to the City Council Approval Of Zoning Code Amendment No. 2016-02 Whereby Chapter 23.46 of Title 23 Shall Be Amended to Expressly Prohibit the Development of Marijuana related Uses; and
3. Recommend that the City Council find that adoption of Zoning Code Amendment No. 2016-02 is exempt from environmental review pursuant to the provisions of the California Environmental Quality Act (CEQA), Section 15061(b)(3) in that the proposed Code Amendments are not expected to create a negative impact on the physical environment and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

### **BACKGROUND**

On December 6, 2016, the City Council adopted two urgency ordinances regarding marijuana related activities. Urgency Ordinance No. O-2016-08 amended Chapter 8.42 of the Municipal Code (Title 8 – Health and Sanitation) regarding provisions that do not relate to zoning. It replaced the existing Chapter 8.42 to the Municipal Code with a new Chapter 8.42 to prohibit marijuana related use and activity, for the purpose of promoting the health, safety, and general welfare of the residents, businesses, and visitors to the City. This prohibition does not apply to prohibit qualified patients and persons with identification cards to cultivate indoors, possess, and use marijuana for their own personal medical purposes to the degree such activity is authorized by state law.

Urgency Ordinance No. O-2016-09 amended Chapter 23.46 of Title 23 (Zoning Code), also to prohibit marijuana related land uses and activities including dispensing, cultivation, possession, manufacture, processing, storing, testing, labeling, relabeling, packaging, repackaging, transporting, delivery, distribution, provision, or sale, of marijuana, whether related to marijuana business, for personal use or otherwise. This Ordinance was adopted in conjunction with, and is consistent with Urgency Ordinance No. O-2016-08, which amended Chapter 8.42 of the Placentia Municipal Code in a similar fashion.

Planning Commission action is not applicable for amendments to Chapter 8.42, it is only applicable for any Ordinance amending Title 23 (Zoning). Staff has prepared a draft Ordinance which includes the Non-Zoning Code amendments and Zoning Code amendments. Although the Ordinance affects Title 8 and Title 23 of the Municipal Code, the Planning Commission is charged with making a recommendation to City Council regarding that portion of the Ordinance that affects Title 23. The draft Ordinance would permanently adopt the provisions previously adopted by the two urgency ordinances.

## **DISCUSSION**

Prior to adoption of the two urgency ordinances on December 6, 2016, the City's Municipal Code banned only "medical marijuana dispensaries" (including mobile dispensaries) and "medical marijuana cultivation." (PMC Chapter 8.42). That current ban applied only to medical marijuana. The City's current Zoning Code did not expressly permit distribution or sale of marijuana, therefore, those activities are now prohibited by passage of Urgency ordinance No. O-2016-09. (Related Zoning Code Provisions, PMC Title 23).

New state laws impacting marijuana related use and activity throughout the state have been adopted by the state legislature and California voters as follows.

1. Effective January 1, 2016, the State of California adopted the Medical Cannabis Regulation and Safety Act (MCRSA), recognizing several categories of marijuana related businesses beyond just medical marijuana dispensaries and cultivation.
2. Effective November 9, 2016, California voters approved Proposition 64 (Adult Use of Marijuana Act (AUMA)) legalizing recreational marijuana and authorizing the State to establish a licensing scheme for recreational marijuana businesses and activities.
3. In January 2018, the State will begin issuing licenses for both medical and recreational marijuana related businesses and activities including (1) cultivation, (2) dispensing, (3) transporting, (4) distribution, (5) processing, (6) delivery, (7) manufacturing, (8) labelling; and (9) testing of marijuana. The State is not anticipated to have created any rules or regulations governing medical and recreational marijuana businesses until January 2018.
4. Both MCRSA and AUMA expressly allow cities to ban both medical and recreational marijuana related uses and activities within their boundaries. Unless

the City bans marijuana businesses, they may operate legally in the City of Placentia without State regulation until January 2018.

### **Adult Use of Marijuana Act**

#### **Non-medical / Recreational Marijuana for Personal Use**

AUMA presently allows adults 21 and over to use, possess, and cultivate limited amounts of marijuana, establishes a state licensing and regulatory scheme for marijuana businesses serving the recreational market; and expressly allow local jurisdictions to prohibit outdoor cultivation of marijuana for personal use, to regulate indoor cultivation of marijuana for personal use, and to prohibit all non-medical and recreational marijuana businesses from locating and operating within their jurisdictions.

The AUMA specifically prohibits cities and counties from completely prohibiting indoor cultivation for non-medical use, but allows cities and counties to completely ban cultivation outdoors upon the grounds of a private residence.<sup>1</sup> The AUMA also expressly allows cities and counties to enact and enforce reasonable regulations to regulate the indoor cultivation of marijuana for non-medical use.<sup>2</sup>

Also of note, the AUMA prohibits smoking or ingesting marijuana or marijuana products in the following places:

- In any public place (unless its inside a business that is authorized by state and local law to allow use of marijuana on its premises);
- In places where smoking tobacco is prohibited;
- Within 1,000 feet of a school, day care center, or youth center while children are present, except in or upon the grounds of a private residence or inside a business that is authorized by state and local law to allow the use of marijuana on its premises; and
- While driving in, operating, or riding in a motor vehicle, boat, vessel, aircraft or other vehicle.<sup>3</sup>

The AUMA also allows cities, counties and public employers to maintain a drug and alcohol free workplace and to have policies prohibiting the use of marijuana by employees and prospective employees.<sup>4</sup> The City will therefore be conducting a review its current personnel policies related to the use of drugs and make sure marijuana use is addressed.

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<sup>1</sup>Proposed Health and Safety Code section 11362.2(b)(2) and (3).

<sup>2</sup>Proposed Health and Safety Code section 11362.2(b)(1).

<sup>3</sup>Proposed Health and Safety Code section 11362.3.

<sup>4</sup>Prospective Health and Safety Code section 11362.45.

### **Nonmedical / Recreational Marijuana Businesses**

The second primary component of the AUMA is a newly established state licensing and regulation scheme for commercial non-medical marijuana businesses, similar to the categories of businesses permitted under the MMRSA.<sup>5</sup> The AUMA renames the Bureau of Medical Marijuana Regulation the Bureau of Marijuana Control and charges it with issuing licenses to marijuana-related retail, manufacturing, distribution, transport, dispensary and delivery businesses catering to recreational users in addition to licensing medical marijuana businesses.<sup>6</sup> The Department of Food and Agriculture is tasked with issuing licenses to non-medical marijuana cultivation businesses. The AUMA requires all state licensing authorities to issue licenses by January 1, 2018.<sup>7</sup>

The AUMA permits local jurisdictions to adopt and enforce local ordinances to regulate recreational marijuana businesses, including local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke. The AUMA also expressly authorizes cities and counties to completely prohibit the establishment or operation of businesses within their jurisdictions.<sup>8</sup>

### **City Authority to Regulate Non-medical Marijuana Businesses**

The City may regulate or completely ban non-medical marijuana businesses. Since the state began licensing these businesses on January 1, 2018 under AUMA, the City Council chose to permanently ban these types of businesses by adopting the two Urgency Ordinances on December 6, 2016.

Prior to adoption of the Urgency Ordinances, the City's municipal code prohibited marijuana cultivation and prohibited some but not all commercial cannabis activity with respect to medical cannabis only, but if prohibition is desired, then the prohibition on recreational non-medical cultivation should be more explicit and comprehensive. Recreational commercial cannabis activity is not currently prohibited by the municipal code. Due to the passage of AUMA, recreational marijuana businesses could potentially operate within the City if a prohibition is not put in place.

To solidify the current ban in light of new legislation, the City Council chose to adopt two urgency ordinances on December 6, 2016 which did the following:

1. Added Chapter 8.42 to the Municipal Code to be entitled "Marijuana Related Uses and Activities Prohibited." This ordinance is enacted as an urgency ordinance pursuant to Government Code § 36934.
2. Temporarily amend Title 23 of the Municipal Code (Zoning) to expressly prohibit the development of Marijuana Related Uses. This ordinance is enacted as an urgency moratorium pursuant to Government Code § 65858.

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<sup>5</sup> Proposed Business and Professions Code sections 26000 et seq.

<sup>6</sup> Proposed Business and Professions Code section 26010.

<sup>7</sup> Proposed Business and Professions Code section 26012(c).

<sup>8</sup> Proposed Business and Professions Code section 26200.

The ordinances apply to both medical marijuana and recreational marijuana. Unlike the previous municipal code provisions that only applied to medical marijuana, State law requires that an ordinance not prohibit qualified patients and persons with identification cards to cultivate indoors, possess, and use marijuana for their own personal medical purposes. The proposed ordinance does not regulate medical and recreational marijuana because they are regulated by state law.

AUMA prohibits cities from banning the following with respect to recreational marijuana: (1) Possession of no more than 28.5 grams of marijuana or 8 grams of marijuana product; (2) transportation through the City on City streets; and (3) indoor cultivation of no more than 6 plants per dwelling.

Additionally, because the City will not be allowing marijuana sales or outdoor cultivation, the City will not be eligible to apply via a grant for a portion of the newly imposed excise tax under AUMA, and collected by the State from recreational marijuana businesses.

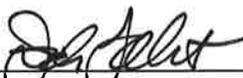
**CEQA**

The proposed zoning code amendment was reviewed by staff in accordance with the requirements of the California Environmental Quality Act (“CEQA”). Based on that review, staff recommends that the City Council find that adoption of Zoning Code Amendment No. 2016-02 is exempt from environmental review pursuant to the provisions of the California Environmental Quality Act (CEQA), Section 15061(b)(3) in that the proposed Code Amendments are not expected to create a negative impact on the physical environment and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

**CONCLUSION**

The City Council adopted two Urgency Ordinances prohibiting marijuana related uses and activities including provisions that do not relate to zoning (Chapter 8.42) and including provisions regarding permissible uses of land related to Title 23 (Zoning). The attached Resolution as prepared by staff would recommend City Council Approval of Zoning Code Amendment No. 2016-02 whereby Chapter 23.46 of Title 23 (Zoning) of the Municipal Code shall be amended to expressly prohibit the development of Marijuana related uses.

**Prepared, Submitted and Approved By:**

  
\_\_\_\_\_  
Joseph M. Lambert  
Development Services Director

**Attachments:**

1. Resolution No. 2017-01 and Exhibit A thereto (Draft Ordinance No. O-2017-XX)

## RESOLUTION NO. PC-2017-01

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PLACENTIA CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF ZONING CODE AMENDMENT NO. 2016-02 WHEREBY CHAPTER 23.46 OF TITLE 23 SHALL BE AMENDED TO EXPRESSLY PROHIBIT THE DEVELOPMENT OF MARIJUANA RELATED USES**

#### **A. Recitals.**

WHEREAS, the City, pursuant to its police power granted by Cal. Const. art. XI, § 7 and Cal. Govt. Code § 37100, may adopt regulations to protect the health, safety and welfare of the public, and thereby is authorized to declare what use and condition constitutes a public nuisance; and

WHEREAS, Section 38771 of the California Government Code 38771 authorizes the City through its legislative body to declare actions and activities that constitute a public nuisance; and

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana possession, cultivation and distribution; and

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5 et seq.) (the "CUA"), which exempts qualified patients and their primary caregivers from criminal prosecution under enumerated Health and Safety Code sections for use of marijuana for medical purposes; and

WHEREAS, the California Legislature enacted Senate Bill 420 in 2003, the Medical Marijuana Program Act (codified at Health and Safety Code Section 11362.7 et seq.) (the "MMPA"), as amended, which created a state-wide identification card scheme for qualified patients and primary caregivers; and

WHEREAS, on August 19, 2008, the City of Placentia enacted Ordinance 0-2008-09, which expressly prohibited the operation of "Medical Marijuana Dispensaries", including mobile dispensaries in the City. On January 19, 2016, the City of Placentia enacted Ordinance 0-2016-01 adding Chapter 23.46 to the Zoning Code expressly prohibiting "Marijuana Cultivation" in all zoning districts throughout the City.

WHEREAS, on October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Cannabis Regulation and Safety Act (MCRSA) formerly known as (the Medical Marijuana Regulation and Safety Act), effective January 1, 2016, which established a state licensing system for medical marijuana cultivation, manufacturing, delivery, and dispensing, regulating these activities with licensing requirements and regulations

that are only applicable if cities and counties also permit marijuana cultivation, manufacturing, dispensing, and delivery within their jurisdictions. Under the MCRSA, cities and counties may continue to regulate and/or prohibit medical marijuana cultivation, manufacturing, dispensing, and delivery, consistent with their respective police powers, in which case the new law would not allow or permit these activities within the cities and counties where such activities are not otherwise permitted; and

WHEREAS, on February 3, 2016, Assembly Bill 21 (Wood) was signed by the Governor, amending provisions of MCRSA pertaining to cultivation licenses by eliminating a March 1, 2016 deadline for local jurisdictions for the promulgation of cultivation regulations or cultivation bans other local jurisdictions would lose the ability to regulate to the State. Assembly Bill 21 also modified language in Health & Safety Code section 11362.777(g), which pertained to exemptions from licensing requirements for qualified patients and caregivers. The prior language, which specifically stated that local governments retained the right to prohibit cultivation without exception, was revised to state: "Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from exercising its police authority under Section 7 of Article XI of the California Constitution."; and

WHEREAS, notwithstanding the CUA, the MMPA, and the MCRSA as amended, marijuana remains a schedule I substance pursuant to California Health & Safety Code § 11054 (d) (13); and

WHEREAS, marijuana also remains a schedule I substance pursuant to federal law, 21 U.S.C. § 812, Schedule 1 (c) (10), and federal law does not provide for any medical use defense or exception (Gonzales v. Raich, 545 U.S. 1 (2005); United States v. Oakland Cannabis Buyers' Coop., 532 U.S. 483 (2001)); and

WHEREAS, the California Supreme Court has established that neither the CUA nor the MMPA preempt local regulation in the case of City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal.4th 729 (2013); and

WHEREAS, the MCRSA expressly allows cities and counties to ban marijuana cultivation consistent with current state law including the Maral v. City of Live Oak, 242 Cal.App.4th 940 (2013); and

WHEREAS, on November 8, 2016, the electorate of the State of California voted on Proposition 64 ("Prop 64"), approving the Adult Use of Marijuana Act ("AUMA"), codified in California Health and Safety Code at various sections and in California Business and Professions Code at various sections. The AUMA allows adults 21 and over to use, possess, and cultivate limited amounts of marijuana, establishes a state licensing and regulatory scheme for marijuana businesses serving the recreational market; and expressly allows local jurisdictions to prohibit outdoor cultivation of marijuana for personal use, to regulate indoor cultivation of marijuana for personal use, and to prohibit all non-medical and recreational marijuana businesses from locating and operating within their jurisdictions; and

WHEREAS, AUMA went into effect November 9, 2016, legalizing marijuana related uses and activities that are not presently regulated or prohibited by the City.

Unless the City immediately regulates or bans these currently unregulated marijuana related uses and activities, marijuana businesses may be able to operate within the City without State regulation until approximately January 2018, and this would cause an immediate harm to the public safety, health and welfare; and

WHEREAS, the changes in the law based upon AUMA constitute a current and immediate threat to the public health, safety and welfare; and

WHEREAS, the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to all for marijuana relate uses would result in that threat to public health safety or welfare; and

WHEREAS, the City Council finds that prohibiting marijuana use and activity will protect the public safety, health, and welfare; and

WHEREAS, possession of marijuana and concentrated marijuana is governed by State law. California Health and Safety Code, Section 11357 sets forth the criminal punishment or adjudication for possession of marijuana and concentrated cannabis in violation of State law; and

WHEREAS, this resolution is consistent with Urgency Ordinance Nos. O-2016-08 and O-2016-09 adopted by the City Council on December 6, 2016, at which time the City Council found that adoption of said ordinances was in the interest of the health, safety and welfare of the City to make explicit that all marijuana related use and activity of any kind as set forth herein, whether medical, recreational, or otherwise, is prohibited everywhere in the City and is a public nuisance per se, consistent with State law, and

WHEREAS, by adopting Urgency Ordinance Nos. O-2016-08 and O-2016-09, the City Council of the City of Placentia found and clarified that the prohibitions contained in said ordinances do not apply to prohibit qualified patients and persons with identification cards to cultivate indoors, possess, and use marijuana for their own personal medical purposes only, as permitted by state law; but that nothing herein shall be construed to authorize qualified patients to engage in the collective cultivation of marijuana as described by Health and Safety Code section 11362.775, nor are they permitted to cultivate marijuana above limits established by State law and guidelines for their own personal use; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) this project (Code Amendment) is exempt pursuant to Section 15061(b)(3) of Title 14 the California Code of Regulations; and

## **B. Resolution.**

NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission of the City of Placentia as follows:

**SECTION NO. 1:** Based on the evidence presented and the findings set forth, Zoning Code Amendment No. ZCA 2016-02 is hereby found to be consistent with the Placentia General Plan and the implementation thereof.

**SECTION NO. 2:** Based on the evidence presented and the findings set forth, the Planning Commission of the City of Placentia hereby recommends to the City Council of the City of Placentia that it approves Zoning Code Amendment No. ZCA 2016-02 to amend Section 23.46 of Chapter 23 of the Placentia Municipal Code to read as shown on Exhibit "A."

**SECTION NO. 3:** The Secretary is instructed to forward a copy of this Resolution to the City Council for their attention in the manner as prescribed by law.

ADOPTED AND APPROVED this 10<sup>th</sup> day of January, 2017

\_\_\_\_\_  
CHRISTINE SCHAEFER, CHAIR

I, Joseph M. Lambert, Secretary to the Planning Commission of the City of Placentia, do hereby certify that the foregoing Resolution was introduced at a regular meeting of the Planning Commission of the City of Placentia held on the 10th day of January, 2017, and was passed at this regular meeting of the Planning Commission of the City of Placentia held on the 10th day of January, 2017, by the following vote:

AYES:	COMMISSION MEMBERS:
NOES:	COMMISSION MEMBERS:
ABSENT:	COMMISSION MEMBERS:
ABSTAINED:	COMMISSION MEMBERS:

ATTEST:

\_\_\_\_\_  
JOSEPH M. LAMBERT,  
SECRETARY TO THE PLANNING COMMISSION

APPROVED AS TO FORM

\_\_\_\_\_  
YOLANDA M. SUMMERHILL,  
ASSISTANT CITY ATTORNEY

EXHIBIT "A"

DRAFT ORDINANCE NO. O-2017-XX

## **ORDINANCE NO. O-2017-XX**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLACENTIA, CALIFORNIA, REPEALING CHAPTER 8.42 OF TITLE 8 OF THE CITY OF PLACENTIA MUNICIPAL CODE AND REPLACING IT WITH A NEW CHAPTER 8.42 TO PROHIBIT MARIJUANA-RELATED USES AND ACTIVITIES AND AMENDING PROVISIONS OF TITLE 23 (THE ZONING CODE) PROHIBITING THE DEVELOPMENT OF MARIJUANA RELATED USES**

#### **[Zoning Code Amendment 2016-02]**

#### **City Attorney's Summary**

An ordinance amending the City of Placentia Municipal Code whereby Chapter 23.46 of Title 23 (Zoning) of the Municipal Code is amended to expressly prohibit the development of marijuana related uses and marijuana businesses of any kind; and, Chapter 8.42 of Title 8 (Health and Sanitation) is amended to also prohibit marijuana related uses and activities. "Marijuana related use and activity" means dispensing, cultivation, possession, manufacture, processing, storing, testing, labeling, relabeling, packaging, repackaging, transporting, delivery, distribution, provision, or sale, or any combination thereof, of marijuana, whether related to Marijuana business, for personal use or otherwise. This prohibition does not prohibit qualified patients and persons with identification cards to cultivate indoors, possess, and use marijuana for their own personal medical purposes only, as permitted by state law; but that nothing herein shall be construed to authorize qualified patients to engage in the collective cultivation of marijuana. The proposed Code Amendments are not expected to create a negative impact on the physical environment and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and are therefore exempt from environmental review pursuant to the provisions of the California Environmental Quality Act (CEQA), Section 15061(b)(3).

WHEREAS, the City, pursuant to its police power granted by Cal. Const. art. XI, § 7 and Cal. Govt. Code § 37100, may adopt regulations to protect the health, safety and welfare of the public, and thereby is authorized to declare what use and condition constitutes a public nuisance; and

WHEREAS, Section 38771 of the California Government Code 38771 authorizes the City through its legislative body to declare actions and activities that constitute a public nuisance; and

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana possession, cultivation and distribution; and

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5 et seq.) (the "CUA"), which exempts qualified patients and their primary caregivers from criminal prosecution under enumerated Health and Safety Code sections for use of marijuana for medical purposes; and

WHEREAS, the California Legislature enacted Senate Bill 420 in 2003, the Medical Marijuana Program Act (codified at Health and Safety Code Section 11362.7 et seq.) (the "MMPA"), as amended, which created a state-wide identification card scheme for qualified patients and primary caregivers; and

WHEREAS, on August 19, 2008, the City of Placentia enacted Ordinance 0-2008-09, which expressly prohibited the operation of "Medical Marijuana Dispensaries", including mobile dispensaries in the City. On January 19, 2016, the City of Placentia enacted Ordinance 0-2016-01 adding Chapter 23.46 to the Zoning Code expressly prohibiting "Marijuana Cultivation" in all zoning districts throughout the City.

WHEREAS, on October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Cannabis Regulation and Safety Act (MCRSA) formerly known as (the Medical Marijuana Regulation and Safety Act), effective January 1, 2016, which established a state licensing system for medical marijuana cultivation, manufacturing, delivery, and dispensing, regulating these activities with licensing requirements and regulations that are only applicable if cities and counties also permit marijuana cultivation, manufacturing, dispensing, and delivery within their jurisdictions. Under the MCRSA, cities and counties may continue to regulate and/or prohibit medical marijuana cultivation, manufacturing, dispensing, and delivery, consistent with their respective police powers, in which case the new law would not allow or permit these activities within the cities and counties where such activities are not otherwise permitted; and

WHEREAS, on February 3, 2016, Assembly Bill 21 (Wood) was signed by the Governor, amending provisions of MCRSA pertaining to cultivation licenses by eliminating a March 1, 2016 deadline for local jurisdictions for the promulgation of cultivation regulations or cultivation bans other local jurisdictions would lose the ability to regulate to the State. Assembly Bill 21 also modified language in Health & Safety Code section 11362.777(g), which pertained to exemptions from licensing requirements for qualified patients and caregivers. The prior language, which specifically stated that local governments retained the right to prohibit cultivation without exception, was revised to state: "Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from exercising its police authority under Section 7 of Article XI of the California Constitution."; and

WHEREAS, notwithstanding the CUA, the MMPA, and the MCRSA as amended, marijuana remains a schedule I substance pursuant to California Health & Safety Code § 11054 (d) (13); and

WHEREAS, marijuana also remains a schedule I substance pursuant to federal law, 21 U.S.C. § 812, Schedule 1 (c) (10), and federal law does not provide

for any medical use defense or exception (Gonzales v. Raich, 545 U.S. 1 (2005); United States v. Oakland Cannabis Buyers' Coop., 532 U.S. 483 (2001)); and

WHEREAS, the California Supreme Court has established that neither the CUA nor the MMPA preempt local regulation in the case of City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal.4th 729 (2013); and

WHEREAS, the MCRSA expressly allows cities and counties to ban marijuana cultivation consistent with current state law including the Maral v. City of Live Oak, 242 Cal.App.4th 940 (2013); and

WHEREAS, on November 8, 2016, the electorate of the State of California voted on Proposition 64 ("Prop 64"), approving the Adult Use of Marijuana Act ("AUMA"), codified in California Health and Safety Code at various sections and in California Business and Professions Code at various sections. The AUMA allows adults 21 and over to use, possess, and cultivate limited amounts of marijuana, establishes a state licensing and regulatory scheme for marijuana businesses serving the recreational market; and expressly allows local jurisdictions to prohibit outdoor cultivation of marijuana for personal use, to regulate indoor cultivation of marijuana for personal use, and to prohibit all non-medical and recreational marijuana businesses from locating and operating within their jurisdictions; and

WHEREAS, AUMA went into effect November 9, 2016, legalizing marijuana related uses and activities that are not presently regulated or prohibited by the City. Unless the City immediately regulates or bans these currently unregulated marijuana related uses and activities, marijuana businesses may be able to operate within the City without State regulation until approximately January 2018, and this would cause an immediate harm to the public safety, health and welfare; and

WHEREAS, the changes in the law based upon AUMA constitute a current and immediate threat to the public health, safety and welfare; and

WHEREAS, the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to all for marijuana relate uses would result in that threat to public health safety or welfare; and

WHEREAS, the City Council finds that prohibiting marijuana use and activity will protect the public safety, health, and welfare; and

WHEREAS, possession of marijuana and concentrated marijuana is governed by State law. California Health and Safety Code, Section 11357 sets forth the criminal punishment or adjudication for possession of marijuana and concentrated cannabis in violation of State law; and

WHEREAS, this ordinance is consistent with Ordinance Nos. O-2016-08 and O-2016-09 adopted by the City Council on December 6, 2016, at which time the City Council found that adoption of said ordinances was in the interest of the health, safety and welfare of the City to make explicit that all marijuana related use and

activity of any kind as set forth herein, whether medical, recreational, or otherwise, is prohibited everywhere in the City and is a public nuisance per se, consistent with State law, and

WHEREAS, the City Council of the City of Placentia has passed this ordinance upon finding that it is in the interest of the health, safety and welfare of the City to make explicit that all marijuana related use and activity of any kind as set forth herein, whether medical, recreational, or otherwise, is prohibited everywhere in the City and is a public nuisance per se, consistent with State law, and

WHEREAS, the City Council of the City of Placentia finds and clarifies this prohibition does not apply to prohibit qualified patients and persons with identification cards to cultivate indoors, possess, and use marijuana for their own personal medical purposes only, as permitted by state law; but that nothing herein shall be construed to authorize qualified patients to engage in the collective cultivation of marijuana as described by Health and Safety Code section 11362.775, nor are they permitted to cultivate marijuana above limits established by State law and guidelines for their own personal use; and

WHEREAS, the City of Placentia, California, pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) has determined that this Ordinance is exempt pursuant to Section 15061(b)(3) of Title 14 the California Code of Regulations; and

WHEREAS, the City Council finds that the provisions of this Ordinance are consistent with the City of Placentia's General Plan; and

WHEREAS, all legal prerequisites prior to the adoption of this ordinance have occurred.

WHEREAS, on or about January 10, 2017, the Planning Commission held a duly noticed public hearing and adopted a resolution recommending to the City Council adoption of this Ordinance as it relates to Title 23 (Zoning Code).

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PLACENTIA DOES ORDAIN AS FOLLOWS:**

**SECTION 1: Findings.** The City Council finds that all the facts, findings, and conclusions set forth above in this Ordinance are true and correct.

**SECTION 2: Amending Title 8.** Title 8 of the Placentia Municipal Code is hereby amended with the repeal of Chapter 8.42 (Medical Marijuana Dispensaries) in its entirety and adding a new Chapter 8.42 to read as follows:

**Chapter 8.42 Marijuana-Related Uses and Activities Prohibited**

**8.42.010. Purpose.**

- A. General Purpose. This Chapter is intended to prohibit marijuana related use and activity, for the purpose of promoting the health, safety, and general welfare of the residents, businesses, and visitors to the City. Except when preempted by state law, this prohibition includes marijuana related uses and activities, including marijuana dispensing, cultivation, transporting, distributing, processing, delivering, manufacturing, labeling, and/or testing, whether for recreational, medical, or any other use, except that this prohibition does not apply to prohibit qualified patients and persons with identification cards to cultivate indoors, possess, and use marijuana for their own personal medical purposes to the degree such activity is authorized by state law.
  
- B. Collective Cultivation. Nothing herein shall be construed to authorize qualified patients to engage in the collective cultivation of marijuana as described by Health and Safety Code section 11362.775, nor are they permitted to cultivate marijuana above limits established by state law and guidelines for their own personal use. Nor shall anything herein be construed as permitting primary caregivers to cultivate marijuana indoors or outdoors anywhere in the City.
  
- C. Interpretation. If any provision of this ordinance is unclear, it shall be interpreted in the manner which is most prohibitive of marijuana related use and activity, but only to the extent that such regulation would be consistent with applicable law.

**8.42.020. Applicability**

- A. Nothing in this Chapter is intended, nor shall it be construed, to burden any defense to criminal prosecution under the State law.
  
- B. All the provisions of this Chapter shall apply to all property, public, and private, within the City.
  
- C. All the provisions of this Chapter shall apply indoors and outdoors.
  
- D. Nothing in this Chapter shall authorize criminal prosecution or abatement for violations of this Chapter or any other provision of the Placentia Municipal Code inconsistent with the holding of Kirby v. County of Fresno 242 Cal.App.4th 940 (2015).

**8.42.030. Definitions**

The following definitions apply to this Chapter:

- A. "Caregiver" or "primary caregiver" shall have the same definition as that set forth in California Health and Safety Code section 11362.7 (d) and (e).

- B. "Cultivation" shall mean any activity involving the germinating, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. Indoor cultivation of marijuana for personal use by persons twenty-one (21) years of age or older on the grounds of a private residence is permitted to the extent allowed by state law (Health and Safety Code section 11362.1, subdivision (c).)
- C. "Delivery" shall have the same definition as set forth in California Business and Professions Code 19300.5 (m). "Delivery" shall also have the same definition as set forth in California Health and Safety Code section 26001(h). "Delivery" shall not include transportation of marijuana or marijuana products by a licensed transporter traveling through the City on public roads to and from locations outside of the City where marijuana-related activities or uses are permitted.
- D. "Dispensary" shall mean any location where marijuana or devices for the use of marijuana are offered, either individually, or in combination, and includes retail sales. "Dispensary" includes delivery services, mobile dispensing and distribution.
- E. "Dispensing" shall mean any activity involving the provision of marijuana for any purpose.
- F. "Distribution" shall mean the provision and transport of marijuana between persons.
- G. "Manufacturer" shall mean a person that conducts the production, preparation, propagation, or compounding of marijuana, either directly or indirectly, or by extraction methods, or independently by means of chemical synthesis or by any combination thereof, and includes packaging, repackaging, labeling, and/or relabeling.
- H. "Marijuana" shall have the same definition as that set forth in California Health & Safety Code Section 11018. "Marijuana" shall include: "cannabis" as defined in California Business & Professions Code section 19300.5(f); "cannabis concentrate" as defined in in California Business & Professions Code section 19300.5(g); "edible cannabis product" as defined in California Business & Professions Code section 19300.5(s); "manufactured cannabis" as defined in California Business & Professions Code section 19300.5(ae); "medical cannabis," "medical cannabis product," or "cannabis product" as defined in California Business & Professions Code section 19300.5(ag); and "topical cannabis" as defined in California Business & Professions Code section 19300.5(al).
- I. "Marijuana Businesses" shall mean marijuana businesses for any purpose (medical or non-medical) including dispensaries, cooperatives, cultivation, manufacturing, testing facilities, transporting, or distributing; all of which are prohibited from being established or operating within the City, except that

licensed marijuana transporters are permitted to pass through the City on public roads as mandated by Business and Professions Code sections 19338 and 26080.

- J. "Marijuana-Related Use and Activity" means dispensing, cultivation, possession, manufacture, processing, storing, testing, labeling, relabeling, packaging, repackaging, transporting, delivery, distribution, provision, or sale, or any combination thereof, of marijuana, whether related to Marijuana business, for personal use or otherwise.
- K. "Person" shall mean any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer and/or salesperson.
- L. "Qualified Patient" or "Qualifying Patient" shall mean qualified patient and persons with identification cards as those terms are defined by the Health and Safety Code section 11362.7.
- M. "Testing Site" shall mean any facility, entity, or site in the City that offers or performs tests of marijuana.

#### **8.42.040. All Marijuana-Related Use and/or Activity Prohibited**

- A. Cultivation. Indoor cultivation of marijuana for personal use by persons twenty-one (21) years of age or older on the grounds of a private residence is permitted, but only to the extent allowed by state law (Health and Safety Code section 11362.1, subdivision (c).) All outdoor cultivation of marijuana within the City is prohibited.
- B. Marijuana Businesses. Marijuana businesses, for any purpose (medical or non-medical) including dispensaries, cultivation, manufacturing, testing facilities, transporting, or distributing are prohibited from being established or operating within the City, except that licensed marijuana transporters are permitted to pass through the City on public roads as mandated by Business and Professions Code sections 19338 and 26080.
- C. All marijuana related use and activity is prohibited in the City of Placentia. This prohibition includes those marijuana related uses and activities set forth herein.

#### **8.42.050. Declaration of Public Nuisance**

Any use, structure, or property that is altered, enlarged, erected, established, maintained, moved, or operated contrary to the provisions of this Chapter, is hereby declared to be unlawful and a public nuisance and may be abated by the city through civil and/or administrative proceedings by means of a restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances.

**8.42.060. Violations**

- A. Violations of this Chapter shall be punishable as provided in this Code.
- B. This Chapter is not the exclusive means for the abatement of marijuana-related uses or activities within the City of Placentia. The remedies set forth pursuant to this Section shall be in addition to any other existing remedies for violations of the Zoning Code, including but not limited to, any action at law or equity.
- C. Violations of this Chapter is hereby declared a public nuisance.

**SECTION 3. Chapter 23.46 Amendment.** The following Sections of Chapter 23.46 of the Zoning Code are revised to provide as follows (Section 23.46.20 and Section 23.46.50 remain unamended):

**23.46.010 Purpose**

The City Council of the City of Placentia hereby finds and determines that it is the purpose and intent of this chapter to prohibit marijuana related use and activity, in order to promote the health, safety, and general welfare of the residents and the businesses within the city by maintaining local control over the ability to authorize and regulate marijuana-related uses and activities, including marijuana businesses engaged in prohibited marijuana use and activity.

**23.46.030 Definitions.**

The following definitions apply to this chapter:

“Marijuana” shall have the same definition as that set forth in Chapter 8.42 of the Placentia Municipal Code.

“Marijuana business” shall have the same definition as that set forth in Chapter 8.42 of the Placentia Municipal Code.

“Marijuana cultivation” shall have the same definition as that set forth for “cultivation” in Chapter 8.42 of the Placentia Municipal Code.

“Marijuana-Related Use and Activity” means dispensing, cultivation, possession, manufacture, processing, storing, testing, labeling, relabeling, packaging, repackaging, transporting, delivery, distribution, provision, or sale, or any combination thereof, of marijuana, whether related to Marijuana business, for personal use or otherwise, and as otherwise defined in Title 8.42 of the Placentia Municipal Code.

“Person” shall have the same definition as that set forth in Chapter 8.42 of the Placentia Municipal Code.

23.46.040 Marijuana Related Use and Activity prohibited.

Marijuana related uses and activities shall be prohibited on all parcels in the City.

23.46.060 Violations.

(a) Violations of this chapter shall be punishable pursuant to Chapter 1.08 of the City of Placentia Municipal Code.

(b) The remedies set forth pursuant to this section shall be in addition to any other existing remedies for violations of the municipal code, including, but not limited to, any action at law or equity.

**SECTION 4. CEQA.** Pursuant to the California Environmental Quality Act (CEQA), The proposed project (Code Amendments) are not expected to create a negative impact on the physical environment and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and are therefore exempt from environmental review pursuant to the provisions of the CEQA, Section 15061(b)(3).

**SECTION 5. Inconsistent Code Provisions.** Any provision of the 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 that extent necessary to effect the provisions of this Ordinance.

**SECTION 6: Severability.** Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable. The City Council declares that it would have adopted all the provisions of this ordinance that remain valid if any provisions of this ordinance are declared invalid.

**SECTION 7. Effective Date.** This ordinance shall be in full force and effect commencing thirty (30) days after its final adoption and a summary hereof shall be published once within fifteen (15) days in the \_\_\_\_\_, a newspaper of general circulation printed and published in the County of Orange and circulated in the City of Placentia and hereby designated for that purpose by the City Council.

PASSED AND ADOPTED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

\_\_\_\_\_  
CRAIG GREEN, MAYOR

ATTEST:

\_\_\_\_\_  
PATRICK J. MELIA, CITY CLERK

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss.  
CITY OF PLACENTIA )

I, Patrick J. Melia, City Clerk of the City of Placentia do hereby certify that the foregoing ordinance was introduced at a regular meeting of the City Council held on the \_\_\_\_\_th day of \_\_\_\_\_, 2017, and was finally adopted at a regular meeting held on \_\_\_\_\_ day of \_\_\_\_\_, 2017 by the following vote:

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

\_\_\_\_\_  
PATRICK J. MELIA, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CHRISTIAN L. BETTENHAUSEN, CITY ATTORNEY