

ORDINANCE NO. 10-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE AMENDING CHAPTER 5.89 OF THE OMC PROHIBITING THE BUSINESS OF SELLING, CULTIVATING OR DISTRIBUTING CANNABIS.

WHEREAS, the City of Orange has historically prohibited commercial cannabis activity; and

WHEREAS, in 1996 California voters approved Proposition 215, the Compassionate Use Act (“CUA”), which provides that a patient or the patient’s primary caregiver who possesses or cultivates marijuana for the personal medical purpose of the patient upon an oral or written recommendation from a physician may assert these facts as an affirmative defense to prosecution under California’s marijuana laws; and

WHEREAS, except as provided above, possession, distribution, cultivation and transportation of marijuana is still a violation of state law and can be prosecuted as such; and

WHEREAS, in January 2004, the state legislature enacted the Medical Marijuana Program (MMP) to clarify the scope of the CUA; and

WHEREAS, notwithstanding the CUA and MMP, the Federal Controlled Substances Act classifies marijuana as a Schedule I narcotic and under federal law the manufacture, distribution, or possession of marijuana is a criminal offense and physicians are still prohibited from prescribing marijuana because the federal Food and Drug Administration regulates prescription drugs; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, (2013) 56 Cal.4th 729, the California Supreme Court held that nothing in the CUA or the MMP limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land; and

WHEREAS, Governor Brown has recently signed three (3) bills into law (AB266, AB 243 and SB 643) which, among other things, allow the City to completely prohibit commercial medical cannabis activities.

NOW THEREFORE, the City Council of the City of Orange hereby ordains as follows:

SECTION I:

Chapter 5.89 of the Orange Municipal Code shall be deleted in its entirety and replaced with a new Chapter 5.89 to read as follows:

Chapter 5.89

Medical Cannabis Businesses

5.89.010 Definitions.

(a) The definitions in Business and Professions Code section 19300.5 and Health and Safety Code section 11362.7, as they may be amended from time to time, apply to this chapter and are incorporated by reference.

(b) The term “Cannabis” includes “Marijuana.”

5.89.020 Prohibitions.

(a) Commercial cannabis activity of all types is prohibited. No person shall establish, operate, conduct, or engage in commercial cannabis activity in the city.

(b) Cultivation of cannabis is prohibited. No person, including a qualified patient or primary caregiver, shall cultivate cannabis in the city.

(c) Delivery of cannabis to or from any location in the city is prohibited. No person shall conduct any delivery of cannabis that either originates or terminates in the city and no person shall own, manage, or operate a cannabis delivery service or business in the city. No person shall lease or offer to lease any facility or location in support of a cannabis delivery service.

(d) Dispensing cannabis is prohibited. No person shall dispense cannabis in the city.

(e) Cannabis dispensaries are prohibited. No person shall own, manage, operate, or work in, whether as an employee, volunteer, or independent contractor, a cannabis dispensary in the city. No person shall lease or offer to lease any facility or location for use as a cannabis dispensary.

5.90.030 Public Nuisance.

Any violation of this Chapter shall constitute a public nuisance and may be abated as provided in Chapter 1.08 of this Code and/or under state law.

5.90.040 Penalty.

Any person who violates this section shall be guilty of a misdemeanor and fined up to \$1,000 and/or be imprisoned in Orange County Jail for a period of up to six months.”

SECTION II:

The City Council finds that this Ordinance is not a project and is not subject to the California Environmental Quality Act ("CEQA") pursuant to Title 14, California Code of Regulations, Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment.

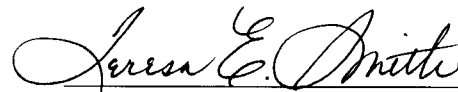
SECTION III:

If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION IV:

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. A summary of this Ordinance shall also be published once within fifteen (15) days after this Ordinance's passage in a newspaper of general circulation, published, and circulated in the City of Orange. The City Clerk shall post in the Office of the City Clerk a certified copy of the full text of such adopted Ordinance along with the names of those City Council members voting for and against the Ordinance in accordance with Government Code Section 36933. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

ADOPTED this 12th day of January 2016.



Teresa E. Smith, Mayor, City of Orange

ATTEST:



Mary E. Murphy, City Clerk, City of Orange

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, MARY E. MURPHY, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the 8th day of December 2015, and thereafter at the regular meeting of said City Council duly held on the 12th day of January 2016, was duly passed and adopted by the following vote, to wit:

AYES: COUNCILMEMBERS: Alvarez, Whitaker, Smith, Murphy
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: Nichols
ABSTAIN: COUNCILMEMBERS: None


Mary E. Murphy, City Clerk, City of Orange