

CITY OF COVINA
PLANNING COMMISSION AGENDA
REGULAR MEETING, TUESDAY, JULY 9, 2013
COUNCIL CHAMBER, CITY HALL, 125 EAST COLLEGE STREET
7:30 P.M.

PLEASE NOTE: THOSE WHO WISH TO ADDRESS THE PLANNING COMMISSION ON ANY ITEM ARE REQUESTED TO FILL OUT A SPEAKER'S CARD AND LEAVE IT WITH A MEMBER OF THE STAFF PRIOR TO THE ITEM BEING CALLED. THE PURPOSE OF THIS IS TO ENSURE THAT YOUR NAME AND ADDRESS ARE CORRECTLY IDENTIFIED IN THE MINUTES OF THE PLANNING COMMISSION.

1. Opening Matters

- A. Pledge of Allegiance.
- B. Roll Call of Commissioners: Connors, Hodapp, Manning, McMeekin and Patterson.
- C. Minutes of the Regular Meeting of June 25, 2013
- D. Amendments to the Agenda.
- E. Election of Chairman and Vice Chairman
- F. Public Comment:

Citizens wishing to address the Commission on any matter **not** on the agenda may do so at this time. Citizens wishing to be heard on any matter on the agenda, please wait until that point on the agenda. **Please keep your comments to five minutes or less and try not to be repetitive.**

Under the provisions of the Brown Act, the Commission is prohibited from taking action on oral requests but may refer the matter to staff or to a subsequent meeting.

PUBLIC HEARINGS

- 2. Planning Commission to consider an Ordinance of the City Council of the City of Covina, California amending Sections 17.04.414,5 and 17.60.025 of Title 17 of the Covina Municipal Code to expressly define and prohibit the operation of medical marijuana dispensaries and mobile marijuana dispensaries in the City.
 - Staff Report
 - Questions of staff from Commission
 - Open public hearing; receive testimony in favor and in opposition of the item
 - Close the public hearing
 - Roll Call Vote

GENERAL MATTERS

3. NONE

ADMINISTRATIVE ITEMS

4. INFORMATION
5. COMMISSION COMMENTS
6. ADJOURNMENT

Adjourn to the regular meeting of the Planning Commission on July 23, 2013 at 7:30 p.m.

Additional information on any agenda item can be obtained by contacting the Planning Division at 125 East College Street, Covina, or by telephoning (626) 384-5450.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the Planning Division office at (626) 384-5450 or the California Relay Service. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.



MINUTES OF THE JUNE 25, 2013 REGULAR MEETING OF THE COVINA PLANNING COMMISSION HELD IN THE COUNCIL CHAMBERS OF CITY HALL, 125 EAST COLLEGE STREET AT 7:30 P.M.

CALL TO ORDER

Chairman McMeekin called the Planning Commission meeting to order at 7:30 p.m.

ROLL CALL

Commission Members Present: Connors, Hodapp, Manning, McMeekin, Patterson

Commission Members Absent: None

Staff Members Present: Assistant City Attorney, City Planner, Planning Consultant

PLEDGE OF ALLEGIANCE

Chairman McMeekin led the Pledge of Allegiance.

AMENDMENTS TO THE AGENDA

None

MINUTES OF THE REGULAR MEETING OF JUNE 11, 2013

A motion was made and seconded to approve the minutes of the regular meeting of June 11, 2013.

The motion carried by a vote 5-0.

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 13, 2011

A motion was made and seconded to approve the minutes of the regular meeting of September 13, 2011

The motion carried by a vote 5-0.

MINUTES OF THE REGULAR MEETING OF AUGUST 9, 2011

A motion was made and seconded to approve the minutes of the regular meeting of August 9, 2011

The motion carried by a vote 4-0 with 1 abstention.

MINUTES OF THE REGULAR MEETING OF JUNE 14, 2011

A motion was made and seconded to approve the minutes of the regular meeting of June 14, 2011

The motion carried by a vote 3-0 with 2 abstentions.

PUBLIC COMMENT

None

PUBLIC HEARINGS

ITEM NO. 2

Application CUP 13-007, a Conditional Use Permit to operate a nail salon in a currently vacant tenant space, within a commercial building, at 1463 North Hollenbeck Avenue.

Planning Consultant Gus Romo presented the report and answered the Commissioners' questions.

Chairman McMeekin opened the public hearing.

There were no speakers.

The public hearing was closed.

A motion was made and seconded to approve Application CUP 13-007.

The motion carried by a vote of 5-0.

ITEM NO. 3

Application CUP 13-008, a Conditional Use Permit to operate an eyebrow threading business in a currently vacant tenant space, within a commercial building, at 1005 North Grand Avenue.

Planning Consultant Gus Romo presented the report and answered the Commissioners' questions.

Chairman McMeekin opened the public hearing.

Eifah Abdul Nour of West Covina spoke in favor of the application.

The public hearing was closed.

A motion was made and seconded to approve Application CUP 13-008

The motion carried by a vote of 5-0.

ITEM NO. 4

Application VAR 13-001, a Variance to allow 98% accessory structure coverage in excess of 50% code allowance from total main dwelling floor area (related: SPR 12-046, a staff-level site plan review to legalize a guesthouse, a second dwelling unit, and two storage buildings – SPR subject to PC decision on variance) on a residential property at 520 Retford Knoll.

City Planner Alan Carter presented the report.

Planning Consultant Gus Romo presented the report and answered the Commissioners' questions.

Chairman McMeekin opened the public hearing.

Deirdre Weatherwax, applicant, spoke in favor of the item and answered the Commissioners' questions.

The public hearing was closed.

A motion was made and seconded to approve Application VAR 13-001.

The motion carried by a vote of 5-0.

GENERAL MATTERS

ITEM NO. 5

None

ADMINISTRATIVE ITEMS

ITEM NO. 6 **INFORMATION**

City Planner Alan Carter asked the Commission if it has a preference for types of displays and graphics used in conjunction with staff reports or if it would prefer overhead presentations. The Commission answered that it depends on the scope of the project and suggested that staff use its discretion to determine whether more extensive displays are needed.

ITEM NO. 7 **COMMISSION COMMENTS**

Commissioner Hodapp asked about the status of two lots on Center Street where a fire had occurred. Mr. Carter stated that he will inquire as to the status of the properties and report back to the Commission.

ITEM NO. 8 **ADJOURNMENT**

A motion was made and seconded to adjourn the Planning Commission meeting to a meeting to be held on July 9, 2013 at 7:30 p.m. in the City Hall Council Chambers.

The motion carried by a vote of 5-0.

Assistant Secretary

CITY OF COVINA

STAFF REPORT

JULY 9, 2013

ITEM NO. 2

TO: PLANNING COMMISSION

FROM: DARYL PARRISH, CITY MANAGER
KIM J. RANEY, CHIEF OF POLICE
WILLIAM J. PRIEST, ASSISTANT CITY ATTORNEY

SUBJECT: PROPOSED ORDINANCE AMENDING THE CITY'S MUNICIPAL CODE TO EXPRESSLY DEFINE AND PROHIBIT THE OPERATION OF MEDICAL MARIJUANA DISPENSARIES AND MOBILE MARIJUANA DISPENSARIES IN THE CITY.

REQUEST:

That the Planning Commission adopt Resolution No. 2013-004 PC recommending that the City Council adopt **Ordinance No. 13-2025** amending the City's Zoning Code to expressly define and prohibit the operation of medical marijuana dispensaries and mobile marijuana dispensaries in the City.

LOCATION:

Prohibits operation of medical marijuana dispensaries within all zoning districts of the City.

BACKGROUND:

State and Federal Law

In 1996, California voters approved Proposition 215, entitled "The Compassionate Use Act" (the "CUA"), which provides seriously ill Californians "the right to obtain and use marijuana for medical purposes" once a physician has deemed the use beneficial to the patient's health. The CUA regulates several forms through which marijuana can be distributed, such as "a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license." By its own terms, nothing in CUA prohibits a city from adopting policies further restricting the location or establishment of such operations. Accordingly, a city may impose such restrictions on any medical marijuana distributor, whether it operates via a storefront or via a mobile retail delivery.

In 2003, the State legislature enacted SB 420 to clarify the CUA's scope and to allow cities to adopt and enforce rules and regulations consistent with its provisions. SB 420 is also known as the "Medical Marijuana Program Act" ("MMP") and provides additional statutory guidance for those involved with medical marijuana use. However, the Federal Controlled Substance Act makes it unlawful to manufacture, process, distribute or dispense marijuana. Further, the United States Supreme Court, in both 2001 and 2005, held that Federal law continues to apply in California despite the CUA and that no medical necessity exceptions exist.

On May 6, 2013, in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center*, the California Supreme Court held that local governments can ban medical marijuana dispensaries because California's marijuana laws do not expressly or impliedly limit a local jurisdiction's land use authority, including the authority to prohibit facilities for the distribution of medical marijuana. In this opinion, the Court further ruled that the California Constitution grants cities and counties broad power to determine the permitted uses of land within their borders, that the CUA and MMP do not restrict that power, and that a local ban on MMD's does not conflict with these laws because they do no more than exempt certain activities from State criminal and nuisance laws.

City's Urgency Ordinance and Current Regulation of Medical Marijuana Dispensaries

Covina's Zoning Code did not contain an express definition of "medical marijuana dispensaries" ("MMD's"). Therefore, MMD's had been prohibited in the City because they were neither a listed permitted use in any zoning district nor had they been deemed by the City Council to be a "similar use" to another permitted use under CMC Chapter 17.60. However, on June 18, 2013, the City Council adopted an urgency ordinance expressly defining and prohibiting the operation of medical marijuana dispensaries and mobile marijuana dispensaries in all zoning districts within the City and to address the public peace, health, and safety concerns at issue with the continued operation of MMD's within the City. That urgency ordinance is substantially similar to the attached ordinance, with the only difference being a more streamlined definition of "medical marijuana dispensary" in subsection (a) to further clarify the scope of the City's prohibition of these MMD's.

Mobile Marijuana Dispensaries

Medical marijuana advocates have taken a narrow interpretation that the Supreme Court of California's holding merely upheld local prohibitions on the dispensing of marijuana from a *stationary storefront*. Therefore, these advocates have advised MMD's to create "hybrid" operations - storefront offices only to process paperwork for joining an MMD, to receive payment/donations for the marijuana, and to give vouchers or membership documents to new members. Then, they later dispense the marijuana from a mobile or on- or off-site standalone delivery source independent of the office. These advocates have also stated that they intend to apply for local business licenses for the distribution of marijuana under this alternative method and for offices to operate in accordance with these standards.

The exact number of mobile or on- or off-site standalone delivery services operating in California is unclear, since the State does not keep a registry of these distributors. In June of 2013, at least four services within 10 miles of Covina advertised direct delivery of marijuana within the City on

“Weedmaps.com”, an Internet commercial listing service. An increase in mobile dispensaries has been found to coincide with successful enforcement actions involving storefront dispensaries. In other parts of the State, shuttered businesses turned to delivery services instead. There is reason to expect the same in the City of Covina in light of the Supreme Court’s recent ruling, Covina’s cooperation with Federal law enforcement, and its own aggressive action to shut down MMD’s.

Mobile dispensaries have been strongly associated with criminal activity. Delivery drivers, for example, are targets of armed robbers and many reportedly carry weapons or have armed guards as protection. Examples in the media include the following:

- a. In March of 2013, a West Covina deliveryman was reportedly robbed after making a delivery. The deliveryman told police that he was approached by two subjects in ninja costumes who chased him with batons. He was scared and dropped a bag with some marijuana and money, which was taken by the suspects.
- b. In February of 2013, a Temecula deliveryman was reportedly robbed of cash outside of a Denny’s restaurant, which led to a vehicular chase that continued until the robbers’ vehicle eventually crashed on a freeway on ramp.
- c. In January of 2013, marijuana deliverymen in Imperial Beach were reportedly robbed after being stopped by assailants (one with a brandished semi-automatic handgun) after making a stop.
- d. In January 2013, a deliveryman was reportedly robbed of three ounces of marijuana while making a delivery outside a Carl’s Jr. restaurant in Riverside, and he told police that the suspect may have had a gun.
- e. In May of 2012, a 23-year-old deliverywoman in La Mesa was reportedly shot in the face with a pellet gun. After running away, the assailants carjacked her vehicle.
- f. In August of 2011, a medical marijuana deliveryman was reportedly robbed of \$20,000 worth of his marijuana (approximately 9 pounds) and a cellular phone in Fullerton. The driver suffered a head cut during the crime.
- g. In June of 2011, a marijuana delivery from a Los Angeles mobile dispensary turned deadly in Orange County when four individuals reportedly ambushed the mobile dispensary driver and his armed security guard and tried to rob them. One of the suspects approached the delivery vehicle and confronted the driver and a struggle ensued. A second suspect armed with a handgun, approached the security guard, who fired at the suspect hitting him multiple times.
- h. In April of 2011, a customer reportedly made arrangements for a medical marijuana deliveryman to meet him in a Safeway parking lot in Salinas. The deliveryman had about \$1,000 in cash and 1.5 pounds of marijuana. As the

deliveryman began weighing the order, he looked up and saw a silver handgun in his face. The customer stole money and marijuana. The judge sentenced the customer to five years in state prison.

- i. In May of 2010, a college student who delivers medical marijuana door-to-door was reportedly robbed at gunpoint in Richmond. The assailants took \$1,000 in cash and a pound of marijuana; and

Concerns about recreational marijuana use in connection with medical marijuana distribution operations have been recognized by Federal and State courts. In the 2012 case of *People v. Leal*, the Court noted, that the legal protection of State law “has proven irresistible to those illegally trafficking marijuana . . . that there is obviously widespread abuse of the CUA and the MMP identification card scheme by illicit sellers of marijuana. . . . [and] that many citizens, judges undoubtedly among them, believe the CUA has become a charade enabling the use of marijuana much more commonly for recreational than for genuine medical uses.”

Despite the CUA and the MMP, the United States Attorneys in California have taken action to enforce the federal Controlled Substances Act against MMD’s, and have issued letters stating that California cities and officials face possible criminal prosecution for enabling MMD’s to violate Federal law. The failure to prohibit mobile marijuana dispensaries or medical marijuana dispensaries will expose the City to costs related to regulation, enforcement, and the negative secondary effects of dispensaries including an increase in violent crime.

Given the stated intentions of medical marijuana advocates in order to evade the Supreme Court’s recent ruling, the attached ordinance expressly and broadly defines the term “medical marijuana dispensary” and prohibits the use of any buildings, structures and land in the City for a medical marijuana dispensary or mobile marijuana dispensary within any zoning district in the City. The attached ordinance expressly prohibits “medical marijuana dispensaries”, which will include “hybrid” offices as described above, mobile and off-site delivery facilities as well as medical marijuana cooperatives and collectives.

RECOMMENDATION:

Pursuant to California Government Code, Sections 65854 and 65855, the Planning Commission is required to conduct a noticed public hearing to consider any standard ordinance that, among other things, regulates the use, height, size or intensity of land, buildings or structures. Notice of this hearing was properly published in the City’s newspaper of general circulation on June 27, 2013.

After such a hearing, the Commission is required to make a written recommendation to the City Council regarding the Ordinance which both (i) explains the reasons for the recommendation and (ii) makes a finding that that the proposed ordinance is consistent with the General Plan.

For the reasons more specifically set forth in Resolution No. 2013-004 PC, Staff believes that the proposed Ordinance is in the public interest in that it expressly defines and prohibits medical marijuana dispensaries (“MMD’s”), including mobile MMD’s, within any zoning district in the

City to address the negative and harmful secondary effects of such MMD operation. Further, an increase in mobile dispensaries has been found to coincide with successful enforcement actions involving storefront dispensaries. Mobile MMD's have been strongly associated with criminal activity. Delivery drivers, for example, are targets of armed robbers who seek cash and drugs. As a result, many of the drivers reportedly carry weapons or have armed guards as protection, as referenced in the attached ordinance.

For the reasons more specifically set forth in Resolution No. 2013-004 PC, Staff also believes that the ordinance is consistent with the Covina General Plan because it addresses land use impacts on both neighborhood and citywide levels while discouraging land uses that could induce unlawful or criminal activity. The ordinance also helps to ensure the quality of life for Covina residents, workers, shoppers and others in an effort to maintain individual health, safety and welfare. Further, the ordinance maintains and enhances Covina's positive image and attempts to reduce crime to persons and property by alleviating the underlying causes and opportunities for crime.

Staff therefore requests that the Planning Commission adopt Resolution No. 2013-004 PC recommending that the City Council adopt Ordinance No. 13-2025 amending the City's Zoning Code to expressly define and prohibit the operation of medical marijuana dispensaries and mobile marijuana dispensaries in the City.

ATTACHMENTS:

- A. Resolution No. 2013-004 PC
- B. Ordinance No. 13-2025

RESOLUTION NO. 2013-004 PC

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COVINA RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF COVINA APPROVAL OF ORDINANCE NO. 13-2025, AMENDING CERTAIN SECTIONS OF THE CITY OF COVINA MUNICIPAL CODE TO EXPRESSLY DEFINE AND PROHIBIT THE OPERATION OF MEDICAL MARIJUANA DISPENSARIES AND MOBILE MARIJUANA DISPENSARIES IN THE CITY.

WHEREAS, California Government Code, Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, City staff has prepared Ordinance No. 13-2025, which amends certain sections of the Covina Municipal Code to expressly define and prohibit the operation of medical marijuana dispensaries and mobile marijuana dispensaries in the City; and

WHEREAS, the Planning Commission has carefully considered all pertinent testimony and the staff report presented during a duly noticed public hearing for Ordinance No. 13-2025.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF COVINA DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1: Based on the entire record before the Planning Commission, all written and oral evidence presented to the Planning Commission, and the findings made in the staff report and this Resolution, the Planning Commission of the City of Covina hereby recommends that the City Council adopt Ordinance No. 13-2025 entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, AMENDING SECTIONS 17.04.414.5 AND 17.60.025 OF TITLE 17 OF THE COVINA MUNICIPAL CODE TO EXPRESSLY DEFINE AND PROHIBIT THE OPERATION OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY.", which is attached hereto as Attachment "A" and incorporated herein by reference.

SECTION 2: The Planning Commission finds that the above referenced ordinance is in the public interest and reasonably related to the public welfare because it expressly defines and prohibits medical marijuana dispensaries ("MMD's"), including mobile MMD's, within any zoning district in the City. Several California cities that have permitted the operation of MMD's have found that such operation results in negative and harmful secondary effects, including significant increases in traffic and crimes such as burglaries, takeover robberies of dispensaries, robberies of customers leaving dispensaries, an increase in theft and robberies in the vicinity of dispensaries, illegal re-selling of marijuana obtained from dispensaries, physicians issuing apparently fraudulent recommendations for the use of marijuana, dispensary staff selling marijuana to customers with obviously counterfeit patient identification cards, street dealers attempting to sell marijuana to dispensary customers, dispensary customers using marijuana and then driving under its influence, the sale of other illegal narcotics other than marijuana in the dispensaries, and the sales of marijuana to minors. An increase

in mobile dispensaries has been found to coincide with successful enforcement actions involving storefront dispensaries. In other parts of the state, shuttered businesses turned to delivery services instead. There is reason to expect the same in the City of Covina, particularly in light of the Supreme Court of California's recent ruling upholding a city's ability to ban MMD's in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, the City's willingness to cooperate with federal law enforcement operations, and its own aggressive enforcement actions against medical marijuana dispensaries. Mobile MMD's have been strongly associated with criminal activity. Delivery drivers, for example, are targets of armed robbers who seek cash and drugs. As a result, many of the drivers reportedly carry weapons or have armed guards as protection, as referenced in the attached ordinance. The failure to expressly prohibit mobile marijuana dispensaries or medical marijuana dispensaries will expose the City to costs related to regulation, enforcement, and the negative secondary effects of dispensaries including an increase in violent crime. For these reasons, the adoption of Ordinance No. 13-2025 is in the public interest and reasonably related to the public welfare.

SECTION 3: The Planning Commission also finds that adoption of this ordinance is consistent with the City of Covina General Plan because it addresses land use impacts on both neighborhood and citywide levels while discouraging land uses that could induce unlawful or criminal activity and helping to ensure the quality of life for Covina residents, workers, shoppers and others in an effort to maintain individual health, safety and welfare. Further, the ordinance maintains and enhances Covina's positive image and attempts to reduce crime to persons and property by alleviating the underlying causes and opportunities for crime. Overall, the amendments to the City of Covina Municipal Code made by Ordinance No. 13-2025 remain consistent with the objectives and policies of each element of the General Plan and do not obstruct their attainment.

SECTION 4: The ordinance is not subject to the California Environmental Quality Act ("CEQA") because it is not a project within the meaning of Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Planning Commission further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 5: The Secretary shall certify to the adoption of this resolution.

APPROVED AND ADOPTED by the members of the Planning Commission of Covina this 9th day of July, 2013.

CHAIRMAN
CITY OF COVINA PLANNING COMMISSION

I hereby certify that the foregoing is a true copy of a resolution adopted by the Planning Commission of the City of Covina at a regular meeting thereof held on the 9th day of July, 2013, by the following vote of the Planning Commission:

AYES:

NOES:

ABSENT:

ABSTAIN:

COVINA PLANNING COMMISSION SECRETARY

Attachment "A"

"AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, AMENDING SECTIONS 17.04.414.5 AND 17.60.025 OF TITLE 17 OF THE COVINA MUNICIPAL CODE TO EXPRESSLY DEFINE AND PROHIBIT THE OPERATION OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY."

[Attached behind this page]

ORDINANCE NO. 13 -2025

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA AMENDING SECTIONS 17.04.414.5 AND 17.60.025 OF TITLE 17 OF THE COVINA MUNICIPAL CODE TO EXPRESSLY DEFINE AND PROHIBIT THE OPERATION OF MEDICAL MARIJUANA DISPENSARIES AND MOBILE MARIJUANA DISPENSARIES IN THE CITY.

WHEREAS, in 1996, the voters of the State of California ("State") approved Proposition 215, codified as Health and Safety Code sections 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996" (the "CUA"), which provides seriously ill Californians "the right to obtain and use marijuana for medical purposes" once a physician has deemed the use beneficial to the patient's health; and

WHEREAS, as part of the CUA, Health and Safety Code section 11362.768 regulates several forms through which marijuana can be distributed. Specifically the section applies to "a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license;" and

WHEREAS, In 2003, the State legislature enacted SB 420 to clarify the scope of the CUA and to allow cities to adopt and enforce rules and regulations consistent with the provisions of SB 420. Specifically, the Legislature approved the Medical Marijuana Program Act ("MMP") which provided additional statutory guidance for those involved with medical marijuana use and also authorized cities to enact rules and regulations with regard to medical marijuana consistent with California law; and

WHEREAS, the CUA expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (Health & Safety Code section 11362.5.) The MMP similarly anticipates local regulation, providing: "Nothing in this article shall prevent a city ... from adopting and enforcing ... local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective ... civil and criminal enforcement of local ordinances; [and] ... other laws consistent with this article" (Health & Safety Code section 11362.83); and

WHEREAS, the Federal Controlled Substances Act (the "Controlled Substances

Act"), codified as 21 U.S.C. Section 801 *et seq.*, makes it unlawful for any person to manufacture, distribute or dispense or process with intent to manufacture, distribute or dispense marijuana. Despite the passage of the CUA, the Supreme Court of the United States in *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, held that the Controlled Substances Act continues to prohibit marijuana use, distribution, and possession, and that no medical necessity exceptions exist to those prohibitions and, in *Gonzales v. Raich* (2005) 545 U.S. 1, held that Congress, under the authority of the Commerce Clause of the United States Constitution, could regulate the intrastate manufacture and possession of marijuana in furtherance of the provisions of the Controlled Substances Act; and

WHEREAS, several California cities that have permitted the establishment of medical marijuana dispensaries have found that such medical marijuana dispensaries have resulted in negative and harmful secondary effects, including significant increases in traffic, crime, and noise. These harmful secondary effects have involved a wide range of activity including burglaries, takeover robberies of dispensaries, robberies of customers leaving dispensaries, an increase in theft and robberies in the vicinity of dispensaries, illegal re-selling of marijuana obtained from dispensaries, physicians issuing apparently fraudulent recommendations for the use of marijuana, dispensary staff selling marijuana to customers with obviously counterfeit patient identification cards, street dealers attempting to sell marijuana to dispensary customers, dispensary customers using marijuana and then driving under its influence, the sale of other illegal narcotics other than marijuana in the dispensaries, sales of marijuana to minors, and

WHEREAS, on May 6, 2013, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, et al., the Supreme Court of California held that local governments can ban medical marijuana dispensaries by stating that nothing in the State of California's marijuana laws "expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders." In this opinion, the Court further ruled that the California Constitution grants cities and counties broad power to determine the permitted uses of land within their borders, that the CUA and MMP state or imply no purpose to restrict that power, and that the City of Riverside's prohibition of marijuana dispensaries does not conflict with these statutes because the statutes do no more than exempt certain activities from the state's criminal and nuisance laws; and

WHEREAS, in response to the holding in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, marijuana advocates have stated that they plan

to narrowly interpret the Court's holding to merely prohibit the dispensing of marijuana from a stationary storefront; and

WHEREAS, these marijuana advocates plan on advising marijuana dispensaries to create facilities or offices to handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, to receive financial compensation or donations for the marijuana, or to give vouchers or other indicia of membership to new members only to later dispense the marijuana from a mobile or on- or off-site standalone delivery source independent of the office; and

WHEREAS, the exact number of mobile or on- or off-site standalone delivery services operating in California is unclear, since the state does not keep a registry of mobile medical marijuana distributors. In June of 2013, at least four services within 10 miles of Covina advertised direct delivery of marijuana within the City on "Weedmaps.com", an internet commercial listing service; and

WHEREAS, An increase in mobile dispensaries has been found to coincide with successful enforcement actions involving storefront dispensaries. In other parts of the state, shuttered businesses turned to delivery services instead. There is reason to expect the same in the City of Covina, particularly in light of the Supreme Court of California's recent ruling upholding the City's ban on marijuana dispensaries, the City's willingness to cooperate with federal law enforcement operations, and its own aggressive enforcement actions against medical marijuana dispensaries; and

WHEREAS, Mobile dispensaries have been strongly associated with criminal activity. Delivery drivers, for example, are targets of armed robbers who seek cash and drugs. As a result, many of the drivers reportedly carry weapons or have armed guards as protection. Examples of such criminal activity reported in the media include the following:

- a. In February of 2013, a Temecula deliveryman was reportedly robbed of cash outside of a Denny's restaurant, which led to a vehicular chase that continued until the robbers' vehicle eventually crashed on a freeway on ramp.
- b. In January of 2013, marijuana deliverymen in Imperial Beach were reportedly robbed after being stopped by assailants (one with a brandished semi-automatic handgun) after making a stop.
- c. In January 2013, a deliveryman was reportedly robbed of three ounces of marijuana while making a delivery outside a Carl's Jr. restaurant in

Riverside, and he told police that the suspect may have had a gun.

- d. In May of 2012, a 23-year-old deliverywoman in La Mesa was reportedly shot in the face with a pellet gun. After running away, the assailants carjacked her vehicle.
- e. In March of 2012, a West Covina deliveryman was reportedly robbed after making a delivery. The deliveryman told police that he was approached by two subjects in ninja costumes who chased him with batons. He was scared and dropped a bag with some marijuana and money, which was taken by the suspects.
- f. In August of 2011, a medical marijuana deliveryman was reportedly robbed of \$20,000 worth of his marijuana (approximately 9 pounds) and a cellular phone in Fullerton. The driver suffered a head cut during the crime.
- g. In June of 2011, a marijuana delivery from a Los Angeles mobile dispensary turned deadly in Orange County when four individuals reportedly ambushed the mobile dispensary driver and his armed security guard and tried to rob them. One of the suspects approached the delivery vehicle and confronted the driver and a struggle ensued. A second suspect armed with a handgun, approached the security guard, who fired at the suspect hitting him multiple times.
- h. In April of 2011, a customer reportedly made arrangements for a medical marijuana deliveryman to meet him in a Safeway parking lot in Salinas. The deliveryman had about \$1,000 in cash and 1.5 pounds of marijuana. As the deliveryman began weighing the order, he looked up and saw a silver handgun in his face. The customer stole money and marijuana. The judge sentenced the customer to five years in state prison.
- i. In May of 2010, a college student who delivers medical marijuana door-to-door was reportedly robbed at gunpoint in Richmond. The assailants took \$1,000 in cash and a pound of marijuana; and

WHEREAS, Concerns about non-medical marijuana use in connection with medical marijuana distribution operations have been recognized by federal and state courts. One example is *People v. Leal*, (2012) 210 Cal.App.4th 829. ("Not surprisingly, it seems that the enhanced protection from arrest has proven irresistible to those illegally trafficking marijuana, for if there is even rough accuracy in the anecdotal estimate by

the arresting detective in this case — that nearly 90 percent of those arrested for marijuana sales possess either a CUA recommendation or a card — then there is obviously widespread abuse of the CUA and the MMP identification card scheme by illicit sellers of marijuana. Ninety percent far exceeds the proportion of legitimate medical marijuana users one would expect to find in the populace at large. For this and other reasons, it is impossible for us not to recognize that many citizens, judges undoubtedly among them, believe the CUA has become a charade enabling the use of marijuana much more commonly for recreational than for genuine medical uses.”); and

WHEREAS, Despite the CUA and the MMP, the United States Attorneys in California have taken action to enforce the federal Controlled Substances Act against marijuana dispensaries, and have issued letters stating that California cities and officials face possible criminal prosecution for enabling dispensaries to violation federal law; and

WHEREAS, in accordance with the authority granted under California Government Code Section 36937, the City, on June 18, 2013, passed by a four-fifths supermajority vote an urgency ordinance to expressly and broadly define the term “medical marijuana dispensary” and prohibit the use of any buildings, structures and land in the City for a medical marijuana dispensary or mobile marijuana dispensary within any zoning district in the City due to the public peace, health, and safety concerns at issue in an effort to protect the community and comply with applicable law; and

WHEREAS, as a matter of standard practice, the City Council now wishes to adopt this standard ordinance as a follow up to its adoption of the urgency ordinance adopted on June 18, 2013; and

WHEREAS, prior to the adoption of that urgency ordinance, the Covina Zoning Code did not contain an express definition for Medical Marijuana Dispensaries or include in such definition facilities or offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative, receive any financial compensation or donation for the marijuana, or give vouchers or other indicia of membership to new members of these MMDs or expressly reference by name mobile or off-site delivery of marijuana independent from these facilities or offices and absent such express definition such Medical Marijuana Dispensaries had been prohibited in the City because they had neither been a permitted use in any zoning district in the City nor had they been deemed by the City Council to be a use similar and not more obnoxious and detrimental to the public health, safety and welfare pursuant to Covina Municipal Code Chapter 17.60; and

WHEREAS, the City Council hereby finds that, given the recent case law permitting cities to ban medical marijuana dispensaries and the public peace, health, safety and welfare concerns associated with the operation of medical marijuana dispensaries mentioned herein, the City wishes to ban medical marijuana dispensaries, as defined herein, in all zoning districts of the City; and

WHEREAS, the City now wishes to expressly define the term Medical Marijuana Dispensaries and expressly prohibit the use of any buildings, structures and land in the City for a Medical Marijuana Dispensary as defined herein.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

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

SECTION 2. Section 17.04.414.5 entitled "Medical Marijuana Dispensary" is hereby added to Chapter 17.04 of the Covina Municipal Code and shall read as follows:

CHAPTER 17.04 DEFINITIONS AND STANDARDS

...

17.04.414.5 MEDICAL MARIJUANA DISPENSARY.

- A. A "medical marijuana dispensary" means any facility or location, including any clinic, cooperative, club, business or group which dispenses, sells, provides, transports or delivers, or arranges the dispensing, sale provision, transport or delivery, of medical marijuana to any person, firm, corporation, association, club, society, or other organization or any owner, manager, proprietor, employee, volunteer, or salesperson thereof, whether such facility, location or delivery service is independent from or affiliated with any fixed facility or location in the City, where medical marijuana is made available to, distributed by, sold or supplied to one or more of the following: (1) more than a single qualified patient, (2) more than a single person with an identification card, or (3) more than a single primary caregiver.

- B. Unless otherwise regulated by ordinance or applicable law, a "medical marijuana dispensary" shall not be construed to include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health & Safety Code, (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health & Safety Code, (3) a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health & Safety Code, (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health & Safety Code, (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health & Safety Code, to the extent that such use strictly complies with applicable law, including but not limited to California Health & Safety Code Section 11362.5, et seq.
- C. A medical marijuana cooperative is two or more persons collectively or cooperatively cultivating, using, transporting, processing, administering, delivering or making available medical marijuana, with or without compensation. The term "medical marijuana cooperative" shall include a medical marijuana collective.
- D. All terms used in this definition of medical marijuana dispensary, including but not limited to "medical marijuana," "qualified patient," "identification card," and "primary caregiver," shall be as defined in California Health & Safety Code Section 11362.5, et seq."

SECTION 3. Section 17.60.025 entitled "Unlisted Use - Medical Marijuana Dispensary" is hereby added to Chapter 17.60 of the Covina Municipal Code and shall read as follows:

CHAPTER 17.60 PERMITTED USES

...

17.60.025 UNLISTED AND UNPERMITTED USE - MEDICAL MARIJUANA DISPENSARY; PUBLIC NUISANCE DECLARED; VIOLATIONS.

- A. Notwithstanding any other provision of this Code, medical marijuana dispensaries, as that term is defined in Section 17.04.414.5 of this Title, are hereby expressly prohibited from operating in any zone of the City of Covina (including within the Town Center Specific Plan and any Planned Community Development zones). Therefore, the use of any property within the City as a medical marijuana dispensary shall not be treated as a listed or permitted use under this Title and shall not be determined to be a similar use not more obnoxious and detrimental to the public health, safety and welfare under this Title.

- B. The operation of any medical marijuana dispensary as defined in this Title within the City is hereby declared a public nuisance and shall be abated pursuant to all available remedies. Violations of this Section may be enforced by any applicable law. Notwithstanding any other provisions of this Code, a violation of this Section is not subject to criminal penalties.

- C. No person shall deliver marijuana or marijuana-infused products, such as tinctures, baked goods or other consumable products, to any location within the City from a medical marijuana dispensary, regardless of where the medical marijuana dispensary is located, or engage in any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet, or assist in the operation of any medical marijuana dispensary in the City.

SECTION 4. CEQA. This ordinance is not a project within the meaning of Section 15378 of the State California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

SECTION 5. Custodian of Records. The documents and materials that

constitute the record of proceedings on which these findings and this Ordinance are based are located at the City Clerk's office located at 125 E. College Street, Covina, CA 91723. The custodian of these records is the City Clerk.

SECTION 6. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Covina hereby declare that they would have adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 7. Effective Date. This Ordinance shall become effective within thirty (30) days after its adoption.

SECTION 8. Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary of thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Covina.

SIGNED AND APPROVED this _____ day of _____, 2013.

WALTER ALLEN III, MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

I HEREBY CERTIFY that the above and foregoing ordinance was duly passed and adopted by the Covina City Council at its regular meeting held on the ____ day of _____, 2013, by the following vote, to wit:

AYES;

NOES:

ABSENT:

City Clerk