

ORDINANCE NO. 6354

AN ORDINANCE OF THE CITY OF ANAHEIM ADDING CHAPTER 4.19 TO TITLE 4 OF THE ANAHEIM MUNICIPAL CODE (MEDICAL MARIJUANA CULTIVATION AND PROCESSING) TO PROHIBIT MEDICAL MARIJUANA CULTIVATION AND PROCESSING ACTIVITIES IN THE CITY OF ANAHEIM AND DETERMINING PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) THAT THIS ORDINANCE IS NOT A PROJECT PURSUANT TO SECTIONS 15060(C)(2), 15060(C)(3) AND 15378 OF THE CEQA GUIDELINES

WHEREAS, the People of the State of California approved Proposition 215, which was codified as California Health and Safety Code Section 11362.5 and entitled the Compassionate Use Act of 1996 ("CUA"); and

WHEREAS, the CUA provides an affirmative defense to particular state laws regarding the possession or cultivation of marijuana for a qualified patient, or a patient's primary caregiver who possesses or cultivates marijuana for the personal medical use of the patient upon the recommendation of a physician, and also provides an affirmative defense to the criminal prosecution or punishment of a physician for recommending marijuana to a patient for medical purposes; and

WHEREAS, California courts have held that the CUA creates a limited exception from criminal liability for seriously ill persons who need medical marijuana for specified medicinal purposes and who obtain and use medical marijuana under limited, defined circumstances; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 *et seq.*, which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, California Health and Safety Code Section 11362.5(b)(2) expressly provides that nothing in the CUA "shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes." Health and Safety Code Section 11362.83 similarly anticipates that local agencies may take action to regulate in this area, providing that "[n]othing in [the MMP] shall prevent a city...from ... civil and criminal enforcement of local ordinances ... [and] other laws consistent with [the MMP];" and

WHEREAS, notwithstanding the passage of the CUA and the MMP, the possession, distribution and cultivation of marijuana are prohibited by the federal Controlled Substances Act, 21 U.S.C. Sections 801 *et seq.*, and Section 11359 of the California Health and Safety Code; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., et al.*, holding that cities have the authority to ban medical marijuana land uses; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed into law the "Medical Marijuana Regulation and Safety Act" ("Act"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains new statutory provisions that:

- Allow local governments to enact ordinances prohibiting the cultivation of marijuana and electing not to administer a cultivation permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4), Business and Professions Code Sections 19315(a) and 19316(c));
- Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
- Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c), Section 7 of Article XI of the California Constitution); and
- Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code Section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)); and

WHEREAS, due to documented public health and safety risks, the City of Anaheim (the "City") has previously availed itself of its legal right to prohibit marijuana dispensaries and deliveries within City limits; specifically, Chapter 4.20 of the Anaheim Municipal Code prohibits the existence or operation of medical marijuana dispensaries in the City, and Chapter 4.21 prohibits mobile medical marijuana dispensaries from operating in the City; and

WHEREAS, a number of California cities have reported negative impacts of marijuana cultivation, processing and distribution, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, in the case of multiple qualified patients who are in control of the same legal parcel(s) of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large number of plants could be cultivated on the same legal parcel(s) within the City; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building(s) used, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants; and

WHEREAS, one marijuana plant needs five to ten gallons of water per day or an estimated three billion liters of water per square kilometer in one season, and marijuana farmers have been found directly siphoning water from tributaries and other bodies of water. This extraordinary consumption of water during drought conditions not only negatively impacts the City's efforts to conserve water resources but the reduction in available water negatively affects other plants and wildlife; and

WHEREAS, heavy use of pesticides to prevent rodents and other wildlife from eating marijuana plants, as well as poorly-built irrigation systems, has polluted the ecosystem and contaminated soil, groundwater, sewer systems and storm drains; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, the negative effects on the public health, safety and welfare described above are likely to occur, and continue to occur, in the City due to the establishment and operation of medical marijuana cultivation and/or processing activities; and

WHEREAS, the California Constitution grants charter cities the power to make and enforce all ordinances and regulations with respect to municipal affairs. Section 7 of Article XI of the California Constitution provides that a city may make and enforce within its limits all police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the City of Anaheim, as a charter city, by and through its City Council, has and may exercise all powers necessary to ensure the general welfare of its inhabitants; and

WHEREAS, the City's prior enactment of ordinances banning storefront and mobile medical marijuana dispensaries codify and reflect the City's determination that medical marijuana operations pose a significant threat to the public health, safety and welfare, which the City has sought to avoid through the exercise of its local powers and control; and

WHEREAS, the Act provides that if cities do not exercise their local powers and authority to enact a land use regulation or ordinance banning medical marijuana cultivation and cultivation activities, state law will control and allow such activities as provided for in the Act; and

WHEREAS, the City desires to exercise its local power and authority to enact a land use regulation banning medical marijuana cultivation and processing as part of Title 4 of the Anaheim Municipal Code, which contains a number of land use regulations, including the regulations prohibiting storefront and mobile medical marijuana dispensaries; and

WHEREAS, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; herein referred to as "CEQA") and the State of California Guidelines for Implementation of the California Environmental Quality Act (commencing with Section 15000 of Title 14 of the California Code of Regulations; herein referred to as the "State CEQA Guidelines"), the City is the "lead agency" for the preparation and consideration of environmental documents for this ordinance; and

WHEREAS, the City Council finds and determines that this ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines, because it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project", as defined in Section 15378 of the CEQA Guidelines; and

WHEREAS, based on the findings, above, the City Council has determined that there exists a current and immediate threat to public health, safety and welfare if the City does not add Chapter 4.19 to the Municipal Code to ban the cultivation and processing of medical marijuana and cannabis in the City of Anaheim and to prohibit the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation; and

WHEREAS, it is in the interest of the City, its residents, and its lawfully permitted businesses that the City adopt this land use ordinance to expressly prohibit the establishment and operation of marijuana cultivation and/or processing establishments or activities, as well as the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity, except where the City is preempted by federal or state law from enacting a prohibition on any such establishment or activity or a prohibition on the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity; and

WHEREAS, the City Council determines that this ordinance is a matter of City-wide importance and necessary for the preservation and protection of the public health, safety and welfare of the citizens of the City of Anaheim and is enacted pursuant to California Health and Safety Code Sections 11362.5(c)(2) and 11362.83 and the City's police power, as granted broadly under Section 7 of Article XI of the California Constitution.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ANAHEIM DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1.

That new Chapter 4.19 (Medical Marijuana Cultivation and Processing) be, and the same is, hereby added to Title 4 of the Anaheim Municipal Code to read in full as follows:

**CHAPTER 4.19 MEDICAL MARIJUANA CULTIVATION
AND PROCESSING**

Sections:

- 4.19.010 Purpose and Findings.**
- 4.19.020 Definitions.**
- 4.19.030 Medical Marijuana Cultivation and
Processing Prohibited.**
- 4.19.040 Use or Activity Prohibited by State or
Federal Law.**
- 4.19.050 Public Nuisance Declared.**

4.19.010 PURPOSE AND FINDINGS.

The City Council finds that federal and state laws prohibiting the possession, distribution, cultivation and processing of marijuana preclude the establishment or operation of City-sanctioned or permitted Medical Marijuana Cultivation or Medical Marijuana Processing facilities or activities. In order to promote and ensure the health, safety and welfare of the City and its residents, the declared purpose of this chapter is to prohibit Medical Marijuana Cultivation and Medical Marijuana Processing activities, operations or facilities as provided in this chapter.

4.19.020 DEFINITIONS.

For purposes of this chapter, the following definitions shall apply:

.010 "Medical Marijuana Cultivation" means any activity involving the growing, planting, harvesting, farming, drying, curing, grading, or trimming of medical marijuana or medical cannabis.

.020 "Medical Marijuana Processing" means any method or activity used to prepare medical marijuana or medical cannabis or their

by-products for commercial retail and/or wholesale use, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana-related products and concentrates.

4.19.030 MEDICAL MARIJUANA CULTIVATION AND PROCESSING PROHIBITED

Notwithstanding any other provision of this Code to the contrary (including but not limited to any definitional sections), Medical Marijuana Cultivation and/or Medical Marijuana Processing shall be prohibited in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of Medical Marijuana Cultivation or Medical Marijuana Processing, and no person shall otherwise establish or conduct such activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

4.19.040 USE OR ACTIVITY PROHIBITED BY STATE OR FEDERAL LAW.

Nothing contained in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

4.19.050 PUBLIC NUISANCE DECLARED.

Medical Marijuana Cultivation or Medical Marijuana Processing within the City of Anaheim in violation of the provisions of this chapter is hereby declared a public nuisance and may be abated by all available means.

SECTION 2. EXISTING NONCONFORMING USES.

Any Medical Marijuana Cultivation or Medical Marijuana Processing facility, operation or activity existing or operating within the City of Anaheim on the effective date of this ordinance shall cease operations forthwith.

SECTION 3. SEVERABILITY.

The City Council of the City of Anaheim hereby declares that should any section, paragraph, sentence or word of this ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the City Council that it would have passed all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

SECTION 4. SAVINGS CLAUSE.

Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

SECTION 5. CERTIFICATION; PUBLICATION BY CLERK.

The City Clerk shall certify to the passage of this ordinance and shall cause this ordinance or a summary thereof to be printed once within fifteen (15) days after its adoption in the *Anaheim Bulletin*, a newspaper of general circulation, published and circulated in the City of Anaheim.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect and be in full force thirty (30) days from and after its final passage.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council of the City of Anaheim held on the 15th day of December, 2015, and thereafter passed and adopted at a regular meeting of said City Council held on the 12th day of January, 2016, by the following roll call vote:

AYES: Mayor Tait and Council Members Kring, Murray, Brandman, and Vanderbilt

NOES: None

ABSENT: None

ABSTAIN: None

CITY OF ANAHEIM

By: 
MAYOR OF THE CITY OF ANAHEIM

ATTEST:


CITY CLERK OF THE CITY OF ANAHEIM

113368-v4/KP

CLERK'S CERTIFICATE

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

I, LINDA ANDAL, City Clerk of the City of Anaheim, do hereby certify that the foregoing is the original Ordinance No. 6354 introduced at a regular meeting of the City Council of the City of Anaheim, held on the 15th day of December, 2015 and that the same was duly passed and adopted at a regular meeting of said City Council held on the 12th day of January, 2016, by the following vote of the members thereof:

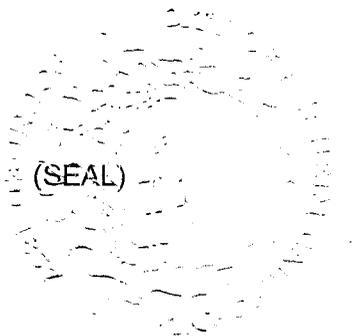
AYES: Mayor Tait and Council Members Kring, Murray, Brandman, and Vanderbilt.

NOES: None

ABSENT: None

ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of January 2016.




CITY CLERK OF THE CITY OF ANAHEIM

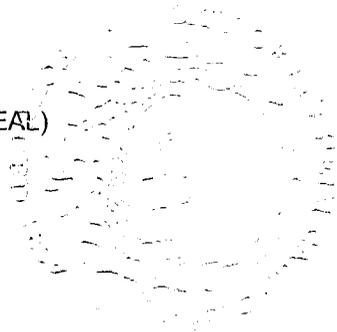
CLERK'S CERTIFICATE

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

I, LINDA ANDAL, City Clerk of the City of Anaheim, do hereby certify that the foregoing is the original Ordinance No. 6354 and was published in the Anaheim Bulletin on the 21st day of January, 2016.


CITY CLERK OF THE CITY OF ANAHEIM

(SEAL)



AFFIDAVIT OF PUBLICATION

STATE OF CALIFORNIA,)
) ss.
County of Orange)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the **Anaheim Bulletin**, a newspaper that has been adjudged to be a newspaper of general circulation by the Superior Court of the County of Orange, State of California, on December 28, 1951, Case No. A-21021 in and for the City of Anaheim, County of Orange, State of California; that the notice, of which the annexed is a true printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

January 21, 2016

"I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct":

Executed at Santa Ana, Orange County, California, on

Date: January 21, 2016



Signature

**Anaheim Bulletin
625 N. Grand Ave.
Santa Ana, CA 92701
(714) 796-2209**

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SUMMARY PUBLICATION
CITY OF ANAHEIM
ORDINANCE NO. 6354

AN ORDINANCE OF THE CITY OF ANAHEIM ADDING CHAPTER 4.19 (MEDICAL MARIJUANA CULTIVATION AND PROCESSING) TO TITLE 4 OF THE ANAHEIM MUNICIPAL CODE TO PROHIBIT MEDICAL MARIJUANA CULTIVATION AND PROCESSING ACTIVITIES IN THE CITY OF ANAHEIM AND DETERMINING PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) THAT THIS ORDINANCE IS NOT A PROJECT PURSUANT TO SECTIONS 15060(C)(2), 15060(C)(3) AND 15378 OF THE CEQA GUIDELINES.

This ordinance adds Chapter 4.19 (Medical Marijuana Cultivation and Processing) to Title 4 (Business Regulation) of the Anaheim Municipal Code for the purpose of prohibiting (1) Medical Marijuana Cultivation and Medical Marijuana Processing activities, operations or facilities in the City of Anaheim and (2) the issuance or approval of use permits, variances, building permits, or any other entitlement, license, or permit, whether administrative or discretionary, for Medical Marijuana Cultivation and Medical Marijuana Processing activities, operations or facilities, except where the City is preempted by federal or state law from enacting a prohibition on any such activity.

I, Linda N. Andal, City Clerk of the City of Anaheim, do hereby certify that the foregoing is a summary of Ordinance No. 6354, which ordinance was introduced at a regular meeting of the City Council of the City of Anaheim on the 15th day of December, 2015 and was duly passed and adopted at a regular meeting of said Council held on the 12th day of January, 2016 by the following roll call vote of the members thereof:

- AYES: Mayor Tait and Council Members Kring, Murray, Brandman and Vanderbilt
- NOES: None
- ABSENT: None
- ABSTAIN: None

The above summary is a brief description of the subject matter contained in the text of Ordinance No. 6354, which has been prepared pursuant to Section 512 of the Charter of the City of Anaheim. This summary does not include or describe every provision of the ordinance and should not be relied on as a substitute for the full text of the ordinance.

To obtain a copy of the full text of the ordinance, please contact the Office of the City Clerk, (714) 765-5166, between 8:00 AM and 5:00 PM, Monday through Friday. There is no charge for the copy.

Publish: Anaheim Bulletin January 21, 2016 10127654

