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Published: 08-26-08
Effective: 09-25-08

ORDINANCE NO. O2M8-4531 A

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF ALHAMBRA, CALIFORNIA, REPEALING CHAPTER
6.08 OF TITLE VI OF THE MUNICIPAL CODE ENTITLED
DRUG AND MEDICINE DISTRIBUTION AND AMENDING
TITLE XXIII TO ADD CHAPTER 23.85 PROHIBITING
MEDICAL MARIJUANA DISPENSARIES CITYWIDE**

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, *et seq.*, and entitled the Compassionate Use Act of 1996 (“CUA”).

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of medical marijuana for medical purposes to obtain and use it under limited, specified circumstances.

WHEREAS, the Supreme Court of the United States ruled in *United States v. Oakland Cannabis Buyers' Cooperative*, 532 US 483 (2001) that, notwithstanding California law, the federal Controlled Substances Act continues to prohibit marijuana use, distribution, and possession, and that no medical necessity exception exists to these prohibitions.

WHEREAS, on January 1, 2004, SB 420 went into effect. SB 420 was enacted by the Legislature to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act. These new regulations and rules became known as the Medical Marijuana Program (“MMP”), which, among other things, enhanced the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects; and

WHEREAS, the Supreme Court of the United States ruled in *Gonzales v. Raich*, 545 US 1 (2005), that pursuant to the commerce clause, the federal government has the power to prohibit the local cultivation and use of marijuana, even though such cultivation and use complies with California law.

WHEREAS, on August 28, 2006, the City Council adopted a 45 day interim urgency ordinance (Ordinance 4488), to impose a moratorium on the issuance of any entitlement for any medical marijuana dispensary. Ordinance 4488 was adopted due to perceived inconsistencies between state and federal laws regarding this matter, anecdotal reports suggesting that crime and other public nuisances increase in those areas where medical marijuana facilities exist and the possibility of additional federal laws that will further regulate this type of use.

WHEREAS, on October 23, 2006, the City Council adopted an ordinance (ordinance 4490), to extend the urgency ordinance (Ordinance 4488) prohibiting the establishment or operation of medical marijuana dispensaries in the City by 22 months and 15 days which expires on August 7, 2008.

WHEREAS, collective case decisions reveal an unresolved conflict between federal and state law as to the legality of the CUA, the MMP and consequently, medical marijuana dispensaries;

WHEREAS, the City must now, in the face of continuing conflict between state and federal law, resolve for itself whether, as a land use matter, medical marijuana dispensaries should be permitted, regulated or prohibited; and

WHEREAS, the City Council hereby specifically finds as follows:

a. The sale, possession, cultivation and distribution of cannabis is prohibited by federal law, specifically 21 U.S.C. sections 812 and 841, part of the Controlled Substances Act;

b. Marijuana continues to be a prohibited Schedule I drug for which there is no legally accepted medical use;

c. Cities in California continue to receive mixed messages from the state and federal governments regarding the legality of medical marijuana for medicinal purposes and the establishment and operation of medical marijuana dispensaries. This confusion has increasingly led to wasted taxpayer dollars as cities have been caught in the middle;

d. The Federal Drug Enforcement Administration has raided several medical marijuana dispensaries in various California cities, despite the state's passage of the CUA;

e. Beyond the legal issue, 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;

f. 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 the influence, the sale of other illegal narcotics other than marijuana in the dispensaries, sales of marijuana to minors;

g. For these reasons and those provided to the City Council during the hearing on this Ordinance, the city finds that the adoption of a ban on the establishment and operation of medical marijuana dispensaries is necessary to both protect the public health, safety

and welfare and to comply with federal law;

h. The proposed amendments to the Code are consistent with the City's objectives, policies, general land uses and programs of the General Plan; and

i. The adoption of the proposed amendments would not be detrimental to the public interest.

THE CITY COUNCIL OF THE CITY OF ALHAMBRA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Repeal of Chapter 6.08. Chapter 6.08 of Title VI entitled Health and Sanitation is repealed.

SECTION 2. Amendment to Chapter 23.04, Definitions. Chapter 23.04 of Title XXIII entitled Definitions is amended to add subpart .526 (read in it's entirety, Chapter 23.04.526.), and read as follows:

“§ 23.04.526 MEDICAL MARIJUANA DISPENSARY.

MEDICAL MARIJUANA DISPENSARY means any site, facility, location, use, cooperative or business, including vending machines, which distributes, sells exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers, or physicians. Marijuana shall also mean cannabis and all parts of that plant.

SECTION 3. Amendment to Title XXIII, Zoning. Title XXIII entitled Zoning is amended to add Chapter 23.85 and read as follows:

“Chapter 23.85 PROHIBITED USES

23.85.010. The following uses are prohibited within the City in all zones:

a. Medical Marijuana Dispensaries.

SECTION 4. Compliance with California Environmental Quality Act. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to 15061(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any

particular portion thereof.

SECTION 5. Effective Date. This Ordinance shall be in full force and effect thirty (30) days from its passage and adoption.

SECTION 6. Certification and publication. The City Clerk shall certify to the adoption of this ordinance and shall cause a summary of same to be published once in a newspaper of general circulation within the City of Alhambra.

SIGNED AND APPROVED this 25th day of August, 2008.

/s/ Barbara A. Messina
BARBARA A. MESSINA, Vice Mayor

ATTEST:

/s/ Frances A. Moore
FRANCES A. MOORE, City Clerk

I HEREBY CERTIFY that the above and foregoing ordinance was duly passed and adopted by the Alhambra City Council at its regular meeting held on the 25th day of August, 2008, by the following vote, to wit:

AYES: SHAM, YAMAUCHI, PLACIDO, MESSINA
NOES: NONE
ABSENT: NONE

/s/ Frances A. Moore
FRANCES A. MOORE, City Clerk

I hereby certify that the foregoing document is a full, true, and correct copy of
Ordinance No. 02MS-4531A

on file in the office of the City Clerk of the City of Alhambra, California.

James Myles
City Clerk

PUBLIC NOTICE OF ADOPTION OF ORDINANCE

CITY OF ALHAMBRA

ORDINANCE NO. O2M8-4531

NOTICE IS HEREBY GIVEN that on August 25, 2008, the City Council of the City of Alhambra adopted, after a public hearing held on August 11, 2008, Ordinance No. O2M8-4531, entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALHAMBRA, CALIFORNIA, REPEALING CHAPTER 6.08 OF TITLE VI OF THE MUNICIPAL CODE ENTITLED DRUG AND MEDICINE DISTRIBUTION AND AMENDING TITLE XXIII TO ADD CHAPTER 23.85 PROHIBITING MEDICAL MARIJUANA DISPENSARIES CITYWIDE

The purpose of this ordinance is to repeal Chapter 6.08 (Drug and Medicine Distribution) from Title VI (Health & Sanitation) of the Alhambra Municipal Code and to amend Title XXIII (Zoning) of the Alhambra Municipal Code by adding Chapter 23.85 prohibiting medical marijuana dispensaries citywide.

A certified copy of the full text of Ordinance No. O2M8-4531 is available for review in the Office of the City Clerk, City of Alhambra, 111 South First Street, Alhambra, California.

/s/ Frances A. Moore

FRANCES A. MOORE, City Clerk

PUBLISH: August 26, 2008
ORDINANCE NO. O2M8-4531
FILE NO. F2M6-80
NOTICE NO. N2M8-104

City of Alhambra

City Clerk



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June 24, 2013

Law Offices of Omar Figueroa
7770 Healdsburg Avenue, Suite A
Sebastopol, CA 95472-3352

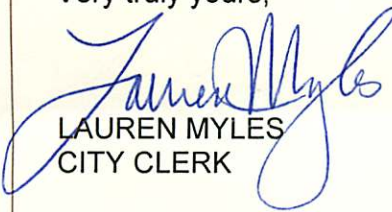
Re: Medical Marijuana/Proposition 215/SB 420

Dear Mr. Figueroa:

This letter is regarding your request for information (copy attached) that was forwarded to my office for response on June 24, 2013 by Alhambra City Attorney Joseph M. Montes. Enclosed is City of Alhambra Ordinance No. O2M8-4531A regarding medical marijuana dispensaries in the City.

Please call me if you have any questions concerning this letter or if I can be of further assistance.

Very truly yours,


LAUREN MYLES
CITY CLERK

