

**ORDINANCE NO. 4096**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA ADOPTING CODE AMENDMENT (CA 06-001) AMENDING THE ZONING ORDINANCE AND SPECIFIC PLAN AMENDMENTS (SPA 07-004), (SPA 07-005), (SPA 07-006), (SPA 07-007), AND (SPA 07-008) AMENDING THE PHILLIPS RANCH SPECIFIC PLAN, DOWNTOWN POMONA SPECIFIC PLAN, MOUNTAIN MEADOWS SPECIFIC PLAN, MISSION-71 BUSINESS PARK SPECIFIC PLAN, AND KELLOGG PLAZA SPECIFIC AREA PLAN TO PROHIBIT THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES CITYWIDE**

**WHEREAS**, the City of Pomona has duly initiated Code Amendment (CA 06-001) pertaining to the Pomona Zoning Ordinance and Specific Plan Amendments (SPA 07-004) pertaining to the Phillips Ranch Specific Plan, (SPA 07-005) pertaining to the Downtown Pomona Specific Plan, (SPA 07-006) pertaining to the Mountain Meadows Specific Plan, (SPA 07-007) pertaining to the Mission-71 Business Park Specific Plan and (SPA 07-008) pertaining to the Kellogg Plaza Specific Area Plan;

**WHEREAS**, during the past two years, City staff has received a number of inquiries from members of the public regarding the possibility of establishing and operating medical marijuana dispensaries within the City;

**WHEREAS**, the Pomona City Code, including the Zoning Ordinance, the Phillips Ranch Specific Plan, Downtown Pomona Specific Plan, Mountain Meadows Specific Plan, Mission-71 Business Park Specific Plan, and Kellogg Plaza Specific Area Plan do not address or regulate in any manner the existence or location of medical marijuana dispensaries;

**WHEREAS**, the September 2006 "White Paper" entitled "Medical Marijuana: History and Current Complications" produced by the Riverside County District Attorney's Office and various other reports and articles indicate that such dispensaries compromise the health and welfare of citizens;

**WHEREAS**, after receiving inquiries from persons interested in establishing medical marijuana dispensaries, numerous other cities in the State of California have adopted ordinances prohibiting or heavily regulating such dispensaries;

**WHEREAS**, because a significant number of cities throughout the State of California have prohibited or heavily regulated medical marijuana dispensaries, there is a substantially increased likelihood that such establishments will seek to locate in the City of Pomona;

**WHEREAS**, other California cities that have permitted the establishment of medical marijuana dispensaries have witnessed an increase in crime such as burglaries, robberies and the sales of illegal drugs in areas immediately surrounding such dispensaries;

**WHEREAS**, in *Gonzalez v. Raich*, 125 S. Ct. 2195 (2005), the United States Supreme Court upheld Congress's authority to regulate and prohibit the manufacture and possession of marijuana under the Commerce Clause; the Federal Controlled Substance Act continues to prohibit marijuana use, distribution and possession; and no medical necessity exception to this prohibition exists. However, since the U.S. Supreme Court was not presented with and did not address the issue of whether federal law preempts state law with respect to medical marijuana dispensaries, the Court did not resolve the conflict between federal laws and California laws regarding the legality of medical marijuana dispensaries;

**WHEREAS**, based on the foregoing, the City wishes to amend the Zoning Ordinance and the Phillips Ranch Specific Plan, Downtown Pomona Specific Plan, Mountain Meadows Specific Plan, Mission-71 Business Park Specific Plan, and Kellogg Plaza Specific Area Plan to prohibit the establishment and operation of medical marijuana dispensaries Citywide;

**WHEREAS**, the Planning Commission of the City of Pomona, after giving notice thereof as required by law, held a public hearing on November 14, 2007, concerning Code Amendment (CA 06-001) and Specific Plan Amendments (SPA 07-004), (SPA 07-005), (SPA 07-006), (SPA 07-007), and (SPA 07-008) and carefully considered all pertinent testimony and the staff report offered in the case as presented;

**WHEREAS**, the City Council of the City of Pomona, after giving notice thereof as required by law, held a public hearing on December 17, 2007, concerning the first reading of Code Amendment (CA 06-001) and Specific Plan Amendments (SPA 07-004), (SPA 07-005), (SPA 07-006), (SPA 07-007), and (SPA 07-008);

**WHEREAS**, the City Council of the City of Pomona has carefully considered all pertinent testimony and the staff report offered in the case as presented at the duly noticed public hearing held on December 17, 2007; and

**WHEREAS**, the City Council has duly considered the proposed changes to the Zoning Ordinance and Specific Plans, and the impact of the changes on the general welfare of the City and the consistency of the changes with the General Plan.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Pomona as follows:

**SECTION 1.** Pursuant to the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the City Council has determined that the project is exempt per Section 15061(b)(3). Section 15061(b)(3) exempts projects where it can be seen with certainty that the activity does not have the potential to cause a significant direct effect on the environment. The adoption of Code Amendment (CA 06-001) and Specific Plan Amendments

(SPA 07-004), (SPA 07-005), (SPA 07-006), (SPA 07-007), and (SPA 07-008) does not have the potential to cause a significant direct effect on the environment. Rather, because these amendments will prohibit the establishment and operation of medical marijuana dispensaries, their adoption has the potential to prevent or reduce significant direct effects on the environment.

**SECTION 2.** Zoning Ordinance Section .062 pertaining to definitions is amended to add the following definition:

*Sec. .062 Specific definitions*

**Medical marijuana dispensary.** Any facility or location where a primary caregiver intends to or does make available, sell, transmit, give, exchange for consideration or otherwise provide medical marijuana to any of the following: a qualified patient, a person with an identification card or a primary caregiver. For purposes of this ordinance, the terms “primary caregiver,” “qualified patient” and “person with an identification card” shall have the same meanings as those set forth in Health and Safety Code Section 11362.5 *et seq.* A “medical marijuana dispensary” shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and as long as such uses strictly comply with applicable law including, but not limited to, Health and Safety Code Section 11362.5 *et seq.*: (1) a clinic, licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; (2) a health care facility, licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; (3) a residential care facility for persons with chronic life-threatening illness, licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; (4) a residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or (5) a residential hospice or home health agency, licensed pursuant to Chapter 8 of the Health and Safety Code.

**SECTION 3.** Zoning Ordinance Section .222 pertaining to the “O” Open Space District is amended to add the following subsection “D”:

*Sec. .222. Uses expressively prohibited.*

**(D) Medical marijuana dispensaries.**

**SECTION 4.** Zoning Ordinance Section .229.6 pertaining to the R-1-20,000 Single-family Residential District is amended to add the following subsection “D”:

*Sec. .229.6. Uses expressively prohibited.*

**D. Medical marijuana dispensaries.**

**SECTION 5.** Zoning Ordinance Section .232 pertaining to the R-1-10,000 Single-family Residential District is amended to add the following subsection “F”:

Sec. .232. *Uses expressively prohibited.*

**F. Medical marijuana dispensaries.**

**SECTION 6.** Zoning Ordinance Section .242 pertaining to the R-1-7,500 Single-family Residential District is amended to add the following subsection “F”:

Sec. .242. *Uses expressively prohibited.*

**F. Medical marijuana dispensaries.**

**SECTION 7.** Zoning Ordinance Section .252 pertaining to the R-1-7,200 Single-family Residential District is amended to add the following subsection “F”:

Sec. .252. *Uses expressively prohibited.*

**F. Medical marijuana dispensaries.**

**SECTION 8.** Zoning Ordinance Section .262 pertaining to the R-1-6,000 Single-family Residential District is amended to add the following subsection “F”:

Sec. .262. *Uses expressively prohibited.*

**F. Medical marijuana dispensaries.**

**SECTION 9.** Zoning Ordinance Section .272 pertaining to the R-1-E Single-family Residential Overlay District is amended to add the following subsection “F”:

Sec. .272. *Uses expressively prohibited.*

**F. Medical marijuana dispensaries.**

**SECTION 10.** Zoning Ordinance Section .275 pertaining to the “PD” Planned Development Overlay District is amended to add the following:

*Sec. .275.B. Permitted uses.*

**No building or structure or land shall be used, and no building or structure shall be designed, erected, structurally altered or enlarged except for the following specific purposes only:**

1. Uses permitted in the base district upon which the overlay district is applied.
2. Recreation elements, including structures in connection with the planned development.
3. Home occupations, for limitations see Section .530.

**SECTION 11.** Zoning Ordinance Section .280.B pertaining to the “R-2” Low Density Multiple Family District is amended to read as follows:

*Sec. .280.B. Permitted uses.*

*No building or structure or land shall be used, and no building or structure shall be designed, erected, structurally altered or enlarged except for the following **specific purposes only:***

**SECTION 12.** Zoning Ordinance Section .290.B pertaining to the “R-3” Medium Density Multiple Family District is amended to read as follows:

*Sec. .290.B. Permitted uses.*

*No building or structure or land shall be used, and no building or structure shall be designed, erected, structurally altered or enlarged except for the following **specific purposes only:***

**SECTION 13.** Zoning Ordinance Section .300.B pertaining to the “R-4” High Density Multiple Family District is amended to read as follows:

*Sec. .300.B. Permitted uses.*

*No building or structure or land shall be used, and no building or structure shall be designed, erected, structurally altered or enlarged except for the following **specific purposes only:***

**SECTION 14.** Zoning Ordinance Section .316.C pertaining to the “PRD” Planned Residential Development District is amended to read as follows:

*Sec. .316.C. Uses permitted.*

*No building or structure shall be designed, erected or structurally altered, and no building or structure or land shall be used except in conformity with the final development plot plan approved subject to the issuance of a conditional use permit, and in conformance with the following specific purposes only:*

**SECTION 15.** Zoning Ordinance Section .322 pertaining to the “A-P” Administrative and Professional Office District is amended to add the following subsection “F”:

*Sec. .322. Uses expressively prohibited.*

**F. Medical marijuana dispensaries.**

**SECTION 16.** Zoning Ordinance Section .342 pertaining to the “C-1” Neighborhood Stores and Services Commercial District is amended to add the following subsection “G”:

*Sec. .342. Uses expressively prohibited.*

**G. Medical marijuana dispensaries.**

**SECTION 17.** Zoning Ordinance Section .352 pertaining to the “C-2” Neighborhood Shopping Center Commercial District is amended to add the following subsection “F”:

*Sec. .352. Uses expressively prohibited.*

**F. Medical marijuana dispensaries.**

**SECTION 18.** Zoning Ordinance Section .362 pertaining to the “C-3” General Commercial District is amended to add the following subsection “E”:

*Sec. .362. Uses expressively prohibited.*

**E. Medical marijuana dispensaries.**

**SECTION 19.** Zoning Ordinance Section .367 pertaining to the “C-C” Community Shopping Center Commercial District is amended to add the following subsection “F”:

Sec. .367. *Uses expressively prohibited.*

**F. Medical marijuana dispensaries.**

**SECTION 20.** Zoning Ordinance Section .372 pertaining to the “C-4” Highway Commercial District is amended to add the following subsection “E”:

Sec. .372. *Uses expressively prohibited.*

**E. Medical marijuana dispensaries.**

**SECTION 21.** Zoning Ordinance Section .392 pertaining to the “C-IND” Commercial and Industrial District is amended to add the following subsection “E”:

Sec. .392. *Uses expressively prohibited.*

**E. Medical marijuana dispensaries.**

**SECTION 22.** Zoning Ordinance Section .398 pertaining to the “M” Special Industrial District is amended to add the following subsection “i”:

Sec. .398. *Uses expressively prohibited.*

**(i) Medical marijuana dispensaries.**

**SECTION 23.** Zoning Ordinance Section .412 pertaining to the “M-1” Light Industrial District is amended to add the following subsection “E”:

Sec. .412. *Uses expressively prohibited.*

**E. Medical marijuana dispensaries.**

**SECTION 24.** Zoning Ordinance Section .422 pertaining to the “M-2” General Industrial District is amended to add the following subsection “F”:

Sec. .422. *Uses expressively prohibited.*

**F. Medical marijuana dispensaries.**

**SECTION 25.** The Zoning Ordinance is amended to add Section .437.5 pertaining to the “F” Fairgrounds District to read as follows:

**Sec. .437.5. Uses expressly prohibited.**

**a.) Medical marijuana dispensaries.**

**SECTION 26.** Zoning Ordinance Section .452 pertaining to the “Civic” Supplemental Use District is amended to add the following subsection “d.”:

*Sec. .452. Uses expressively prohibited.*

**d. Medical marijuana dispensaries.**

**SECTION 27.** The Zoning Ordinance is amended to add Section .482.5 pertaining to the “R-MHD” Residential-Manufactured Housing Development District to read as follows:

**Sec. .482.5. Uses expressly prohibited.**

**A. Medical marijuana dispensaries.**

**SECTION 28.** The City Council hereby finds and determines that Specific Plan Amendments (SPA 07-004) pertaining to the Phillips Ranch Specific Plan, (SPA 07-005) pertaining to the Downtown Pomona Specific Plan, (SPA 07-006) pertaining to the Mountain Meadows Specific Plan, (SPA 07-007) pertaining to the Mission-71 Business Park Specific Plan, and (SPA 07-008) pertaining to the Kellogg Plaza Specific Area Plan meet the findings outlined in Section .584(I) of the City of Pomona Zoning Ordinance:

1. The proposed Specific Plan Amendments systematically implement and are consistent with the General Plan.

Specific Plan Amendments (SPA 07-004), (SPA 07-005), (SPA 07-006), (SPA 07-007), and (SPA 07-008) explicitly prohibit the establishment and operation of medical marijuana dispensaries within all areas of the City regulated by a Specific Plan, thereby avoiding the potential increase in crime such as burglaries, robberies and the sales of illegal drugs associated with areas immediately surrounding medical marijuana dispensaries. In so doing, the Specific Plan Amendments will help to achieve the General Plan objective “to promote a positive image of Pomona on all levels to both residents and non-local persons alike” (p. 68).



2. The proposed Specific Plan Amendments will not be detrimental to the public interest, health, safety, convenience or welfare of the City.

The proposed Specific Plan Amendments will not be detrimental to the public interest, health, safety, convenience or welfare of the City. By prohibiting the establishment and operation of medical marijuana dispensaries within all areas of the City regulated by a Specific Plan, the proposal will avoid the potential increase in crime such as burglaries, robberies and the sales of illegal drugs associated with areas immediately surrounding medical marijuana dispensaries.

3. The subject property is physically suitable for the requested land use designations and the anticipated land use developments.

The proposed Specific Plan Amendments do not involve either a request for land use designation or an anticipated land use development. Rather, the proposal will prohibit the establishment of a particular land use, namely, medical marijuana dispensaries.

4. The Specific Plan Amendments provide for the development of a comprehensively planned project that is superior to development otherwise allowed under conventional zoning classifications.

The proposed Specific Plan Amendments do not involve the development of a project. Rather, the proposal will prohibit the development of a particular type of project, namely, medical marijuana dispensaries.

5. The proposed Specific Plan Amendments will contribute to a balance of land uses so that local residents may work and shop in the community in which they live.

The proposed Specific Plan Amendments will contribute to the balance of land uses by helping to maintain community safety in that there will be no potential increase in crime such as burglaries, robberies and the sales of illegal drugs associated with areas immediately surrounding medical marijuana dispensaries. By promoting community safety, the Specific Plan Amendments will help to attract new residential, commercial, industrial and institutional development to the City.

**SECTION 29.** Section 1. “Land Use Districts” pertaining to the Single Family Residential (S-R) District of the Phillips Ranch Specific Plan is amended to add the following:

*Uses expressively prohibited.*

8. **Medical marijuana dispensaries, as defined in Zoning Ordinance Section .062.**

**SECTION 30.** Section 1. “Land Use Districts” pertaining to the Multiple Family Residential (M-R) District of the Phillips Ranch Specific Plan is amended to add the following:

*Uses expressively prohibited.*

7. **Medical marijuana dispensaries, as defined in Zoning Ordinance Section .062.**

**SECTION 31.** Section 1. “Land Use Districts” pertaining to the Neighborhood Commercial (N-C) District of the Phillips Ranch Specific Plan is amended to add the following:

*Uses expressively prohibited.*

4. **Medical marijuana dispensaries, as defined in Zoning Ordinance Section .062.**

**SECTION 32.** Section 1. “Land Use Districts” pertaining to the Regional Commercial (R-C) District of the Phillips Ranch Specific Plan is amended to add the following:

*Uses expressively prohibited.*

4. **Medical marijuana dispensaries, as defined in Zoning Ordinance Section .062.**

**SECTION 33.** Section 1. “Land Use Districts” pertaining to the Open Space (O) District of the Phillips Ranch Specific Plan is amended to add the following:

*Uses expressively prohibited.*

4. **Medical marijuana dispensaries, as defined in Zoning Ordinance Section .062.**

**SECTION 34.** Figure 6 “Allowed Uses Matrix” of Part A “Allowed Uses” of Chapter 6 “Development Standards” of the Downtown Pomona Specific Plan is amended by listing “Medical Marijuana Dispensaries, as defined in Zoning Ordinance Section .062” as N/A “Not allowed in this zone” under “Office and Medical Services” within the Mixed Use - Central Business District (MU-CBD), Mixed Use - High Density Residential (MU-HDR), Mixed Use - Institutional (MU-I), Mixed Use - Light Industrial (MU-LI), Mixed Use - Arterial Retail (MU-AR), Residential - Single Family (R-SF), and Residential - Multi-Family (R-MF) land use designations.

**SECTION 35.** Section 2. “Land Use Districts” pertaining to the Detached Residential (DRD) District of the Mountain Meadows Specific Plan is amended to add the following:

*Uses expressively prohibited.*

7. **Medical marijuana dispensaries, as defined in Zoning Ordinance Section .062.**

**SECTION 36.** Section 2. “Land Use Districts” pertaining to the Attached Residential (ARD) District of the Mountain Meadows Specific Plan is amended to add the following:

*Uses expressively prohibited.*

6. **Medical marijuana dispensaries, as defined in Zoning Ordinance Section .062.**

**SECTION 37.** Section 2. “Land Use Districts” pertaining to the Open Space (O) District of the Mountain Meadows Specific Plan is amended to add the following:

*Uses expressively prohibited.*

4. **Medical marijuana dispensaries, as defined in Zoning Ordinance Section .062.**

**SECTION 38.** Section III.A “Proposed Land Uses” of the Mission – 71 Business Park Specific Plan is amended to add the following:

*The Mission – 71 Business Park Specific Plan propose[s] that all uses in the Project be industrial, including warehousing, distribution and manufacturing, plus the existing self-storage facility. The purpose of this is to provide a unified, cohesive development with its own identity, providing the City of Pomona with a tax and employment base. **Medical marijuana dispensaries, as defined in Zoning Ordinance Section .062, are an expressly prohibited use.***

**SECTION 39.** Section 1.4 "Zoning and Specific Area Plan Requirements" of the University Corporate Center Design Element for the Kellogg Plaza Specific Area Plan is amended to add the following:

**4. Uses Expressively Prohibited.**

**a. Medical marijuana dispensaries, as defined in Zoning Ordinance Section .062.**

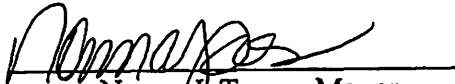
**SECTION 40.** The City Clerk shall attest to the passage and adoption of this Ordinance, and shall cause same to be posted as required by law, and this Ordinance shall take effect thirty (30) days after its final adoption.

**PASSED AND ADOPTED THIS 4TH DAY OF FEBRUARY, 2008.**


**ATTEST:**

**CITY OF POMONA:**

  
Marie Michel Macias, City Clerk

  
Norma J. Torres, Mayor

**APPROVED AS TO FORM:**

  
Arnold Alvarez-Glasman, City Attorney

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CITY OF POMONA

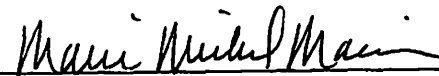
I, MARIE MICHEL MACIAS, CITY CLERK of the City of Pomona do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Pomona held on the 17<sup>th</sup> day of December, 2007 and adopted on the 4th day of February, 2008 by the following vote:

AYES: COUNCILMEMBERS: RODRIGUEZ, CARRIZOSA, LANTZ, ROTHMAN  
ATCHLEY, MAYOR TORRES

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: HUNTER

ABSTAIN: COUNCILMEMBERS: NONE

  
Marie Michel Macias, City Clerk