Approvals	
City Attorney	
Finance Director	
City Manager	

CITY OF TEMECULA
AGENDA REPORT

TO: City Manager/City Council

FROM: Randi Johl, City Clerk

DATE: January 26, 2016

SUBJECT: Adopt Ordinance 16-01 Adding Chapter 8.52, Marijuana Cultivation, to the Temecula Municipal Code Prohibiting Cultivation of Marijuana in the City, Amending the Zoning Ordinance Prohibiting Marijuana Cultivation In All Zones, Amending the Definition of Enforcement Official and Finding this Ordinance is Exempt from the California Environmental Quality Act Pursuant To CEQA Guidelines, Section 15061(B)(3) (Second Reading)

PREPARED BY: Randi Johl, City Clerk

RECOMMENDATION: That the City Council adopt an ordinance entitled:

ORDINANCE NO. 16-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA ADDING CHAPTER 8.52, MARIJUANA CULTIVATION, TO THE TEMECULA MUNICIPAL CODE TO PROHIBIT THE CULTIVATION OF MARIJUANA IN THE CITY, AMENDING THE ZONING ORDINANCE TO PROHIBIT MARIJUANA CULTIVATION IN ALL ZONES, AMENDING THE DEFINITION OF ENFORCEMENT OFFICIAL AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO CEQA GUIDELINES, SECTION 15061(B)(3)

BACKGROUND: The City of Temecula is a general law city formed under the laws of the State of California. With respect to adoption of ordinances and resolutions, the City adheres to the requirements set forth in the Government Code. With the exception of urgency ordinances, Government Code Section 36934 requires two readings of standard ordinances more than five days apart. Ordinances must be read in full at the time of introduction or passage unless a motion waiving the reading is adopted by a majority of the City Council present.

Ordinance No. 16-01 was first introduced at the regularly scheduled meeting of January 12, 2016.

FISCAL IMPACT: None

ATTACHMENTS: Ordinance

ORDINANCE NO. 16-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA ADDING CHAPTER 8.52, MARIJUANA CULTIVATION, TO THE TEMECULA MUNICIPAL CODE TO PROHIBIT THE CULTIVATION OF MARIJUANA IN THE CITY, AMENDING THE ZONING ORDINANCE TO PROHIBIT MARIJUANA CULTIVATION IN ALL ZONES, AMENDING THE DEFINITION OF ENFORCEMENT OFFICIAL AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO CEQA GUIDELINES, SECTION 15061(B)(3)

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 8.52, Marijuana Cultivation, is hereby added to the Temecula Municipal Code to read as follows:

CHAPTER 8.52 - MARIJUANA CULTIVATION

8.52.010 Findings and purpose.

The City Council finds and declares the following:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996").

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

C. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 *et seq.*, and referred to as the "Medical Marijuana Program") to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana

Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.

D. The Medical Marijuana Regulation and Safety Act was enacted by Chapters 688, 698 and 719 of the Statutes of 2015 and is found at Chapter 3.5 of Division 8 of the Business and Professions Code. While the Act establishes standards for the licensed cultivation of medical marijuana, including, but not limited to, the establishment of uniform state minimum health and safety standards, and testing standards, the state requirements established under the Medical Marijuana Regulation and Safety Act authorize a city to prohibit all cultivation of medical marijuana.

E. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land..." Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal. App.4th 975, the Court of Appeal held that "there is no right—and certainly no constitutional right—to cultivate medical marijuana..." The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

F. In *Browne v. County of Tehama* (2013) 213 Cal. App. 4th 704, the California Court of Appeal found that the CUA does not confer a right to cultivate marijuana and that an ordinance limiting the number of medical marijuana plants that may be grown outside, precluding marijuana cultivation within 1000 feet of schools, parks, and churches, and requiring that an opaque fence of at least six feet to be installed around all marijuana grows was not preempted by state law. Further, in *Maral* the Court of Appeal held that the CUA and the MMP do not preempt a city's police power to completely prohibit the cultivation of all marijuana within that City.

G. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*, classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.

H. Marijuana cultivation in the City can adversely affect the health, safety, and well-being of City residents, visitors and workers. Prohibition of marijuana cultivation in the City is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

I. The justification for regulating or banning marijuana cultivation pursuant to the City's police power includes, but is not limited to: 1) The increased risk to public safety, based on the value of marijuana plants and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; 2) the strong "skunk like" malodorous fumes emitted from mature plants which can interfere with the use and enjoyment of neighboring properties by their occupants; and 3) the potential for theft and use by school age children where medical marijuana is cultivated in a visible location, particularly where such location is close to schools.

J. Marijuana cultivation at locations or premises within one thousand feet of schools, parks, and community centers creates unique risks that the marijuana plants may be observed by minors, and therefore be especially vulnerable to theft or recreational consumption by minors. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that minors will be involved or endangered. Therefore, any amount of marijuana cultivation in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.

K. As recognized by the Attorney General's August 2008 Guidelines for the security and non-diversion of marijuana grown for medical use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

L. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program and the Medical Marijuana Regulation and Safety Act does not confer a land use right or the right to create or maintain a public nuisance.

8.52.020 Authority.

This ordinance is adopted pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code section 11362.83,

Government Code sections 25845 and 53069.4, the Medical Marijuana Regulation and Safety Act, and other applicable law.

8.52.030 Definitions.

The terms used in this Chapter shall have the definitions provided in Section 17.34.010 of this Code unless otherwise specified. As used in this Chapter the following specific terms shall have the following meanings:

A. "Child care center." Any licensed child care center, daycare center, child care home, or any preschool.

B. "Community center." Any facility open to the public at which classes, social activities, recreational activities, educational activities, support and public information are offered for all residents of the community.

C. "Marijuana cultivation." The planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, fixed or mobile, for medical or other uses, including from within a fully enclosed and secure building.

D. "Primary caregiver." Shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 *et seq*.

E. "Qualified patient." Shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 *et seq*.

F. "School." An institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.

G. "Youth-oriented facility." Any facility that caters to or provides services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

8.52.040 Prohibitions on marijuana cultivation—Nuisance declared.

Marijuana cultivation, either indoors or outdoors, fixed or mobile, for medical or other uses, is prohibited on all parcels, all zones, and all specific plan areas in the City and is hereby declared to be unlawful and a public nuisance. No person owning, renting, leasing, occupying or having charge or possession of any parcel shall cause or allow such parcel to be used for marijuana cultivation. The foregoing prohibition shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or

indirectly in the cultivation. Further, this prohibition shall be imposed notwithstanding any assertion that the person or persons cultivating marijuana are the primary caregiver or caregivers for qualified patients or that such person or persons are collectively or cooperatively cultivating marijuana.

8.52.050 Abatement of unlawful marijuana cultivation. Violations of this Chapter shall be subject to penalties and abatement as provided in Title 1 and Chapter 8.12 this code. No provision of Title 1 or Chapter 8.12 shall authorize a criminal prosecution or arrest prohibited by Health and Safety Code section 11362.71 *et seq*.

8.52.060 - Limited exemption from enforcement.

A. The City is committed to making efficient and rational use of its limited investigative and prosecutorial resources. There shall be a limited exemption from enforcement for violations of this Chapter by primary caregivers and qualified patients for small amounts of marijuana cultivation for their own medical use in zone classifications identified Section 17.06.030 on which a single family detached dwelling exists when all of the following conditions and standards are complied with:

1. The premises shall contain a legally permitted single family detached dwelling.

2. Cultivation of no more than twelve (12) marijuana plants per qualified patient. In the event a qualified patient has a primary caregiver cultivating marijuana plants for the qualified patient, only one primary caregiver may cultivate no more than twelve (12) marijuana plants for that qualified patient at any one time. In no circumstances shall a qualified patient have multiple primary caregivers cultivating marijuana plants for the qualified patient at the same time.

3. Two (2) qualified patient limit to aggregate marijuana plant count for a maximum total of twenty-four (24) marijuana plants per premises.

4. At least one qualified patient or one primary caregiver, acting on behalf of the qualified patient pursuant to subsection A.2., must live on the premises.

5. All marijuana plants must be reasonably secured to prevent access by minors or theft, to a standard satisfactory to the enforcement official.

6. All marijuana cultivation outside of any building must be fully enclosed by an opaque fence at least six feet in height. The fence must be adequately secured to prevent unauthorized entry. Bushes, hedgerows, plastic sheeting, tarps, or cloth material shall not constitute an adequate fence under this subsection. Premises larger than five (5) acres are exempt from this fencing provision so long as all other standards and

conditions of subsection A. of this section are complied with and any barriers used are otherwise consistent with this Code.

7. Each building or outdoor area in which the marijuana plants are cultivated shall be set back at least ten (10) feet from all boundaries of the premises. Such setback distance shall be measured in a straight line from the building in which the marijuana plants are cultivated, or, if the marijuana plants are cultivated in an outdoor area, from the fence required by subsection A.6. to the boundary line of the premises.

8. The designated marijuana cultivation area must not be visible from any public right-of-way.

9. If the person cultivating marijuana plants on any premises is not the owner of the premises, such person shall submit a letter from the owner(s) consenting to the marijuana cultivation on the parcel. An original of this letter shall be submitted to and retained by the Community Development Department. The City shall prescribe forms for such letters.

10. Parolees or probationers shall not live on the premises unless the parolees or probationers have received written confirmation from the court that he or she is allowed to use medical marijuana while on parole or probation pursuant to Health & Safety Code section 11362.795 which shall be subject to verification by the enforcement official.

11. Qualified patients for whom the marijuana plants are being cultivated shall have valid medical marijuana identification cards issued by the Riverside County Department of Public Health. Any primary caregiver cultivating marijuana plants for a qualified patient shall have a copy of the qualified patient's valid medical marijuana identification card issued by the Riverside County Department of Public Health which shall be kept on the premises.

12. The address for the premises must be posted and plainly visible from the public right-of-way.

13. The marijuana cultivation shall not be within a building containing two or more dwelling units.

14. The marijuana cultivation shall not be upon any premises located within one thousand (1,000) feet of any school, community center, or park.

15. The marijuana cultivation shall not be upon any premises containing a child care center, church (religious facility), or youth-oriented facility.

B. Any marijuana cultivation that does not comply with all of the standards and conditions in subsection A. of this section is a public nuisance and shall be subject to penalties and abatement as provided in Title 1 and Chapter 8.12 this code. No provision of Title 1 or Chapter 8.12 shall authorize a criminal prosecution or arrest prohibited by Health and Safety Code section 11362.71 *et seq*.

8.52.070 Abatement of Other Nuisances. Nothing in this Chapter shall be construed as a limitation on the City's authority to abate any nuisance which may otherwise exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.

Section 2. Residential Zoning Prohibition. Section 17.06.030, Use Regulations, and Table 17.06.030, Residential Districts, are hereby amended to provide that "marijuana cultivation," as defined in Chapter 8.52, is a prohibited use in all residential zones except as provided in Section 8.52.060.

Section 3. Commercial, Office, Industrial Zoning Prohibition. Section 17.08.030, Use Regulations, and Table 17.08.030, Schedule of Permitted Uses Commercial/Office/Industrial Districts, are hereby amended to provide that "marijuana cultivation," as defined in Chapter 8.52, is a prohibited use in all commercial, office and industrial zones.

Section 4. Open Space Zoning Prohibition. Section 17.14.030, Use Regulations, and Table 17.14.030, Schedule of Permitted Uses Open Space, are hereby amended to provide that "marijuana cultivation," as defined in Chapter 8.52, is a prohibited use in all open space zones except as provided in Section 8.52.060.

Section 5. Enforcement Official. Section 1.21.020, Definitions, of the Temecula Municipal Code is hereby amended to read as follows:

1.21.020 Definitions. The following words and phrases, when used in the context of this Title, shall have the following meanings:

A. "Enforcement official" or "enforcement officials" shall be: (1) Members of the Riverside County Sheriff's Department or such other police agency under contract to provide police services to the City; (2) members of the Riverside County Fire Department or such other fire agency under contract to provide fire and emergency services to the City; (3) persons employed by the City whose job descriptions require the person to enforce the provisions of this Code, including but not limited to directors, senior planners, code enforcement officers, building inspectors, or park rangers; and (4) such other employees of the City as may be designated by resolution of the City Council.

B. “Legal interest” means any interest that is represented by a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic’s lien or other similar instrument, which is recorded with the county recorder.

C. “Responsible person” means any person whom an enforcement official determines is responsible for causing or maintaining a violation of the code. The term “responsible person” includes but is not limited to a property owner, tenant, person with a legal interest in real property, or person in possession of real property.

Section 6. CEQA Findings. The City Council finds that the adoption of the proposed ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Section 15061(b)(3). It can be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. The ordinance bans the growing of marijuana. Placing such a restriction on the use of property will not result in a permanent alteration of property nor the construction of any new or expanded structures. The adoption of this Ordinance imposes greater limitations on uses allowed in the City and therefore will eliminate adverse environmental impacts.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 26th day of January, 2016.

_____
Michael S. Naggar, Mayor

ATTEST:

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Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 16-01 was duly introduced and placed upon its first reading at a meeting of the City Council of the City of Temecula on the 12th day of January, 2016, and that thereafter, said Ordinance was duly adopted by the City Council of the City of Temecula at a meeting thereof held on the 26th day of January, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
Randi Johl, City Clerk