

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
RIALTO, CALIFORNIA AMENDING CHAPTER 9.45 AND
ADDING CHAPTER 18.112 OF THE RIALTO MUNICIPAL CODE
TO EXPRESSLY BAN THE CULTIVATION AND DELIVERY OF
MEDICAL MARIJUANA IN ALL ZONES OF THE CITY**

WHEREAS, in 1996, the voters of the state of California approved Proposition 215, codified at Health and Safety Code section 11362.5 et seq. and entitled “The Compassionate Use Act of 1996” (the “CUA”); and

WHEREAS, the CUA was intended to provide seriously ill Californians the ability to possess, use and cultivate marijuana for medical use once a physician has deemed the use beneficial to a patient’s health; and

WHEREAS, in 2003, California Senate Bill (SB) 420 was enacted by the Legislature to clarify the scope of the CUA and to allow California cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the CUA; and

WHEREAS, 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, 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, in 2013, the California Supreme Court confirmed that cities have the authority to ban medical marijuana land uses (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729); and

WHEREAS, also in 2013, the California Supreme Court further determined that the Act and MMP do “not preempt a city’s police power to prohibit the cultivation of all marijuana within that city” (*Maral v. City of Oak Live* (2013) 221 Cal.App.4th 975, 978); and

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U. S. C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

1 WHEREAS, on October 9, 2015, Governor Jerry Brown signed into law, three (3) bills – AB
2 243, AB 266 and SB 643 – which together form the Medical Marijuana Regulation and Safety Act
3 (the “Act”); and

4 WHEREAS, the Act, which became effective January 1, 2016, creates a comprehensive state
5 licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution,
6 delivery, and testing of medical cannabis; and

7 WHEREAS, in addition to creating these State controls, the Act preserves cities’ authority to
8 prohibit, regulate and/or license medicinal marijuana uses within its jurisdiction, as it expressly
9 provides that the Act:

- 10 • Is not intended “to supersede or limit existing local authority for law enforcement activity,
11 enforcement of local zoning requirements or local ordinances, or enforcement of local
12 permit or licensing requirements” (Bus. & Prof. Code § 19315(a));
- 13 • Does not limit the authority or remedies of a local government under any provision of law
14 regarding marijuana, including but not limited to a local government's right to make and
15 enforce within its limits all police regulations not in conflict with general laws (Bus. &
16 Prof. Code § 19316(c));
- 17 • Authorizes local jurisdictions to “adopt ordinances that establish additional standards,
18 requirements, and regulations for local licenses and permits for commercial cannabis
19 activity” (Bus. & Prof. Code § 19316); and

20 WHEREAS, the Act further expressly allows local governments to enact ordinances
21 expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a
22 conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation
23 of marijuana (Health & Safety Code § 11362.777(c)(4)); and

24 WHEREAS, the Act requires a local government that wishes to prevent marijuana delivery
25 activity, as defined in Business & Professions Code section 19300.5(m), from operating within the
26 local government’s boundaries to enact an ordinance affirmatively banning such delivery activity
27 (Bus. & Prof. Code § 19340(a)); and
28

1 WHEREAS, under the dual licensing system created by the Act, before any kind of medical
2 marijuana license will be issued by the State, the applicant must have obtained the necessary local
3 license and/or permit for the requested marijuana-related use; and

4 WHEREAS, pursuant to the following statutes created by the Act, local jurisdictions that
5 adopt a ban on medicinal marijuana dispensaries, cultivation and/or mobile delivery will effectively
6 have a “veto” over whether a state license for the locally regulated activities can be issued:

- 7 • Business & Professions § 19320(b): “A licensee shall not commence [commercial
8 cannabis] activity under the authority of a state license until the applicant has obtained, in
9 addition to the state license, a license or permit from the local jurisdiction in which he or
10 she proposes to operate, following the requirements of the applicable local ordinance.”
- 11 • Health & Safety Code § 11362.777(b)(1): “A person shall not cultivate medical marijuana
12 without first obtaining . . . A license, permit, or other entitlement, specifically permitting
13 cultivation pursuant to these provisions, from the city. . . in which the cultivation will
14 occur.”
- 15 • Business & Professions Code § 19320(b): “Revocation of a local license, permit or
16 authorization shall terminate the ability of a medical cannabis business to operate within
17 that local jurisdiction. . . .”
- 18 • Business & Professions Code § 19312: “Each licensing authority may suspend or revoke
19 licenses. . . ;” and

20 WHEREAS, several California cities have reported negative impacts of marijuana cultivation,
21 processing and delivery and/or distribution activities, including but not limited to offensive odors,
22 criminal activity – including trespassing, theft, violent robberies and robbery attempts, and the illegal
23 sale and distribution of marijuana, and public health concerns including fire hazards and problems
24 associated with mold, fungus, and pests; and

25 WHEREAS, marijuana plants, as they begin to flower and for a period of two months or
26 more, produce a strong odor, offensive to many people, and detectable far beyond property
27 boundaries if grown outdoors; and
28

1 WHEREAS, due to the value of marijuana plants and their strong smell (which alerts others to
2 their locations), marijuana cultivation has been linked to break-ins, robbery, armed robbery, theft and
3 attendant violence and injury, creating an increased risk to public safety and/or “attractive nuisance”;
4 and

5 WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural
6 integrity of the buildings in which it is cultivated, and the use of high wattage grow lights and
7 excessive use of electricity increases the risk of fire, which presents a clear and present danger to the
8 building and its occupants; and,

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

13 WHEREAS, based on the experiences of other cities, these negative effects on the public
14 peace, health, and safety would be likely to occur, and continue to occur, in the City due to the
15 establishment and operation of marijuana cultivation activities; and

16 WHEREAS, based on the findings set forth above and herein, the potential establishment of
17 the cultivation of medical marijuana in the City without an express ban poses a current and
18 immediate threat to the public peace, health, and safety in the City due to the negative impacts of
19 such activities as described above; and

20 WHEREAS, the issuance or approval of business licenses, subdivisions, use permits,
21 variances, building permits, or any other applicable entitlement for marijuana cultivation, processing,
22 and/ or distribution will result in the aforementioned threat to public peace, health, and safety; and

23 WHEREAS, in 2009, the City adopted Ordinance No. 1453, which prohibits medical
24 marijuana dispensaries in several zones of the City, and is codified in several sections of the City’s
25 zoning code; and

26 WHEREAS, in 2014, the City adopted Ordinance No. 1540, which prohibits delivery of
27 medical marijuana through mobile marijuana dispensaries in the City, and is codified at Rialto
28 Municipal Code Chapter 9.45; and

1 WHEREAS, the Act authorizes the City to enact permanent land use regulations or
2 ordinances regulating or prohibiting the cultivation of marijuana within the City; and

3 WHEREAS, pursuant to the above-described express statutory authority and its police power,
4 the City has determined that, in addition to the existing prohibitions against mobile marijuana
5 dispensaries and medical marijuana dispensaries, an express prohibition against the cultivation and
6 delivery of marijuana is needed to protect the public peace, health and safety; and

7 WHEREAS, the City desires to clarify the provisions of the Rialto Municipal Code
8 prohibiting mobile medical marijuana dispensaries and medical marijuana delivery in light of the new
9 state law requirements; and

10 WHEREAS, in light of the findings and determinations set forth herein and further advanced
11 during the public hearing on this matter, the City now desires to amend the Rialto Municipal Code to
12 prohibit cultivation pursuant to the new state law requirements (AB 266 and AB 243) ("Ordinance");
13 and

14 WHEREAS, the provisions of this Ordinance would affect all properties city-wide; and

15 WHEREAS, at a properly-noticed public hearing held on _____, the Planning Commission
16 considered this issue and adopted Resolution No. _____ recommending that the City Council adopt
17 the proposed Ordinance contained herein; and

18 WHEREAS, the City Council, after notice duly given as required by law, held a public
19 hearing on [date] during a regular meeting and considered this proposed Ordinance, and all interested
20 parties were given an opportunity to be heard.

21 **NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RIALTO FINDS AND**
22 **ORDAINS AS FOLLOWS:**

23 **Section 1.** The recitals set forth above are all true and correct and are incorporated herein.

24 **Section 2.** The City Council of the City of Rialto hereby makes the following findings:

25 A. The City Council finds that the prohibitions on marijuana cultivation and marijuana
26 delivery are necessary for the preservation and protection of the public health, safety, and welfare for
27 the City and its community. The City Council's prohibitions of such activities is within the authority
28 conferred upon the City Council by state law.

1 B. On October 9, 2015, the governor signed the “Medical Marijuana Regulation and
2 Safety Act” (“Act”) into law. The Act became effective January 1, 2016 and contains new statutory
3 provisions that:

- 4 1. Allow local governments to enact ordinances expressing their intent to prohibit the
5 cultivation of marijuana and their intent not to administer a conditional permit
6 program pursuant to Health & Safety Code section 11362.777 for the cultivation of
7 marijuana (Health & Safety Code § 11362.777(c)(4));
- 8 2. Expressly provide that the Act does not supersede or limit local authority for local law
9 enforcement activity, enforcement of local ordinances, or enforcement of local permit
10 or licensing requirements regarding marijuana (Business & Professions Code §
11 19315(a));
- 12 3. Expressly provide that the Act does not limit the authority or remedies of a local
13 government under any provision of law regarding marijuana, including but not limited
14 to a local government’s right to make and enforce within its limits all police
15 regulations not in conflict with general laws (Business & Professions Code
16 §19316(c)); and
- 17 4. Require a local government that wishes to prevent marijuana delivery activity, as
18 defined in Business & Professions Code section 19300.5(m) of the Act, from
19 operating within the local government’s boundaries to enact an ordinance
20 affirmatively banning such delivery activity (Business & Professions Code §
21 19340(a)).

22 C. The City Council finds that this proposed Ordinance: (1) expressly prohibits the
23 delivery of marijuana in the City, (2) expressly prohibits the cultivation of marijuana in the City; (3)
24 exercises its local authority to enact and enforce local regulations or other entitlement of the activities
25 prohibited by this chapter; and (4) exercises its police power to enact and enforce regulations for the
26 public benefit, safety, and welfare of the City and its community.

27 **Section 3.** The title and text of Chapter 9.45 of the Rialto Municipal Code is amended to
28 read, in its entirety, as follows:

1 “Chapter 9.45

2 **MOBILE MARIJUANA DISPENSARIES AND DELIVERY**

3 **Sections:**

4 9.45.010 – Definitions

5 9.45.020 – Mobile marijuana dispensaries prohibited

6 9.45.030 – Marijuana delivery prohibited

7 9.45.040 – Public Nuisance declared

8 9.45.050 – Violations; penalties

9 **9.45.010 – Definitions.**

10 The following words and phrases shall, for the purposes of this chapter, have the meanings
11 respectively ascribed to them by this section, as follows:

12 “Delivery” means the commercial delivery, transfer, or transport, or arranging for the
13 commercial delivery, transfer, or transport, or the use of any technology platform to arrange for or to
14 facilitate the commercial delivery, transfer, or transport of marijuana, marijuana edibles, or any
15 marijuana products to or from any location within the city.

16 “Marijuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds
17 thereof; the resin extracted from any part of the plant; and every compound manufacture, salt,
18 derivative, mixture, or preparation of the plant, its seeds, or resin. This definition includes marijuana
19 infused in foodstuff but does not include the mature stalks of the plant, fiber produced from the
20 stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt,
21 derivative, mixture or preparation of the mature stalks (except resin extracted therefrom), fiber, oil, or
22 cake, or the sterilized seeds of the plant incapable of germination.

23 “Medical marijuana dispensary” means any for profit or not-for-profit facility, location, or
24 similar entity, whether permanent or temporary, where the owner(s) or operator(s) intends to or does
25 possess, dispense, and distribute marijuana for any purpose, or allows others to possess, dispense, and
26 distribute marijuana for any purpose. “Medical marijuana dispensary” includes a “collective,”
27 “cooperative,” or other entity as defined in Business and Professions Code Section 19300.5(n).

28 “Mobile marijuana dispensary” means any person, facility, location, or similar entity, whether
permanent or temporary, that transports or delivers, or arranges for the transportation or delivery, of
medical marijuana to a person.

“Operate” or “operation” means to locate, own, lease, supply, allow to be operated, or to aid, abet, or assist in the operation of a mobile medical marijuana dispensary, and shall include any attempt to do so.

“Person” means any individual, firm, corporation, association, club, society, or other organization or entity, including but not limited to any owner, manager, proprietor, employee, volunteer, salesperson or agent thereof.

9.45.020 – Mobile marijuana dispensaries prohibited.

Mobile marijuana dispensaries are prohibited in the city. No person shall operate or allow to be operated any mobile marijuana dispensary within the city, regardless of where the mobile marijuana dispensary is located or based.

9.45.030 – Marijuana delivery prohibited.

No person shall deliver or provide delivery services for marijuana, medical marijuana, or marijuana-infused products to or from any location within the city, regardless of the vehicle or method of delivery, or engage in any operation for this purpose.

9.45.040 – Public nuisance declared.

A. Operation of any mobile marijuana dispensary within the city in violation of the provisions of this chapter is hereby declared a public nuisance and shall be abated pursuant to all available remedies.

B. The delivery of marijuana within the city in violation of the provisions of this chapter is hereby declared a public nuisance and shall be abated pursuant to all available remedies.

9.45.050 – Violations; penalties.

Any violation of this chapter shall be and is declared to be contrary to the public interest, a misdemeanor, and subject to Chapters 1.10 and 1.16 of this Code, as well as any other applicable municipal or state law.”

Section 4. Section 18.04.585 of the Rialto Municipal Code is repealed in its entirety.

Section 5. Section 18.26.045 of the Rialto Municipal Code is repealed in its entirety.

Section 6. Section 18.27.025 of the Rialto Municipal Code is repealed in its entirety.

Section 7. Section 18.28.025 of the Rialto Municipal Code is repealed in its entirety.

Section 8. Section 18.30.025 of the Rialto Municipal Code is repealed in its entirety.

Section 9. Section 18.31.025 of the Rialto Municipal Code is repealed in its entirety.

Section 10. Section 18.32.025 of the Rialto Municipal Code is repealed in its entirety.

Section 11. Section 18.33.025 of the Rialto Municipal Code is repealed in its entirety.

Section 12. Section 18.34.025 of the Rialto Municipal Code is repealed in its entirety.

Section 13. Section 18.35.025 of the Rialto Municipal Code is repealed in its entirety.

Section 14. Section 18.36.025 of the Rialto Municipal Code is repealed in its entirety.

Section 15. Section 18.38.025 of the Rialto Municipal Code is repealed in its entirety.

Section 16. Paragraph (E) of Section 18.40.040 of the Rialto Municipal Code is repealed in its entirety.

Section 17. A new Chapter 18.112, entitled “Regulation of Medical Marijuana Dispensaries and Cultivation” is added to the Rialto Municipal Code to read, in its entirety, as follows:

“Chapter 18.112

REGULATION OF MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION

Sections:

18.112.010 – Purpose and intent
18.112.020 – Definitions
18.112.030 – Medical marijuana dispensaries prohibited
18.112.040 – Marijuana cultivation prohibited
18.112.050 – Public nuisance declared
18.112.060 – Violation; penalties

18.112.010 – Purpose and intent.

It is the purpose and intent of this chapter to prohibit medical marijuana dispensaries and medical marijuana cultivation in the city.

18.112.020. – Definitions

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

“Cultivation” means the planting, growing, harvesting, drying, curing, grading, trimming, and/or processing of marijuana plants or any part thereof.

“Marijuana” shall have the same definition as provided in Section 9.45.010 of this code.

“Medical marijuana dispensary” shall have the same definition as provided in Section 9.45.010 of this code.

“Operate” or “operation” shall have the same definition as provided in Section 9.45.010 of this code.

“Person” shall have the same definition as provided in Section 9.45.010 of this code.

18.112.030 – Medical marijuana dispensaries prohibited.

Medical marijuana dispensary is not a permitted use and is prohibited in all zones throughout the city. No permit or any other applicable license or entitlement for use, nor any business license, shall be approved or issued for the establishment, maintenance, or operation of a medical marijuana dispensary within the city.

18.112.040 – Marijuana cultivation prohibited.

The cultivation of medical marijuana is not a permitted use and is prohibited in all zones throughout the city. No permit or any other applicable license or entitlement for use, nor any business license, shall be approved or issued for the cultivation of marijuana within the city.

18.112.050 – Public nuisance declared.

A. The establishment, maintenance, or operation of a marijuana dispensary within the city is declared to be a public nuisance and may be abated by the city either pursuant to the Rialto Municipal Code or any other available remedies, including but not limited to declaratory relief and civil injunctions.

B. The cultivation of marijuana within the city is declared to be a public nuisance and may be abated by the city either pursuant to the Rialto Municipal Code or any other available remedies, including but not limited to declaratory relief and civil injunctions.

18.112.060 – Violation; penalties.

Any violation of this chapter shall be and is declared to be contrary to the public interest, a misdemeanor, and subject to Chapters 1.10 and 1.16 of this Code, as well as any other applicable municipal or state law.”

Section 18. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15061(b)(3) because it

1 can be seen with certainty that it will not have a significant effect or physical change to the
2 environment. The proposed amendment to the Rialto Municipal Code would only prohibit marijuana
3 dispensaries, delivery, and cultivation, and would not cause a significant effect on the environment.

4 **Section 19.** If any provision of this Ordinance is held invalid, such invalidity shall not
5 affect the remaining provisions of this Ordinance , which shall remain in effect absent the provision
6 held to be invalid, and to this end, the provisions of this Ordinance are declared to be severable.

7 **Section 20.** The City Clerk shall certify to the adoption of this Ordinance, and cause the
8 same to be published in the local newspaper, and the same shall take effect thirty (30) days after its
9 date of adoption.

10
11 PASSED, APPROVED AND ADOPTED this ____ day of _____, 2016.

12
13 _____
14 DEBORAH ROBERTSON, Mayor

15 ATTEST:

16 _____
17 BARBARA A. McGEE, City Clerk

18 APPROVED AS TO FORM

19 _____
20 FRED GALANTE, City Attorney
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1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF RIALTO)

4 I, Barbara A. McGee, City Clerk of the City of Rialto, do hereby certify that the foregoing
5 Ordinance No. _____ was duly passed and adopted at a regular meeting of the City Council of
6 the City of Rialto held on the _____ day of _____, 2016.

7 Upon motion of Councilmember _____, seconded by Councilmember
8 _____, the foregoing Ordinance No. _____ was duly passed and adopted.

9 Vote on the Motion:

10 AYES:

11 NOES:

12 ABSENT:

13 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of
14 Rialto, this _____ day of _____, 2016.

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16 _____
17 Barbara A. McGee, City Clerk
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