

RESOLUTION NO. _____

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF RIALTO, CALIFORNIA, RECOMMENDING THE CITY
COUNCIL TO ADOPT THE PROPOSED ORDINANCE
AMENDING CHAPTER 9.45 AND ADDING CHAPTER 18.112 TO
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
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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 and delivery pursuant to the new state law requirements (AB 266 and AB 243), as
13 provided in the proposed ordinance amendment attached hereto as Exhibit 1 ("Ordinance
14 Amendment"); and

15 WHEREAS, the provisions of the proposed Ordinance Amendment would affect all
16 properties city-wide; and

17 WHEREAS, on April 27, 2016, the Planning Commission of the City of Rialto conducted a
18 duly noticed public hearing, as required by law, on the proposed Ordinance Amendment, took
19 testimony, at which time it received input from staff, the city attorney, and the applicant; heard public
20 testimony; discussed the proposed Ordinance Amendment; and closed the public hearing; and

21 WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

22 **NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF RIALTO,**
23 **CALIFORNIA DOES HEREBY RESOLVE AND RECOMMEND AS FOLLOWS:**

24 SECTION 1. The recitals set forth above are all true and correct and are incorporated herein.

25 SECTION 2. Based on substantial evidence presented to the Planning Commission during the
26 public hearing conducted with regard to the proposed Ordinance Amendment, including written staff
27 reports, verbal testimony, project plans, other documents, and the conditions of approval stated herein,
28 the Planning Commission hereby determines that the proposed Ordinance Amendment satisfies the

1 requirements of Government Code Sections 65855 and 65860 pertaining to the findings which must be
2 made precedent to amending a zoning ordinance. The findings are as follows

- 3 1. The proposed Ordinance Amendment is consistent with the goals, policies, and
4 objectives of the General Plan.

5 *This finding is supported by the following facts:*

6 The proposed Ordinance Amendment is consistent with the General Plan and is in
7 compliance with all applicable provisions of the Zoning Code and other ordinances and
8 regulations of the City. Both medical marijuana dispensaries and mobile medical marijuana
9 dispensaries are currently prohibited in all zones of the City and have been declared public
10 nuisances. Additionally, cultivation of medical marijuana is not expressly permitted under
11 the Rialto Municipal Code. Goal 5-8 of the General Plan is to provide effective and
12 comprehensive policing services that meet the safety needs of the City, which includes
13 Policy 5-8-4, which is to initiate proactive crime suppression and prevention strategies
14 throughout the community. The proposed Ordinance Amendment will curtail the
15 secondary adverse effects of marijuana cultivation, delivery, and dispensaries, thereby
16 reducing instances of crime and meeting the safety needs of the City. Goal 2-19 of the
17 General Plan is to encourage neighborhood preservation, stabilization, and property
18 maintenance. Prohibiting the cultivation and the adverse effects associated with it,
19 including dangerous electrical alterations, noxious odors, and inadequate ventilation, will
20 promote that goal. Furthermore, one of the guiding principles of the General Plan is to
21 provide safe neighborhoods and a place to call home. The proposed Ordinance
22 Amendment will facilitate in achieving that principle.

23 The proposed Ordinance Amendment is consistent with Federal law. The possession,
24 cultivation, use, and dispensing of marijuana continues to be illegal under Federal law.
25 The Federal Controlled Substances Act classifies marijuana as a "Schedule I Drug," which
26 is defined as a drug or other substance that has a high potential for abuse, and makes it
27 unlawful for any person to cultivate or dispense marijuana. The Controlled Substance Act
28 contains no statutory exemption for the possession of marijuana for medical purposes.

- 29 2. The proposed Ordinance Amendment will not adversely affect surrounding
30 properties.

31 *This finding is supported by the following facts:*

32 The cultivation of marijuana has significant impacts or the potential for significant impacts
33 on the City. These impacts include damage to residences and other buildings, dangerous
34 electrical alterations and use, inadequate ventilation, and the nuisance of strong and
35 noxious odors. Additionally, there is evidence of an increased incidence of crime-related
36 secondary impacts in locations associated with medical marijuana dispensaries, cultivation,
37 and the mobile delivery of same.

38 The proposed Ordinance Amendment will not adversely affect adjoining property as to
value or be detrimental to the area. The proposed Ordinance Amendment will further
solidify the City's stance on prohibiting medical marijuana cultivation. The prohibition of

1 this use will help protect property values in the City and discourage a wide range of illicit
2 activities associated with the sale, cultivation, delivery and dispensing of medical
3 marijuana.

- 3 3. The proposed Ordinance Amendment promotes public health, safety, and general
4 welfare and serves the goals and purposes of the Zoning Code.

5 *This finding is supported by the following facts:*

6 The proposed Ordinance Amendment will prohibit marijuana cultivation within the City
7 limits and will help protect the public peace, health, and safety of the City and its residents.
8 It will also mitigate or reduce the crime-related secondary impacts associated with medical
9 marijuana cultivation, which is contrary to policies that are intended to promote and
10 maintain public peace, health, and safety. These prohibited services will help preserve the
11 City's law enforcement services, in that monitoring and addressing the negative secondary
12 effects and adverse impacts will likely burden the City's law enforcement resources.

11 SECTION 3. The Planning Commission hereby recommends that the City Council of the
12 City of Rialto approve the attached proposed Ordinance Amendment to the Rialto Municipal Code.

13 SECTION 4. The Chair of the Planning Commission shall sign the passage and adoption of
14 this resolution and thereupon the same shall take effect and be in force.

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16 PASSED, APPROVED AND ADOPTED this 27th day of April, 2016.

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19 JERRY GUTIERREZ, Chair
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