CITY OF MONTEREY PARK
PLANNING COMMISSION AGENDA

REGULAR MEETING
Monterey Park City Hall – Council Chambers
320 West Newmark Avenue
Monterey Park, CA 91754

TUESDAY
JANUARY 12, 2016
7:00 PM

MISSION STATEMENT
The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community.

Staff reports, writings, or other materials related to an item on this Agenda, which are distributed to the Planning Commission less than 72 hours before this scheduled meeting are available for public inspection in the City Clerk's Office located at 320 West Newmark Avenue, Monterey Park, CA 91754, during normal business hours. Such staff reports, writings, or other materials are also on the City's website subject to staff's ability to post the materials before the meeting. The City's website is located at **http://ci.monterey-park.ca.us/home/index.asp**. Copies of staff reports and/or written documents pertaining to any item on the Agenda are on file in the Community and Economic Development Department – Planning Division and are available for public inspection during regular business hours.

PUBLIC COMMENTS ON AGENDA ITEMS

For members of the public wishing to address the Planning Commission regarding any item on this Agenda, including Oral Communications, please fill out a speaker card and return it to Planning staff before the announcement of the Agenda Item.

Speakers are provided five (5) minutes per individual on each published agenda item. Individual speakers may consolidate time with another speaker's time; the total consolidated time cannot exceed two (2) minutes per speaker giving up time. However in the interest of ensuring that all members of the Public have an equal opportunity to participate, a single speaker cannot speak for more than ten (10) minutes on an individual Agenda item. If there are a large number of speakers on a particular agenda item, the Chairperson, as confirmed by the Planning Commission, may reduce the amount of time allotted to each speaker or limit the total amount time allowed for speakers to address the agenda item. At the conclusion of that period of time, the speaker will be asked to please conclude their remarks so that the next speaker may begin their comments.

In accordance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please call City Hall, (626) 307-1359. Please notify the Community and Economic Development Department twenty-four hours prior to the meeting so that reasonable arrangements can be made to ensure availability of audio equipment for the hearing impaired. Council Chambers are wheelchair accessible.

CALL TO ORDER – Chairperson Rodrigo Garcia

PLEDGE OF ALLEGIANCE

ROLL CALL – Commissioners Choi, Sullivan, Lee, and Leung

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

ORAL AND WRITTEN COMMUNICATIONS

MINUTES –

[1.] CONSENT CALENDAR

1-A. CONDITIONAL USE PERMIT – 901 CORPORATE CENTER DRIVE (CU-15-08)

The applicant, Lisa Desmond of Delta Groups Engineering, Inc., on behalf of Verizon Wireless, is requesting a Conditional Use Permit to allow a wireless telecommunication facility at 901 Corporate Center Drive.

In compliance with Monterey Park Municipal Code (MPMC) § 21.34.020(H) (2), the proposed project must be re-noticed to notify properties within a 500 feet radius, instead of 300 feet. Also, 3 feet by 4 feet public notice sign must be posted on the property. The mailing and posting must occur 30 days before the meeting.

It is recommended that the Planning Commission consider taking the following actions:

(1) Continue this matter to the February 9, 2016 Planning Commission meeting for review and consideration; and
(2) Taking such additional, related, action that may be desirable.

1-B. CONDITIONAL USE PERMIT AND TENTATIVE MAP NO. 073665 – 120 WEST HELLMAN AVENUE (CU-15-07/TM-15-09)

The applicant, Jin Zeng, is requesting a Conditional Use Permit to allow a 1.0 floor area ratio and Tentative Map to subdivide air rights to construct a medical office condominium project at 120 West Hellman Avenue.

Staff is reevaluating the project scope. Accordingly, the matter will need to be re-noticed.

It is recommended that the Planning Commission consider taking the following actions:

(1) Continue this matter to a future date to be re-noticed; and
(2) Taking such additional, related, action that may be desirable.

1-C. CONDITIONAL USE PERMIT – 417 NORTH GARFIELD AVENUE (CU-15-09)

The applicant, Jerry Ambrose of Eukon Group, on behalf of AT&T Wireless, is requesting a Conditional Use Permit to allow a wireless telecommunication facility at 417 North Garfield Avenue.

In compliance with Monterey Park Municipal Code (MPMC) § 21.34.020(H) (2), the proposed project must be re-noticed to notify properties within a 500 feet radius, instead of 300 feet. Also, 3 feet by 4 feet public notice sign must be posted on the property. The mailing and posting must occur 30 days before the meeting.

It is recommended that the Planning Commission consider taking the following actions:

(1) Continue this matter to the February 9, 2016 Planning Commission meeting for review and consideration; and
(2) Taking such additional, related, action that may be desirable.

[2.] UNFINISHED BUSINESS - None

[3.] NEW BUSINESS (PUBLIC HEARING)

3-A. CODE AMENDMENT OF TITLES 9 AND 21 OF THE MONTEREY PARK MUNICIPAL CODE RELATIVE TO PROHIBITING COMMERCIAL CANNABIS ACTIVITIES, CULTIVATION OF MEDICAL CANNABIS, AND DELIVERY OF MEDICAL CANNABIS IN ALL AREAS OF THE CITY (CA-16-01)

The City of Monterey Park is requesting a zone text amendment amending Titles 9 and 21 of the Monterey Park Municipal Code to prohibit commercial cannabis activities, cultivation of medical cannabis, and delivery of medical cannabis in all areas of the City.

This project was determined to be exempted under Section 15061(b)(3) of CEQA Guidelines and no further review under CEQA is warranted or necessary.

It is recommended that the Planning Commission consider taking the following actions:

(1) Opening the public hearing;
(2) Receiving documentary and testimonial evidence;
(3) Closing the public hearing;
(4) Adopting the Resolution recommending to the City Council adoption of the Ordinance amending Titles 9 and 21 of Monterey Park Municipal Code to prohibit cannabis activities in all areas of the City; and
(5) Take such additional, related, action that may be desirable.

[4.] COMMISSION COMMUNICATIONS

[5.] FUTURE AGENDA ITEMS AS DIRECTED BY THE COMMISSION

[6.] STAFF UPDATES

[7.] CLOSED SESSION

ADJOURN

To the next regularly scheduled meeting on January 26, 2016

APPROVED BY:

MICHAEL A. HUNTLEY	

Planning Commission Staff Report

DATE: January 12, 2016

AGENDA ITEM NO: 1-A

TO: The Planning Commission

FROM: Michael A. Huntley, Community and Economic Development Director

SUBJECT: Public Hearing – Conditional Use Permit (CUP-15-08) to allow a wireless telecommunications facility – 901 Corporate Center Drive.

EXECUTIVE SUMMARY:

In compliance with Monterey Park Municipal Code (MPMC) § 21.34.020(H) (2), the proposed project has been re-noticed to notify properties within a 500 feet radius, instead of 300 feet. Also, 3 feet by 4 feet public notice sign will be posted on the property. The mailing and posting must occur 30 days before the meeting.

Respectfully submitted,

Michael A. Huntley
Community and Economic
Development Director

Prepared by:

Harald Luna
Assistant Planner

Reviewed by:

Karl H. Berger
Assistant City Attorney

Planning Commission Staff Report

DATE: January 12, 2016

AGENDA ITEM NO: 1-B

TO: The Planning Commission

FROM: Michael A. Huntley, Community and Economic Development Director

SUBJECT: Consent – Conditional Use Permit (CUP-15-07) to allow a 1.0 floor area ratio and Tentative Map No. 073665 (TM-15-09) for a 12-unit medical office condominium development – 120 West Hellman Avenue.

EXECUTIVE SUMMARY:

Staff is revaluating the project scope. Accordingly, the matter will be re-noticed for a future meeting date.

Respectfully submitted,

Michael A. Huntley
Community and Economic
Development Director

Prepared by:

Samantha Tewasart
Senior Planner

Reviewed by:

Karl H. Berger
Assistant City Attorney

Planning Commission Staff Report

DATE: January 12, 2016

AGENDA ITEM NO: 1-C

TO: The Planning Commission

FROM: Michael A. Huntley, Community and Economic Development Director

SUBJECT: Consent – Conditional Use Permit (CUP-15-09) to allow a wireless telecommunications facility (AT&T) – 417 North Garfield Avenue.

EXECUTIVE SUMMARY:

In compliance with Monterey Park Municipal Code (MPMC) § 21.34.020(H) (2), the proposed project has been re-noticed to notify properties within a 500 feet radius, instead of 300 feet. Also, 3 feet by 4 feet public notice sign will be posted on the property. The mailing and posting must occur 30 days before the meeting.

Respectfully submitted,

Michael A. Huntley
Community and Economic
Development Director

Prepared by:

Samantha Tewasart
Senior Planner

Reviewed by:

Karl H. Berger
Assistant City Attorney

Planning Commission Staff Report

DATE: January 12, 2016

AGENDA ITEM NO: 3-A

TO: The Planning Commission

FROM: Michael A. Huntley, Community and Economic Development Director

SUBJECT: Public Hearing – Recommend that the City Council Adopt a Zoning Code Amendment Expressly Prohibiting Commercial Cannabis Activities, Cultivation of Medical Cannabis, and Delivery of Medical Cannabis in All Areas of the City

RECOMMENDATION:

It is recommended that the Planning Commission:

(1) Opening the public hearing;
(2) Receiving documentary and testimonial evidence;
(3) Closing the public hearing;
(4) Adopt Resolution No. _____ recommending that the City Council adopt an ordinance adding Chapter 9.102 to Title 9 and adding Chapter 21.46 to Title 21 of the Monterey Park Municipal Code to clarify that commercial cannabis activities, cultivation of medical cannabis and delivery of medical cannabis are prohibited in all zones and specific plan areas of the city; and
(5) Take such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

The Monterey Park Municipal Code expressly prohibits medical marijuana dispensaries in the City. Recent legislation signed by Governor Brown expressly authorizes cities to regulate or prohibit the cultivation and delivery of medical cannabis, and commercial cannabis activities, generally. If cities in California do not prohibit the cultivation of medical cannabis by March 1, 2016, the State will become the exclusive licensing authority for medical cannabis cultivation. Although these medical marijuana-related activities are already technically prohibited under the City's permissive zoning scheme (*viz.* any use that is not expressly permitted is prohibited), staff recommends adoption of an ordinance that expressly prohibits these medical marijuana-related activities in order to avoid any possible ambiguity.

BACKGROUND:

In 1996, the voters of the State of California approved Proposition 215, also known as the Compassionate Use Act ("CUA") (codified as Health and Safety Code section 11362.2 et seq.). The purpose of the Act was to ensure that seriously ill patients could obtain and use marijuana for medical purposes, even though the use and possession of marijuana remains illegal under the federal Controlled Substances Act. In 2003, the

state Legislature enacted SB 420 (the "Medical Marijuana Program Act" or "MMPA"), which provided additional statutory guidance for those involved with medical marijuana use and also allowed local governing bodies to adopt and enforce rules and regulations regarding the operation or establishment of medical marijuana facilities. The CUA and MMPA do not "legalize" marijuana, but rather provide limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses.

Neither the CUA nor the MMPA preempt or limit local zoning regulations on medical marijuana cultivation and distribution. The California Supreme Court has ruled that a city has the power to ban facilities that distribute medical marijuana (*City of Riverside v. Inland Empire Patient's Health & Wellness Center* (2013) 56 Cal.4th 729) and an appellate court has ruled that a City may prohibit all marijuana cultivation. (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975 (review denied March 26, 2014))

Monterey Park's zoning ordinance is a "permissive" zoning ordinance, meaning uses that are not specifically permitted are prohibited (MPMC § 21.02.170). No medical marijuana-related uses are permitted or conditionally permitted in any zone. Consequently, they are prohibited under the principles of permissive zoning. Section 21.02.170 of the Municipal Code also provides that the use of any property for purposes prohibited by federal law is a misdemeanor. Since marijuana remains illegal to use, possess or sell under federal law, marijuana-related uses are also prohibited by that section. Likewise, because marijuana use and possession is illegal under federal law, no business license could be issued for any such activity in the City.

On October 9, 2015 Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act ("MMRSA"). MMRSA established a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. MMRSA allows a City to prohibit commercial medical marijuana activities.

MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.

The Monterey Park Municipal Code already expressly prohibits medical marijuana dispensaries. Although other medical marijuana-related uses and activities are already technically prohibited in the City pursuant to principles of permissive zoning (and pursuant to the prohibition of illegal uses in MPMC § 21.02.170), staff nevertheless recommends adoption of an ordinance expressly prohibiting commercial cannabis activities, cultivation of medical cannabis, and delivery of medical cannabis in all zones throughout the City. The ordinance is intended to clarify the City's longstanding prohibition on these medical marijuana-related uses and does not state a new or different rule of law.

The proposed ordinance is consistent with the City's police powers under article XI, section 7 of the California Constitution and promotes the public health and safety. The act of cultivating and furnishing marijuana to another person for medicinal purposes poses several serious risks to the health, safety and welfare of both the individual and the people of the City at large and can cause adverse secondary effects, including, but not limited to, increased crime in the vicinity of collectives and marijuana cultivation operations. Other California cities that have permitted medical marijuana cultivation and distribution activities have experienced an increase in crime, such as burglary, robbery and sale of illegal drugs in areas immediately surrounding these activities. (See, e.g., *White Paper on Marijuana Dispensaries*, California Police Chiefs Association's Task Force on Marijuana Dispensaries, April 22, 2009, pp. v, 8-9 and Richard Winton, *Sheriff Says Pot Dispensaries Have Become Crime Targets*, Los Angeles Times, September 2, 2010)

Marijuana cultivation can also attract crime, lead to fires, expose minors to marijuana, negatively impact neighborhoods, damage buildings, require dangerous electrical alterations and use, and create the nuisance of strong and noxious odors. (*White Paper on Marijuana Dispensaries*, California Police Chiefs Association's Task Force on Marijuana Dispensaries, April 22, 2009, p. 12.) Based on these studies and other evidence, there is a concern that the cultivation and distribution of medical marijuana in the City would result in increased crime and other negative secondary effects like those experienced in other communities throughout California. By clarify existing law to unambiguously prohibit all commercial cannabis activities, cultivation of medical cannabis, and delivery of medical cannabis, the City can further safeguard against the detrimental secondary impacts associated with such activities.

GENERAL PLAN AND ZONING CODE CONSISTENCY:

The proposed amendments to the zoning regulations (Title 21) are consistent with the objectives of the zoning regulations, the General Plan, and the City's development policies. The General Plan's goals, objectives, and policies do not permit or contemplate the establishment or operation of medical marijuana dispensaries or collectives, nor do they contemplate the cultivation or delivery of medical marijuana. The proposed ordinance would not create new law; rather, it would clarify the City's existing prohibitions on the distribution, delivery and cultivation of medical marijuana. The proposed clarifying amendment is also consistent with the purpose of Title 21, which is to serve the public health, safety, and general welfare, and the amendment is necessary to make the prohibition of medical marijuana cultivation and delivery clear and unambiguous. The amendments will ensure that all properties in the City remain free of the deleterious impacts associated with marijuana-related uses as discussed herein.

ENVIRONMENTAL ASSESSMENT:

The proposed ordinance does not have the potential to cause significant effects on the environment and, therefore, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code Regs. § 15061(b)(3). The ordinance amends the Municipal Code to make clear that commercial cannabis activities, cultivation of medical cannabis, and delivery of medical cannabis are not permitted in

the City. The ordinance does not portend any development or changes to the physical environment. Following an evaluation of possible adverse impacts, Staff has concluded with certainty that there is no possibility that the ordinance will have a significant effect on the environment. In addition to the foregoing general exemption, the following categorical exemptions apply: 14 Cal. Code Regs. § 15307 (actions taken for protection of natural resources) and § 15308 (actions taken for protection of the environment).

LEGAL NOTIFICATION:

The legal notice of this hearing was posted at the subject site, City Hall, Monterey Park Bruggemeyer Library, and Langley Center on **December 17, 2015** and published in the Wave on **December 24, 2015**, with affidavits of posting on file.

FISCAL IMPACT:

None.

Respectfully submitted by:

Michael A. Huntley
Community and Economic
Development Director

Prepared by:

Samantha Tewasart
Senior Planner

Reviewed by:

Karl H. Berger
Assistant City Attorney

Attachments:

Exhibit A: Draft Resolution
Exhibit B: Draft Ordinance

RESOLUTION NO. _____

A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE ADDING CHAPTER 9.102 TO TITLE 9 AND ADDING CHAPTER 21.46 TO TITLE 21 OF THE MONTEREY PARK MUNICIPAL CODE TO CLARIFY THAT COMMERCIAL CANNABIS ACTIVITIES, CULTIVATION OF MEDICAL CANNABIS AND DELIVERY OF MEDICAL CANNABIS ARE PROHIBITED IN ALL ZONES AND SPECIFIC PLAN AREAS OF THE CITY

The Planning Commission of the City of Monterey Park does resolve as follows:

SECTION 1: The Planning Commission finds and declares that:

A. On November 5, 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et seq., and entitled the Compassionate Use Act of 1996 ("CUA"). The CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use.

B. The intent of the CUA was to enable persons in the State of California who are in need of marijuana for medicinal purposes to obtain it and use it under limited, specified circumstances.

C. The State enacted Senate Bill 420 in October 2003, codified a Health and Safety Section 11362.7, *et seq.*, ("Medical Marijuana Program Act," or "MMPA") to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420. The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws. 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 CUA and MMPA do not "legalize" marijuana, but provide limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses.

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. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 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 State, 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 medical purposes.

G. On October 9, 2015 Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act ("MMRSA"). MMRSA established a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. MMRSA allows a City to completely prohibit commercial medical marijuana activities.

H. The Planning Commission finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition 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 such activities. Further, 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.

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

J. MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.

K. Medical marijuana dispensaries are already expressly prohibited by the Monterey Park Municipal Code. While commercial cannabis activities, cultivation of

medical cannabis, and delivery of medical cannabis are already technically prohibited under the terms of the City's permissive zoning regulations (MPMC § 21.02.170), the Planning Commission recommends adoption of an ordinance that expressly makes clear that all such uses are prohibited in all zones throughout the City. Therefore, this ordinance is intended to clarify the City's longstanding position on medical marijuana cultivation, distribution and delivery does not state a new or different rule of law.

SECTION 2: *General Plan/zoning regulations Findings.* Pursuant to MPMC section 21.38.030(B), the Planning Commission finds that the proposed amendments to the zoning regulations (Title 21) are consistent with the objectives of the zoning regulations, the General Plan, and the City's development policies. The General Plan's goals, objectives, and policies do not permit or contemplate the establishment or operation of medical marijuana dispensaries or collectives, nor do they contemplate the cultivation or delivery of medical cannabis. This ordinance does not create new law; rather, it clarifies the City's existing prohibitions on the distribution, delivery and cultivation of medical cannabis. The proposed clarifying amendment is also consistent with the purpose of Title 21, which is to serve the public health, safety, and general welfare, and the amendment is necessary to make the prohibition of medical marijuana cultivation and delivery clear and unambiguous. The amendments will ensure that all properties in the City remain free of the deleterious impacts associated with marijuana-related uses as discussed herein and in the accompanying staff report.

SECTION 3: *Recommendation.* The Planning Commission recommends that the City Council adopt the ordinance set forth in attached "Exhibit A," which is incorporated into this resolution by reference.

SECTION 4: *Environmental Review.* The Planning Commission finds that the proposed ordinance does not have the potential to cause significant effects on the environment and, therefore, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code Regs. § 15061(b)(3). The ordinance amends the Municipal Code to make clear that commercial cannabis activities, cultivation of medical cannabis, and delivery of medical cannabis are not permitted in the City. The ordinance does not portend any development or changes to the physical environment. Following an evaluation of possible adverse impacts, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. In addition to the foregoing general exemption, the following categorical exemptions apply: 14 Cal. Code Regs. § 15307 (actions taken for protection of natural resources) and § 15308 (actions taken for protection of the environment).

SECTION 5: *Reliance on Record.* Each and every finding and determination in this Resolution is based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 6: *Effective Date*. This Resolution will become effective immediately upon adoption.

ADOPTED AND APPROVED this 12th day of January 2016.

Chairperson Ricardo Garcia

I hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Monterey Park at the regular meeting held on the 12th day of January 2016, by the following vote of the Planning Commission:

AYES:
NOES:
ABSTAIN:
ABSENT:

Michael A. Huntley, Secretary

APPROVED AS TO FORM:
Mark D. Hensley, City Attorney

By: _____
Karl H. Berger,
Assistant City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTEREY PARK ADDING CHAPTER 9.102 TO TITLE 9 AND CHAPTER 21.46 TO TITLE 21 OF THE MONTEREY PARK MUNICIPAL CODE TO CLARIFY THAT COMMERCIAL CANNABIS ACTIVITIES, CULTIVATION OF MEDICAL CANNABIS AND DELIVERY OF MEDICAL CANNABIS ARE PROHIBITED IN ALL ZONES AND SPECIFIC PLAN AREAS OF THE CITY

The City Council of the City of Monterey Park does ordain as follows:

SECTION 1: The City Council finds and determines as follows:

A. On November 5, 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et seq., and entitled the Compassionate Use Act of 1996 ("CUA"). The CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use.

B. The intent of the CUA was to enable persons in the State of California who are in need of marijuana for medicinal purposes to obtain it and use it under limited, specified circumstances.

C. The State enacted Senate Bill 420 in October 2003, codified as Health and Safety Section 11362.7, *et seq.*, ("Medical Marijuana Program Act," or "MMPA") to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420. The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws. 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 CUA and MMPA do not "legalize" marijuana, but provide limited defenses to certain categories of individuals with respect to certain conduct and certain state criminal offenses.

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. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 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 State, 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 medical purposes.

G. On October 9, 2015 Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act ("MMRSA"). MMRSA established a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. MMRSA allows a City to completely prohibit commercial medical marijuana activities.

H. The City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition 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 such activities. Further, 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.

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

J. MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.

K. Medical marijuana dispensaries are already expressly prohibited by the Monterey Park Municipal Code. While the City Council believes that commercial cannabis activities, cultivation of medical cannabis, and delivery of medical cannabis

are already prohibited under the terms of the City's permissive zoning regulations (MPMC § 21.02.170), it desires to enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City. Therefore, this ordinance is intended to clarify the City's longstanding position on medical marijuana cultivation, distribution and delivery does not state a new or different rule of law.

L. The Planning Commission held a duly-noticed public hearing on January 12, 2016, at which time it considered all evidence presented, both written and oral, and voted to adopt a resolution recommending the City Council adopt this Ordinance.

M. The proposed amendments to the Zoning Code are consistent with the goals, policies and objectives of the General Plan. The General Plan's goals, objectives, and policies do not permit or contemplate the establishment or operation of medical marijuana dispensaries or collectives, nor do they contemplate the cultivation or delivery of medical cannabis, or any other commercial cannabis activities whatsoever. This ordinance does not create new law; rather, it clarifies the City's existing prohibitions on the cultivation, distribution and delivery of medical cannabis.

N. The proposed amendments to the Zoning Code will not adversely affect any property in the City. The amendments are intended to clarify existing law and to ensure that all properties in the City remain free of the deleterious impacts associated with marijuana-related uses as discussed herein and in the accompanying staff report.

O. The proposed amendments to the Zoning Code promote the public health, safety, and general welfare and serve the goals and purposes of the Zoning Code. Clarifying existing law to expressly prohibit commercial cannabis activities, cultivation of medical cannabis, and delivery of medical cannabis will ensure against the deleterious impacts associated with marijuana-related uses as discussed herein and in the accompanying staff report.

SECTION 2: *Authority*. This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate use Act, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act.

SECTION 3: A new Chapter 9.102 entitled "Medical Marijuana" is added to Title 9 of the Monterey Park Municipal Code to read as follows:

"**Chapter 9.102**

MEDICAL MARIJUANA

9.102.010 Medical Marijuana Regulations.

For regulations regarding medical marijuana and medical cannabis cultivation and delivery, see Title 21, Chapter 21.46."

SECTION 4: A new Chapter 21.46 entitled "Medical Cannabis Cultivation and Delivery" is added to Title 21 of the Monterey Park Municipal Code to read as follows:

"**Chapter 21.46**

MEDICAL CANNABIS CULTIVATION AND DELIVERY

21.46.010 Definitions
21.46.020 Prohibition

21.46.010 Definitions.

"Cannabis" has the same meaning as set forth in Business & Professions Code § 19300.5(f), as the same may be amended from time to time.

"Commercial cannabis activity" has the same meaning as that set forth in Business & Professions Code § 19300.5(k), as the same may be amended from time to time.

"Cultivation" has the same meaning as that set forth in Business & Professions Code § 19300.5(l), as the same may be amended from time to time.

"Delivery" has the same meaning as that set forth in Business & Professions Code § 19300.5(m), as the same may be amended from time to time.

"Medical cannabis," medical cannabis product," or "cannabis product" has the same meaning as set forth in Business & Professions Code § 19300.5(ag), as the same may be amended from time to time.

21.46.020 Prohibition.

Commercial cannabis activities, cultivation of medical cannabis, and delivery of medical cannabis are prohibited in all zones and all specific plan areas in the City of Monterey Park. No use permit, variance, building permit, or any other entitlement, license, or permit, whether ministerial or discretionary, can be issued or approved for any commercial cannabis activity, cultivation of medical cannabis or delivery of medical cannabis in the City, and it is unlawful for any person to establish or conduct such activities in the City."

SECTION 5: *Environmental Review.* The City Council finds that this ordinance does not have the potential to cause significant effects on the environment and, therefore, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to 14

Cal. Code Regs. § 15061(b)(3). The ordinance amends the Monterey Park Municipal Code to make clear that commercial cannabis activities, cultivation of medical cannabis, and delivery of medical cannabis are not permitted in the City. The ordinance does not portend any development or changes to the physical environment. Following an evaluation of possible adverse impacts, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. In addition to the foregoing general exemption, the following categorical exemptions apply: 14 Cal. Code Regs. § 15307 (actions taken for protection of natural resources) and § 15308 (actions taken for protection of the environment).

SECTION 6: *Construction*. This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council's intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 7: *Enforceability*. Repeal of any provision of the Monterey Park Municipal Code does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 8: *Severability*. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 9: The City Clerk is directed to certify the passage and adoption of this Ordinance, cause it to be entered into the city of Monterey Park's book of original ordinances, make a note of the passage and adoption in the records of this meeting, and, within fifteen days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 10: This Ordinance will take effect on the 31st day following its final passage and adoption.

PASSED AND ADOPTED this _____ day of _____, 2016

_____

Peter Chan, Mayor

ATTEST:

_____
Vincent D. Chang, City Clerk

APPROVED AS TO FORM
MARK D. HENSLEY, City Attorney

By: _____