Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: SECOND AND FINAL READING OF ORDINANCE 3795

RECOMMENDATION:
Second and Final Reading of ORDINANCE NO. 3795 adding a new Chapter 12 to Division 4 of the Torrance Municipal Code prohibiting all medical marijuana dispensaries, marijuana cultivation, commercial medical marijuana activity, and marijuana deliveries citywide.

BACKGROUND:
At the regular meeting of the City Council held on the 12th day of January 2016, this Ordinance was introduced and approved for its first reading by the following roll call vote:


NOES: COUNCILMEMBERS: None.

ABSTAIN: COUNCILMEMBERS: None.

ABSENT: COUNCILMEMBERS: None.

Respectfully submitted,

Rebecca Poirier
City Clerk

LeRoy J. Jackson
City Manager

Attachments A: Ordinance 3795
B: Ordinance Summary
ORDINANCE NO. 3795

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF TORRANCE ADDING A NEW CHAPTER 12
TO DIVISION 4 OF THE TORRANCE MUNICIPAL
CODE PROHIBITING ALL MEDICAL MARIJUANA
DISPENSARIES, MARIJUANA CULTIVATION,
COMMERCIAL MEDICAL MARIJUANA ACTIVITY,
AND MARIJUANA DELIVERIES CITYWIDE.

WHEREAS, the Federal Controlled Substances Act ("CSA"), 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 CSA 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 CSA contains no
exemption for medical purposes, although there is recent case law that raises a
question whether the Federal Government may enforce the Act where medical
marijuana is allowed; and

WHEREAS, California law generally makes it a crime to possess and cultivate
marijuana under Health & Safety Code Sections 11357 and 11358, respectively;
and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215
(codified as Health & Safety Code Section 11362.5 et seq. and entitled “The
Compassionate Use Act of 1996” ("CUA"); and

WHEREAS, in 2003, the Legislature enacted Senate Bill 420 (codified as Health &
Safety Code Section 11362.7 et seq. and referred to as the “Medical Marijuana
Program” ("MMP") 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 MMP 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; and

WHEREAS, 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 implicitly limits the inherent authority
of a local jurisdiction, by its own ordinances, to regulate the use of its land ...." The
Court held that cities have the authority to ban medical marijuana land uses.
Additionally, in Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, the Court of
Appeal held that “there is not 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; and

WHEREAS, on October 9, 2015, Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643), which are collectively known as the “Medical Marijuana Regulation and Safety Act” ("MMRSA"). The MMRSA set up a State licensing scheme for commercial medical marijuana activities 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. The MMRSA allows the City to completely prohibit commercial medical marijuana activities; and

WHEREAS, the MMRSA contains language 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. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. The MMRSA is silent as to how the City must prohibit other types of commercial medical marijuana activities; and

WHEREAS, although State law creates a limited affirmative defense to criminal prosecution for qualified patients and their primary caregivers, the operation of medical marijuana dispensaries as for profit is expressly prohibited, and it is difficult to determine whether or not a dispensary is operating for profit; and

WHEREAS, the limited immunity from specified State marijuana laws provided by the CUA and MMP does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the United States Supreme Court has continuously held that marijuana, including medical marijuana, violates Federal law under the CSA. In 2001, the Court held in United States v. Oakland Cannabis Buyers Cooperative, et al. that there was no “medical necessity” defense under the CSA, and therefore a medical marijuana dispensary could be enjoined from distribution and manufacturing. In 2005, the Court held in Gonzalez v. Raich that the Commerce Clause authorizes Congress to prohibit the cultivation or use of marijuana for medical purposes permitted by California law. The significance of the Raich decision is that Federal law enforcement agents may continue to enforce Federal drugs laws against Californians who cultivate or use marijuana for medical purposes; and

WHEREAS, the City Council previously adopted Ordinance No. 3684 to prohibit the conduct of or continuance of any illegal or unlawful business or practice, or the furnishing, sale, or provisioning of any service, good, or product that is illegal under this Local, State, or Federal Law in order to protect the health, safety, and welfare of the residents of the City of Torrance; and

WHEREAS, Section 92.2.1 of the Torrance Municipal Code, as well as various other sections of Chapter 1 of Division 9 dealing with permitted uses, provides that
uses that are not specifically permitted are prohibited. As medical marijuana
dispensaries are not permitted by right or with a conditional use permit, they are
prohibited; and

WHEREAS, because the Torrance Municipal Code does not currently expressly
and separately prohibit the cultivation of marijuana, the delivery of marijuana, or
the processing of marijuana with the City of Torrance, Section 31.3.6 has been
historically been applied to prohibit or preclude activities that are prohibited by
State or Federal law; and

WHEREAS, several California cities have reported negative impacts of marijuana
cultivation, processing, delivery, and distribution activities, including offensive
odors, illegal sales and distribution of marijuana, trespassing, theft, robberies, and
robbery attempts, fire hazards, unpermitted construction, and problems associated
with mold, fungus, and pests; and

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

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting
persons to the location of the valuable plants, and creating a risk of burglary,
robbery or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the
structural integrity of the building, the use of high wattage grow lights and
excessive use of electricity increases the risk of fire which presents a clear and
present danger to the building and its occupants; and

WHEREAS, cultivation of marijuana uses large quantities of potable water which is
a concern in light of the drought and the Governor’s Executive Order B-36-15
(Emergency Conservation Regulation); and

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

WHEREAS, based on the experiences of other cities, these negative effects on the
public health, safety, and welfare are likely to occur, and continue to occur, in the
City due to the establishment and operation of marijuana cultivation, processing,
delivery, and distribution activities; and

WHEREAS, marijuana delivery vehicles have been robbed and carjacked; and

WHEREAS, this ordinance is consistent with the City’s General Plan; and
WHEREAS, this ordinance is not detrimental to, and if fact protects, the public convenience, health, interest, safety, and welfare of the City for the reasons set forth above; and

WHEREAS, 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, and the Medical Marijuana Regulation and Safety Act.

NOW, THEREFORE, the City Council of the City of Torrance does ordain as follows:

SECTION 1
Chapter 12 of Division 4 is added to the Torrance Municipal Code to read in its entirety as follows:

“CHAPTER 12
Medical Marijuana (Medical Cannabis)

SECTION 412.1.010. – Definitions.
A. Cannabis will have the same meaning as set forth in Business and Professions Code Section 19300.5(f) as it may be amended from time to time.
B. Caregiver or Primary Caregiver will have the same meaning as set forth in Business and Professions Code Section 11362.7 as it may be amended from time to time.
C. Commercial Cannabis Activity means will have the same meaning as set forth in Business and Professions Code Section 19300.5(k) as it may be amended from time to time. For purposes of this Chapter, Commercial Cannabis Activity will also include Commercial Medical Marijuana Activity.
D. Cooperative or Collective means two or more persons or a group that collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering, or making available medical marijuana, with or without compensation.
E. Cultivation will have the same meaning as set forth in Business and Professions Code Section 19300.5(l) as it may be amended from time to time.
F. Cultivation Site will have the same meaning as set forth in Business and Professions Code Section 19300.5(x) as it may be amended from time to time.
G. Delivery will have the same meaning as set forth in Business and Professions Code Section 19300.5(m) as it may be amended from time to time.
H. Dispensary will have the same meaning as set forth in Business and Professions Code Section 19300.5(n) as it may be amended from time to time. For purposes of this Chapter, Dispensary will also include Cooperative and Collective.
I. Dispensing will have the same meaning as set forth in Business and Professions Code Section 19300.5(o) as it may be amended from time to time.

J. Distribution will have the same meaning as set forth in Business and Professions Code Section 19300.5(p) as it may be amended from time to time.

K. Distributor will have the same meaning as set forth in Business and Professions Code Section 19300.5(q) as it may be amended from time to time.

L. Manufacturer will have the same meaning as set forth in Business and Professions Code Section 19300.5(y) as it may be amended from time to time.

M. Manufacturing Site will have the same meaning as set forth in Business and Professions Code Section 19300.5(af) as it may be amended from time to time.

N. Medical Cannabis, Medical Cannabis Product, or Cannabis Product will have the same meaning as set forth in Business and Professions Code Section 19300.5(ag) as it may be amended from time to time. For purposes of this Chapter, Medical Cannabis will also include Medical Marijuana.

O. Medical Marijuana Regulation and Safety Act or MMRSA means the following bills signed into law by the Governor on October 9, 2015 as the same may be amended from time to time: AB 243, AB266, and SB 643.

P. Mobile Marijuana Dispensary means any person, business, office, store, facility, vehicle, retail storefront or wholesale component of any business, establishment, cooperative, collective, club, dispensary, or entity of that nature transports or delivers or arranges the transportation or delivery of marijuana and/or medical marijuana for any purpose.

Q. Nursery will have the same meaning as set forth in Business and Professions Code Section 19300.5(ah) as it may be amended from time to time.

R. Qualifying Patient or Qualified Patient will have the same meaning as set forth in Business and Professions Code Section 11362.7 as it may be amended from time to time.

S. Testing Laboratory will have the same meaning as set forth in Business and Professions Code Section 19300.5(z) as it may be amended from time to time.

T. Transport will have the same meaning as set forth in Business and Professions Code Section 19300.5(am) as it may be amended from time to time.

U. Transporter will have the same meaning as set forth in Business and Professions Code Section 19300.5(aa) as it may be amended from time to time.

SECTION 412.1.020 – Prohibited Activities.
A. Dispensaries of Medical Cannabis are expressly prohibited in the City.
B. Cultivation of Medical Cannabis is expressly prohibited in the City. No person, including a qualified patient or primary caregiver, will cultivate any amount of Cannabis in the City, even for medical purposes.
C. Deliveries of Medical Cannabis are expressly prohibited in the City. No person will conduct any Delivery that either originates or terminates in the City of Torrance.
D. Mobile Marijuana Dispensaries are expressly prohibited in the City of Torrance.
E. Commercial Cannabis Activities are expressly prohibited in the City of Torrance.
F. This Section is meant to expressly prohibit all activities for which a State license is required. Accordingly, the City of Torrance will not issue any permit, license, or other entitlement for any activity for which a State license is required under the MMRSA.

SECTION 412.1.030 – Use or Activity Prohibited by State or Federal Law
Nothing contained in this Chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any State or Federal law.

SECTION 412.1.040 – Public Nuisance.
Any violation of any provision of this Chapter will be, and is declared to be a public nuisance and may be summarily abated by the City pursuant to the Torrance Municipal Code, Code of Civil Procedure Section 731, or any other remedy available to the City under Local, State, or Federal law.”

SECTION 2
Any inconsistent provisions of the Torrance Municipal Code, or any other inconsistent ordinances of the City, are repealed, to the extent of the inconsistencies.

SECTION 3
If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision will not affect that validity of the remaining portion of this Ordinance. The City Council of the City of Torrance hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or other portions might subsequently be declared invalid or unconstitutional.

SECTION 4
This ordinance will take effect thirty days after the date of its adoption. Within fifteen days following adoption, this ordinance or a summary of this ordinance, if authorized by the City Council, will be published at least once in the Daily Breeze, a newspaper of general circulation, published and circulated in the City of Torrance.
INTRODUCED and APPROVED this 12th day of January, 2016.

ADOPTED and PASSED this ______ day of ______, 2016.

APPROVED AS TO FORM:
JOHN L. FELLOWS III, City Attorney

Mayor Patrick J. Furey
ATTEST:

by
Patrick Q. Sullivan, Assistant City Attorney

Rebecca Poirier, MMC, City Clerk
ORDINANCE NO. 3795

SUMMARY

On January 26, 2015, the City Council of the City of Torrance adopted Ordinance No. 3795, which added a new Chapter 12 to Division 4 of the Torrance Municipal Code prohibiting all medical marijuana dispensaries, marijuana cultivation, commercial medical marijuana activity, and marijuana deliveries citywide.

The Ordinance adds new definitions to the Torrance Municipal Code relating to medical marijuana including, but not limited to: cannabis, cultivation, delivery, dispensary, distributor, manufacturer, medical cannabis, mobile marijuana dispensary, and transporter.

The Ordinance makes the following activities prohibited activities in the City of Torrance: dispensaries of medical cannabis, cultivation of medical cannabis, deliveries of medical cannabis, mobile marijuana dispensaries, commercial cannabis activities, and any activity for which a State license is required under the Medical Marijuana Regulation and Safety Act.

The Ordinance provides that nothing in the Chapter shall be deemed to permit or authorize any use or activity that is otherwise prohibited by any State or Federal law.

Additionally, the Ordinance provides that any violation of the Chapter is declared to be a public nuisance and may be summarily abated by the City of Torrance or any other remedy available to the City of Torrance under Local, State, or Federal law.