ORDINANCE NO. 303u

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO HILLS, CALIFORNIA, AMENDING CHAPTER 5.28 OF THE CHINO HILLS MUNICIPAL CODE TO PROHIBIT ALL COMMERCIAL MARIJUANA ACTIVITY

The City Council of the City of Chino Hills 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 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 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 contained language that required the city to prohibit cultivation uses either expressly or otherwise under the principles of permissive zoning, or the State would become the sole licensing authority. MMRSA also contained language that required delivery services to be expressly prohibited by local ordinance, if the City wished to do so.

K. On September 23, 2014, the City Council adopted Ordinance No. 275 expressly prohibiting medical marijuana collectives and medical marijuana cultivation throughout the City.

L. On November 8, 2016, the voters of the State of California passed proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA). The AUMA decriminalizes (under California law), controls and regulates the cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana,

including marijuana products, for use by adults 21 years of age or older. The AUMA also taxes the commercial growth and retail sale of marijuana. It does not, and cannot, affect federal regulations as to marijuana or its derivatives.

M. The AUMA expressly preserves local control over the regulation of marijuana-related businesses and marijuana-related land uses (Business & Professions Code § 26200, *et seq.*) The City Council wishes to prohibit all commercial marijuana activity and marijuana cultivation to the maximum extent authorized by State law.

N. In accordance with Government Code sections 36934 and 36937(b), the City Council finds that this Ordinance should be adopted on an urgency basis to preserve the public health, safety and welfare. A complete prohibition on commercial marijuana activities and marijuana cultivation in the City of Chino Hills is necessary to avoid the deleterious secondary effects of such activity as detailed herein. In addition to the negative effects recited above, marijuana cultivation and distribution can 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.) In Colorado, where recreational marijuana is legal and commercialized, marijuana-related traffic deaths increased 92% from 2010 to 2014 while all traffic deaths increased only 8 percent during the same time period. (*The Legalization of Marijuana in Colorado: The Impact*, Rocky Mountain High Intensity Drug Trafficking Area, Vol. 3, September 2015, pp. 14-15.) Use of marijuana by Colorado teens ages 12-17 is at least 56% higher than the national average. (*Id.* at pp. 35-36.) A study released in May 2016 by AAA Foundation for Traffic Research found that fatal crashed involving drivers who recently used marijuana doubled in the state of Washington after it legalized marijuana. (*Prevalence of Marijuana Involvement in Fatal Crashes: Washington, 2010-2014*, May 2016, AAA Foundation for Traffic Safety.) Based on these facts and other evidence, there is a concern that the proliferation of marijuana-related businesses and activities in the City would result in increased crime and other negative secondary effects like those experienced in other communities throughout California and around the country. By expressly prohibiting commercial marijuana activities and marijuana cultivation to the maximum extent authorized by State law, the City can further safeguard against the detrimental secondary impacts associated with such activities.

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, the Medical Marijuana Regulation and Safety Act, the Control, Regulate and Tax Adult Use of Marijuana Act, and Government Code sections 36934 and 36937(b).

SECTION 3: Chapter 5.28 of the Chino Hills Municipal Code is amended to read as follows:

"Chapter 5.28 — MARIJUANA

Sections:

5.28.010 Definitions.
5.28.020 Commercial marijuana activity—Prohibited.
5.28.030 Cultivation of marijuana for personal use.
5.28.040 Severability.
5.28.050 Interpretation.

5.28.010 Definitions.

"Commercial marijuana activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery, or sale of marijuana and marijuana products.

"Cultivation" means any activity involving the planting, growing, cultivating, harvesting, drying, curing, grading, trimming or processing of marijuana.

"Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

"Marijuana" means all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:

(a) industrial hemp, as defined in Health & Safety Code Section 11018.5; or

(b) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

"Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

"Marijuana cultivation facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana

product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

"Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

"Marijuana product manufacturing facility" means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

"Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

"Marijuana storage facility" means any entity or premises used for the storage of marijuana, marijuana products or marijuana accessories.

"Marijuana testing facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

"Private residence" means a house, an apartment unit, a mobile home, or other similar habitable dwelling.

"Retail marijuana store" means any entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers; or any premises, whether licensed or unlicensed, where marijuana, marijuana products, or devices for the use of marijuana or marijuana products are offered, either individually or in any combination, for retail sale, including an establishment that delivers marijuana and marijuana products as part of a retail sale.

5.28.020 Commercial marijuana activity—Prohibited.

No license can be issued for, nor shall any person operate, a marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, marijuana delivery business, marijuana storage facility, retail marijuana store, marijuana establishment, or any commercial marijuana activity in the City of Chino Hills.

5.28.030 Cultivation of marijuana for personal use.

A. Outdoor Cultivation. The cultivation of marijuana outdoors is prohibited in the City of Chino Hills regardless of purpose.

B. Indoor Cultivation. Not more than six plants may be cultivated, planted, harvested, dried, processed or possessed within a single private residence at one time pursuant to Health & Safety Code Section 11362.2.

5.28.040 Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this chapter, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

5.28.050 Interpretation.

The intent of this chapter is to prohibit commercial marijuana activities and the personal cultivation of marijuana, whether medical or recreational in nature, to the maximum extent allowed under state law. Nothing in this chapter shall be interpreted as allowing behavior otherwise prohibited by state law and nothing in this chapter shall be interpreted as prohibiting conduct that the city is expressly preempted from prohibiting under state law."

SECTION 4: *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 Chino Hills Municipal Code to expressly prohibit commercial marijuana activities and outdoor cultivation of marijuana in the City. The ordinance does not portend any development or changes to the physical environment. Further, the City Council finds that this ordinance is categorically exempt from further CEQA review under California Code Regs. Title 14, §§ 15305 (minor alterations in land use limitations) and 15308 (actions taken as authorized by local ordinance to assure protection of the environment). The City is not aware of any existing marijuana commercial uses in Chino Hills and the proposed ordinance would maintain the status quo. 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.

SECTION 5: *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 6: *Enforceability*. Repeal of any provision of the Chino Hills 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 7: *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 8: The City Clerk is directed to certify the passage and adoption of this Ordinance, cause it to be entered into the city of Chino Hill'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 9: *Declaration of Urgency*. Based on the findings set forth in Section 1, this is an urgency ordinance adopted for the immediate preservation of the public peace, health, safety and welfare. This Ordinance is adopted by a four-fifths vote and will become effective immediately upon adoption pursuant to Government Code section 36937(b).

INTRODUCED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Chino Hills, California this 22nd day of November, 2016.

Art Bennett

ART BENNETT, MAYOR

ATTEST:

CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:

Asst. City Atty.

MARK D. HENSLEY, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF CHINO HILLS)

I, CHERYL BALZ, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that Ordinance No. 303u was duly introduced and adopted at a regular meeting of the City Council held November 22, 2016 by the following vote, to wit:

AYES:	COUNCIL MEMBERS:	BENNETT, MARQUEZ, GRAHAM MORAN, ROGERS
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE

CHERYL BALZ, CITY CLERK

I hereby certify that the foregoing is the original of Ordinance No. 303u duly passed and adopted by the Chino Hills City Council at their regular meeting held on November 22, 2016 and that the Ordinance in its entirety was published on December 3, 2016 the Chino Hills Champion newspaper.

CHERYL BALZ, CITY CLERK