

**ATTACHMENT 2A
[REVISED] Ordinance
Pertaining to
Personal Marijuana Cultivation
and Prohibiting Smoking of
Marijuana in Public Places**

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ORDINANCE NO. XXXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA
AMENDING CHAPTER 34 OF THE POMONA CITY CODE TO ADD
ARTICLE X TO CHAPTER 34 TO IMPLEMENT A PERMITTING AND
REGULATORY PROGRAM FOR INDOOR PERSONAL CANNABIS
CULTIVATION AND TO PROHIBIT SMOKING CANNABIS IN
DESIGNATED AREAS**

WHEREAS, the City of Pomona ("City") is a Charter City, incorporated under the laws of the State of California, and has the power to make and enforce within its jurisdictional limits all local, police, sanitary, and other ordinances and regulations;

WHEREAS, on May 22, 2017, the City Council of the City of Pomona held a study session to discuss the potential impacts on the City of Pomona of the "Adult Use of Marijuana Act" (AUMA also known as Prop 64), and at the conclusion of such meeting staff was directed to create such further regulations to address the concerns raised by the community and the City Council at that time:

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

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of cannabis for non-medical purposes";

WHEREAS, in 2004 the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 *et seq.* and referred to as to the "Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate cannabis for medical purposes with a limited defense to certain specified state criminal statutes;

WHEREAS, on April 3, 2006, City Council adopted interim Urgency Ordinance No. 4058 to establish a forty-five (45) day citywide moratorium on the establishment and operation of medical marijuana dispensaries;

WHEREAS, on May 15, 2006 the City Council adopted Interim Ordinance 4060 to extend the moratorium for an additional ten (10) months and fifteen (15) days;

WHEREAS, the September 2006 “White Paper” entitled “Medical Marijuana: History and Current Complications” produced by the Riverside County District Attorney’s Office and various other reports and articles indicate that such dispensaries compromise the health and welfare of citizens;

WHEREAS, on March 5, 2007 the City Council adopted Interim Ordinance No. 4080 to extend the moratorium for an additional year;

WHEREAS, on November 14, 2007, the City’s Planning Commission voted to adopt Planning Commission Resolution 07-086 recommending City Council approval of Code Amendment (06-001) and Specific Plan Amendments (SPA 07-004, SPA 07-005, SPA 07-006, SPA 07-007, and SPA 07-008) to prohibit the establishment and operation of medical marijuana dispensaries citywide;

WHEREAS, on December 17, 2007, City Council considered Code Amendment (06-001) and Specific Plan Amendments (SPA 07-004, SPA 07-005, SPA 07-006, SPA 07-007, and SPA 07-008) and voted to approve the introduction for the first reading of Ordinance No. 4096 to prohibit the establishment and operation of medical marijuana dispensaries citywide;

WHEREAS, on February 4, 2008, City Council passed and adopted Ordinance No. 4096 to prohibit the establishment and operation of medical marijuana dispensaries citywide;

WHEREAS, 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;

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 impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land” Further, 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 government entity to prohibit the cultivation of marijuana under its land use authority;

WHEREAS, on October 9, 2015 Governor Jerry Brown signed three bills into law (AB 266, AB 243, and SB 643), collectively currently known as the Medical Cannabis Regulation and Safety Act (“MCRSA”, formerly “MMRSA”). MCRSA establishes 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. MCRSA allows the City to completely prohibit commercial medical marijuana activities;

WHEREAS, Business and Professions Code section 19340(a) provides that deliveries of marijuana can only be made in a city that does not explicitly prohibit it by local ordinance;

WHEREAS, on January 11, 2016 City Council adopted Ordinance No. 4215, amending the Pomona Zoning Ordinance to prohibit marijuana cultivation citywide;

WHEREAS, on February 22, 2016 City Council adopted Ordinance No. 4217, amending Chapter 34 of the Pomona City Code to add Article IX relating to the prohibition of marijuana deliveries citywide;

WHEREAS, on November 8, 2016, 57.1% of voters in California, 59.5% of voters in Los Angeles County, and 56.9% of voters in the City of Pomona approved Proposition 64, titled the "Adult Use of Marijuana Act" (the "AUMA"), which became effective immediately to reduce the criminal penalties for various acts and uses of cannabis, and enacted a state statutory scheme legalizing, controlling, and regulating the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical (i.e., recreational) marijuana, including marijuana products, for use by adults twenty-one (21) years of age and older;

WHEREAS, the AUMA sets an implementation date for commercial operations of January 1, 2018;

WHEREAS, pursuant to Business & Professions Code section 26200(a), the AUMA allows cities to ban all or part of the uses allowed under its provisions:

Nothing in this division shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction. (Emphasis added);

WHEREAS, currently pursuant to the Pomona City Code and the Pomona Zoning Ordinance, as discussed hereinabove, the City of Pomona explicitly prohibits medical cannabis dispensaries and cannabis cultivation, as well as cannabis deliveries citywide;

WHEREAS, the Federal Controlled Substance Act, 21 U.S.C § 801 et seq., continues to classify cannabis 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 States, and that has not been accepted as safe for use under medical supervision. Currently, the Federal Controlled Substances Act contains no exemption for medical or recreational purposes;

WHEREAS, the AUMA added, among other provisions, subdivision (a)(3) to Section 11362.1 of the Health and Safety Code (which all subsequent statutory references being to such Code) making it legal under state and local law for persons twenty-one (21) years and older to possess, plant, cultivate, harvest, dry, or process not more than six (6) living cannabis plants, and possess the cannabis produced by the plants, upon the grounds of a private residence (hereinafter "Personal Cultivation Activities"), provided such Personal Cultivation Activities comply with various requirements set forth in Section 11362.2;

WHEREAS, notwithstanding the foregoing, in subdivision (b) of Section 11362.2 the AUMA allows cities to completely prohibit persons from engaging in outdoor Personal Cultivation Activities, and while cities may not completely *prohibit* indoor Personal Cultivation Activities, cities *may enact and enforce reasonable regulations* on indoor Personal Cultivation Activities;

WHEREAS, Personal Cultivation Activities give rise to, or pose a significant risk of giving rise to, various health and safety concerns and negative impacts to residents of the City of Pomona, including but not limited to burglaries and robberies, trespassing, personal and property crimes, fire and building hazards, chemical and waste disposal, mold growth, offensive odors, and possession, and increased access to and use by persons under the age of twenty-one (21);

WHEREAS, in light of such concerns, in accordance with the intent and language of the AUMA, the City Council for the City of Pomona desires to keep in place the citywide ban on cannabis cultivation in place since January 11, 2016 pursuant to Ordinance No. 4215;

WHEREAS, on June 27, 2017, Governor Brown signed Senate Bill 94, the "Medicinal and Adult-Use Cannabis Regulation and Safety Act" ("SB 94" or the "MAUCRSA"). SB 94 creates one state regulatory structure for medical and recreational cannabis use and commercial cannabis activities, reconciling AUMA, with Proposition 215 and MCRSA. SB 94 also retains the provisions of MCRSA and AUMA that granted local jurisdictions control over whether commercial cannabis activity is allowed. Specifically, California Business and Professions Code section 26200 provides that SB 94 shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the state. SB 94 continues to provide that a state licensing authority shall not approve an application for a state license for a business to engage in commercial cannabis activity if approval of the state license will violate the provisions of any local ordinance or regulation. SB 94 requires that a state licensing authority begin issuing licenses to marijuana businesses January 1, 2018;

WHEREAS, SB 94 also makes amendments to state law concerning definitions related to marijuana and cannabis activity, and in an effort to be consistent with the most current state

laws concerning the regulation of marijuana and cannabis, City Council desires to incorporate said applicable definitions within the City's laws;

WHEREAS, consistent with the AUMA and SB 94, the City Council also desires to explicitly designate where smoking cannabis is prohibited;

WHEREAS, the City Council has duly considered the proposed changes to the Pomona City Code; and

WHEREAS, the City Council for the City of Pomona finds and declares that this ordinance constitutes a valid exercise of police power in accordance with the City's Charter, is consistent with the language and intent of the AUMA, as well as cannabis related state laws mentioned hereinabove, and furthers the health, safety, and general welfare of the residents of the City of Pomona.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Pomona as follows:

SECTION 1. Incorporation of Recitals

The City Council for the City of Pomona finds and declares that the foregoing recitals are true and correct, and incorporates said recitals fully into this Ordinance as substantive findings.

SECTION 2. The purpose of this Ordinance is to enact and enforce reasonable regulations on personal cannabis cultivation activities in private residences by enacting a permitting and regulatory program for such activity to the furthest extent possible under state and federal law. The City Council's regulation of such activity is within the authority conferred upon the City Council by the City's Charter and applicable state law, and is an exercise of its police powers to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community.

SECTION 3. Pursuant to the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the City Council has determined that the project is exempt per Section 15061(b)(3). Section 15061(b)(3) exempts projects where it can be seen with certainty that the activity does not have the potential to cause a significant direct effect on the environment. Pomona City Code currently prohibits exterior cultivation. State law allows personal cultivation to occur indoors. The adoption of this code amendment does not have the potential to cause a significant direct effect on the environment. Rather, because these amendments will limit cannabis activity citywide, the adoption has the potential to prevent or reduce significant direct effects on the environment.

The purpose of this Chapter is also to enact and enforce reasonable regulations on personal cannabis cultivation activities, for medical and recreational purposes, by enacting a permitting and regulatory scheme for this action in residential zoning districts.

SECTION 4. Chapter 34, titled "Offenses and Miscellaneous Provisions," of the Pomona City Code is hereby amended to add Article ~~X~~, X, "Marijuana Regulations – Indoor Personal Cultivation Permit; Smoking Prohibitions," as follows:

ARTICLE X. – MARIJUANA REGULATION – INDOOR PERSONAL CULTIVATION PERMIT; SMOKING PROHIBITION

Sec. 34-900. - Definitions.

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

Accessory structure shall mean a fully enclosed, lawful structure that is physically detached from, and secondary and incidental to, the existing primary structure of a *private residence*, as that term is defined herein.

California Adult Use of Marijuana Act shall mean and refer to the provisions of California law added by Proposition 64, approved by California voters at the election occurring on November 8, 2016.

City shall mean the City of Pomona.

Code shall mean the Pomona City Code, including all laws, ordinances, and regulations adopted and incorporated therein.

Cannabis. means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "*Cannabis*" also means the separated resin, whether crude or purified, obtained from cannabis. "*Cannabis*" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "*Cannabis*" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code, or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. The terms "marijuana" and "cannabis" shall be synonymous and have the same meaning.

Cannabis products. Cannabis 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 cannabis or concentrated cannabis and other ingredients.

Commercial cannabis activity. The cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, distribution, delivery or sale of cannabis and cannabis products, whether the cannabis or cannabis products is for medical or recreational purposes. *Commercial cannabis activity* is meant to include all cannabis related activities for which a State license is required, pursuant to applicable State laws, as they may be amended from time to time.

Cultivation. Any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

Delivery. The transfer of cannabis, including the use of any technology platform to arrange for or facilitate the transfer of cannabis, by any business, cooperative, or collective, whether or not carried on for profit, to or from any location within the City of Pomona.

Electronic smoking device means an electronic or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of marijuana, hashish, honey oil, cannabis infused wax, nicotine or other substances, whether as a vapor or a gas. Electronic smoking device includes, but is not limited to, any such device, whether manufactured, distributed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, or any other product name or descriptor. Electronic smoking device does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

Indoor shall mean entirely within and inside a lawfully existing private residence, residential structure, or accessory structure.

~~*Marijuana* shall mean 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. The terms *marijuana* and *cannabis* shall be synonymous and have the same meaning. It does not include:~~

~~(1) — Industrial hemp, as defined in Section 11018.5 of the California Health and~~

Safety Code; or

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

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

Manufacture. To compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

Outdoor shall mean any location within the City of Pomona that is not within a lawfully existing fully enclosed structure.

Permittee shall mean any real person having been issued and maintaining a valid personal cultivation permit under this Article.

Personal cultivation permit or permit shall mean and refer to the permit issued by the City under this Article authorizing permittees to possess, plant, cultivate, harvest, dry, and process cannabis produced by the plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence.

Private residence shall mean a legally existing house, an apartment unit, a mobile home, or other similar dwelling, and inclusive of any rooms, garages, or structures physically attached thereto. A lawful accessory structure located on the same parcel as a private residence shall be considered a part of that private residence.

Smoke means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts.

Smoking means engaging in the act that generates smoke, such as, but not limited to: (a) possessing a lighted pipe, bong, carb, hookah pipe, cigar, joint, blunt, or a lighted cigarette of any kind; (b) operating an electronic smoking device; or (c) lighting or igniting a hookah pipe, a cigar, an electronic smoking device, a bong, a carb, a joint, a blunt, a pipe, or a cigarette of any kind.

Sec. 34-901. — Cultivation Prohibitions.

- (a) Marijuana Cultivation Without a Permit. Marijuana cultivation shall be prohibited within the City of Pomona and considered unlawful to the extent it is unlawful under California law, with the exception of personal cannabis cultivation of no more than six (6) plants in a private residence by first securing a permit pursuant to Section 34-902.
- (b) Outdoor Cultivation. The outdoor cultivation of cannabis is expressly prohibited.
- (c) Commercial Cultivation. Any commercial cannabis activity, including cultivation of cannabis is expressly prohibited.
- ~~(d) Smoking and use of Marijuana. The smoking and use of marijuana, as further regulated in section 34-903 is expressly prohibited.~~

Sec. 34-902. - Indoor Personal Marijuana Cultivation.

- (a) Purpose and Intent. It is the purpose and intent of this section to enact and enforce reasonable regulations to reasonably regulate the ability of an individual twenty-one (21) years of age or older to possess, plant, cultivate, harvest, dry, or process, for personal, noncommercial use, not more than six (6) cannabis plants indoors and to possess the cannabis produced by the plants, all in accordance with the Adult Use of Marijuana Act of 2016 and, specifically, Sections 11362.1 and 11362.2 of the Health and Safety Code. The cultivation of cannabis for personal noncommercial and recreational use may only take place in accordance with this Article.
- (b) Indoor Personal Cultivation; Permit Required. It shall be unlawful for any person to plant, cultivate, harvest, dry, or process cannabis, cannabis plants, or the cannabis produced by the plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, without first obtaining and maintaining a valid indoor personal cultivation permit under this Article.
- (c) Indoor Personal Cultivation Permit.
 - (1) Application. Every person required to have a personal cultivation permit under this Article shall make an application therefor, in a form prescribed by the Development Services Director of the City. Such application shall include the written permission, including notarized signatures, of the legal

owner(s) consenting to the indoor personal cultivation of cannabis on the private residence. Upon the payment of the fee established by resolution or ordinance of the City Council, and upon determination that none of the grounds for denial as specified in Section 34-902(g)(1) exist, the Development Services Director shall issue to such person a permit which shall contain:

- a. The name of the person to whom the permit is issued.
- b. The permit number issued.
- c. The address of the private residence for which the permit has been issued.
- d. The date of expiration of such permit.
- e. Any conditions imposed by the City, if in addition to those proscribed in this Article.
- f. If the private residence is leased or rented private residence to the permittee, the name of the property owner(s) whom gave the express, written consent for the cannabis cultivation activities pursuant to this Article.
- g. Such other information as may be deemed necessary to process the application for permit (e.g., diagram, etc.).

(2) No more than one (1) permit per private residence unit shall be issued and maintained at any one time, regardless of the number of persons dwelling or residing in the private residence unit or upon the grounds thereof. Each legal residential unit on a lot containing more than one legal residential unit shall be considered a separate grounds of a residential unit for purposes of this Article.

(3) Due to the privacy concerns associated with the use and cultivation of cannabis outweighing the public benefit in disclosure of information contained in application for cultivation permits, such application and permit and the personal information contained therein (including address) shall not be considered a disclosable public record.

(d) Indoor Personal Cultivation Regulations.

(1) Permittees issued a personal cultivation permit under this Article shall, at all

times, conduct the activities authorized by said permit in strict accordance with the requirements of this section, Article, and the California Adult Use of Marijuana Act, and all other applicable State law in California, whichever is more restrictive, as well as any conditions of approval imposed by the City.

- a. All planting, cultivation, harvesting, drying, and processing (or similar actions) of cannabis plants, and the cannabis produced by the plants, shall be conducted entirely within the interior of a private residence or accessory structure.
- b. The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping, and sanitation facilities with proper ingress and egress. Kitchens, bathrooms or primary bedrooms of a residence shall not be used for cannabis cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping and bathing.
- c. Cultivation of cannabis shall not displace required off-street parking.
- d. No permittee shall exercise or engage in any of the activities authorized by a personal cultivation permit, or otherwise engage in the planting, cultivation, harvesting, drying, and processing or cannabis plants, and the cannabis produced by the plants, except upon the grounds of a private residence of which the permittee is owner of the private residence, or a lawful, permanent resident of the residence who entered into a written lease agreement with the owner of the premises. For purposes of this paragraph, a lawful, permanent resident shall mean any permittee who, as of a given date, obtained the lawful right to occupy the private residence for more than thirty (30) consecutive days.
- e. No cannabis may be cultivated in a leased or rented private residence without the prior express, written consent of the property owner. Said permittee shall obtain the written permission, including notarized signatures, of the legal owner(s) consenting to the indoor personal cultivation of cannabis on the private residence.
- f. Not more than six (6) cannabis plants (of any size, maturity, or stage of life from germination through dispersal, harvest, or death) may be planted, cultivated, harvested, dried, or processed upon the grounds of any single private residence. Pre-germination, cultivation/growth,

harvest, and post-harvest activities are not authorized to be done off of the premises for which a permit is issued.

- g. All living cannabis plants, and any cannabis produced by the plants in excess of 28.5 grams, shall be kept within the private residence or accessory structure in a locked and secured space.
 - h. No living cannabis plants, cannabis cultivation activities, cannabis, cannabis products, or equipment, shall be visible, and no odor, light, heat, or other environmental impacts associated with personal cultivation shall be detectable, from a public place, right-of-way, neighboring public or private property, or beyond the bounds of the grounds of the private residence at any time.
 - i. All structures and buildings, or portions thereof, of a private residence used to cultivate cannabis pursuant to this Article shall, at all times, comply with all applicable laws and provisions concerning building and construction of structures, including, without limitation, the Pomona Zoning Ordinance, as well as Building and Building Regulations, pursuant to Chapter 74 of the Pomona City Code, and the adopted and incorporated California Building Standards Code, as amended from time to time.
 - j. The indoor use of generators and/or gas products, including, without limitation, CO2, butane, propane, and natural gas shall be prohibited for the cultivation and/or processing of cannabis.
 - k. Not more potable water than is reasonably necessary to sustain six (6) living plants shall be utilized for cultivation.
 - l. The lighting used for cultivation shall not exceed 1200 watts.
 - m. No nuisance shall be caused or maintained on the grounds of the private residence.
- (2) As a condition of approval of any application for any personal cultivation permit, the Development Services Director may, in his or her discretion, impose additional requirements and restrictions in addition to those expressly set forth in this section, to the extent such additional requirements and restrictions are necessary to ensure activities authorized by a personal cultivation permit are exercised in a manner that preserves and protects the public interest. In imposing such additional requirements and restrictions,

the Development Services Director may consider such factors as the proximity of the private residence to sensitive land uses, the physical characteristics of the grounds of the private residence, and other relevant matters.

(e) Enforcement and Inspection Authority.

- (1) Upon seventy-two (72) hour written notice, the Development Services Director, or assignee, and any City police officer or code enforcement officer, shall have the right to enter into and upon the grounds of any private residence, and into or upon a private residence or accessory structure, for which a permit has been issued pursuant to this Article for purposes of conducting an inspection to ensure compliance with the requirements of this Article, the Pomona City Code, state law, and the Adult Use of Marijuana Act. A permittee's refusal to allow said inspection shall be grounds for revocation of the permit.
- (2) Notwithstanding the foregoing, the City shall make reasonable efforts to schedule and conduct the inspection authorized by this section at the date and time agreeable to be the permittee; provided that if the City makes reasonable efforts with a permittee to establish an agreeable date and time for an inspection, the failure of refusal of a permittee to establish an inspection date and time may be construed as a refusal to allow the inspection.
- (3) This section shall not limit or be interpreted as limiting the authority of the City or any representative thereof to enter upon or into the grounds of a private residence, or the private residence itself, as otherwise may be authorized by law or pursuant to a court-issued warrant.

(f) Sale or Transfer of Marijuana from Permitted Plants Prohibited.

- (1) It shall be unlawful for any person or permittee to sell, or otherwise transfer for any consideration whatsoever, cannabis plants, cannabis, or cannabis products produced by the permitted plants, to any other person.
- (2) It shall be unlawful for any person or permittee to sell, transfer, give away, or provide access to cannabis plants, cannabis, or cannabis products produced by the permitted plants, to any person under the age of 21.

(g) Grounds for Permit Denial.

- (1) Grounds for denial. The Development Services Director shall deny any application for a permit or for the renewal thereof if the Development Services Director makes any of the following determinations:
- a. The applicant has not first obtained or has not maintained in full force and effect the permit required under this Article prior to engaging in the activities authorized by the permit.
 - b. The private residence or accessory structure used, or proposed to be used, to engage in the activities fails to comply with all applicable health, safety, zoning, fire, building and safety laws and regulations.
 - c. The applicant has knowingly made any false, misleading, or fraudulent statement of material fact in the application for the permit, in the application for or renewal of the permit.
 - d. The applicant is in violation of a provision of the Pomona City Code or owes taxes, fees, or penalties pursuant to this Article or any other provision of the Pomona City Code.
 - e. The applicant of a new permit, or for the renewal thereof, has had a permit denied or revoked by the City within the preceding twelve (12) months.
 - f. The applicant has failed to provide information required for processing of such application.
- (2) Notice of Denial. Upon determination of the existence of any factors or conditions specified in Section 34-902(g)(1) hereinabove, the Development Services Director shall advise the applicant by sending to the applicant a notice of denial in writing by U.S. mail within ten (10) business days of such determination. Failure to receive such notice of denial shall not constitute a permit being deemed approved. The notice of denial shall state the Development Services Director's findings and/or determinations that justify denial of the permit application, and shall include a summary of the evidence upon which such findings and/or determinations are based.
- (h) Permit – Posting or Storage. Permits issued pursuant to this Article shall be posted, kept, stored, or maintained in the private residence or accessory structure for which the permit was issued, and shall remain so posted, kept, stored, or maintained

during the period the permit remains in force and be ready for inspection upon request by the Development Services Director or assignee, any City police officer, or any code enforcement officer.

(i) Permit – Duration and Renewal.

(1) Permits issued pursuant to this Article shall be valid for two (2) years from the date of issuance.

(2) Permits issued pursuant to this Article may be renewed upon the filing of an application therefore with the Development Services Director. The application for renewal shall be in substantially the same form as an application for an original permit. It shall be issued or denied in a like manner as in the case of the original permit.

(j) Permit Fees. A filing and processing fee, in an amount established by resolution or ordinance of the City Council, shall be submitted with each application for an original permit, or applications for permit renewals. The fee provided for in this section is imposed to cover the cost of processing and reviewing permit applications, and to cover the cost of site inspections provided for in this Article. The fee provided for in this section may be amended from time to time by resolution of the City Council.

(k) Transfer of Permit Prohibited. No permit issued pursuant to this Article shall be transferrable or assignable to any other person. The activities authorized by any permit issued pursuant to this Article shall only be conducted inside the private residence or accessory structure for which the permit was issued.

(l) Permit Revocation.

(1) Grounds for Revocation. The Development Services Director shall revoke any permit issued pursuant to this Article, if the Development Services Director makes any of the following findings or determinations:

a. There exists any ground for denial of the permit issued pursuant to this Article.

b. The permittee has knowingly made any false, misleading, or fraudulent statement of material fact in the application for a permit or in any report required to be filed by law.

- c. The permittee has violated or is violating any condition of approval imposed on such permit, or upon any other entitlement granted by the City or other government agency.
- d. The permittee has violated or is violating any ordinance, law, or regulation of the City, Los Angeles County, or State of California in the course of exercising any rights under the permit.
- e. The permittee has been held liable for, or has been convicted of, any offense involving the maintenance of a nuisance resulting from any act performed in exercising any rights under the permit.
- f. The continued activities under the permit would endanger, disrupt or otherwise be detrimental to the public peace, health, safety, morals or general welfare of the City or its inhabitants, or constitute a public nuisance.

(2) Order of Revocation. The Development Services Director shall serve a written order of revocation upon the permittee the grounds for revocation and informing the permittee of his/her appeal rights (including method and timeline for requesting appeal). The order shall also advise the licensee/permittee of the effective date of the revocation.

(3) Effectiveness of Order. Any permit revoked pursuant to the provisions of this Article shall become effective, and the permittee shall cease all activities authorized under such permit, no later than ten (10) calendar days from the service of the order of revocation. Where an appeal is timely filed in accordance with the provisions of this Article, the notice of revocation shall be stayed pending the City Manager's, or an appointed hearing officer's, resolution of the appeal pursuant to the provisions of this Article.

(m) Appeal of Permit Application Denial or Revocation of a Permit. The denial of any application for a permit, or the revocation of a City-issued permit, may be appealed to a hearing officer as appointed by the City Manager, and such appeal shall be governed by the standards and procedures set forth in Section 30-129 of this Code. The applicant or permittee may seek prompt judicial review of such administrative actions or decision in a court of competent jurisdiction as provided by law, pursuant to Section 1094.6 of the California Code of Civil Procedure.

- (a) No person shall smoke or ingest cannabis in any public place. Public place shall include but not be limited to the front yard of a residence, or any balcony, patio, yard, or other non-enclosed portion of a property able to be viewed from public property, right-of-way, or another public place.
- (b) No odor or other environmental impact associated with the smoking of cannabis in a private residence shall be detectable, from a public place, right-of-way, neighboring public or private property, or beyond the bounds of the grounds of the private residence at any time.
- (c) Smoking of cannabis shall be prohibited in any building, structure, location, area or place where the Code currently prohibits the smoking of tobacco.

Sec. 34-904. - Violations.

- (a) No person owning, leasing, occupying or having charge, control, or possession of any premises within the City shall cause, allow, suffer, or permit such premises to be used in violation of this Article.
- (b) Except for Section 34-903, which shall be subject to an infraction pursuant to state law, any person violating any provision of this Article shall be guilty of a misdemeanor, and shall be subject to the penalty thereof, as set forth in Section 1-7 of this Code. Any such person shall be guilty of a separate offense for each and every day a violation of the provisions of this Article is committed, continued, or permitted to be continued by such person.
- (c) Any violation of this Article is hereby declared a public nuisance and, as such, may be abated or enjoined from further operation within the City of Pomona by administrative, injunctive or other equitable means. All means of enforcement authorized under this Code may be used to address violations of this Article.

Sec. 34-905. - Severability.

If any section, subsection, sentence, or clause of this Article is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article.

SECTION 5. The City Clerk shall attest to the passage and adoption of this Ordinance, and shall cause same to be posted as required by law, and this Ordinance shall take effect thirty (30) days after its final adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2017.

ATTEST:

CITY OF POMONA:

Eva M. Buice, City Clerk

Tim Sandoval, Mayor

APPROVED AS TO FORM:

Arnold Alvarez-Glasman, City Attorney

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, EVA M. BUICE, CITY CLERK of the City of Pomona do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Pomona held on the ____ day of _____, 2017 and adopted on the ____ day of _____, 2017 by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Pomona, California, this ____ day of _____ 2017.

Eva M. Buice, City Clerk