

1 **WHEREAS**, in May 2013, the California Supreme Court issued its decision in *City of*
2 *Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729,
3 holding that cities have the authority to regulate or ban outright medical marijuana land uses; and

4 **WHEREAS**, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section
5 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal
6 prosecution without regard to a claimed medical need; and

7 **WHEREAS**, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana
8 Regulation and Safety Act” (“Act”) into law; and

9 **WHEREAS**, the Act becomes effective January 1, 2016 and contains provisions which
10 allow for local governments to regulate licenses and certain activities thereunder; and

11 **WHEREAS**, the Act contains a provision which sets forth that the State shall become the
12 sole authority for regulation under certain parts of the Act, unless local governments have “land
13 use regulations or ordinances regulating or prohibiting the cultivation of marijuana...” (Health
14 and Safety Code §11362.777(c)(4); and

15 **WHEREAS**, several California cities have reported negative impacts of marijuana
16 cultivation, processing, and distribution uses, including offensive odors, illegal sales and
17 distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards,
18 and problems associated with mold, fungus, and pests; and

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

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

1 **WHEREAS**, the indoor cultivation of marijuana has potential adverse effects to the health
2 and safety of the occupants; including structural damage to the building due to increased moisture
3 and excessive mold growth which can occur and can pose a risk of fire and electrocution;
4 additionally, the use of pesticides and fertilizers can lead to chemical contamination within the
5 structure; and
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7 **WHEREAS**, the Attorney General’s August 2008 Guidelines for the Security and Non-
8 Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other
9 concentration of marijuana in any location or premises without adequate security increases the
10 risk that nearby homes or businesses may be negatively impacted by nuisance activity such as
11 loitering or crime; and
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13 **WHEREAS**, based on the experiences of other cities, these negative effects on the public
14 health, safety, and welfare are likely to occur, and continue to occur, in the City due to the
15 establishment and operation of marijuana cultivation, processing, and distribution uses; and
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17 **WHEREAS**, the Municipal Code (“Code”) does not address the cultivation of medical
18 cannabis; and
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20 **WHEREAS**, based on the findings above, the potential cultivation of cannabis in the City
21 without regulation poses a current and immediate threat to the public health, safety and welfare in
22 the City due to the negative land use and other impacts of such uses as described above; and
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24 **WHEREAS**, based on the findings above, the City Council wishes to prohibit the
25 issuance or approval of business licenses, subdivisions, use permits, variances, building permits,
26 or any other applicable entitlement for cannabis cultivation; and
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28 **WHEREAS**, such a prohibition is consistent with the Colton General Plan, and promotes
the following:

1 Land Use Element - Goal LU-6. "Minimize or eliminate land use conflicts where
2 residences are in close proximity to ...industrial businesses." Adoption of a ban on marijuana
3 cultivation eliminates the chance of creating such land use incompatibility.
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5 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COLTON,**
6 **CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

7 **SECTION 1. Incorporation of Recitals.** The City Council hereby finds that all of the
8 foregoing recitals and the staff report presented herewith are true and correct and are hereby
9 incorporated and adopted as findings of the City Council as if fully set forth herein.

10 **SECTION 2. Repeal.** The City Council of the City of Colton hereby repeals Section
11 18.04.321.

12 **SECTION 3.** The City Council of the City of Colton hereby amends Section 18.48.130
13 in its entirety to read as follows:

14 **"18.48.130 - Prohibition of Businesses or Uses that Violate State or Federal Law; Medical
15 Cannabis Uses.**

16 A. For purposes of this Title, the following definitions shall apply:

17 1. "Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or
18 Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or
19 purified, extracted from any part of the plant; and every compound, manufacture, salt,
20 derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means
21 the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also
22 means marijuana as defined by Section 11018 of the Health and Safety Code as enacted
23 by Chapter 1407 of the Statutes of 1972.

24 2. "Cannabis dispensary" means a facility where cannabis, cannabis products, or devices
25 for the use of cannabis or cannabis products are offered, either individually or in any
26 combination, for retail sale, including an establishment that delivers cannabis and
27 cannabis products as part of a retail sale.

28 3. "Cannabis manufacturer" means a person that conducts the production, preparation,
propagation, or compounding of manufactured cannabis, or cannabis products either
directly or indirectly or by extraction methods, or independently by means of chemical
synthesis or by a combination of extraction and chemical synthesis at a fixed location that
packages or repackages medical cannabis or cannabis products or labels or relabels its
container

4. "Cannabis Cultivation" means any activity involving the planting, growing, harvesting,
drying, curing, grading, or trimming of cannabis.

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2 5. "Cannabis Delivery" means the commercial transfer of cannabis or cannabis products,
and includes origination or termination within the City as well as a delivery business.

3
4 B. Cannabis dispensaries, cultivation, cannabis manufacturers, and delivery of cannabis, as
5 defined in Section 18.04.321, shall be considered prohibited uses in all zoning districts of
6 the City. No use permit, variance, building permit, or any other entitlement or permit,
7 whether administrative or discretionary, shall be approved or issued for the establishment
8 or operation of cannabis dispensaries, cannabis cultivation, cannabis manufacturers, and
9 delivery of cannabis as defined herein in any zoning district, and no person shall otherwise
establish such businesses or operations in any zoning district. Any Business, operation or
Use that cannot be conducted or carried out without being in violation of state or federal
law, including any Medical Cannabis Dispensary as the term is defined in this Code, shall
be prohibited in all planning areas, Districts, or zones within the City.

10 C. No person, whether as principal, agent, employee or otherwise, shall violate, cause the
11 violation of, or otherwise fail to comply with any of the requirements of this Section.
12 Every act prohibited or declared unlawful, and every failure to perform an act made
13 mandatory by this Section, shall be a misdemeanor or an infraction, at the discretion of the
14 City Attorney or the District Attorney. In addition to the penalties provided in this
Section, any condition caused or permitted to exist in violation of any of the provisions of
this Section is declared a public nuisance and may be abated as provided in Chapter 8.12
and/or under state law."

15 **SECTION 4. CEQA.** The City Council finds that this ordinance is not subject to the
16 California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections
17 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA
18 Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA
Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a
significant effect or physical change to the environment.

19 **SECTION 5. Severability.** If any section, subsection, subdivision, sentence, clause,
20 phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the
21 decision of any court of competent jurisdiction, such decision shall not affect the validity of the
22 remaining portions of this Ordinance. The City Council hereby declares that it would have
23 adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or
24 portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions,
25 sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

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1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF COLTON)

4 CERTIFICATION

5 I, CAROLINA R. PADILLA, City Clerk of the City of Colton, California, do hereby
6 certify under penalty of perjury that the foregoing is a full, true and correct copy of
7 ORDINANCE NO. O-01-16, and was duly passed, approved, and adopted by the City
8 Council of the City of Colton at its Regular Meeting held on the 19th day of January,
9 2016, by the following vote to wit:

10
11 AYES: COUNCILMEMBER Toro, Jorrin, Navarro, González,
12 Bennett, Suchil and Mayor
DeLaRosa
13 NOES: COUNCILMEMBER None
14 ABSTAIN: COUNCILMEMBER None
15 ABSENT: COUNCILMEMBER None
16

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

19
20
21
22 CAROLINA R. PADILLA
23 City Clerk
24 City of Colton, California

25 (SEAL)
26
27
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