



1 United States Constitution, could regulate the intrastate manufacture and possession of  
2 marijuana in furtherance of the provisions of the Controlled Substances Act; and

3 **WHEREAS**, the Colton Municipal Code does not contain an express definition for  
4 Medical Marijuana Dispensaries and absent such express definition such Medical Marijuana  
5 Dispensaries have been prohibited in the City because they have neither been a permitted use  
6 or a conditionally permitted use in any zoning district in the City; and

7 **WHEREAS**, on May 6, 2013, in *City of Riverside v. Inland Empire Patients Health*  
8 *and Wellness Center, Inc.*, et al., the Supreme Court of California held that local governments  
9 can ban medical marijuana dispensaries by stating that nothing in the State of California's  
10 marijuana laws "expressly or impliedly limits the inherent authority of a local jurisdiction, by  
11 its own ordinances, to regulate the use of its land, including the authority to provide that  
12 facilities for the distribution of medical marijuana will not be permitted to operate within its  
13 borders." In this opinion, the Court further ruled that the California Constitution grants cities  
14 and counties broad power to determine the permitted uses of land within their borders, that the  
15 CUA and MMP state or imply no purpose to restrict that power, and that the City of  
16 Riverside's prohibition of marijuana dispensaries does not conflict with these statutes because  
17 the statutes do no more than exempt certain activities from the state's criminal and nuisance  
18 laws; and

19 **WHEREAS**, in response to the holding in *City of Riverside v. Inland Empire Patients*  
20 *Health and Wellness Center, Inc.*, marijuana advocates have stated that they plan to narrowly  
21 interpret the Court's holding to merely prohibit the dispensing of marijuana from a stationary  
22 storefront; and

23 **WHEREAS**, these marijuana advocates plan on advising marijuana dispensaries to  
24 create facilities or offices to handle or process the paperwork for joining a medical marijuana  
25 dispensary or medical marijuana cooperative as defined herein, to receive financial  
26 compensation or donations for the marijuana, or to give vouchers or other indicia of  
27 membership to new members only to later dispense the marijuana from a mobile or on- or off-  
28 site standalone delivery source independent of the office; and

**WHEREAS**, the exact number of mobile or on- or off-site standalone delivery  
services operating in California is unclear, since the state does not keep a registry of mobile  
medical marijuana distributors. In June of 2013, at least five services within 10 miles of  
Colton advertised direct delivery of marijuana within the City on "Weedmaps.com", an  
internet commercial listing website for such delivery services; and

**WHEREAS**, An increase in mobile dispensaries has been found to coincide with  
successful enforcement actions involving storefront dispensaries. In other parts of the state,  
shuttered businesses turned to delivery services instead. There is reason to expect the same in  
the City of Colton, particularly in light of the Supreme Court of California's recent ruling  
upholding the City of Riverside's ban on marijuana dispensaries, the City of Colton's  
willingness to cooperate with federal law enforcement operations, and its own aggressive  
enforcement actions against medical marijuana dispensaries; and

1           **WHEREAS**, Mobile dispensaries have been strongly associated with criminal  
2 activity. Delivery drivers, for example, are targets of armed robbers who seek cash and drugs.  
3 As a result, many of the drivers reportedly carry weapons or have armed guards as protection.  
4 Examples of such criminal activity reported in the media include the following:

- 5           a.     In February of 2013, a Temecula deliveryman was reportedly robbed of cash  
6 outside of a Denny's restaurant, which led to a vehicular chase that continued  
7 until the robbers' vehicle eventually crashed on a freeway on ramp.
- 8           b.     In January of 2013, marijuana deliverymen in Imperial Beach were reportedly  
9 robbed after being stopped by assailants (one with a brandished semi-  
10 automatic handgun) after making a stop.
- 11          c.     In January 2013, a deliveryman was reportedly robbed of three ounces of  
12 marijuana while making a delivery outside a Carl's Jr. restaurant in Riverside,  
13 and he told police that the suspect may have had a gun.
- 14          d.     In May of 2012, a 23-year-old deliverywoman in La Mesa was reportedly shot  
15 in the face with a pellet gun. After running away, the assailants carjacked her  
16 vehicle.
- 17          e.     In March of 2012, a West Covina deliveryman was reportedly robbed after  
18 making a delivery. The deliveryman told police that he was approached by two  
19 subjects in ninja costumes who chased him with batons. He was scared and  
20 dropped a bag with some marijuana and money, which was taken by the  
21 suspects.
- 22          f.     In August of 2011, a medical marijuana deliveryman was reportedly robbed of  
23 \$20,000 worth of his marijuana (approximately 9 pounds) and a cellular phone  
24 in Fullerton. The driver suffered a head cut during the crime.
- 25          g.     In June of 2011, a marijuana delivery from a Los Angeles mobile dispensary  
26 turned deadly in Orange County when four individuals reportedly ambushed  
27 the mobile dispensary driver and his armed security guard and tried to rob  
28 them. One of the suspects approached the delivery vehicle and confronted the  
driver and a struggle ensued. A second suspect armed with a handgun,  
approached the security guard, who fired at the suspect hitting him multiple  
times.
- h.     In April of 2011, a customer reportedly made arrangements for a medical  
marijuana deliveryman to meet him in a Safeway parking lot in Salinas. The  
deliveryman had about \$1,000 in cash and 1.5 pounds of marijuana. As the  
deliveryman began weighing the order, he looked up and saw a silver handgun  
in his face. The customer stole money and marijuana. The judge sentenced the  
customer to five years in state prison.
- i.     In May of 2010, a college student who delivers medical marijuana door-to-  
door was reportedly robbed at gunpoint in Richmond. The assailants took  
\$1,000 in cash and a pound of marijuana; and

1           **WHEREAS**, Concerns about non-medical marijuana use in connection with medical  
2 marijuana distribution operations have been recognized by federal and state courts. One  
3 example is *People v. Leal*, (2012) 210 Cal.App.4th 829. (“Not surprisingly, it seems that the  
4 enhanced protection from arrest has proven irresistible to those illegally trafficking marijuana,  
5 for if there is even rough accuracy in the anecdotal estimate by the arresting detective in this  
6 case — that nearly 90 percent of those arrested for marijuana sales possess either a CUA  
7 recommendation or a card — then there is obviously widespread abuse of the CUA and the  
8 MMP identification card scheme by illicit sellers of marijuana. Ninety percent far exceeds the  
9 proportion of legitimate medical marijuana users one would expect to find in the populace at  
10 large. For this and other reasons, it is impossible for us not to recognize that many citizens,  
11 judges undoubtedly among them, believe the CUA has become a charade enabling the use of  
12 marijuana much more commonly for recreational than for genuine medical uses.”); and

13           **WHEREAS**, Despite the CUA and the MMP, the United States Attorneys in  
14 California have taken action to enforce the federal Controlled Substances Act against  
15 marijuana dispensaries, and have issued letters stating that California cities and officials face  
16 possible criminal prosecution for enabling dispensaries to violation federal law; and

17           **WHEREAS**, The failure to expressly prohibit mobile marijuana dispensaries or  
18 medical marijuana dispensaries will expose the City to costs related to regulation,  
19 enforcement, and the negative secondary effects of dispensaries including an increase in  
20 violent crime; and

21           **WHEREAS**, the City’s current prohibition of MMDs in the CMC does not expressly  
22 define the term Medical Marijuana Dispensaries or include in such definition facilities or  
23 offices that handle or process the paperwork for joining a medical marijuana dispensary or  
24 medical marijuana cooperative, receive any financial compensation or donation for the  
25 marijuana, or give vouchers or other indicia of membership to new members of these MMDs  
26 or expressly reference by name mobile or off-site delivery of marijuana independent from  
27 these facilities or offices; and

28           **WHEREAS**, the City now wishes to expressly define the term Medical Marijuana  
Dispensaries and expressly prohibit the use of any buildings, structures and land in the City  
for a Medical Marijuana Dispensary as defined herein; and

**WHEREAS**, the City Council finds that this Urgency Ordinance, and the regulations  
set forth herein, are necessary for the preservation of the public peace, health and safety in  
order to clarify that the City’s ban of MMDs includes and encompasses facilities or offices  
that handle or process the paperwork for joining a medical marijuana dispensary or medical  
marijuana cooperative, receive financial contributions or donations for the marijuana, or give  
vouchers or other indicia of membership to individuals, regardless of whether marijuana is  
ultimately dispensed from the location or a mobile or off-site delivery source independent of  
the facility or location, as well as the dispensing or delivery of marijuana from mobile or off-  
site delivery sources independent from these offices or facilities; and

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COLTON,  
CALIFORNIA, DOES ORDAIN AS FOLLOWS:**

1           **SECTION 1.** Findings. The above recitals are true and correct and are incorporated  
2 herein by this reference.

3           **SECTION 2.** Further Findings. The adoption of this Urgency Ordinance is necessary  
4 for the protection of the public peace, health and safety. In accordance with California  
5 Government Code Section 36937 and in order to protect the public peace, health and safety,  
6 the City Council of the City of Colton further finds that this Ordinance is necessary to  
7 expressly address medical marijuana dispensaries and related facilities or offices to handle or  
8 process the paperwork for joining a medical marijuana dispensary or medical marijuana  
9 cooperative as defined herein, to receive financial compensation or donations for the  
10 marijuana, or to give vouchers or other indicia of membership to individuals as well as the  
11 dispensing or delivery of marijuana from mobile or off-site delivery sources independent from  
12 these offices or facilities. Based upon statements made by medical marijuana advocates, the  
13 City Council also finds that there is a high likelihood that mobile marijuana dispensaries will  
14 quickly proliferate in the City without the adoption of this Ordinance. The City Council finds  
15 that this Ordinance is necessary as an emergency measure for preserving the public peace,  
16 health, or safety. The City Council of the City of Colton further finds that Medical Marijuana  
17 Dispensaries were effectively banned by the City prior to the adoption of this Ordinance and  
18 the purpose of this Ordinance is to expressly clarify the scope of the City's ban of medical  
19 marijuana dispensaries and that such ban includes the facilities and offices as well as mobile  
20 or off-site delivery sources described herein.

21           **SECTION 3.** Section 18.04.321 entitled "Medical Marijuana Dispensary" is hereby  
22 added to Chapter 18.04 of the Colton Municipal Code and shall read as follows:

23                           **"CHAPTER 18.04 DEFINITIONS**

24                           ...

25                           **18.04.321 MEDICAL MARIJUANA DISPENSARY.**

- 26           A.     A "medical marijuana dispensary" means any facility or location,  
27 including any clinic, cooperative, club, business or group which  
28 dispenses, sells, provides, transports or delivers, or arranges the  
dispensing, sale provision, transport or delivery, of medical marijuana  
to any person, firm, corporation, association, club, society, or other  
organization or any owner, manager, proprietor, employee, volunteer,  
or salesperson thereof, whether such facility, location or delivery  
service is independent from or affiliated with any fixed facility or  
location in the City, where medical marijuana is made available to,  
distributed by, sold or supplied to one or more of the following: (1)  
more than a single qualified patient, (2) more than a single person with  
an identification card, or (3) more than a single primary caregiver.
- B.     Unless otherwise regulated by ordinance or applicable law, a "medical  
marijuana dispensary" shall not be construed to include the following  
uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the  
California Health & Safety Code, (2) a health care facility licensed

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pursuant to Chapter 2 of Division 2 of the California Health & Safety Code, (3) a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health & Safety Code, (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health & Safety Code, (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health & Safety Code, to the extent that such use strictly complies with applicable law, including but not limited to California Health & Safety Code Section 11362.5, et seq.

C. A medical marijuana cooperative is two or more persons collectively or cooperatively cultivating, using, transporting, processing, administering, delivering or making available medical marijuana, with or without compensation. The term "medical marijuana cooperative" shall include a medical marijuana collective.

D. All terms used in this definition of medical marijuana dispensary, including but not limited to "medical marijuana," "qualified patient," "identification card," and "primary caregiver," shall be as defined in California Health & Safety Code Section 11362.5, et seq."

**SECTION 4.** Section 18.06.060 entitled "Uses Permitted in each Zone" is hereby amended as a part of Chapter 18.06 of the Colton Municipal Code and shall read as follows:

**"CHAPTER 18.06 ZONING DISTRICTS AND MAPS**

...

**18.06.060 Uses Permitted in each Zone.**

Use types Permitted in each Zone shall be as shown in the following table; a slash (/) means the Use is Permitted only with a Conditional Use Permit; a cross mark (x) indicates the Use is Permitted by right. The City Council of the City of Colton expressly declares that a Medical Marijuana Dispensary, as defined in section 18.04.321 of this Code, shall not open or operate within the City or be a Permitted Use, a Use Permitted only with a Conditional Use Permit, or a Use Permitted by right in any zoning district of the City, or be reflected as such in the following table.

..."

**SECTION 5.** Section 18.48.130 entitled "Prohibition of Businesses or Uses that violate state or Federal Law" is hereby amended as a part of Chapter 18.48 of the Colton Municipal Code and shall read as follows:

**"CHAPTER 18.48 SPECIAL PROVISIONS**

...

1                   **18.48.130 Prohibition of Businesses or Uses that violate state or Federal**  
2                   **Law; Medical Marijuana Dispensaries.**

- 3                   A.     Any Business, operation or Use that cannot be conducted or carried out  
4                   without being in Violation of state or Federal Law, including any  
5                   Medical Marijuana Dispensary as the term is defined in section  
6                   18.04.321 of this Code, Shall be prohibited in all planning areas,  
7                   Districts, or zones within the City.
- 8                   B.     Notwithstanding any other provision of this Code, any Medical  
9                   Marijuana Dispensary, as that term is defined in section 18.04.321 of  
10                  this Code, is hereby expressly prohibited from operating in any zone of  
11                  the City of Colton. Therefore, the use of any property within the City  
12                  as a Medical Marijuana Dispensary shall not be treated as a permitted  
13                  use, a use permitted only with a Conditional Use Permit, or a use  
14                  permitted by right in any zoning district of the City.
- 15                  C.     The operation of any Medical Marijuana Dispensary, as defined in  
16                  section 18.04.321 of this Code, within the City is hereby declared a  
17                  public nuisance and shall be abated pursuant to all available remedies.  
18                  Violations of this Section may be enforced by any applicable law.  
19                  Notwithstanding any other provisions of this Code, a violation of this  
20                  Section is not subject to criminal penalties.
- 21                  D.     No person shall deliver marijuana or marijuana-infused products, such  
22                  as tinctures, baked goods or other consumable products, to any location  
23                  within the City from a Medical Marijuana Dispensary, regardless of  
24                  where the Medical Marijuana Dispensary is located, or engage in any  
25                  effort to locate, operate, own, lease, supply, allow to be operated, or  
26                  aid, abet, or assist in the operation of any medical marijuana dispensary  
27                  in the City.”

28                  **SECTION 6.** CEQA. This ordinance is not a project within the meaning of Section  
15378 of the State California Environmental Quality Act (“CEQA”) Guidelines, because it  
has no potential for resulting in physical change in the environment, directly or indirectly.  
The City Council further finds, under Title 14 of the California Code of Regulations, Section  
15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in  
that the activity is covered by the general rule that CEQA applies only to projects which have  
the potential for causing a significant effect on the environment. Where it can be seen with  
certainty that there is no possibility that the activity in question may have a significant effect  
on the environment, the activity is not subject to CEQA. The City Council, therefore, directs  
that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in  
accordance with CEQA Guidelines.

**SECTION 7.** Custodian of Records. The documents and materials that constitute the  
record of proceedings on which these findings and this Ordinance are based are located at the  
City Clerk’s office located at 650 N. La Cadena Drive, Colton, CA 92324. The custodian of  
these records is the City Clerk.

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**SECTION 8.** Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Colton hereby declare that they would have adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

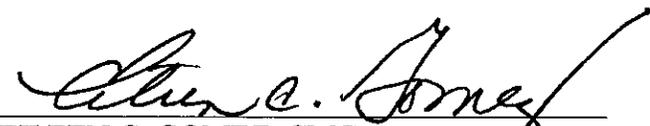
**SECTION 9.** Effective Date. This Urgency Ordinance shall become effective immediately upon its adoption by a 4/5 supermajority vote of the City Council.

**SECTION 10.** Publication. The City Clerk shall certify to the adoption of this Urgency Ordinance. Not later than fifteen (15) days following the passage of this Urgency Ordinance, the Urgency Ordinance, or a summary of the Urgency Ordinance, along with the names of the City Council members voting for and against the ordinance, shall be published in a newspaper of general circulation in the City of Colton.

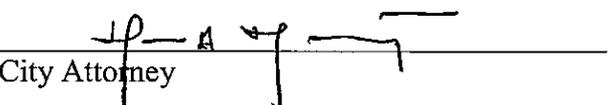
**PASSED, APPROVED AND ADOPTED** this 2<sup>nd</sup> day of July, 2013.

  
SARAH S. ZAMORA  
Mayor

ATTEST:

  
EILEEN C. GOMEZ, CMC  
City Clerk

APPROVED AS TO FORM:

  
City Attorney

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

4 CERTIFICATION

5 I, EILEEN C. GOMEZ, 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-03-13, and was duly passed, approved, and adopted by the City  
8 Council of the City of Colton at its Regular Meeting held on the 2<sup>nd</sup> day of July, 2013,  
9 by the following vote to wit:

10  
11 AYES: COUNCILMEMBER Toro, Gonzales, Oliva, Bennett and  
Mayor Zamora

12  
13 NOES: COUNCILMEMBER Suchil

14  
15 ABSTAIN: COUNCILMEMBER None

16  
17 ABSENT: COUNCILMEMBER Navarro

18 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official  
19 seal of the City of Colton, California, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

20  
21 \_\_\_\_\_  
22 EILEEN C. GOMEZ  
23 City Clerk  
City of Colton, California

24 (SEAL)  
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