

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2006-002

(1005/1098/1413/2792)

AN INTERIM URGENCY ORDINANCE OF THE CITY OF SAN LEANDRO
MAKING FINDINGS AND EXTENDING ORDINANCE NO. 2005-001, A
MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL
MARIJUANA DISPENSARIES PENDING THE REVIEW AND POSSIBLE
AMENDMENT OF ZONING REGULATIONS APPLICABLE TO MEDICAL
MARIJUANA DISPENSARIES

The City Council of the City of San Leandro does ORDAIN as follows:

Section 1. Findings

A. In 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."

B. The intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain medical marijuana, and use it under limited, specified circumstances.

C. The Legislature enacted SB 420 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.

D. In June of 2005, the U.S. Supreme Court held, in *Gonzales v. Raich*, that marijuana possession and use remained criminalized under federal law, but that this case did not affect state law concerning medical marijuana.

E. The San Leandro Municipal Code and Zoning Code are silent with regard to the regulation and location of medical marijuana dispensaries.

F. The City of San Leandro continues to receive inquiries regarding the permitting and establishment of medical marijuana dispensaries within the City due, in part, to restrictions that other surrounding agencies have placed on the ability of such uses to locate within those agencies' jurisdictions.

G. In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of San Leandro to study the potential impact such facilities may have on the public health, safety, and welfare.

H. The City Council finds that it is necessary to study the possible adoption of amendments to the City's Zoning Code in order to adopt legislation that conforms to the recently enacted SB 420 as well as recent state and federal case law.

I. Based on the foregoing, the City Council finds that issuing permits, business licenses, or other applicable approvals allowing for the establishment and operation of medical marijuana dispensaries, prior to the completion of the City's study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety, and welfare, and that therefore a temporary moratorium on the issuance of such permits, licenses, and other approvals is necessary.

J. The City Council adopted a 45-day moratorium on medical marijuana dispensaries on December 6, 2004, with a 12-month extension approved on January 18, 2005. This final extension will allow for the maximum time permitted (until December 4, 2006) under state law for urgency ordinances.

Section 2. Imposition of Moratorium

A. From and after the date the City Council adopts this interim urgency ordinance, no use permit, variance, building permit, or any other applicable approval for use, including, but not limited to, the issuance of a business license, may be approved or issued for the establishment or operation of a medical marijuana dispensary for a period of 10 months and 15 days (until December 4, 2006).

B. For purposes of this ordinance, "medical marijuana dispensary" means any facility or location where a primary caregiver intends to make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or another primary caregiver in strict accordance with Health and Safety Code Section 11362.5 et seq. The definitions "primary caregiver", "qualified patient", and "person with an identification card" are as defined in Health and Safety Code Section 11362.5 et seq.

C. For purposes of this ordinance, a "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the Health & Safety Code, as long as any such use complies strictly with all applicable laws.

D. This ordinance is an interim ordinance adopted as an urgency measure, and is for the immediate preservation of the public safety, health, and welfare. The facts constituting the urgency are: California cities that have permitted the establishment of medical marijuana dispensaries have recognized that doing so has resulted in negative secondary effects such as an increase in crime, including burglary, robbery, and the sale of illegal drugs in the areas immediately surrounding medical marijuana dispensaries. The City of San Leandro continues to receive inquiries regarding

the permitting and establishment of medical marijuana dispensaries within the City. The City of San Leandro does not currently have standards in the San Leandro Zoning Code related to the location, operation, and concentration of medical marijuana dispensaries within the City. Absent the adoption of this urgency ordinance, the establishment and operation of medical marijuana dispensaries in the City would result in the harmful secondary effects identified above. As a result of the harmful secondary effects associated with medical marijuana dispensaries, and the current and immediate threat such secondary effects pose to the public health, safety, and welfare, it is necessary to establish a 1-year moratorium on the establishment and operation of new medical marijuana dispensaries in the City pending the completion of the City's study of the potential impacts of medical marijuana dispensaries, and possible amendments to the City's Zoning Code.

E. The Community Development Director, in conjunction with the City Manager, the City Attorney, and the Chief of Police will continue to study the potential impacts of medical marijuana dispensaries, and possible amendments to the City's Zoning Code related to this use

Section 3. Compliance with California Environmental Quality Act

The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated Zoning Code review.

Section 4. Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 5. Effective Date

This ordinance shall become effective immediately upon adoption if adopted by at least four-fifths vote of the City Council and shall be in effect for 10 months and 15 days (until December 4, 2006) from the date of adoption. Under state law, no further extensions of the ordinance will be available after December 4, 2006.

Introduced by Councilmember Badger on this 17th day of January, 2006, passed and adopted by the following called vote:

Members of the Council:

AYES: Councilmembers Badger, Grant, Nardine, Santos, Starosciak, Stephens;
Mayor Young (7)

NOES: None (0)

ABSENT: None (0)

ATTEST: Marian Handa
Marian Handa, City Clerk