

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2010-012

AN INTERIM URGENCY ORDINANCE OF THE CITY OF SAN LEANDRO PROHIBITING CONSIDERATION AND APPROVAL OF USE PERMITS, VARIANCES, BUILDING PERMITS, START OF NEW CONSTRUCTION, OR OTHER ENTITLEMENTS FOR ANY ESTABLISHMENT OR OPERATION OF MEDICAL MARIJUANA DISPENSARIES, MARIJUANA CULTIVATION FACILITIES, OR OTHER LAND USES THAT COULD BE PROPOSED SHOULD PROPOSITION 19 BE APPROVED BY VOTERS ON NOVEMBER 2, 2010 WITHIN THE CITY FOR A FORTY-FIVE DAY PERIOD

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.

D. Cities throughout California either prohibit medical marijuana dispensaries, marijuana cultivation facilities and other related activities or allow them under certain conditions or through certain processes.

E. The City of San Leandro enacted an interim urgency ordinance and moratorium on medical marijuana dispensaries in late 2004, and approved an extension for the statutorily prescribed period in early 2005. The San Leandro Municipal Code and Zoning Code are silent with regard to the regulation and location of medical marijuana dispensaries, marijuana cultivation facilities or other related land uses.

F. The City of San Leandro has recently received inquiries regarding the permitting and establishment of medical marijuana dispensaries and marijuana cultivation facilities within the City due, in part, to other Alameda County cities' municipal laws and restrictions as well as the anticipation of passage of Proposition 19.

G. Recent court decisions, such as the *Qualified Patients Association v. City of Anaheim* (2010) case (Case No. G040077), further dictate that the City Council should impose a moratorium to further study and define the legal parameters to establish City policy regarding medical marijuana dispensaries, cultivation facilities, and other land uses that could be approved if Proposition 19 passes.

H. In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, marijuana cultivation facilities and other land uses deemed legal if Proposition 19 is approved, 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.

I. The City Council finds that it is necessary to study the possible adoption of amendments to the City's Zoning Code in order to address the issues, including possibly adopting legislation that conforms with changes in State law.

J. 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, marijuana cultivation facilities or other land uses that could be deemed approved with passage of Proposition 19 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.

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

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, marijuana cultivation facility or other land uses that could be proposed should Proposition 19 be approved by voters in November for a period of 45 days.

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*. For the purposes of this ordinance, a "marijuana cultivation facility" means any facility or location where marijuana plants are grown or cultivated, no matter their ultimate

purpose. 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, marijuana cultivation facilities and other related land uses 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, marijuana cultivation facilities and other related land uses. The City of San Leandro has recently received inquiries regarding the permitting and establishment of medical marijuana dispensaries and marijuana cultivation facilities 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, marijuana cultivation facilities or other related land uses within the City. Absent the adoption of this urgency ordinance, the establishment and operation of medical marijuana dispensaries, marijuana cultivation facilities and other related land uses 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 45-day moratorium on the establishment and operation of new medical marijuana dispensaries, marijuana cultivation facilities or other land uses that could be deemed legal pursuant to passage of Proposition 19 in the City pending the completion of the City’s study of the potential impacts of medical marijuana dispensaries, marijuana cultivation facilities and other related land uses and possible amendments to the City’s Zoning Code.

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 forty-five days from the date of adoption unless extended by the City Council as provided for in the Government Code.

Introduced by Councilmember Stephens and passed to print and adopted this 4th day of October, 2010, by the following vote:

Members of the Council:

AYES: Councilmembers Gregory, Prola, Reed, Souza, Starosciak, Stephens;
Mayor Santos (7)

NOES: None (0)

ABSENT: None (0)

ATTEST: Marian Handa
Marian Handa, City Clerk