

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2011-010

AN URGENCY ORDINANCE OF THE CITY OF SAN LEANDRO EXTENDING A MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES, MARIJUANA CULTIVATION FACILITIES, OR OTHER LAND USES THAT RELATE TO THE DISPENSING OR CULTIVATION OF MEDICAL MARIJUANA PENDING THE REVIEW AND POSSIBLE AMENDMENT OF THE SAN LEANDRO MUNICIPAL AND/OR ZONING CODES APPLICABLE TO MEDICAL MARIJUANA DISPENSARIES, MARIJUANA CULTIVATION FACILITIES, OR OTHER LAND USES THAT RELATE TO DISPENSING OR CULTIVATING MEDICAL MARIJUANA

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, medical marijuana cultivation facilities or other related land uses; have passed a moratorium banning them; 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 early 2005. At the conclusion of the moratorium, the City took no further action to amend its Zoning Code to address marijuana dispensaries, or cultivation facilities. 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 received inquiries recently regarding the permitting and establishment of medical marijuana dispensaries and marijuana

cultivation facilities within the City, which the City believes is due, in part, to other Alameda County cities' laws and restrictions related to medical marijuana land uses.

G. Recent court decisions, such as *Qualified Patients Association v. City of Anaheim* (2010) (Case No. G040077), further dictate that the City Council should impose a temporary moratorium to further study and define the legal parameters by which the City may establish policy regarding medical marijuana dispensaries, cultivation facilities, and other land uses that could be permitted should a state ballot proposition to legalize marijuana be approved in the near future.

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 a proposition legalizing marijuana is approved, it is necessary for the City of San Leandro to study the potential impacts such facilities may have on the public health, safety, and welfare.

I. The City Council held a City Council work session on February 28, 2011 to consider various options and give direction to staff. On February 28, 2011, the City Council directed staff to prepare an ordinance prohibiting Medical Marijuana Dispensaries and Cultivation Facilities.

J. The City Council, at its May 16, 2011 meeting, indicated a desire to postpone a decision on a Medical Marijuana Dispensaries and Cultivation Facilities prohibition, pending additional information from other municipalities regarding their Medical Marijuana ordinances relative to cultivation facilities.

K. The City Council finds that it is necessary to continue to study the possible adoption of amendments to the City's Zoning and Municipal Codes in order to address medical marijuana land uses and regulations.

L. 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 a state ballot proposition to legalize marijuana prior to the completion of the City's study of the potential impacts of such facilities, poses a current and immediate threat to the public health, safety, and welfare, and that therefore a continuation of the moratorium on the issuance of such permits, licenses, and other approvals for an additional 12 month period is necessary.

M. The Community Development Director, in conjunction with the City Manager, the City Attorney, and the Chief of Police, will continue their research and study of the potential impacts of medical marijuana dispensaries, cultivation facilities, and other related land uses as well as possible amendments to the City's Zoning and Municipal Codes.

## Section 2. Continuation of Moratorium

A. From and after the date the City Council adopts the extension of this moratorium, 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 related land uses, including any that could be proposed should a state ballot proposition legalizing marijuana be approved by voters for a period of 12 months.

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 California Health & 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 & 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 extension of the existing 10- month, 15- day moratorium, and is for the continued 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 extend the moratorium by 12 months for 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 a state ballot proposition legalizing marijuana, 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 12 months from September 30, 2011 as provided for in the Government Code.

Introduced by Councilmember Prola and passed to print and adopted this 6th day of September, 2011, by the following vote:

Members of the Council:

AYES: Councilmembers Cutter, Gregory, Prola, Reed, Souza, Starosciak;  
Mayor Cassidy (7)

NOES: None (0)

ABSENT: None (0)

ATTEST: Marian Handa  
Marian Handa, City Clerk