

ORDINANCE NO. 2006-08

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ADDING CHAPTER 6.80 TO THE MUNICIPAL CODE PROHIBITING MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF EL CERRITO.

WHEREAS, the City Council adopts this Chapter based upon the following findings:

A. On November 5, 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 in the State of California who are in need of marijuana for specified medical purposes to obtain it and use it under limited, specified circumstances.

C. The State enacted Senate Bill 420 in October 2003 (codified at Health and Safety Code Section 11362.7, et seq.) 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. The act of providing or furnishing marijuana to another person for medicinal purposes poses several serious risks to the safety, health and welfare of both the individual and the people of the City at large and can cause adverse secondary effects, including, but not limited to, increased crime in the vicinity of dispensaries. Evidence of these adverse secondary effects from across the State is outlined in the report prepared by the El Cerrito Police Department. The City Council has read and considered the information contained in this report and has relied on this information in enacting this ordinance to protect the health safety and welfare of the residents and businesses in the City of El Cerrito.

E. On June 6, 2005, the United States Supreme Court issued a decision in the case of *Gonzales v. Raich* which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and, under the Federal Controlled Substances Act (21 USC Section 841), the power to prosecute the local cultivation and use of marijuana even if such use is in compliance with California law.

F. Until the inconsistency between Federal and State law is resolved, it is the intent of the City Council to prohibit medical marijuana dispensaries within the City of El Cerrito.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 6.80 is hereby added to the El Cerrito Municipal Code to read as follows:

“Chapter 6.80

Medical Marijuana Dispensaries

6.80.010 Definitions.

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

“Medical Marijuana Dispensary” means any facility or location where a Primary Caregiver makes available, sells, transmits, gives, or otherwise provides medical marijuana to two or more Persons With Identification Cards or Qualified Patients. A Medical Marijuana Dispensary shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or 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 license 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 licensed pursuant to Chapter 8.5 of Division 2 of the Health & Safety Code, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.5 et seq.

“Person With an Identification Card” shall have the meaning set forth in California Health & Safety Code Section 11362.7, as may be amended from time to time, or any successor statute.

“Primary Caregiver” shall have the meaning set forth in California Health & Safety Code Section 11362.7, as may be amended from time to time, or any successor statute.

“Qualified Patient” shall have the meaning set forth in California Health & Safety Code Section 11362.7, as may be amended from time to time, or any successor statute.

6.80.020 Medical Marijuana Dispensary as a Prohibited Use.

A Medical Marijuana Dispensary, as defined in this Chapter, is prohibited in all zones throughout the City of El Cerrito.

6.80.030 Separate Offense for Each Day.

Any person who violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

6.80.040 Public Nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to Chapter 8.34 of this Code.

6.80.050 Criminal Penalties.

Any violation of any provision of this chapter shall be deemed a misdemeanor.

6.80.060 Civil Injunction.

The violation of any provision of this chapter shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief.

6.80.070 Administrative Remedies.

In addition to the civil remedies and criminal penalties set forth above, any violation of the provisions of this Chapter may be subject to administrative remedies, as set forth by Section 1.14 of this Code.”


SECTION 2. The City Council finds that it is necessary for the preservation of the public peace, health and safety that this Ordinance take immediate effect, in order to ensure that Medical Marijuana Dispensaries are prohibited in all zones throughout the City of El Cerrito for that period of time between midnight on July 19, 2006 when the City’s moratorium on such use expires and August 16, 2006 when Ordinance 2006-06, becomes effective. Based on this finding, the City Council declares under Government Code section 36934 that this Ordinance is an urgency ordinance that may be adopted immediately upon introduction, and under Government Code section 36937(b) that this Ordinance is an urgency ordinance that shall take effect immediately upon adoption.

SECTION 3. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

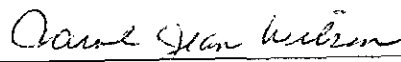
SECTION 4. Within fifteen (15) days after passage, a summary of this ordinance, including the names of the Councilmembers voting for and against it, shall be published in a newspaper of general circulation that is circulated in the City of El Cerrito.

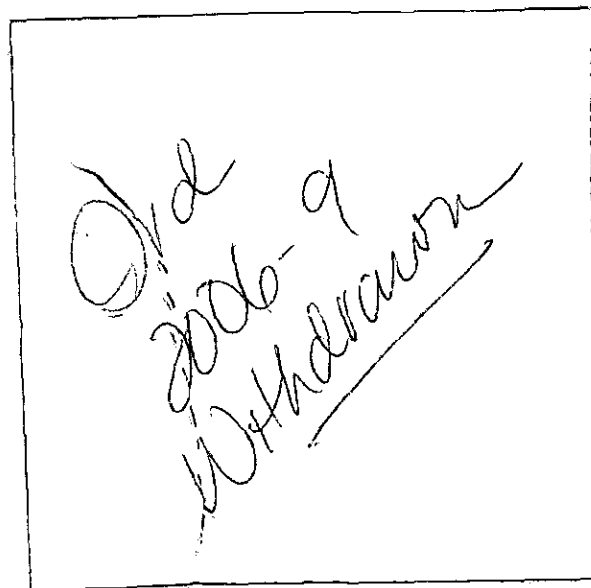
The foregoing ordinance was adopted at a regular meeting of the City Council of the City of El Cerrito, held on July 17, 2006 by the following vote:

AYES: COUNCILMEMBERS: Bridges, Jones, Potter and Abelson
NOES: COUNCILMEMBERS: Moore
ABSENT: COUNCILMEMBERS: None


Janet Abelson, Mayor

ATTEST:


Carol Jean Wilson, City Clerk


Ord
2006-9
Withdrawn