

ORDINANCE NO. 1026

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAMARILLO, CALIFORNIA, ADOPTING AN INTERIM ZONING ORDINANCE UNDER CALIFORNIA GOVERNMENT CODE SECTION 65858(A) PERTAINING TO THE ESTABLISHMENT AND OPERATION OF MEDICINAL MARIJUANA DISPENSARIES

The City Council of the City of Camarillo ordains as follows:

SECTION 1. Findings.

A. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5 and following, and entitled the Compassionate Use Act of 1996 (the "Act").

B. The intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana under limited, specified circumstances.

C. On January 1, 2004, SB 420 went into effect. SB 420 was enacted by the Legislature to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act.

D. Comprehensive zoning regulations lie within the police power of local governments.

E. Neither Proposition 215 nor SB 420 authorizes medical marijuana dispensaries.

F. The Camarillo Municipal Code does not currently address or regulate the existence or location of establishments that purport to dispense medical marijuana in the City of Camarillo.

G. After receiving inquiries from persons interested in establishing medical marijuana dispensaries, numerous other cities in the State of California have adopted ordinances prohibiting or heavily regulating such dispensaries. Because a number of cities, including cities surrounding Camarillo such as Simi Valley, Moorpark, and Oxnard, have prohibited or imposed moratoria on medical marijuana dispensaries, there is a substantial increased likelihood that such establishments will seek to locate in the City of Camarillo, thus creating a potential current and immediate threat to the public health, safety, or welfare. At least one such inquiry regarding the establishment of a medical marijuana dispensary in Camarillo has been received by City staff.

H. Other California cities that have permitted the establishment of medical marijuana dispensaries have witnessed an increase in crime, such as burglaries, robberies, and sales of illegal drugs in the areas immediately surrounding such dispensaries. Furthermore, the United States Department of Justice's California

Medical Marijuana Information report has advised that large-scale drug traffickers have been posing as "care givers" to obtain and sell marijuana, thus increasing the likelihood that such problems would traffic in illegal drugs in the City, thereby endangering the public health, safety and welfare.

I. The Supreme Court of the United States ruled in *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 US 483 that, notwithstanding California law, the federal Controlled Substances Act continues to prohibit marijuana use, distribution, and possession, and that no medical necessity exception exists to these prohibitions.

J. The Supreme Court of the United States ruled in *Gonzales v. Raich* (2005) 545 U.S. 1 that pursuant to the commerce clause, the federal government has the power to prohibit the local cultivation and use of marijuana, even though such cultivation and use complies with California law.

K. Even though medical marijuana dispensaries ostensibly violate federal law, such facilities continue to operate throughout California. It remains unclear whether the federal government after *Gonzales v. Raich* will strongly enforce the Controlled Substances Act against medical marijuana dispensaries and users in California.

L. Currently, the issue of whether California medical marijuana law is preempted by federal law is the subject of ongoing litigation. For example, the County of San Diego has an action pending in federal court to invalidate the Act on the basis of federal preemption. Thus, further judicial clarification of the Act's validity may be forthcoming.

M. In addition, members of Congress have also introduced bills which would, among other things, have the effect of legalizing the cultivation and use of marijuana for medical purposes in California and other states that permit medical marijuana.

N. Due to the apparent conflict between federal and state law including internal California legal conflicts, as well as the community and statewide concerns regarding the establishment of medicinal marijuana dispensaries, and the fact that federal legislation and enforcement is currently in flux, it is necessary for the City of Camarillo to study the potential impacts such facilities may have on the public health, safety, and welfare, as well as the impacts that the inconsistent and conflicting authorities may have on the City's ability to regulate such facilities.

O. Based on the foregoing, the City Council finds that allowing the establishment or operation of or approving any entitlements for the establishment or operation of medical marijuana dispensaries prior to (1) resolving whether Federal law will be routinely enforced against medical marijuana dispensaries, (2) the results of pending lawsuits to determine whether Federal law pre-empts State law on this issue, (3) the City's monitoring of the potential impacts of such facilities in other jurisdictions, and (4) resolving any zoning conflicts based on the fact that no zoning currently exists in the City for such dispensaries, would result in the current and immediate threat to the

public health, safety, and welfare. Accordingly, the City finds that an interim prohibition on such uses and the issuance of any such applicable entitlements is necessary for a period of 45 days.

SECTION 2. Environmental Review. 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, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; rather it prevents changes in the environment pending the completion of the contemplated municipal code review.

SECTION 3. Imposition of Moratorium. The City Council orders as follows:

A. In accordance with the authority granted the City of Camarillo under Government Code Section 65858(a), and pursuant to the findings stated herein, for a period of 45 days from the date of adoption of this ordinance:

1. No medical marijuana dispensary may be established or operate in any zone of the City.

2. No use permit, variance, zoning clearance or other applicable entitlement or approval will be accepted, approved or issued for the establishment or operation of a medical marijuana dispensary.

B. As used in this ordinance, the following definitions apply:

1. "Establish" or "operate" a medical marijuana dispensary means and includes any of the following:

(a) The opening or commencement of such a business or establishment as a new business or establishment;

(b) The conversion of an existing business or establishment to a business or establishment defined as a medical marijuana dispensary in this ordinance;

(c) The addition of any form of business or establishment defined as a medical marijuana dispensary in this ordinance to any other existing business or establishment.

2. "Marijuana" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes marijuana infused in foodstuff. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature

stalks (except resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germination.

3. "Medical marijuana dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to and/or distributed by or to one or more of the following: a "primary caregiver," "a qualified patient," or a person with an "identification card," as these terms are defined in California Health and Safety Code section 11362.5 and following. A "medical marijuana dispensary" does 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 and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code section 11362.5 and following.

SECTION 4. Report on Interim Moratorium. Pursuant to Government Code section 65858, staff must prepare for consideration and issuance by the City Council a written report describing the measures taken to address the conditions which led to adoption of this Ordinance. The report will be provided to the City Council so that it may be considered and issued no later than 10 days prior to the expiration of this ordinance.

SECTION 5. Legal and Planning Study. The Department of Community Development with the assistance of the City Attorney's Office is directed to study and analyze issues related to the establishment or operation of medical marijuana dispensaries within the City, including but not limited to, evaluating conflicts in state and federal law concerning the validity of the Act, the legality of such facilities, the potential impacts of such facilities on public health, safety and welfare of the community, the desirability of such facilities in various zones, and the extent of regulatory controls, if any, to impose on such facilities.

SECTION 6. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 7. Effective Date and Duration. This ordinance is an urgency ordinance enacted under California Government Code section 65858 (a). This urgency ordinance is effective upon adoption and will extend for a period of 45 days from the

date of adoption at which time it will automatically expire unless extended by the City Council in accordance with California Government Code section 65858.

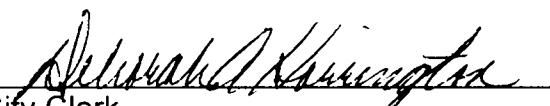
SECTION 8. Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

PASSED, APPROVED AND ADOPTED this 11th day of June 2008.



Mayor

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney

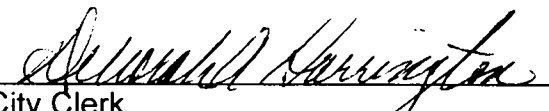
STATE OF CALIFORNIA)
COUNTY OF VENTURA) SS:
CITY OF CAMARILLO)

I, DEBORAH HARRINGTON, City Clerk of the City of Camarillo, certify that Ordinance No. 1026 was passed and adopted by the City Council of the City of Camarillo as an urgency measure at a regular meeting of the Council held on the 11th day of June 2008, by the following vote:

AYES: Councilmembers: Kildee, McDonald, Morgan, Waunch, Mayor Craven

NOES: Councilmembers: None

ABSENT: Councilmembers: None



City Clerk