

## ORDINANCE NO. 1036

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAMARILLO, CALIFORNIA, EXTENDING THE INTERIM ZONING REGULATIONS ADOPTED BY ORDINANCE NO. 1031 PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858(a) PERTAINING TO THE MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES

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

**SECTION 1. Findings.** The City Council finds as follows:

A. On June 11, 2008, pursuant to Government Code section 65858, the City Council adopted Urgency Ordinance No. 1026 to establish interim regulations on issuance of any land use entitlements for medical marijuana dispensaries. Such ordinance, by law, was only effective for 45 days, unless extended following a public hearing.

B. On July 23, 2008, pursuant to Government Code section 65858, the City Council adopted Ordinance No. 1031 to extend such interim regulations for an additional ten (10) months and fifteen (15) days, which is June 11, 2009.

C. Pursuant to Government Code § 65858, the City Council may, following a noticed public hearing, extend the interim standards of Ordinance No. 1031 for an additional year.

D. The factual basis for these interim regulations includes:

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

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

3. On January 1, 2004, Senate Bill (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.

4. The Supreme Court of the United States ruled in *United States v. Oakland Cannabis Buyers' Cooperative*, 532 US 483 (2001) 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.

5. The Supreme Court of the United States ruled in *Gonzales v. Raich*, 545 U.S. 1 (2005), 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.

6. In *Gonzales v. Raich*, the Supreme Court of the United States did not indicate that California law was invalid, but rather, merely indicated that the federal government could continue to enforce its medical marijuana laws.

7. Members of Congress have and anticipate further introduction of bills which would, among other things, have the effect of legalizing the medicinal use of marijuana in California, or impose moratoriums on all Federal government enforcement against users of marijuana for medical purposes.

8. Following the *Gonzales* decision, the federal government has continued to enforce its anti-drug laws against medical marijuana dispensary operators.

9. On February 23, 2009, California Assemblymember Ammiano introduced Assembly Bill 390, which would remove marijuana and its derivatives from statutes defining and regulating controlled substances. This bill would also remove all civil and criminal penalties for adults 21 years of age or older who cultivate, possess, transport, sell or use marijuana.

10. On February 25, 2009, U.S. Attorney General Eric Holder suggested a shift in the federal government's position on the prosecution of medical marijuana dispensaries and their operators. Holder stated at a press conference that law enforcement's actions will be consistent with the President's campaign statement that he would allow states to regulate medical marijuana without interference from the federal government. At the same time, a White House spokesman reiterated that "The president believes that federal resources should not be used to circumvent state laws" on the regulation of medical marijuana.

11. On March 18, 2009, during a question-and-answer session with reporters at the U.S. Department of Justice, Attorney General Holder clarified slightly the current administration's stance on the prosecution of medical marijuana distributors operating under enabling state laws. He stated that "The policy is to go after those people who violate both federal and state law." Furthermore, Holder stated that law enforcement officers will target those who attempt to "use medical marijuana laws as a shield" for other illegal activity."

12. Although the current administration may be leaning towards the position of allowing states to regulate medical marijuana and not prosecuting persons or organizations distributing medical marijuana under the auspices of state law, the administration's policy is silent on what types of facilities dispensing medical marijuana are consistent under both California and federal laws.

Moreover, it is yet to be determined by the courts whether any medical marijuana dispensaries can operate under current federal law.

13. In June 2009, oral arguments in the case of *Qualified Patients Association et al. v. City of Anaheim* are expected to be heard before the California Court of Appeals, Fourth Appellate District, Division Three. The main issue in this case is the legality of the City of Anaheim's ordinance prohibiting the ownership, management, and operation of medical marijuana dispensaries in that city.

14. The Camarillo Municipal Code, including Title 19 (Zoning), does not address or regulate in any manner the existence or location of medicinal marijuana dispensaries.

15. Anecdotal reports from other California cities that have permitted the establishment of medicinal marijuana dispensaries have witnessed an increase in crime, such as burglaries, robberies, and sales of illegal drugs in the areas immediately surrounding such dispensaries. For example, the City of Arcata estimates that is one in five homes in that city is used as a marijuana "grow house." These grow houses are characterized as having a "green" or "skunky" marijuana odor, house numbers removed, blacked-out windows, no residents, constant fan noise, late-night comings-and-goings, and illegal activities. Moreover, a significant number of grow houses have burned down in Willits, Arcata, and other communities. 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 persons would traffic in illegal drugs in the City, thereby endangering the public health, safety and welfare.

16. In extending its interim regulations on medical marijuana dispensaries in February 2009, the City of Los Angeles found that "The Los Angeles Police Department has received complaints from neighbors, business owners, and concerned citizens regarding the negative impacts of dispensaries, including flyers, leaflets and stickers advertising dispensaries being placed on school grounds; smoking marijuana outdoors within 1,000 feet from schools; operating near sensitive uses, and constant activity around dispensaries at all hours."

17. 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 significant 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 substantially increased likelihood that such establishments will seek to locate in the City of Camarillo.

18. The establishment of medical marijuana dispensaries without appropriate rules and regulations could result in the creation of many of the negative secondary effects noted in other jurisdictions, including but not limited to, increases in criminal activity in areas adjacent to such dispensaries, thus creating a potential threat to the public, health, safety, or welfare.

19. To address 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 medical marijuana dispensaries, and the fact that federal legislation and enforcement is currently in flux, it is necessary for the City of Camarillo to continue to review the potential impacts such facilities may have on the public health, safety, and welfare.

20. There is no feasible alternative to the continuation of the interim moratorium that will satisfactorily mitigate or avoid the identified impacts to the public health, safety, and welfare with a less burdensome or restrictive effect.

E. Pursuant to the requirements of California Government Code Section 65858 (d), on May 3, 2009, the City Council issued a report relative to the steps taken to alleviate the conditions that necessitated the adoption of Ordinance No. 1031.

F. On May 13, 2009, the City Council conducted a duly notice public hearing concerning the adoption of this Ordinance.

G. Based on the foregoing, the City Council continues to find that approving any entitlements for the establishment or operation of medical marijuana dispensaries prior to (1) determining whether federal law will be routinely enforced against medical marijuana dispensaries, (2) the resolution of lawsuits challenging the scope of a city's authority to ban or regulate medical marijuana, including whether federal law pre-empts state law on this issues, (3) the City's review of the potential impacts that such facilities may create, and (4) resolving any land use and 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.

**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; it prevents changes in the environment pending the completion of the contemplated municipal code review.

**SECTION 3: Continuation of Moratorium on Medical Marijuana Dispensaries.** 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 12 months from the effective date 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.

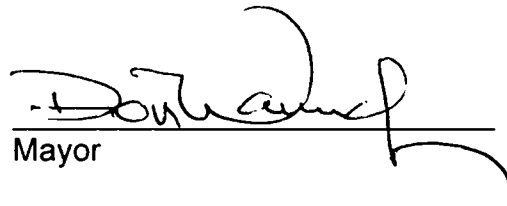
**SECTION 4. Legal and Planning Study.** The Department of Community Development with the assistance of the City Attorney's Office is directed to continue to study and analyze issues related to the establishment or operation of medical marijuana dispensaries within the City, including but not limited to, evaluating conflicts in state and federal law concerning the validity of the Compassionate Use 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 5. 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 6. Effective Date and Duration.** This ordinance is enacted under California Government Code section 65858(a) and will take effect on June 11, 2009 upon adoption by a four fifths (4/5) vote of the City Council. This ordinance will remain in effect for 12 months and, and will expire on June 11, 2010, unless sooner terminated.

**SECTION 7. Publication.** The City Clerk is directed to cause this ordinance to be published in the manner required by law.

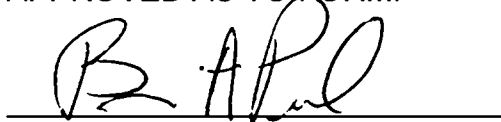
PASSED, APPROVED, AND ADOPTED May 13, 2009.

  
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Mayor

ATTEST:


  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

I, Jeffrie Madland, City Clerk of the City of Camarillo, certify Ordinance No. 1036 was adopted by the City Council at a meeting held May 13, 2009, by the following vote:

AYES: Councilmembers: Craven, Kildee, McDonald, Morgan, Mayor Waunch  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

  
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City Clerk