

## ORDINANCE NO. 2009-033

Adopted by the Sacramento City Council

July 14, 2009

### AN ORDINANCE ESTABLISHING A MORATORIUM ON NEW MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF SACRAMENTO AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1. The City Council of the City of Sacramento finds and declares as follows:

A. General Findings

1. In 1996 California voters approved Proposition 215, entitled "The Compassionate Use Act" that was later codified at Health and Safety Code section 11362.5. The Compassionate Use Act ensures that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. In 2003 the state enacted Senate Bill 420, known as the Medical Marijuana Program and codified at Health and Safety Code sections 11362.7 et seq.). The Medical Marijuana Program was intended to supplement, clarify, give guidance and give effect to the intent of the Compassionate Use Act and to allow cities to adopt and enforce rules and regulations consistent with the Medical Marijuana Program.
2. The Compassionate Use Act does not legalize marijuana dispensaries that are "for profit" or which do not operate under the Health and Safety Code definition of a "primary caregiver." The Medical Marijuana Program has been interpreted by at least one court as contemplating the formation and operation of medical marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana. (People v. Urziceanu (2005) 132 Cal.App.4th 747.)
3. According to the State's Attorney General, "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law....[T]he only recognized group entities are cooperatives and collectives." (California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use – 2008.)

4. Several California cities that have permitted the establishment of medical marijuana dispensaries have experienced negative secondary effects on public health, safety, and welfare, including an increase in crime such as burglary, robbery, and the sale of illegal drugs, in the areas immediately surrounding medical marijuana dispensaries.
  5. There appears to be a proliferation throughout the state of medical marijuana dispensaries that do not comply with The Compassionate Use Act, the Medical Marijuana Program or the Attorney General's Guidelines.
  6. Under the current provisions of Title 17 of the Sacramento City Code ("Zoning Code"), medical marijuana dispensaries are not an expressly permitted use or a use permitted subject to a special permit in any zoning district in the City.
  7. Notwithstanding Section 6 above, medical marijuana dispensaries have been known to operate and advertise in the City of Sacramento, disguised as permitted retail or commercial establishments. These medical marijuana dispensaries are operating without having obtained any City discretionary or regulatory review, approvals or permits and the City has not adopted conditions or regulations governing such operations.
- B. The purpose of this Ordinance is to protect the public health, safety, and welfare by prohibiting the establishment of new medical marijuana dispensaries or expansion or modification of established medical marijuana dispensaries while the City studies and enacts new land use conditions and regulations to address the potential negative secondary effects as detailed above. It would defeat in whole or part of the objectives of any proposed conditions and regulations if, during the period the proposed conditions and regulations are being studied and considered for adoption, further proliferation, establishment, expansion, or modifications of medical marijuana dispensaries occurs.
- C. This Ordinance is enacted as an urgency measure under Government Code section 65858 to protect against the current and immediate threat to the public health, safety, and welfare that unregulated medical marijuana dispensaries can pose to the City as described above. It is appropriate that this Ordinance take effect immediately to ensure that new medical marijuana dispensaries are not established and that established operations of medical marijuana dispensaries are not modified or expanded during the thirty day period that would otherwise elapse before this Ordinance would take effect.

## Section 2. Restriction on New Medical Marijuana Dispensaries

- A. During the term of this Ordinance, including the term of any extension(s) of this Ordinance, no person shall:
1. operate a medical marijuana dispensary at any location in the City of Sacramento except as expressly provided in Section 3 of this Ordinance;

2. open, commence operation, or expand or modify operations of a medical marijuana dispensary at any location in the City of Sacramento.
- B. During the term of this Ordinance, including the term of any extension(s) of this Ordinance, no application for a business operations tax certificate, building permit or other development-related permit or entitlement shall be reviewed or accepted, no hearing on an application (including appeals) for a discretionary entitlement shall be conducted, and no building permit or other development-related permit shall be issued or approved for a medical marijuana dispensary.
  - C. For purposes of this Ordinance, the term "medical marijuana dispensary" means any for profit or not-for-profit facility, building, structure or location, whether fixed, mobile, permanent or temporary, where a person(s) makes available, sells, gives, distributes, or otherwise provides medical marijuana to at least two or more of the following persons: a primary caregiver, a qualified patient, or a person with an identification card in strict accordance with California Health and Safety Code sections 11362.5 and 11362.7 et seq. A "medical marijuana dispensary" includes medical marijuana "cooperatives" and "collectives". The terms "primary caregiver," "qualified patient," "person with an identification card," "cooperatives," and "collectives" shall be as defined in The Compassionate Use Act (California Health and Safety Code section 11362.5) and the Medical Marijuana Program (California Health and Safety Code sections 11362.7 et seq.), and as further supplemented and interpreted by the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use – 2008.
  - D. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by the Sacramento City Code: 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; and 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, The Compassionate Use Act (Health and Safety Code section 11362.5), the Medical Marijuana Program (Health and Safety Code sections 11362.7 et seq.) and the Sacramento City Code.

### Section 3. Exemption of Established Operations

- A. A medical marijuana dispensary shall be exempt from subsection A. 1. of Section 2 of this Ordinance, if the medical marijuana dispensary is an "established operation."
- B. A medical marijuana dispensary shall be deemed to be an "established operation" if the owner or operator of the dispensary timely submits an application in accordance with subsection C and D of this Section and the City Manager or his/her designee finds that, based on credible evidence, the medical marijuana dispensary has been providing marijuana in the City of Sacramento since at least June 16, 2009, in a

manner consistent with the requirements of The Compassionate Use Act and the Medical Marijuana Program.

- C. Any application for an exemption pursuant to subsection B of this Section signed by the medical marijuana dispensary owner or operator under penalty of perjury and supporting documents shall be submitted to the Revenue Manager's Office within 30 days from the date this Ordinance is adopted. The application shall be submitted on a form provided by the Revenue Manager and should include originals or true and correct copies of the following documents:
1. State Board of Equalization seller's permit;
  2. Commercial or business insurance policy evidencing liability insurance coverage of the owner's or operator's operations of the medical marijuana dispensary at its current location;
  3. If renting or leasing the property at its current location, the current rental contract or lease executed by both landlord and tenant, or if the property is owned by the medical marijuana dispensary owner or operator, the current real property deed; and
  4. Any additional evidence that the applicant is an "established operation" in accordance with subsection B of this Section.
- D. All applications shall include an original or a true and correct copy of a City of Sacramento Business Operations Tax Certificate for the medical marijuana dispensary.
- E. The City Manager or his/her designee shall evaluate each application, conduct a reasonable investigation, and determine whether the applicant is an "established operation." The City Manager shall mail the findings and conclusions to the applicant within 30 days from the date the application is received.
- F. If the City Manager or his/her designee determines that the applicant is not an "established operation," the applicant shall immediately cease all medical marijuana dispensary operations within the City and continued operations shall be unlawful and subject to the penalties in Section 7 below.
- G. Notwithstanding any provisions of the Sacramento City Code to the contrary, any decision pursuant to this Section 3 by the City Manager or his/her designee shall be final and conclusive, with no appeal to the City Council or any other appellate body.
- H. Nothing herein shall permit any medical marijuana dispensary to operate in any manner contrary to applicable federal, state, or local law.

#### Section 4. Prohibited Operations

- A. Notwithstanding Section 3 above, no medical marijuana dispensary operating or purporting to operate prior to the date of adoption of this Ordinance shall be deemed to have been a legally established use under the provisions of the

Sacramento City Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

- B. Notwithstanding Section 3 above, during the term of this Ordinance, including the term of any extension(s) of this Ordinance, a medical marijuana dispensary shall be considered a prohibited use in any zoning district of the City of Sacramento.
- C. During the term of this Ordinance, including the term of any extension(s) of this Ordinance, an "established operation," as defined in Section 3 above, shall not modify or expand its operations.

#### Section 5. Term and Extensions

This Ordinance shall be of no further force and effect forty-five (45) days from the date of its adoption unless prior to that date the City Council approves one or more extensions pursuant to Government Code section 65858, in which case this Ordinance shall remain in effect through the term of the extension(s).

#### Section 6. Declaration of Emergency

This Ordinance is declared to be an emergency ordinance to take effect immediately upon adoption by the City Council pursuant to Sacramento City Charter Section 32(g)(2). The facts constituting the emergency are as set forth in Section 1 of this Ordinance, all of which are incorporated into this section as facts supporting the emergency nature of this Ordinance.

#### Section 7. Penalties

- A. Any person who owns or operates a medical marijuana dispensary violating any provision of this Ordinance shall be guilty of a misdemeanor. Such person shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of this Ordinance is committed, continued or permitted by such person and shall be punishable as herein provided.
- B. In addition to criminal sanctions, the city attorney, in the name of and on behalf of the city and/or the people of the state, may bring a civil action in a court of competent jurisdiction to enforce any provision of this Ordinance, or to restrain or abate any violation of the provisions of this Ordinance as a public nuisance.
- C. Unless otherwise expressly provided, the remedies, procedures and penalties provided in this Ordinance are cumulative to each other and to any other remedies, procedures and penalties available under state law or city ordinance.

#### Section 8. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid or ineffective by any court of competent jurisdiction, or by

reason of any preemptive legislation, that invalidity shall not affect the validity of the remaining provisions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, subdivision, sentence, clause and phrase, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or words be declared invalid.

Adopted by the City of Sacramento City Council on July 14, 2009 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.


Abstain: None.

Absent: None.



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Mayor Kevin Johnson

Attest:

  
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Dawn Bullwinkel, Assistant City Clerk

Effective: July 14, 2009