

ORDINANCE NO. 1059

AN ORDINANCE OF THE CITY OF HOLLISTER ADDING A NEW CHAPTER 5.42 ENTITLED "MEDICAL MARIJUANA DISPENSARIES AS A PROHIBITED USE" TO THE HOLLISTER MUNICIPAL CODE TITLE 5, ENTITLED "BUSINESS LICENSES AND REGULATIONS."

WHEREAS, 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" ("the Act"); and

WHEREAS, the intent of the Act was to enable seriously ill persons to obtain, use, and cultivate medical marijuana for medical use under limited, specified circumstances; and

WHEREAS, the State enacted Senate Bill 420, the Medical Marijuana Program Act ("MMPA") in 2003, effective January 1, 2004, to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA; and

WHEREAS, as a result of the Act and MMPA, individuals have established medical marijuana dispensaries in various cities in California; and

WHEREAS, on June 6, 2005, the United States Supreme Court issued its decision in *Gonzales v. Raich* (2005) 125 S. Ct. 2195, which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and the power to prohibit local cultivation and use of marijuana even though it would be in compliance with California law; and

WHEREAS, in February 2009 the U.S. Attorney General stated that federal law enforcement official would ease enforcement at medical marijuana dispensaries, and in October 2009, the U.S. Department of Justice issued a memorandum stating that federal resources should not be focused on prosecution of individuals whose actions are in clear and unambiguous compliance with existing state laws providing for medical use of marijuana; and

WHEREAS, while the experiences in the regulation and policing of medical marijuana dispensaries have varied from city to city; however, several California cities have reported an increase in crime, such as burglary, robbery, loitering around the dispensaries, and an increase in vehicular traffic, odor, and noise in the vicinity of dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries; and

WHEREAS, the City's Zoning Code (Title 17 of Hollister Municipal Code) does not permit the operation of a medical marijuana dispensary in any zoning district of the City; and

WHEREAS, the City has not adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries and the lack of such controls may lead to an establishment of dispensaries and the inability for the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent and near such businesses, and the patients or clients of such establishments; and

WHEREAS, based on the lack of any consistent experience of cities statewide and in the absence of any City regulatory program regarding the review of the establishment and operation of medical marijuana dispensaries, the City finds the establishment of, or the issuance or approval of any permit, certificate of occupancy, or other entitlement for the legal establishment of a medical marijuana dispensary in the city will result in a current and immediate threat to public health, safety and welfare; and

WHEREAS, this ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the Guidelines implementing the California Environmental Quality Act of 1970, as amended, because the ordinance would not result in a direct or reasonably foreseeable indirect physical change in the environmental.

THE CITY COUNCIL OF THE CITY OF HOLLISTER DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT OF CODE: Title 5 of the Hollister Municipal Code entitled "BUSINESS LICENSES AND REGULATIONS" is hereby amended to add a new Chapter 5.42, to read as follows:

5.42.010 Medical Marijuana Dispensary as a Prohibited Use.

- A. "Medical Marijuana Dispensary" or "Dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to or distributed by or distributed to one (1) or more of the following:
1. A primary caregiver;
 2. A qualified patient; or
 3. A patient with an identification card.

All three of these terms are identified in strict accordance with California Health and Safety Code Section 11362.5 *et seq.*

- B. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law:
1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;
 2. A healthcare facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
 3. A facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
 4. 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;
 5. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code;
 6. A residential hospice; or
 7. A home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law, including but not limited to, Health and Safety Code Section 11362.5 *et seq.*
- C. A medical marijuana dispensary as defined above shall not be established, operated or maintained at any location within the City, even if located with an otherwise permitted use.

SECTION 2. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 3. PUBLICATION. Within 15 days after passage, the City Clerk shall cause this ordinance to be published one time in the Free Lance, a newspaper of general circulation.

SECTION 4. EFFECTIVE DATE. This ordinance shall be effective 30 days after the adoption date.

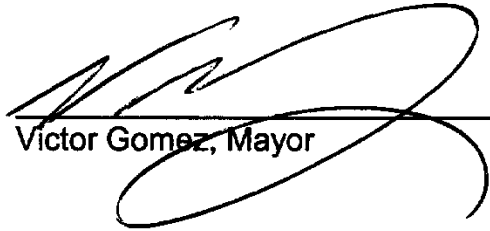
The foregoing ordinance was duly and regularly introduced at a meeting of the City Council of the City of Hollister on January 19, 2010, and was thereafter, at a regular meeting held on February 1, 2010, passed and adopted by the following vote:

AYES: Council Members Emerson, Valdivia and Mayor Gomez.

NOES: None.


ABSENT: Council Members Sanchez and Friend.

ABSTAINED: None.



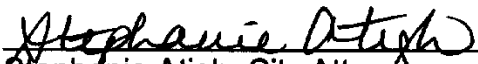
Victor Gomez, Mayor

ATTEST:



Geri Johnson, City Clerk

APPROVED AS TO FORM:



Stephanie Atigh, City Attorney