

## ORDINANCE NO. 2009-06

### AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GALT PROHIBITING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES

THE CITY COUNCIL OF THE CITY OF GALT HEREBY ORDAINS AS FOLLOWS:

#### SECTION 1. FINDINGS

- A. In 2005, the Galt City Council adopted Ordinance No. 2005-06, an interim urgency ordinance establishing a temporary prohibition on the establishment and operation of medical marijuana dispensaries within the City of Galt. This ordinance terminated without the adoption of permanent regulations regarding the establishment and operation of medical marijuana dispensaries within the City.
- B. California Government Code Section 65858(f) provides that upon termination of a prior interim ordinance, the legislative body may adopt a new interim urgency ordinance to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior interim urgency ordinance.
- C. Since the adoption of Ordinance No. 2005-06, there have been significant changes in the enforcement of federal laws prohibiting possession and distribution of medical marijuana. Significantly, in March 2009, the United States Attorney General stated that the federal government will only target marijuana distributors that violate both federal and state law.
- D. The California Compassionate Use Act provides that persons who are in need of medical marijuana for specified medical purposes may obtain and use it under limited, specified circumstances. *See Health and Safety Code § 11362.5 et. seq.* This Act has led to the establishment of medical marijuana dispensaries in various communities throughout California.
- E. In contrast to state law, the Federal Controlled Substances Act provides that the manufacture, cultivation, distribution, and dispensing of marijuana are illegal for any purposes, including medical use. *See 21 U.S.C. 801 § et. seq.*
- F. The federal policy shift away from enforcement of the Controlled Substances Act has led to increased concerns among members of the community that there will be renewed interest in the establishment and operation of medical marijuana dispensaries within the City.
- G. Members of the community are concerned that establishment and operation of medical marijuana dispensaries in the City will lead to an increase in crimes commonly associated with drug use, such as burglary, robbery and the sale of illegal drugs.
- H. Other California cities that have permitted the establishment of medical marijuana dispensaries have experienced an increase in crime, such as burglary, robbery and sale of illegal drugs in the areas immediately surrounding such medical marijuana dispensaries.
- I. The Galt Municipal Code does not currently directly provide for the regulation of medical marijuana dispensaries.
- J. In order to address community concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of Galt to study the potential impact such facilities may have on the public health, safety and welfare, and establish regulations as necessary.
- K. Article XI, Section 7 of the California Constitution provides a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.
- L. The purpose of this Ordinance is to protect the public safety, health and welfare from a current and immediate threat posed by the issuance of a permit, license or entitlement for the establishment and operation of medical marijuana dispensaries in the City. Absent the adoption of this interim urgency

ordinance, it is likely that the establishment and operation of medical marijuana dispensaries will result in the harmful effects described above.

- M. California Government Code Section 65858, subdivision (a) provides: that city legislative bodies may, to protect public safety, health and welfare, adopt as an interim urgency ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be in effect for 24 days from the date of adoption, and may be extended after notice and a hearing for 10 months and 15 days, and subsequently for one year.
- N. California Government Code Section 65858, subdivision (c) provides: that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to the public health, safety or welfare.
- O. In accordance with California Government Code Section 65858, subdivision (c), which provides that such interim ordinances that have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing (as defined in California Government Code Section 65858, subdivisions (g) and (h)) may not be extended except upon written findings adopted by the legislative body as specified in the subdivision, the City Council hereby finds that the prohibition established pursuant to this ordinance will not have the effect of denying approvals needed for the development of projects with a significant component of multi-family housing; and that, therefore, the findings specified in Section 65858, subdivision (c), need not be made.

## **SECTION 2. PROHIBITION ON ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES**

### **A. SCOPE**

In accordance with the authority granted the City of Galt under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this interim urgency ordinance, no permit, license or entitlement, including, but not limited to, a business license, shall be approved or issued for the establishment or operation of a medical marijuana dispensary in the City of Galt. The establishment or operation of a medical marijuana dispensary in the City of Galt is hereby expressly prohibited.

### **B. DEFINITIONS**

1. For purposes of this ordinance, "medical marijuana dispensary" means (1) any facility, building, structure or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver in strict accordance with California Health and Safety Code Section 11362.5 *et seq.*, or (2) any facility, building, structure or location where qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate to cultivate or distribute marijuana for medical purposes. The terms "primary caregiver," "qualified patient," and "person with an identification card" shall be as defined in California Health and Safety Code Section 11362.5 *et seq.*
2. For purposes of this ordinance, a "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the California

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 California Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, California Health and Safety Code Section 11362.5 *et seq.*

**SECTION 3. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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 (Title 14, Chapter 3 of the California Code of Regulations) because it does not have potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated Zoning Code review.

**SECTION 4. SEVERABILITY**

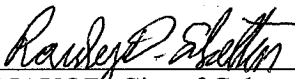
If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Galt hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

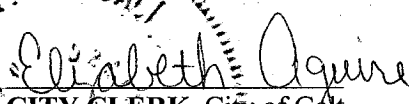
**SECTION 5. EFFECTIVE DATE AND DURATION**

This Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall be in effect for 24 days there from, unless extended by the City Council in accordance with California Government Code Section 65858.

On a motion by Council Member Payne, second by Council Member Clare, the foregoing urgency ordinance was duly passed and adopted by the City Council of the City of Galt at a special meeting thereof, this 27th day of April, 2009, by the following vote, to wit:

AYES:	Council members:	Payne, Clare, Haines, Meredith, Shelton
NOES:	Council members:	
ABSTAIN:	Council members:	
ABSENT:	Council members:	

  
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MAYOR, City of Galt

ATTEST:  
  
CITY CLERK, City of Galt

