

ORDINANCE NO. 2009-145

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF CLEARLAKE,
CALIFORNIA MAKING FINDINGS AND ESTABLISHING A TEMPORARY
MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL
MARIJUANA DISPENSARIES**

THE CITY COUNCIL OF THE CITY OF CLEARLAKE DOES ORDAIN AS FOLLOWS:

Section 1. Authority

The City Council enacts this interim urgency ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution and Section 65858 of the California Government Code.

Section 2. 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, et seq. and entitled the Compassionate Use Act of 1996 (“the Act”).

B. The intent of Proposition 215 was to enable persons who are in need of medical marijuana for medical purposes to obtain it and use it 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. On October 19, 2009, the U.S. Department of Justice Office of the Deputy Attorney General issued a memorandum setting forth that in states that have enacted laws authorizing the medical use of marijuana, like California, United States Attorneys will not prosecute individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.

E. The Clearlake Municipal Code currently does not specifically address or regulate medical marijuana dispensaries.

F. California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries, and sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries, odor, loitering around the dispensaries, and increase in driving while under the influence of marijuana.

G. To address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, the City of Clearlake has studied the potential impacts such facilities may have on the public health, safety, and welfare.

H. Based on the foregoing, the City of Clearlake is in the process of drafting an ordinance regulating the establishment and/or operation of medical marijuana dispensaries.

I. The City Council finds that issuing permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to adoption of the City's ordinance regulating the establishment and/or operation of medical marijuana dispensaries, poses a current and immediate threat to the public health, safety, and welfare, and that a temporary moratorium on the issuance of such permits, licenses, and entitlements is thus necessary.

J. The City Council finds that there are currently three medical marijuana dispensaries operating within the City: Triple C Collective, D & M Compassion Center, and Lakeside Herbal Solutions. These three medical marijuana dispensaries will be allowed to continue operations until such time that the City's regulations are final.

Section 3. Imposition of Moratorium

A. In accordance with the authority granted the City of Clearlake under Government Code Section 65858, from and after the date of this Ordinance, no use permit, variance, building permit, business license or other applicable entitlement for use shall be approved or issued for the establishment or operation of a medical marijuana dispensary for a period of forty-five (45) days.

B. For purposes of this Ordinance, "medical marijuana dispensary" shall mean any facility which makes available, sells, transmits, gives, or otherwise provides medical marijuana to one or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. For purposes of this Ordinance, the terms "primary caregiver," "qualified patient," and "person with an identification card" shall have the same meaning as that set forth in Health and Safety Code Section 11362.5, et seq.

C. For purposes of this Ordinance, a medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and as long as such use complies strictly with applicable law, including, but not limited to, Health and Safety Code Section 11362.5, et seq.: (1) a clinic, licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; (2) a health care facility, licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; (3) 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; (4) a residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or (5) a residential hospice or home health agency, licensed pursuant to Chapter 8 of the Health and Safety Code.

Section 4. CEQA

The City Council hereby finds and determines, that this Ordinance is not subject to the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15060(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) because it has no potential for resulting in physical change to the environment.

Section 5. Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 6. Effective Date

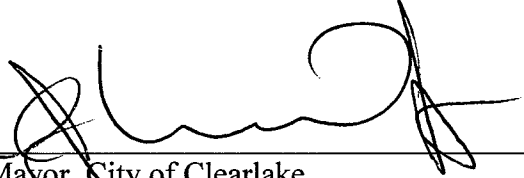
This ordinance shall become effective immediately upon adoption if adopted by at least a four-fifths vote of the City Council and shall be in effect for forty-five (45) days from the date of adoption unless extended by the City Council as provided for in the Government Code.

Section 7. Publication

The City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be published once in a newspaper of general circulation printed and published within the City of Clearlake.

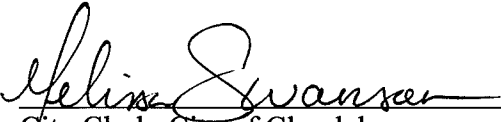
PASSED AND ADOPTED this 5th day of November, 2009
by the following vote:

- AYES: Mayor Chuck Leonard, Vice Mayor Judy Thein, Council Member Joyce Overton,
Council Member Curt Giambruno, Council Member Roy Simons
- NOES: None
- ABSENT: None
- ABSTAIN: None



Mayor, City of Clearlake

ATTEST:



City Clerk, City of Clearlake