

ORDINANCE NO. 2009- 019

**AN INTERIM EMERGENCY ORDINANCE OF THE COUNCIL OF
THE CITY OF SAN BUENAVENTURA DECLARING AND
IMPOSING A CITYWIDE MORATORIUM ON THE
ESTABLISHMENT AND OPERATION OF MEDICAL
MARIJUANA DISPENSARIES**

The Council of the City of San Buenaventura does ordain as follows:

Section 1. Findings and Determinations.

A. City of San Buenaventura ("City") staff has received several inquiries regarding establishing and operating medical marijuana dispensaries within the City; and

B. The City's Municipal Code and Zoning Ordinance do not mention and hence do not permit the existence or location of medical marijuana dispensaries within the City;

C. After receiving inquiries from persons interested in establishing medical marijuana dispensaries, numerous other cities in California have adopted ordinances prohibiting or heavily regulating such dispensaries; and

D. A significant number of cities throughout California have prohibited or heavily regulated medical marijuana dispensaries and therefore there is an increased likelihood that such establishments will seek to locate to City; and

E. The City Police Chief maintains that the establishment of medical marijuana dispensaries will result in an increase in criminal activity such as burglaries, robberies, and the sale of illegal drugs in areas immediately surrounding such dispensaries; and

F. The United States Controlled Substances Act classifies marijuana as a Schedule 1 illegal drug, with high potential for abuse; and

G. In 1996, California voters approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, *et seq.*, and entitled the "Compassionate Use Act of 1996," which allows a patient or a patient's caregiver to possess or cultivate marijuana for personal medical purposes of the patient; and

H. The Supreme Court of the United States ruled in *Gonzalez v. Raich*, 125 S. Ct. 2195 (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; and

I. The federal-state conflict and the interpretation of the scope of the California law continue to exist as the pending case of *Qualified Patients Association v. City of Anaheim* demonstrates; and

J. In *Qualified Patients Association v. City of Anaheim*, a medical marijuana group consisting of approximately fifty (50) members, challenged the City of Anaheim's ban against medical marijuana dispensaries on the basis that the ban contravenes California's Proposition 215 and Health & Safety Code Sections 11362.5 and 11362.7, and violates Civil Code Section 51 ("Unruh Civil Rights Act"); and

K. The medical marijuana group's argument is that they are a "primary caregiver" under the Compassionate Use Act and are allowed to operate medical marijuana dispensaries; and

L. The City of Anaheim argues that the sale of marijuana is illegal under federal law and states do not have the authority to override federal law, and a dispensary is not a "primary caregiver" under the state law; therefore, the medical marijuana group is prohibited under federal and state law from dispensing an illegal drug and Anaheim's Ordinance should be upheld; and

M. The City of Anaheim prevailed in the Orange County Superior Court and Qualified Patients Association appealed the decision; and

N. California cities expect that, with the currently pending appeal of *Qualified Patients Association v. City of Anaheim*, the Courts will settle this conflict in late 2009, or at least shed some guidance on the issue of banning marijuana dispensaries so cities will better understand how to proceed and enact planning regulations; and

O. With respect to the City, the decision to prohibit or authorize the establishment of medical marijuana dispensaries and, if permitted, the appropriate zone(s) and related development standards, has not been commenced or completed by the City; and

P. The City currently does not permit such use, and as such, has not established any express criteria regarding the establishment, location or scope of operations for medical marijuana dispensary uses; and

Q. The establishment of medical marijuana dispensaries before appropriate procedures and regulations are enacted will cause adverse impacts to surrounding development and risks to the public health, safety and welfare of the City's residents and the general public and it is, therefore, urgent that the City have the

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opportunity to consider whether such facilities must or should be allowed or prohibited in the City and, if so allowed, to develop regulations governing the location and operation of medical marijuana dispensaries to prevent adverse impacts to the public health, safety and welfare that may result from unregulated placement and operation of such uses; and

R. The City intends to undertake a study of whether medical marijuana dispensaries (including cooperatives and collectives) must or should be permitted or prohibited, and if so permitted, the appropriate regulations for such uses, within a reasonable time; and

S. Given the time required to undertake the necessary study and planning, the City Council finds that it is necessary that this interim ordinance be immediately enacted to ensure that no medical marijuana dispensaries that may be in conflict with any state or federal law, or the City's general plan, zoning, and/or development policies are permitted in the interim; and

T. Based upon the foregoing, the City Council finds that there is a current and immediate threat to the public health, safety and welfare presented by the unregulated development of medical marijuana dispensaries; and

U. Further based upon the foregoing, the City Council finds and determines that the current and immediate preservation of the public health, safety and welfare requires that this interim Ordinance be enacted as an emergency ordinance pursuant to Government Code Section 65858 and take effect immediately upon adoption, and its urgency is hereby declared; and

V. The City Council now desires to adopt this interim Ordinance as an emergency ordinance, effective immediately, and prohibit the establishment of medical marijuana dispensaries, as defined hereafter, in any zone of the City pursuant to the authority set forth in California Government Code Section 65858; and

W. The City Council finds that this Ordinance should be adopted on an emergency basis pursuant to the authority in Charter Section 706.

Section 2. IMPOSITION OF MORATORIUM

A. The findings and determinations in Section 1 are true and correct.

B. In accordance with the authority granted to the City 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.

C. For purposes of this Ordinance, medical marijuana dispensary shall mean any facility or location where a primary caregiver intends to or does make available, sell, transmit, give, exchange for consideration, or otherwise provide medical marijuana to any 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 meanings as those set forth in Health and Safety Code Section 11362.5 *et seq.*

D. 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 uses strictly comply 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 Safety Code.

E. This Ordinance is an Interim Emergency Ordinance adopted pursuant to the authority granted to the City by Government Code Section 65858 and is for the immediate preservation of the public health, safety and welfare. The facts constituting the urgency are:

(1) California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have resulted in negative and harmful effects such as an increase in crime including robberies, burglaries and the sale of illegal drugs in areas immediately surrounding medical marijuana dispensaries; and

(2) After receiving inquiries from persons interested in establishing medical marijuana dispensaries numerous other cities in California have adopted ordinances prohibiting or heavily regulating such dispensaries and because a significant portion of the region has prohibited or heavily regulated medical marijuana dispensaries there is a substantially increased likelihood that such establishments will seek to locate in the City; and

(3) The City does not currently have standards in its Municipal Code or Zoning Ordinance related to the location, operation or concentration of medical marijuana dispensaries within the City; and

(4) Absent the adoption of this Interim Emergency Ordinance the establishment and operation of medical marijuana dispensaries in the

City would result in the negative and harmful effects other cities have experienced as identified above; and Currently the state and federal laws related to medical marijuana dispensaries appear to be in conflict; and

(5) As a result of the conflict in federal and state laws on the matter, the negative and harmful effects associated with medical marijuana dispensaries, the current and immediate threat such secondary effects pose to the public health, safety and welfare and the potential zoning conflicts that would be created by the establishment and operation of a medical marijuana dispensary, it is necessary to establish a temporary forty-five (45) day moratorium on the establishment and operation of medical marijuana dispensaries in the City pending resolution of the conflict between federal and state law, completion of the City's study of the potential impacts of medical marijuana dispensaries and possible amendments to the City's Zoning Ordinance.

F. City staff is directed to study the applicable legal and land use issues related to operation of medical marijuana dispensaries and develop appropriate zoning and licensing guidelines or regulations governing such uses, and/or a possible prohibition on such uses if authorized by law and desired by the City Council.

G. The violation of any of the provisions of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance.

Section 3. Severability.

If any provision of this Interim Emergency Ordinance or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Interim Emergency Ordinance which can be given effect without the invalid provision or application and to this end the provisions of this Interim Emergency Ordinance are hereby declared to be severable.

Section 4. Effective Date.

This Interim Emergency Ordinance shall become effective immediately upon adoption 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 Section 65858(a) of the Government Code.

Section 5. CEQA Findings.

The City Council on the basis of the whole record and exercising independent judgment finds that this Interim Emergency Ordinance is not subject to environmental review pursuant to the State Guidelines for Implementation of the California Environmental Quality Act Sections 15060(c)(2) and 15060(c)(3) pertaining to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a project under Section 15378. This Ordinance has no potential for resulting in physical change to the environment directly or indirectly in that it prevents change to the environment pending the completion of the contemplated research and studies.

PASSED and ADOPTED this 21 day of September 2009.



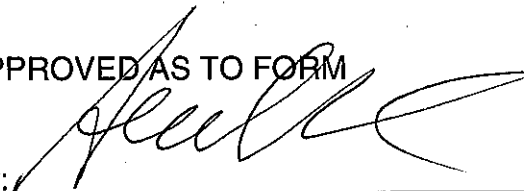
Christy Weir, Mayor

ATTEST:



Mabi Covarrubias Plisky
City Clerk

APPROVED AS TO FORM

By: 

Ariel Pierre Calonne
City Attorney

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss
CITY OF SAN BUENAVENTURA)

I, Mabi Covarrubias Plisky, City Clerk of the City of San Buenaventura, California, certify that the foregoing Ordinance was passed and adopted by the City Council of the City of San Buenaventura, at a regular meeting on September 21, 2009, by the following vote:

AYES: Councilmembers Brennan, Summers, Morehouse, Andrews, Monahan, Deputy Mayor Fulton and Mayor Weir.

NOES: None.

ABSENT: None.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the City of San Buenaventura on September 22, 2009.

Mabi Covarrubias Plisky

City Clerk

