

ORDINANCE NO. 785B

AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF LINCOLN
AMENDING CHAPTER 18.34 OF THE LINCOLN MUNICIPAL CODE
REGARDING MARIJUANA DISPENSARIES

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

Section 1. Findings. In adopting this ordinance, the City Council makes the following findings:

1. The people of the State of California passed Proposition 215, codified as Health & Safety Code section 11362.5 et seq., and entitled "The Compassionate Use Act of 1996," which protects patients and physicians who prescribe marijuana for medical treatment.

2. The Legislature of the State of California passed SB 420, effective January 1, 2004, codified as Health & Safety section 11362.7 et seq., which was designed to provide greater certainty regarding the medical use of marijuana and establish use procedures and voluntary identification and/or registration cards to qualified patients.

3. Although Marijuana Dispensaries have emerged in response to Proposition 215 and SB 420, it is unclear whether these state laws provide for Marijuana Dispensaries and there is a conflict between state and federal law regarding the legality of such dispensaries and federal agents continue to prosecute owners of such dispensaries.

4. Marijuana Dispensaries create adverse secondary effects, including but not limited to, an increase in illegal drug trafficking near their location, and increased burglaries and/or robberies at their locations.

5. This ordinance is hereby found to be categorically exempt from environmental review pursuant to CEQA guidelines section 15061 (b)(3).

Section 2. Chapter 18.34 of the Lincoln Municipal Code is hereby amended to add Article IV to read as follows:

Sections:

ARTICLE IV. MARIJUANA DISPENSARIES

- 18.34.120 Purpose.
- 18.34.130 Definitions.
- 18.34.140 Prohibited Use.

ARTICLE IV. MARIJUANA DISPENSARIES

Section 18.34.120 Purpose. It is the purpose and intent of this ordinance to prohibit Marijuana Dispensaries in order to promote the health, safety, morals, and general welfare of the residents and businesses of the City of Lincoln.

Section 18.34.130. Definitions. "Medical Marijuana Dispensary" or Marijuana Dispensary" means any facility or location where medical marijuana is made available to and/or distributed by or to three or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health and Safety Code section 11362.5 et seq. A "marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: 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, 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, Health and Safety Code section 11362.5 et seq.

Section 18.34.140 Prohibited Use. Pursuant to section 18.04.020 of this code, the listing of a use in a zoning district implies the exclusion of uses not listed. To reiterate and reinforce section 18.04.020 and the interpretation of the Zoning Code of the City of Lincoln, Marijuana Dispensaries are not listed as an approved use in any zone in the City of Lincoln; accordingly, Marijuana Dispensaries are prohibited in all zones and anywhere in the City of Lincoln, and no conditional use permit shall be issued therefore.

Section 3. This ordinance shall become effective thirty (30) days after its adoption and within fifteen (15) days of the passage of this ordinance, a copy shall be published once in the News Messenger, a newspaper of general circulation in the City.

Section 4. Upon the effective date of this ordinance, Interim Ordinance No. 780B will terminate and no longer be in effect.

PASSED AND ADOPTED this 8th day of February, 2005, by the following roll call vote:

AYES: COUNCILMEMBERS: Short, Santini, Nakata

NOES: COUNCILMEMBERS: none

ABSENT: COUNCILMEMBERS: Sprague, Cosgrove


MAYOR

ATTEST:


City Clerk

APPROVED AS TO FORM:

City Attorney