

ORDINANCE NO. 2009-22

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
ADDING CHAPTER 16F TO THE
ESCONDIDO MUNICIPAL CODE
PROHIBITING THE ESTABLISHMENT AND
OPERATION OF MEDICAL MARIJUANA
DISPENSARIES WITHIN THE CITY OF
ESCONDIDO

WHEREAS, in 1996 California voters approved the Compassionate Use Act ("CUA"), which allows a patient or a patient's primary caregiver to possess or cultivate marijuana for personal medical purposes; and

WHEREAS, thereafter, the Legislature of the State of California enacted Senate Bill 420 (the "Medical Marijuana Program"), codified as California Health and Safety Code § 11362.7 et seq., which requires the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and primary caregivers, and prohibits the arrest of a qualified patient or a primary caregiver with a valid identification card for the possession, transportation, delivery, or cultivation of medical marijuana; and

WHEREAS, one purpose of the CUA and the Medical Marijuana Program is "[t]o encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana;" and

WHEREAS, under the Controlled Substances Act ("CSA"), marijuana is a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, with no currently accepted medical use, and Section 841 of the CSA makes

it unlawful for a person to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense marijuana; and

WHEREAS, while the use of marijuana is permitted for medicinal purposes under California law, marijuana remains a prohibited controlled substance under federal law; and

WHEREAS, medical marijuana dispensaries are retail businesses specializing in the sale of marijuana and marijuana related products. These businesses are not licensed pharmacies and do not qualify as primary caregivers within the meaning of Health and Safety Code Section 11362.7, which defines a primary caregiver as an "individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person;" and

WHEREAS, on July 8, 2009, the City Council adopted an urgency ordinance imposing a 45-day moratorium on the legal establishment and operation of medical marijuana dispensaries; and

WHEREAS, existing City ordinances and regulations, other than the interim moratorium established by Ordinance No. 2009-19, do not expressly address the regulation, control, or zoning of medical marijuana dispensaries; and

WHEREAS, medical marijuana dispensaries have been established in numerous locations in California, and as a consequence, local agencies have reported negative secondary effects on the community, including, illegal drug activity and drug sales in the vicinity of dispensaries; robbery of persons leaving dispensaries; driving under the

influence of a controlled substance by persons who have obtained marijuana from a dispensary; persons acquiring marijuana from a dispensary and then selling it to a non-qualified person; burglaries and robberies; and an increase in vacancies in the commercial areas in the vicinity of such businesses; and

WHEREAS, the California Police Chiefs Association has compiled an extensive report detailing the negative secondary effects associated with medical marijuana dispensaries; and

WHEREAS, the California Health and Safety Code § 11362.5(b)(2) expressly provides that nothing in the Compassionate Use Act shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes; and

WHEREAS, pursuant to the City's police powers authorized in Article XI, Section 7 of the California Constitution, the City of Escondido's Municipal Code, other local regulations, and other provisions of California law, including, but not limited to California Government Code § 38771, the City has the power through its City Council to declare actions and activities constitute a public nuisance; and

WHEREAS, the City Council wishes to amend the Escondido Municipal Code to make it unlawful for any person to own, manage, or operate any medical marijuana dispensary in the City of Escondido.

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. Findings.

The City Council finds that the facts set forth in the recitals of this Ordinance are true and correct.

SECTION 2. Addition of Chapter 16F to the Municipal Code.

A new Chapter 16F entitled Medical Marijuana Dispensaries is hereby added to the City of Escondido Municipal Code to read and provide as follows:

CHAPTER 16F

MEDICAL MARIJUANA DISPENSARIES

ARTICLE 1. GENERAL

Sec. 16F-1. Purpose.

Sec. 16F-2. Definitions.

ARTICLE 2. MEDICAL MARIJUANA DISPENSARIES

Sec. 16F-3. Medical marijuana dispensary prohibited.

Sec. 16F-4. Establishment, maintenance, or operation of medical marijuana dispensaries declared public nuisance.

ARTICLE 3. ENFORCEMENT

Sec. 16F-5. Penalties for violation.

ARTICLE 1. GENERAL

Sec. 16F-1. Purpose.

The purpose of this chapter is to prohibit medical marijuana dispensaries from locating in the City of Escondido. This chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to any activity that is regulated by federal or state law to the extent that the application of this chapter would conflict with such law. It is the intention of the City Council that this chapter be

interpreted to be compatible with federal, county, and state enactments and in furtherance of the public purposes which those enactments.

Sec. 16F-2. Definitions.

In addition to any other definitions contained in the Municipal Code, the following words and phrases shall, for the purpose of this chapter be defined as follows, unless it is clearly apparent from the context that another meaning is intended.

Identification card shall mean a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

Medical marijuana shall mean marijuana authorized in strict compliance with Health and Safety Code Section 11362.5 et seq., or as such section may be amended from time to time.

Medical marijuana dispensary or dispensary shall mean any facility or location, whether fixed or mobile, where medical marijuana is made available to, or distributed by or to, three (3) or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. Each of these terms is identified in strict accordance with California Health and Safety Code Section 11362.5 et seq. and ad such sections may be amended from time to time. 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 Division 2 of the Health and Safety Code;

- (2) A healthcare facility licensed pursuant to Chapter 2 Division 2 of the Health and Safety Code;
- (3) A residential care facility for persons with chronic life-threatening illnesses 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; and
- (5) 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 such use complies strictly with applicable law, including but not limited to, Health and Safety Code Section 11362.5 et seq.

Primary caregiver shall mean the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

Qualified patient shall mean a person who is entitled to the protections of the California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

ARTICLE 2. MEDICAL MARIJUANA DISPENSARIES

Sec. 16F-3. Medical marijuana dispensary prohibited.

It shall be unlawful for any person or entity to own, manage, conduct, or operate any medical marijuana dispensary or to participate as an employee, contractor, or agent

or volunteer, or in any manner or capacity, in any medical marijuana dispensary in the City of Escondido.

Sec. 16F-4. Establishment, maintenance, or operation of medical marijuana dispensaries declared public nuisance.

The establishment, maintenance, or operation of a medical marijuana dispensary within the City limits of the City of Escondido is declared to be a public nuisance, and may be abated by the City or subject to any available legal remedies, including but not limited to civil injunctions.

ARTICLE 3. ENFORCEMENT

Sec. 16F-5. Penalties for violation.

- (a) The violation of any provision of this chapter is unlawful and is a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000.00) or a jail term of six months, or both. Each and every day on which a violation occurs shall be deemed to be a separate violation.
- (b) In addition to the remedies set forth in section 16F-5(a), any violation of this chapter may be prosecuted or enforced as a public nuisance and, as such, may be abated or enjoined from further operation.

SECTION 3. The City Council finds that this Ordinance is not subject to environmental review under the California Environmental Quality Act pursuant to Title 14 of the California Code of Regulations (CEQA Guidelines) Section 15060(c)(2) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and Section 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, directly, or indirectly.

SECTION 4. Severability. If any section, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one of more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 5. Certification. That the City Clerk is hereby directed to certify to the passage of this Ordinance and to cause the same or a summary to be prepared in accordance with Government Code Section 36933, to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.

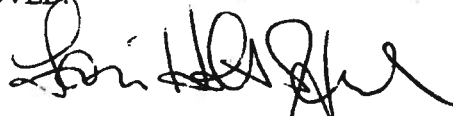
PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 19th day of August, 2009 by the following vote to wit:

AYES : Councilmembers: ABED, DANIELS, WALDRON, PFEILER

NOES : Councilmembers: DIAZ

ABSENT : Councilmembers: NONE

APPROVED:



LORI HOLT PFEILER, Mayor of the
City of Escondido, California

ATTEST:



MARSHA WHALEN, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, MARSHA WHALEN, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2009-22 passed at a regular meeting of the City Council of the City of Escondido held on the 19th day of August, after having been read at the regular meeting of said City Council held on the 12th day of August, 2009.



MARSHA WHALEN, City Clerk of the
City of Escondido, California

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