

ORDINANCE NO. 16-2006

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FREMONT AMENDING FREMONT MUNICIPAL CODE TITLE VII, CHAPTER 2, ZONING, BY ADDING A DEFINITION FOR MEDICAL MARIJUANA DISPENSARIES AND FURTHER PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF FREMONT

WHEREAS, the City Council of the City of Fremont adopts this amendment to the Fremont Municipal Code based upon the following findings:

A. The voters of the State of California approved Proposition 215, codified as Health and Safety Code sections 11362.5 et seq. and entitled "The Compassionate Use Act of 1996, in November 1996, which exempts qualified patients and caregivers from prosecution under State laws that otherwise prohibit the cultivation or possession of marijuana for medical purposes.

B. The State enacted Senate Bill 420 in 2003 to clarify the scope of the Compassionate Use Act of 1996 to provide some guidance on implementation and to specifically allow cities and other governing bodies to adopt rules and regulations pertaining to medical marijuana consistent with SB 420.

C. In May 2001, the United States Supreme Court issued its decision in *United States v. Oakland Cannabis Buyers' Cooperative* holding that distribution of medical marijuana is illegal under the federal Controlled Substances Act (21 USC § 841) and that there is no medical necessity defense allowed under federal law.

D. On June 6, 2005, the United States Supreme Court issued its decision in *Gonzales v. Raich* which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and, under the federal Controlled Substances Act, the power to prohibit local cultivation and use of marijuana even though it would be allowed under California law. As a result of this decision, federal law enforcement officers may enforce federal drug laws against Californians who cultivate or use medical marijuana.

E. In light of these decisions, the City Council finds that it would be inconsistent and contrary to public health, safety, and welfare to permit the establishment of medical marijuana dispensaries, as defined herein, within the City inasmuch as to permit such activities may subject the City and/or its officials and employees to prosecution under the federal law and would otherwise constitute illegal activity under federal law.

F. In addition, the City Council finds that the establishment of medical marijuana dispensaries in other jurisdictions has led to secondary negative impacts on

local communities, such as drug-related crime and use of marijuana for non-medical purposes.

G. Until such inconsistency is resolved between federal and state laws with respect to medical marijuana, and until such time as the negative impacts to the community related to dispensaries may be controlled and eliminated, it is the intent of the Council to prohibit medical marijuana dispensaries within the City of Fremont.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FREMONT DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. SECTION 8-2136.5 ADDED. Section 8-2136.5 is hereby added to the Fremont Municipal Code to read in full as follows:

Sec. 8-2136.5. Dispensary, Medical Marijuana.

“Medical Marijuana Dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is made available to, or distributed to, or distributed by, one or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. All three of these terms are identified in strict accordance with California Health and Safety Code sections 11362.5 et seq. 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: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a healthcare facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a 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 such use complies strictly with applicable law, including but not limited to, Health and Safety Code sections 11362.5 et seq.

SECTION 2. SECTION 8-22137.1 ADDED. Section 8-22137.1 is added to Article 21.3, “Special Provisions Applying to Miscellaneous Uses” of the Fremont Municipal Code to read in full as follows:

Section 8-22137.1 Dispensaries for Medical Marijuana a Prohibited Use.

A medical marijuana dispensary as defined in Section 82136.5 is prohibited in all zones and no use permit of any type shall be issued therefore.

SECTION 3. CEQA – NEGATIVE DECLARATION. The City Council hereby determines that the Negative Declaration prepared for this ordinance has been completed in compliance with the requirements of the California Environmental Quality Act

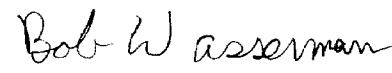
(CEQA) and reflects the independent judgment of the City, and finds that adoption of the ordinance will have no significant negative impact on the area's resources, cumulative or otherwise. The Director of Community Development shall file a Notice of Determination with the County Clerk pursuant to CEQA guidelines.

SECTION 4. SEVERABILITY. In the event any court of competent jurisdiction holds any provision of this ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provisions hereof. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions are declared invalid or unenforceable.

SECTION 5. EFFECTIVE DATE. This ordinance shall be published once in *The Argus*, a newspaper of general circulation, printed and published in Alameda County and circulated in the City of Fremont, within fifteen (15) days from and after its adoption and shall take effect and be enforced thirty (30) days after its adoption.

The foregoing ordinance was duly introduced before the City Council of the City of Fremont, County of Alameda, at the meeting of the City Council of such City, held on the July 11, 2006, and finally adopted at a regular meeting of said Council held on the 25th day of July, 2006, by the following vote, to wit:

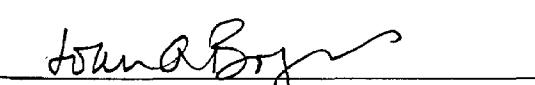
AYES:	Mayor Wasserman, Vice Mayor Cho, Councilmembers Wieckowski and Natarajan
NOES:	None
ABSTAINED:	None
ABSENT:	None



Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


Assistant City Attorney