

ORDINANCE NO. 35-2004

AN URGENCY ORDINANCE OF THE CITY OF FREMONT EXTENDING FOR TWENTY-FOUR MONTHS A MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES

The City Council of the City of Fremont does hereby ordain as follows:

Section 1. Purpose and findings.

Medical marijuana dispensaries have been established in several locations in California, and as a consequence, local agencies have reported increases in illegal drug activity, illegal drug sales, robbery of dispensaries, loitering around dispensaries, falsely obtaining identification cards to qualify for medical marijuana, marijuana plants being grown illegally on public property, robberies of private marijuana gardens and other increases in criminal activity. Recent examples include: Berkeley police have reported robberies inside and outside of the three permitted dispensaries in their City; an armed robbery in Ukiah where a homeowner growing marijuana for claimed medical purposes was shot by a robber who was stealing the marijuana; a person attempting to rob a claimed medical marijuana garden was shot by a guard of the garden in Corning; men kicked in the window of a medical marijuana dispensary in Oakland and tried to rob to the dispensary; San Francisco medical marijuana dispensary operators have reported that many persons make false claims about medical conditions in an attempt to obtain medical marijuana, and thieves in Oakland broke into a medical marijuana dispensary and robbed the safe as well as the persons present. The United States Department of Justice's (DOJ) California Medical Marijuana Information report has advised that large-scale drug traffickers have been posing as "care givers" to obtain and sell marijuana. Furthermore, the State of California has not implemented its State-wide identification card program and the County of Alameda has also not implemented a County-wide program, but has simply deferred to local dispensaries. To protect residents and businesses from harmful secondary effects of medical marijuana dispensaries, mainly relating to criminal activity, City staff need time to study licensing and criminal background check procedures, as well as determine which zoning districts may be appropriate for such a use, pursuant to what level of discretionary review, and subject to what type of operational conditions and restrictions.

Section 2. Imposes an interim prohibition / moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries, which includes any site, facility, location, use, cooperative or business which distributes, sells, exchanges, processes, delivers, gives away, or

cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers, or physicians, pursuant to Proposition 215, the "Compassionate Use Act of 1996", SB 420 (Vasconcellos) or any State regulations adopted in furtherance thereof. Marijuana shall also mean cannabis and all parts of that plant.

Based on the findings set forth herein, no land use approval or building permit may be issued for a medical marijuana dispensary for the effective period of this Ordinance.

Section 3. Immediate threat to health, safety and welfare.

Based on the findings herein, this ordinance is adopted pursuant to California Government Code §65858 and is required to address a current and immediate threat to the public health, safety and welfare. The City Council has determined that granting additional land use approvals or building permits for medical marijuana dispensaries would result in a threat to the public health, safety and welfare.

Section 4. Urgency ordinance.

This ordinance is an urgency ordinance and shall take effect and be enforced immediately upon adoption.

Section 5. Effective Period.

In accordance with Cal. Gov't. Code §65858, this ordinance shall be in full force and effect for a period of twenty-four (24) months from the date of its adoption.

Section 6. Conflicting Laws.

For the term of this ordinance, as set forth in Section 5 above, the provisions of this ordinance shall govern. To the extent that there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

Section 7. Waiver.

The City, on a case by case basis, shall have the authority, upon a showing of good cause by an applicant, to waive the interim prohibition / moratorium imposed by this ordinance and allow for the granting of permits to said applicant pursuant to the Conditional Use Permit process set forth in Article 25 of Chapter 2 of the Fremont Municipal Code. Good cause shall mean a factual and evidentiary showing by the applicant that the interim prohibition / moratorium, if not waived, will deprive the applicant of substantially all reasonable use of his/her property. All such applications for waiver shall be filed with the City Planning Division. Fees for waiver applications and associated appeals shall be

the same as those charged for a Conditional Use Permit.

Section 8. Publication and Posting.

This ordinance, and the names of those council members voting for and against the 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. The City Clerk shall post at City Hall a copy of the full text of this ordinance and the names of those council members voting for and against the ordinance. This ordinance shall take effect immediately upon its adoption.

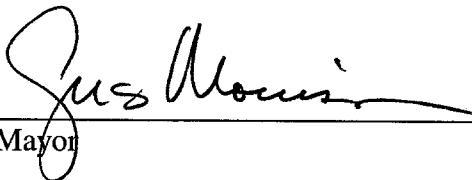
The foregoing urgency ordinance was introduced and duly adopted by a four-fifths vote of the City Council of the City of Fremont, County of Alameda, at the regular meeting of the City Council of such City, held on the 2nd day of November 2004, by the following vote, to wit:

AYES: Mayor Morrison, Vice Mayor Cho, Councilmembers Wasserman, Pease and Dutra

NOES: None

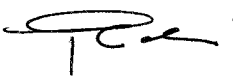
ABSTAIN: None

ABSENT: None



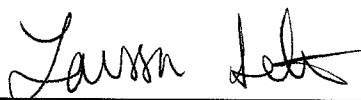
Mayor

ATTEST:



Deputy City Clerk

APPROVED AS TO FORM:



Senior Deputy City Attorney