

ORDINANCE NO. 2004-7

AN URGENCY ORDINANCE OF THE CITY OF EL CERRITO ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 EXTENDING THE INTERIM ORDINANCE PROHIBITING MEDICAL MARIJUANA FACILITIES IN ALL ZONING DISTRICTS AND PROHIBITING THE ISSUANCE OF BUILDING PERMITS AND OTHER LAND USE ENTITLEMENTS THAT WOULD ALLOW THE ESTABLISHMENT OF MEDICAL MARIJUANA FACILITIES IN ANY ZONE DURING THE PENDENCY OF THE CITY'S REVIEW AND ADOPTION OF PERMANENT ZONING REGULATIONS FOR SUCH USES

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES ORDAIN AS FOLLOWS:

SECTION 1. Pursuant to Government Code Section 65858, City of El Cerrito Ordinance No. 2004 -6 is hereby extended for a period of ten (10) months and fifteen (15) days to and including July 19, 2005. This Ordinance shall expire and terminate at midnight on July 19, 2005 unless further extended by the City Council pursuant to Government Code Section 65858 after a regularly noticed public hearing.

SECTION 2. Moratorium extended. The City of El Cerrito hereby extends the interim moratorium on medical marijuana facilities in all zoning districts in the City. For purposes of this Ordinance, the term "medical marijuana facility" shall mean any facility that grows or distributes marijuana for medical purposes as described in California Health and Safety Code Section 11362.5.

SECTION 3. Moratorium defined. Notwithstanding any other ordinance or provision of the Municipal Code of the City of El Cerrito, no person shall establish a medical marijuana facility and no application for a building permit, conditional use permit; or any other entitlement for the establishment of a medical marijuana facility shall be approved during the term of the moratorium as provided in Section 1 above.

SECTION 4. CEQA Finding. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance, and extension of the moratorium hereby, may have a significant effect on the environment, because the moratorium will impose greater limitations on development in the City, and will thereby serve to reduce potential significant adverse environmental impacts. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

SECTION 5. Penalty. Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) 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. In addition to the foregoing, any violation of this Ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

SECTION 6. Legislative Findings. The City is responsible for adopting and implementing land use regulations within its boundaries. In 1996 the California voters adopted Proposition 215, the Compassionate Use Act ("Prop 215"), legalizing, for all intents and purposes, the use of marijuana for medical purposes. Prop 215 was codified in Section 11362.5 of the California Health and Safety Code. Widespread implementation of Prop 215 was delayed, however, due to several ensuing court cases challenging its validity. While the California Supreme Court has stated unequivocally that Prop 215 makes the possession of marijuana for medical purposes legal (People v. Mower (2002) 28 Cal.4th 457), the federal courts have not recognized such a medical necessity exception under federal law (United States v. Oakland Cannabis Buyer's Cooperative (2001) 532 U.S. 483). However, the Ninth Circuit recently ruled that unless there was interstate transfer of marijuana involved, the cultivation, use and transfer of marijuana completely within the State of California for noncommercial purposes under the Compassionate Use Act (Prop 215) fell outside the powers of the federal Commerce Clause. (Raich v. Ashcroft (2003) 352 F.3d 1222). The Ninth Circuit's ruling in Raich has led to an increase in the number of medical marijuana distribution centers.

The City recently has received inquiries regarding the City's requirements for medical marijuana facilities. The establishment of medical marijuana facilities before appropriate procedures and regulations are enacted has the potential to cause adverse impacts to surrounding development and to risk the public health, safety and welfare of the City's residents and the general public. - It is therefore urgent that the City study the options available regarding appropriate regulation of medical marijuana facilities to prevent adverse impact to the public health, safety and welfare that may result from unregulated placement and operation of such uses in the City.

The City Council finds that additional planning and research are necessary before the City adopts any regulation governing medical marijuana facilities. The City intends to undertake such a study within a reasonable time. However, the Planning Commission, the City Council and the people of El Cerrito require a reasonable, limited, yet sufficient period of time to consider and study legally appropriate and reasonable policies governing medical marijuana facilities. During the course of the study and planning process, the City Council finds that operators of medical marijuana facilities and others are likely to submit applications for such uses and/or proceed with the development of medical marijuana facilities before appropriate regulations and safeguards are in place which may be incompatible with the result of this planning process. Given the

time required to undertake the study and planning, the City Council finds that it is necessary that this temporary moratorium be extended to ensure that no medical marijuana facilities that may be in conflict with the contemplated new development policies are permitted in the interim. The City Council has the authority to extend the interim ordinance pursuant to Government Code Section 65858 in order to protect the public health, safety, or welfare.

Accordingly, 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 facilities in the City. In the absence of immediate effectiveness, the approval of building permits, conditional use permits or any other applicable entitlements for such uses will result in that threat to the public welfare and could frustrate the City's ability to adopt and enforce appropriate regulations designed to protect surrounding development and the public health, safety and welfare from the potential adverse effects of medical marijuana facilities. Due to the foregoing circumstances, the City Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this interim ordinance be extended as an urgency ordinance pursuant to Government Code Section 65858 and take effect immediately upon adoption, and its urgency is hereby declared.

SECTION 7. A summary of this ordinance shall, within fifteen (15) days after passage, be posted in accordance with Section 36933 of the Government Code of the State of California with the names of the City Councilmembers voting for and against it.

PASSED, APPROVED and ADOPTED this 16th day of August, 2004 by the following vote:

AYES: Abelson, Brusatori, Friedmen, Potter

NOES: None


ABSTAIN: None

ABSENT: Moore

ATTEST:



CITY CLERK



MAYOR