

**ORDINANCE NO. 763 (Extended)**

**READOPT AND EXTEND URGENCY ORDINANCE NO. 763 OF THE CITY  
COUNCIL  
OF THE CITY OF ANDERSON ADDING CHAPTER 17.57 TO THE ANDERSON  
MUNICIPAL CODE PROHIBITING THE ESTABLISHMENT OF MEDICAL  
MARIJUANA DISPENSARIES, COLLECTIVES AND COOPERATIVES IN ANY  
ZONE DISTRICT**

**WHEREAS**, the City Council of the City of Anderson finds and determines that:

- A. The possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is generally unlawful under California statutory law (California Health and Safety Code Sections 11357-11360); and
- B. In November of 1996 the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et. seq. entitled the "Compassionate Use Act of 1996") which allows a person to use marijuana for medical purposes with a doctor's recommendation without violating state criminal laws concerning the use, possession or cultivation of marijuana; and
- C. In 2003, the State Legislature adopted Senate Bill 420 (codified as Health and Safety Code Section 11362.7 et. seq. entitled the "Medical Marijuana Program Act") which clarified the scope of the Compassionate Use Act of 1996 and allowed cities and other governing bodies to adopt and enforce rules and regulations related to medical marijuana; and
- D. Federal law (codified as 21 U.S.C. Section 801 et. seq. entitled the "Controlled Substances Act") makes it unlawful to manufacture, distribute or possess any controlled substances, including marijuana which creates a law enforcement dilemma due to the conflict between federal and state law; and
- E. The City has recently received inquiries whether any of the zoning districts within the City limits of Anderson would allow a medical marijuana collective or cooperative to be established; and
- F. The Municipal Code does not specifically address the location of a medical marijuana dispensary, collective or cooperative within any of its zoning districts

as either a permitted or a conditional use; and

- G. State law has created a limited affirmative defense to criminal prosecution for qualifying persons who collectively gather to cultivate medical marijuana but there is no provision in State law which specifically authorizes or protects the establishment of a medical marijuana dispensary or other storefront distribution operation;
- H. In California cities that have allowed the establishment of medical marijuana dispensaries, collectives and cooperatives, issues and concerns have arisen related to their location in proximity to residential properties, schools and daycare facilities and some communities have reported adverse impacts on public health, safety and welfare, including an increase in crimes such as loitering, illegal drug activity, burglaries, robberies and other criminal activity within and around dispensaries, as well as increased pedestrian and vehicle traffic, noise and parking violations, thereby generating a need for increased police response; and
- I. There are several unresolved State law questions regarding the regulation of medical marijuana dispensaries, collectives and cooperatives including questions about the interpretation of the State Attorney General's August 2008 "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" [Marijuana dispensaries generally considered to be unprotected, illegal drug-trafficking enterprises unless they fall within the narrow legal definition of a "cooperative" under state law] and the California Supreme Court case People v. Mentch (2008) 45 Cal.4<sup>th</sup> 274 [who may qualify as a "primary caregiver" for the purpose of cultivating or dispensing medical marijuana to qualified patients]; and
- J. At a regular scheduled meeting on October 20<sup>th</sup>, 2009, Anderson City Council adopted Urgency Ordinance No. 763 pursuant to California Government Code Section 65858 (a); and
- K. Urgency Ordinance No. 763 prohibited the establishment of medical marijuana dispensaries, collectives and cooperatives in any zone district within the City for 45 day ending on December 4<sup>th</sup>, 2009; and
- L. At a regular scheduled meeting on November 17<sup>th</sup>, 2009, Anderson City Council Urgency Ordinance No. 763 was readopted and extended for a four months ending on April 4, 2010; and

- M. There have been incidents in Anderson including a home invasion/robbery/assault in 2008 and a robbery/assault in September of 2009 and the burglary of a dispensary in the City of Redding this year associated with the growing and/or distribution of medicinal marijuana; and
- N. In the State of California there have been reports of many violent crimes committed that can be traced to the proliferation of medical marijuana dispensaries; and
- O. The Anderson City Council has been presented with numerous articles and information presented by individuals and organizations in support and opposition of the establishment of medical marijuana dispensaries, collectives and cooperatives within the City limits.
- P. The City desires on an urgency basis to continue to temporarily prohibit the establishment of medical marijuana dispensaries, collectives and cooperatives in any zone districts within the City of Anderson while the issues identified above are further studied to determine what type of regulation, if any, needs to be in place to protect the health, safety and welfare of the residents of the City of Anderson.

**NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANDERSON AS FOLLOWS:**

**Section 1. Purpose and Findings.**

The foregoing recitals are incorporated herein and are each relied upon independently by the City Council as the basis for adopting this ordinance as an urgency ordinance.

**Section 2. Text of Addition to Municipal Code.**

Title 17 of the City of Anderson Municipal Code, is hereby amended to add Chapter 17.57 to read as follows:

## Chapter 17.57

### PROHIBITING MEDICAL MARIJUANA DISPENSARIES, COLLECTIVES AND COOPERATIVES IN ANY ZONE DISTRICT WITHIN THE CITY OF ANDERSON

#### Sections:

17.57.010 Definition of a Medical Marijuana Dispensary

17.57.020 Definition of a Medical Marijuana Collective

17.57.030 Definition of a Medical Marijuana Cooperative

17.57.040 Prohibition

17.57.050 Punishment for Violations

17.57.060 Public Nuisance

17.57.010 Definition of a Medical Marijuana Dispensary.

“Medical Marijuana Dispensary” or “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 care giver, 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 “medical 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 illnesses 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; or a residential hospice or 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.

17.57.020 Definition of a Medical Marijuana Collective

“Medical Marijuana Collective” or “Collective” as referenced in Health and Safety Code Section 11362.775 shall be defined in accordance with State statutory and case law.

17.57.030 Definition of a Medical Marijuana Cooperative

“Medical Marijuana Cooperative” or “Cooperative” as referenced in Health and Safety Code Section 11362.775 shall be defined in accordance with State statutory and case law.

#### 17.57.040 Medical Marijuana Dispensaries, Collectives and Cooperatives Prohibited.

It is unlawful to establish or operate a medical marijuana dispensary, collective or cooperative within the city limits of the City of Anderson.

#### 17.57.050 Punishment for Violations

A violation of any of the provisions of this chapter shall constitute an infraction, punishable as set forth in Section 1.20.010 of this code. Each and every day a violation occurs shall constitute a separate and distinct offense punishable as set forth herein.

#### 17.57.060 Public Nuisance

A violation of any of the provisions of this chapter shall constitute a public nuisance and be subject to abatement as provided by all applicable provisions of law including but not limited to California Code of Civil Procedure Section 731, et. seq.

### **Section 3. Urgency Ordinance: Effective Date and Duration**

Under the authority set forth in Government Code Section 65858, based on the findings set forth above and the recent inquiry about establishing a medical marijuana facility of some nature within the City of Anderson and the immediate threat to public health, safety and welfare which would result were such a facility to be established without adequate regulation thereof, this ordinance needs to be enacted as an urgency measure and shall take effect immediately upon approval by a 4/5 vote of the City Council. It shall be in full force and effect for a period of one year from and after the date of its adoption with the moratorium ending on April 3, 2011.

### **Section 4. Environmental Analysis**

The City Council finds as follows with regard to compliance with the California Environmental Quality Act:

1. This ordinance is not a “project” within the meaning of Section 15378 of the State CEQA Guidelines because it has no potential for resulting in physical change in the environment, directly or ultimately.

**Section 5. Severability**

If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional or unlawful, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect.

**Section 6. Publication**

This Ordinance shall be published in the Valley Post, a newspaper of general circulation in the City of Anderson, in the manner provided by Section 36933 of the Government Code of the State of California.

The foregoing Ordinance was readopted, extended for one year and passed as an urgency measure at a regular meeting of the City Council of the City of Anderson held on March 16, 2010 by the following vote:

AYES: Councilmembers Hunt, Schaefer, Yarbrough, Webster, and Mayor Cornick.

NOES: None.

ABSENT OR NOT VOTING: None.



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Norma Cornick, Mayor of the City of Anderson

ATTEST:



Juanita Barnett, City Clerk