

ORDINANCE NO. 6.10

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW ADDING ARTICLE IV TO CHAPTER 9 OF THE MOUNTAIN VIEW CITY CODE, REGARDING REGULATION OF MEDICAL MARIJUANA DISPENSARIES

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title. The title of Chapter 9 of the Mountain View City Code is amended to read: "Card Rooms, Massage Parlors and Medical Marijuana Dispensaries."

Section 2. Article IV, beginning with Section 9.9, is hereby added to Chapter 9 of the Mountain View City Code to read as follows:

**"ARTICLE IV.
MEDICAL MARIJUANA DISPENSARIES.**

SEC. 9.9. Findings and purpose.

A. In enacting this article, the city council finds as follows:

1. In 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States.

2. In 1996, the voters of the State of California approved Proposition 215 (the "Act" (codified as Health and Safety (H&S) Code Section 11362.5 *et seq.*)).

3. The Act creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.

4. On January 1, 2004, the "Medical Marijuana Program" (MMP), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the state Legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMP.

5. The Act expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (H&S Code Section 11362.5.)

6. The city council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. According to these communities, according to news stories widely reported and according to medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries. The city council reasonably anticipates that the City of Mountain View will experience similar adverse impacts and effects. A California Police Chiefs Association compilation of police reports, news stories and statistical research regarding such secondary impacts is contained in a 2009 white paper report located at

http://www.californiapolicechiefs.org/nav_files/marijuana_files/files/MarijuanaDispensariesWhitePaper_04229.pdf.

7. The city council further takes legislative notice that as of February 2010, according to at least one compilation, 85 cities and 8 counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The city council further takes legislative notice that 121 cities and 8 counties have adopted prohibitions against medical marijuana dispensaries. The compilation is available at: <http://www.safeaccessnow.org>.

8. The city council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the state's medical marijuana laws, entitled "*GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE* (August 2008)." (http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf.) The Attorney General has stated in the guidelines that "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law."

9. The city council further takes legislative notice that concerns about nonmedical marijuana use arising in connection with Proposition 215 and the MMP also have been recognized by state and federal courts. (See, e.g., *Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588; *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1386 to 1387; *Gonzales v. Raich* (2005) 545 U.S. 1.)

10. The city council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal under the CSA (*Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588); that the federal courts have recognized that despite California's Act and MMP, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, 545 U.S. 1; *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the Act and MMP (*Gonzales v. Raich*, 545 U.S. 1).

11. The city council further takes legislative notice that the United States Attorney General recently announced its intention to ease enforcement of federal laws as applied to medical marijuana dispensaries which otherwise comply with state law. There is no certainty how long this uncodified policy will remain in effect, and the underlying conflict between federal and state statutes still remains.

12. In order to address these and other community concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the city first to further study the potential impacts such facilities may have on the citizenry's health, safety and welfare.

13. Allowing medical marijuana dispensaries, and issuing permits, business licenses or other applicable licenses or entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to the completion of such further studies of the potential impact of such facilities, poses a threat to the public health, safety and welfare.

14. An ordinance prohibiting medical marijuana dispensaries, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana dispensaries, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Mountain View pending the completion of further studies.

B. The purpose of this article is to prohibit the operation and location of medical marijuana dispensaries in the City of Mountain View pending the availability of additional information and the completion of additional studies concerning the effects and impacts on communities of medical marijuana dispensaries.

SEC. 9.9.1. Definitions and exceptions.

A. For the purposes of this article, "marijuana" shall have the same meaning as set forth in California Health and Safety Code Section 11018 as of the effective date of this article and as subsequently amended. Currently under Section 11018, "marijuana" means all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. "Marijuana" shall also include concentrated cannabis, the separated resin, whether crude or purified, obtained from marijuana, and any foodstuffs infused with marijuana or concentrated cannabis.

B. For the purposes of this article, "medical marijuana dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is provided, sold, made available, or otherwise distributed to one or more of the following: a primary caregiver, a qualified patient or a person with an identification card.

C. For the purposes of this article, the terms "primary caregiver," "qualified patient" and "person with an identification card" shall be as defined in California Health and Safety Code Section 11362.7.

D. For purposes of this article, a "medical marijuana dispensary" shall not include the following uses, provided that the location of such uses are otherwise regulated by applicable law, and further provided any such use complies strictly with applicable law, including, but not limited to, California Health and Safety Code Section 11362.5 *et seq.* and California Health and Safety Code Section 11362.7 *et seq.*:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code.

2. A health-care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.

3. 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.

4. A residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.

5. A residential hospice, or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

SEC. 9.9.2. Prohibition of medical marijuana dispensaries pending additional studies.

A. Medical marijuana dispensaries are prohibited in the City of Mountain View until additional studies have been completed and presented to the city council, and the council determines on the basis of such studies to amend this article to permit a medical marijuana dispensary within the city. No medical marijuana dispensary shall operate, locate or otherwise be permitted within the City of Mountain View until such studies

have been completed and presented to the city council, and the council determines on the basis of such studies to amend this article to permit a medical marijuana dispensary within the city.

B. The city shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a medical marijuana dispensary until such studies have been completed and presented to the city council, and the council determines on the basis of such studies to amend this article to permit one or more medical marijuana dispensary within the city.

C. The city attorney shall report to the city council periodically on issues associated with medical marijuana dispensaries, including without limitation any experiences learned from other communities.

D. Nothing in this article shall be construed as imposing on the city any mandatory obligation to undertake, complete or fund any study."

Section 3. CEQA. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated studies). This ordinance also is exempt from CEQA pursuant to the "common sense" exemption under Section 15061(b)(3) of the CEQA Guidelines because the city council hereby determines and finds that there is no possibility that the ordinance may have a significant effect on the environment.

Section 4. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 5. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 6. This ordinance will cease to be in full force and effect one year after the effective date of the ordinance described in Section 4 above.

Section 7. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

The foregoing ordinance was regularly introduced at the Regular Meeting of the City Council of the City of Mountain View, duly held on the 23rd day of February, 2010, and thereafter adopted at the Regular Meeting of said Council, duly held on the 9th day of March, 2010, by the following roll call vote:

AYES: Councilmembers Abe-Koga, Macias, Vice Mayor Siegel and Mayor Bryant

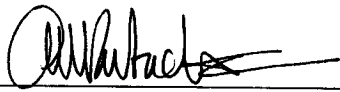
NOES: Councilmembers Inks and Means

ABSENT: Councilmember Kasperzak

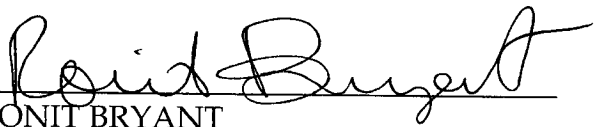
NOT VOTING: None

ATTEST:

APPROVED:



ANGELITA M. SALVADOR
CITY CLERK



RONIT BRYANT
MAYOR

I do hereby certify that the foregoing ordinance was passed and adopted by the City Council of the City of Mountain View at a Regular Meeting held on the 9th day of March, 2010, by the foregoing vote, and was published in the *San Jose Post Record* by reference on the 5th day of March, 2010, and posted in three prominent places in said City.



City Clerk
City of Mountain View

JLQ/8/ORD
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