

ORDINANCE NO. 6067

AN ORDINANCE OF THE CITY OF ANAHEIM
ADDING CHAPTER 4.20 TO TITLE 4 OF THE
ANAHEIM MUNICIPAL CODE PROHIBITING THE
ESTABLISHMENT AND OPERATION OF MEDICAL
MARIJUANA DISPENSARIES.

WHEREAS, the People of the State of California approved Proposition 215, which was codified as California Health and Safety Code § 11362.5 and entitled the Compassionate Use Act of 1996 ("the Act"); and

WHEREAS, the Act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a qualified patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical use of the patient upon the recommendation of a physician, and also prohibits the criminal prosecution or punishment of a physician for having recommended marijuana to a patient for medical purposes; and

WHEREAS, thereafter, the Legislature of the State of California enacted Senate Bill 420 (the "Medical Marijuana Program"), codified as California Health and Safety Code § 11362.7 et seq., which requires the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and primary caregivers, and prohibits the arrest of a qualified patient or a primary caregiver with a valid identification card for the possession, transportation, delivery, or cultivation of medical marijuana; and

WHEREAS, one purpose of the Act and the Medical Marijuana Program is "[t]o encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana;" and

WHEREAS, neither the federal nor the state government has implemented a specific plan "to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana," leaving cities with a lack of direction about how the Act is intended to be implemented, particularly in regard to distribution of medical marijuana through dispensaries; and

WHEREAS, the Medical Marijuana Program provides additional statutory guidance for medical marijuana use and cultivation, but it does not explicitly address the role of dispensaries, nor does it require that cities provide for or allow the establishment and/or operation of medical marijuana dispensaries; and

WHEREAS, notwithstanding the passage of the Act and the Medical Marijuana Program, the possession, sale and distribution of marijuana is prohibited by the Controlled

Substances Act, 21 U.S.C. § 841, and Section 11359 of the California Health and Safety Code; and

WHEREAS, California state law does not provide for the sale or distribution of marijuana by Medical Marijuana Dispensaries to a primary care giver, a qualified patient or a person with an identification card, as the terms are defined in Section 11362.7 of the California Health and Safety Code; and

WHEREAS, the Anaheim Municipal Code currently does not restrict the existence or operation of Medical Marijuana Dispensaries in the City of Anaheim; and

WHEREAS, Medical Marijuana Dispensaries have been established in numerous locations in California, and as a consequence, local agencies have reported negative secondary effects on the community, which effects include, illegal drug activity and drug sales in the vicinity of dispensaries; robbery of persons leaving dispensaries; driving under the influence of a controlled substance by persons who have obtained marijuana from a dispensary; persons acquiring marijuana from a dispensary and then selling it to a non-qualified person; burglaries and robberies; and an increase in vacancies in the commercial areas in the vicinity of such businesses; and

WHEREAS, the California Police Chiefs Association has compiled an extensive report detailing the negative secondary effects associated with medical marijuana dispensaries. The City Council hereby finds that the report, a complete copy of which is on file in the City Clerk's Office, contains persuasive anecdotal and documented evidence that medical marijuana dispensaries pose a threat to public health, safety and welfare; and

WHEREAS, California Health and Safety Code Section 11362.5(c)(2) expressly provides that nothing in the Act shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes; and

WHEREAS, The City Council hereby finds that, because of the inconsistency between state and federal law relating to the possession, sale and distribution, and because of the documented threat to public health, safety and welfare, it is in the best interest of the citizens of the City of Anaheim that the City prohibit the establishment and operation of medical marijuana dispensaries within the City of Anaheim; and

WHEREAS, this ordinance is enacted pursuant to California Health and Safety Code Sections 11362.5(c)(2) and 11362.83 and the City's police power as granted broadly under Article XI, Section 7 of the California Constitution in order to promote the health, safety and welfare of Anaheim residents.

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

SECTION 1.

That new Chapter 4.20 be, and the same is hereby, added to Title 4 of the Anaheim Municipal Code, to read as follows:

“CHAPTER 4.20

MEDICAL MARIJUANA DISPENSARIES

4.20.010 PURPOSE AND FINDINGS.

The City Council finds that federal and state laws prohibiting the possession, sale and distribution of marijuana would preclude the opening of Medical Marijuana Dispensaries sanctioned by the City of Anaheim, and in order to serve public health, safety, and welfare of the residents and businesses within the City, the declared purpose of this chapter is to prohibit Medical Marijuana Dispensaries as stated in this chapter.

4.20.020 DEFINITIONS.

The following terms and phrases, whenever used in this chapter, shall be construed as defined in this section:

.010 ‘Identification Card’ is a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

.020 ‘Medical Marijuana’ is marijuana used for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other serious medical condition for which marijuana is deemed to provide relief as defined in subsection (h) of Health and Safety Code § 11362.7.

.030 ‘Medical Marijuana Dispensary or Dispensary’ is any facility or location where medical marijuana is made available to and/or distributed by or to three or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. Each of these terms is defined herein and shall be interpreted in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq. as such sections may be amended from time to time.

.040 ‘Primary Care Giver’ is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

.050 'Physician' is an individual who possesses a recognition in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

.060 'Qualified Patient' is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

4.20.030 MEDICAL MARIJUANA DISPENSARY PROHIBITED.

It shall be unlawful for any person or entity to own, manage, conduct, or operate any Medical Marijuana Dispensary or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any Medical Marijuana Dispensary in the City of Anaheim.

4.20.040 USE OR ACTIVITY PROHIBITED BY STATE OR FEDERAL LAW.

Nothing contained in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law."

SECTION 2. EXISTING NONCONFORMING USES.

Any Medical Marijuana Dispensary existing within the City of Anaheim on the effective date of this ordinance shall cease operations forthwith.

SECTION 3. SEVERABILITY.

The City Council of the City of Anaheim hereby declares that should any section, paragraph, sentence, phrase, term or word of this ordinance be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

SECTION 4. SAVINGS CLAUSE.

Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

SECTION 5. PENALTY.

Except as may otherwise be expressly provided, any person who violates any provision of this ordinance is guilty of a misdemeanor and shall, upon conviction thereof, be punished in the manner provided in Section 1.01.370 of the Anaheim Municipal Code.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council of the City of Anaheim held on the 31st day of July, 2007, and thereafter passed and adopted at a regular meeting of said City Council held on the 7th day of August, 2007, by the following roll call vote:

AYES: Mayor Pringle, Council Members Hernandez, Sidhu, Galloway, Kring

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

CITY OF ANAHEIM

By: 
MAYOR OF THE CITY OF ANAHEIM

ATTEST:


CITY CLERK OF THE CITY OF ANAHEIM

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WHEREAS, notwithstanding the passage of the Act and the Medical Marijuana Program, the possession, sale and distribution of marijuana is prohibited by the Controlled Substances Act, 21 U.S.C. § 841, and Section 11359 of the California Health and Safety Code; and

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SECTION 5. PENALTY.

Except as may otherwise be expressly provided, any person who violates any provision of this ordinance is guilty of a misdemeanor and shall, upon conviction thereof, be punished in the manner provided in Section 1.01.370 of the Anaheim Municipal Code.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council of the City of Anaheim held on the 17th day of July, 2007, and thereafter passed and adopted at a regular meeting of said City Council held on the 7th day of August, 2007, by the following roll call vote:

AYES: Mayor Pringle, Council Members Hernandez, Sidhu, Galloway, Kring

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

CITY OF ANAHEIM
By: /s/ Curt Pringle
MAYOR OF THE CITY OF ANAHEIM

ATTEST:

/s/ Linda Nguyen
CITY CLERK OF THE CITY OF ANAHEIM

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