

ORDINANCE NO. 06-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING SECTIONS 17.06.030, 17.08.030 AND 17.34.010 OF THE TEMECULA MUNICIPAL CODE, PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Temecula does hereby find, determine and declare that:

A. The Planning Commission considered this Ordinance and the Negative Declaration on April 5, 2006, at duly noticed public hearings as prescribed by law, at which time the City Staff and interested persons had an opportunity to, and did testify either in support or opposition to this matter.

B. At the conclusion of the Commission hearings and after due consideration of the testimony, the Commission adopted Resolution No. 06-28 recommending approval of the Ordinance by the City Council.

C. The City Council considered the Ordinance and Negative Declaration on April 25, 2006, at a duly noticed public hearing as prescribed by law, at which time the City Staff and interested persons had an opportunity to, and did testify either in support or opposition to this matter.

D. The proposed Ordinance is consistent with the City's General Plan and each element thereof.

Section 2. The City Council of the City of Temecula further finds, determines and declares that:

A. The voters of the State of California approved Proposition 215 (codified as Health & Safety Code 11362.5 et seq. and entitled The Compassionate Use Act of 1996).

B. The State enacted SB-420 in 2003 (Health & Safety Code Sections 11362.7 to 11362.83) to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and forge rules and regulations consistent with SB-420.

C. In May 2001, the United States Supreme Court issued its decision in *United States v. Oakland Buyers' Cooperative and Jeffrey Jones* holding that

distribution of medical marijuana is illegal under the CSA and there is no medical necessity defense allowed under federal law.

D. On June 6, 2005, the Supreme Court issued its decision in *Gonzales v. Raich* which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and, under the Federal Controlled Substances Act 21 USC Section 841 (CSA), power to prohibit local cultivation and use of marijuana even though it would be in compliance with California law.

E. In light of these decisions, the City Council finds that it would be inconsistent and contrary to the public health, safety, and general welfare to permit the establishment of medical marijuana dispensaries, as defined herein, within the City insofar as to permit such activities may subject the City and/or its officials and employees to prosecution under federal law and would otherwise constitute illegal activity under federal law.

F. Until such inconsistency is resolved between the federal and state laws with respect to medical marijuana, it is the intent of the Council to prohibit medical marijuana dispensaries within the City of Temecula.

G. Anecdotal evidence indicates that medical marijuana dispensaries are subject to a significantly higher incidences of burglaries and robberies at the site than other businesses, robberies of patrons leaving the dispensaries, loitering and nuisance activities in and around the sites, and persons without medical need attempting to purchase marijuana at the sites.

H. Neither the Compassionate Use Act nor its implementing legislation authorizes medical marijuana dispensaries nor requires the City to provide for medical marijuana dispensaries.

I. This Ordinance is necessary to preserve the public health, safety and general welfare of the City of Temecula and is not in conflict with the general laws.

J. This Ordinance is consistent with the City's General Plan and each element thereof.

Section 3. Pursuant to California Environmental Quality Act ("CEQA") and the City's local CEQA Guidelines, the City Council finds that City staff prepared an Initial Study of the potential environmental effects of this Ordinance amending the City's Development Code to prohibit medical marijuana dispensaries (the "Project"). Based upon the findings contained in that Initial Study, City Staff determined that there was no substantial evidence that the Project could have a significant effect on the environment and a Negative Declaration was prepared. Thereafter, City Staff provided public notice of the public comment period and of the intent to adopt the Negative Declaration as required by law. The public comment period commenced on March 4, 2006 and expired on April 3, 2006. Copies of the documents have been available for public review and

inspection at the offices of the Department of Community Development, located at City Hall, 43200 Business Park Drive, Temecula, California 92589. The City Council has reviewed the Negative Declaration and all comments received regarding the Negative Declaration prior to and at the April 25, 2006 public hearing, and based on the whole record before it, finds that: (1) the Negative Declaration was prepared in compliance with CEQA; (2) there is no substantial evidence that the Project will have a significant effect on the environment; and (3) the Negative Declaration reflects the independent judgment and analysis of the City Council. Based on the findings set forth in this Section, the City Council hereby adopts the Negative Declaration prepared for the Project.

Section 4. Section 17.34.010 of the Temecula Municipal Code is hereby amended to add the definition of "Medical Marijuana Dispensary" to Section 17.34.010 to read as follows:


"Medical Marijuana Dispensary. A facility or location, whether fixed or mobile, which provides, makes available or distributes marijuana to a primary caregiver, a qualified patient or a person with an identification card issued in accordance with California Health and Safety Code Sections 11362.5 et seq."

Section 5. The use matrices of Sections 17.06.030 and 17.08.030 of the Temecula Municipal Code are hereby amended to establish a Medical Marijuana Dispensary, as defined in Section 17.34.010 of the Temecula Municipal Code, as a prohibited use in all zones of the City.

Section 6. If any sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

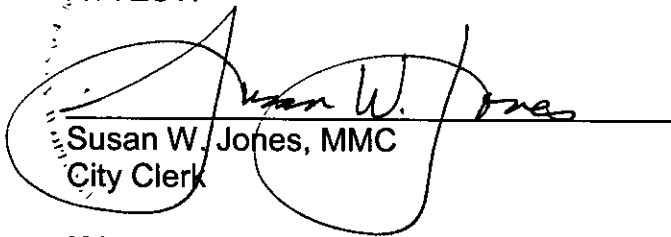
Section 7. The City Clerk of the City of Temecula shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 9th day of May, 2006.



Ron Roberts, Mayor

ATTEST:



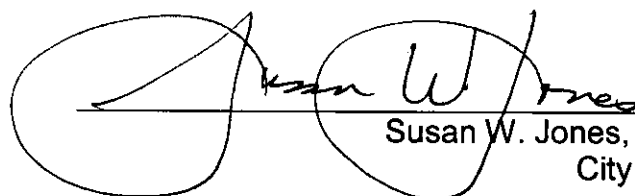
Susan W. Jones, MMC
City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Susan W. Jones, MMC, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 06-05 was duly introduced and placed upon its first reading at a meeting of the City Council of the City of Temecula on the 25th day of April, 2006, and that thereafter, said Ordinance was duly adopted by the City Council of the City of Temecula at a meeting thereof held on the 9th day of May, 2006, by the following vote:

AYES:	5	COUNCIL MEMBERS:	Comerchero, Edwards, Naggar, Washington, Roberts
NOES:	0	COUNCIL MEMBERS:	None
ABSENT:	0	COUNCIL MEMBERS:	None
ABSTAIN:	0	COUNCIL MEMBERS:	None



Susan W. Jones, MMC
City Clerk