

ORDINANCE NO. 16.128.1

**AN URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF SCOTTS VALLEY EXTENDING A
MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES**

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY:

WHEREAS, on February 17, 2010, the City Council of the City of Scotts Valley adopted Ordinance No. 16.128 as an urgency ordinance imposing a forty-five (45) day moratorium on the establishment and operation of medical marijuana dispensaries; and,

WHEREAS, Ordinance No. 16.128 will, unless extended, expire by operation of law on April 3, 2010; and,

WHEREAS, Government Code section 65858 authorizes an extension of an urgency ordinance, after a noticed public hearing, to protect the public health, safety and welfare through adoption of an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time; and,

WHEREAS, pursuant to Government Code section 65858(d), the City Council has accepted a report prepared by City staff describing the study and measures that have been taken to date to alleviate the condition which led to the adoption of the initial emergency ordinance; and,

WHEREAS, current City zoning provisions do not specifically address the regulation or location of medical marijuana dispensaries or list medical marijuana dispensaries as a permitted or conditionally permitted use in any zoning district; and,

WHEREAS, the City has received inquiries regarding the establishment, zoning and regulations for medical marijuana dispensaries in the City. Likewise, other cities in Santa Cruz County also have received similar inquiries, and those cities are studying regulations while operating under moratoria; and,

WHEREAS, in order to address the community concerns regarding the establishment and operation of medical marijuana dispensaries, the City has begun to study the issues and needs additional time to further study the potential impacts such facilities may have on the public health, safety and welfare, zoning applicable to such facilities, and to determine if regulation of such facilities is feasible or recommended; and,

WHEREAS, other California cities which have established medical marijuana dispensaries have identified an increase in crime, such as burglary, robbery and sale of illegal drugs in the areas immediately surrounding these medical marijuana dispensaries; and,

WHEREAS, City staff, as directed by the City Council, has commenced a study of the potential impacts of locating a medical marijuana dispensary in the City and possible zoning regulations related to the establishment of a dispensary and more time is necessary to complete such study; and,

WHEREAS, the City Council finds that it is necessary to study the possible adoption of amendments to the City's Planning and Zoning Code to adopt legislation, to the extent possible, that conforms to the State law (Compassionate Use Act (Health and Safety Section 11362.5 et seq.) and the Medical Marijuana Program Act (Health & Safety Code Section 11362.765)) and takes into consideration existing Federal law; and,

WHEREAS, the City Council finds that it would be detrimental to the public health, safety and welfare of the City to allow or approve any medical marijuana dispensaries until such time as the City has had an opportunity to conclude its study of the appropriateness of medical marijuana dispensaries within the City, including, but not limited to, evaluation of the legal authority to establish such facilities, possible zoning, and the extent of regulatory controls needed to preserve the health, safety and welfare of the community; and,

WHEREAS, the City Council has conducted a noticed public hearing pursuant to Government Code section 65090 and has complied with Government Code section 65858 which provide for the extension of an urgency measure of an interim ordinance to protect public health, safety and welfare, by a four-fifths (4/5) vote of the City Council. Adopting this extension to the interim ordinance as an urgency measure to prohibit the establishment or operation of a medical marijuana dispensary facility within the City is consistent with the stated requirements.

NOW THEREFORE, BASED UPON THE FOREGOING AND ALL EVIDENCE SUBMITTED TO IT, BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY AS FOLLOWS:

SECTION 1: Purpose and findings.

Medical marijuana dispensaries have been established in several locations in California, and as a consequence, some local agencies have reported increases in secondary effects such as illegal drug activity, illegal drug sales, robbery of persons leaving dispensaries, loitering in the vicinity of the dispensaries, falsely obtaining "identification cards" to illegally qualify for medical marijuana and other increases in criminal activity. At the present time, the State of California has not yet implemented a State-wide identification card program for qualified patients and their primary caregivers related to

medical marijuana use as required under State law. Additionally, there are still unresolved legal issues related to Federal preemption of State law. The secondary effects specifically associated with a medical marijuana dispensary pose a current and immediate threat to public health, safety and welfare.

Recent inquiries to the City about opening medical marijuana dispensaries have increased and, at the present time, there are no regulatory requirements in effect that

specifically address or allow this type of use. It is in the best interest for the health, safety and welfare of the citizens of the City of Scotts Valley to prevent potentially harmful secondary effects of medical marijuana dispensaries to adopt this urgency ordinance to allow City staff time to study the impacts of permitting medical marijuana dispensaries, potential licensing and regulatory procedures, as well as determine which zoning districts may be appropriate for such a use, and pursuant to what level of discretionary review.

SECTION 2: Interim suspension of permits, approval or other entitlements.

There shall be an interim moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries, which include any site, facility, location, use, cooperative business which distributes, sells, exchanges, processes, delivers, gives away or cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers or physicians, pursuant to (1) Proposition 215, the "Compassionate Use Act of 1996" (Health & Safety Code § 11362.5) and SB 420 or (2) any State regulations adopted in furtherance thereof. Marijuana shall also mean cannabis and all parts of that plant. Based on the findings set forth herein, no permits, licenses, zoning ordinance interpretation of amendment or other applicable entitlements for use, which has as its result the final approval or allowance of medical marijuana dispensaries within the City of Scotts Valley, shall be granted or approved by any employee, department or commission of the City and no person or entity shall own, manage, conduct, or operate any medical marijuana dispensary as defined above for a period of ten (10) months and fifteen (15) days immediately following the effective date of this ordinance, unless repealed or extended by a later enacted ordinance.

City staff is hereby directed to continue to study the potential harmful secondary effects associated with medical marijuana dispensaries; the current and immediate threat such secondary effects pose to the public health, safety and welfare; the appropriate zoning district(s), if any, for such uses; the impacts of permitting medical marijuana dispensaries; licensing and regulatory procedures; and the appropriate level of discretionary review if necessary.

SECTION 3. Immediate threat to health, safety and welfare.

Based on the findings set forth herein, this ordinance is adopted pursuant to California Government Code section 65858 and is required to address a current and immediate threat to public health, safety and welfare. The City Council has determined that granting land use approvals, building permits or other permits, licenses or entitlements for use for medical marijuana dispensaries would result in an immediate threat to public health, safety and welfare.

SECTION 4. Urgency period.

This ordinance is declared to be an urgency ordinance for preserving the public health, safety and welfare and to take effect and be enforced on and after April 3, 2010, the day that Ordinance No. 16.128 expires. The City intends there to be no gap in the moratorium period so that the moratorium is in effect continuously through the end of the extension granted by this Ordinance.

SECTION 5. Compliance with California Environmental Quality Act.

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; it prevents changes in the environment pending the completion of the study. This urgency ordinance is categorically exempt from CEQA under Section 15308 of the State CEQA Guidelines because it is a regulatory action taken by the City, in accordance with Government Code section 65858, to assure maintenance and protection of the environment pending completion of the study.

SECTION 6. Savings clause.

The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance.

SECTION 7. Constitutionality, severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 8. Effective date.

In accordance with California Government Code section 65858, this ordinance shall be in full force and effect for a period of ten (10) months and fifteen (15) days from April 3, 2010. This period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858.

PASSED FOR THE PURPOSE OF ADOPTION ON THIS 17th day of March, 2010, by the following votes:

AYES: AGUILAR, BUSTICHI, JOHNSON, LIND, REED

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

APPROVED: _____/s/_____
Jim Reed, Mayor

ATTEST:

_____/s/_____
Tracy A. Ferrara, City Clerk

APPROVED AS TO FORM:

_____/s/_____
Kirsten Powell, City Attorney