

**WALNUT CREEK CITY COUNCIL
ORDINANCE NO. 2081**

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF WALNUT CREEK
ADOPTING A 45-DAY MORATORIUM ON THE ESTABLISHMENT AND OPERATION
WITHIN THE CITY OF WALNUT CREEK OF MEDICAL MARIJUANA DISPENSARIES AND
ON THE DISTRIBUTION OF MEDICAL MARIJUANA AT EXISTING BUSINESSES**

The City Council of the City of Walnut Creek does ordain as follows:

SECTION 1. FINDINGS.

1. The voters of the state of California approved Proposition 215 (codified as Health and Safety Code section 11362.5 et seq., and entitled the “Compassionate Use Act of 1996”) purporting to legalize the use of marijuana for specific medical purposes.
2. The state of California adopted Senate Bill 420, which clarified the scope of the Compassionate Use Act and allowed cities and other governing bodies to adopt and enforce rules consistent with S.B. 420.
3. The Walnut Creek General Plan does not presently contain a goal, policy, or textual discussion of the issue of medical marijuana dispensaries.
4. The Walnut Creek Municipal Code does 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.
5. The City has received a demolition permit and building permit application and business license application from a prospective medical marijuana dispensary operator.
6. California cities that have allowed the establishment of medical marijuana dispensaries have experienced adverse impacts on public health, safety, and welfare, including an increase in crimes such as burglaries, robberies, or sale of illegal drugs, at the dispensaries and in the areas immediately surrounding the dispensaries. Medical marijuana dispensaries have also resulted in increased demands for police response and maintenance of public streets and sidewalks.
7. Federal law classifies marijuana as a Schedule 1 drug with “no accepted medical value in treatment.” The use, possession, cultivation, or distribution of marijuana for any purpose remains illegal under federal law.
8. If medical marijuana dispensaries are allowed to be established without appropriate regulation, such uses might: (1) be established under conditions that would conflict with the requirements of the General Plan, and City’s zoning ordinance, forthcoming City regulations, and state and/or federal law; (2) be inconsistent with surrounding uses; and (3) be detrimental to the public health, safety, and welfare.
9. To protect residents and businesses from potential harmful community impacts resulting from medical marijuana dispensaries, City staff needs time to study the legality, potential adverse community

impacts, and mechanisms for regulating medical marijuana dispensaries. The City Council therefore desires, on an urgency basis, to temporarily prohibit medical marijuana dispensaries in the City.

SECTION 2. IMPOSITION OF MORATORIUM.

1. In accordance with California Government Code section 65858, for a period of forty-five (45) days, commencing on the date of adoption of this urgency interim ordinance, or until such time as this ordinance may expire, subject to any extension the City Council may adopt and approve, no zoning ordinance interpretation or amendment, amendment to the City's General Plan or municipal code, use permit, variance, building permit, or any other entitlement for use shall be approved or issued for the establishment or operation of, and no person shall otherwise establish or operate a "medical marijuana dispensary," as that term is defined below.
2. For purposes of this ordinance, "medical marijuana dispensary" shall mean any site, facility, location, use, cooperative, center, or business that distributes, sells, exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to one or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. Marijuana shall also mean cannabis and all parts of that plant. For purposes of this ordinance, "qualified patient," "person with an identification card," "primary caregiver" shall have the same meaning as that set forth in California Health and Safety Code section 11362.5 *et seq.*
3. Ten days prior to the expiration of this interim ordinance or any extension thereof, the City Council shall issue a written report describing the steps that have been taken to study the relevant issues and establish policies and regulations for medical marijuana dispensaries within the City.

SECTION 3. INITIATION OF ZONING AMENDMENT.

The City Council hereby requests that the Planning Commission study and report back to the City Council concerning a proposed amendment to prohibit or regulate medical marijuana dispensaries.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

The City Council hereby finds and determines that this ordinance is not subject to the requirements of the California Environmental Quality Act ("CEQA") because the temporary prohibition of medical marijuana dispensaries will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines § 15060(c)(2)), the temporary prohibition is not a project (CEQA Guidelines § 15060(c)(3)), and it can be seen with certainty that there is no possibility that the temporary prohibition may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 5. SEVERABILITY.

If any section or portion of this ordinance is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section or portion of this ordinance irrespective of the fact that one or more sections or portions be declared unconstitutional, invalid, or ineffective.

SECTION 6. PUBLICATION.

The City Clerk shall cause this ordinance to be published once in a newspaper of general circulation once within fifteen (15) days after its adoption.

SECTION 7. EFFECTIVE DATE.


This ordinance is an urgency ordinance and shall take effect and be enforced immediately upon adoption if adopted by at least a four-fifths vote of the City Council and shall be in effect for 45 days from the date of adoption unless extended by the City Council as provided for in the Government Code.

PASSED AND ADOPTED by the City Council of the City of Walnut Creek at a special meeting thereof held on the 18th day of August 2009, by the following called vote:

AYES: Councilmembers: Rainey, Rajan, Silva, Mayor Skrel

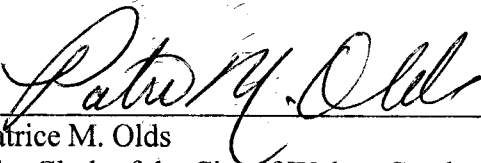
NOES: Councilmembers: Simmons

ABSENT: Councilmembers: None



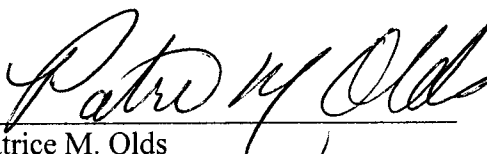
Gary Skrel
Mayor of the City of Walnut Creek

Attest:



Patrice M. Olds
City Clerk of the City of Walnut Creek

I HEREBY CERTIFY the foregoing to be a true and correct copy of Ordinance No. 2081, duly passed and adopted by the City Council of Walnut Creek, County of Contra Costa, State of California, at a special meeting of said Council held on the 18th day of August 2009.



Patrice M. Olds
City Clerk of the City of Walnut Creek