

ORDINANCE NO. 940

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, EXTENDING A MORATORIUM ON THE USE OF ANY PROPERTY FOR THE SALE OR DISTRIBUTION OF MARIJUANA

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 the 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 Substance 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 caregiver, 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 Lancaster Municipal Code currently does not allow the use of property for the sale or distribution of medical marijuana in the City of Lancaster; 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 limited regulation of 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, not 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, and to provide time to further examine the impact of adopting local regulations relating to medical marijuana dispensaries and the use of property by collectives it is in the best interest of the citizens of the City of Lancaster that the City an interim moratorium to prohibit the establishment and operation of medical marijuana dispensaries within the City of Lancaster while the City continues to review the issue; and

WHEREAS, the City Council has previously adopted Ordinance No. 939 as an urgency ordinance placing a moratorium on the use of real property within the City for the purpose of selling or distributing marijuana; and

WHEREAS, the City Council desires to extend the moratorium for a period of 10 months and 15 days pursuant to the provisions of Government Code Section 65858.

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

SECTION 1. Moratorium. In order to protect the public health, safety and welfare and pursuant to the provisions of Section 65858 of the California Government Code, notwithstanding any other provision of this Code, so long as this ordinance shall be in effect, the sale or distribution of marijuana shall not be a permitted use on any property or in any building or structure in any zone throughout the City. This prohibition is not intended to interfere with the individual rights of persons to participate in collectives in order to possess or use marijuana for medical purposes as provided for by the voters of the State of California under Proposition 215 of the California Legislature under Senate Bill 420.

SECTION 2. Declaration of Urgency. This urgency is based on the following facts:

a. There is a current and immediate threat to the public health, safety and welfare arising from the uncontrolled use of real property in the City of Lancaster for the cultivation, sale and distribution of marijuana for medical purposes.

b. Article XI, Section 7 of the California Constitution authorizes cities to adopt local police, sanitary, and other ordinances not in conflict with general laws.

c. The City of Lancaster requires time to study and decide if such an ordinance is necessary to protect the public health, safety and welfare and to either allow or restrict the use of real property for the cultivation, sale or distribution of marijuana for medical purposes.

SECTION 3. Effective Date. This ordinance shall become effective immediately upon the date of its adoption pursuant to Section 65858 of the California Government Code.

SECTION 4. Expiration. This moratorium shall expire and be of no further force or effect on or after December 8, 2010, which date is ten months and fifteen days following the expiration of the moratorium adopted by Ordinance No. 939, unless extended in accordance with Section 65858 of the California Government Code.

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

I, Geri K. Bryan, CMC, City Clerk of the City of Lancaster, do hereby certify that the foregoing urgency ordinance was regularly introduced and adopted at a regular meeting of the City Council on the 12th day of January, 2010, by the following vote:

AYES: Council Members: Mann, Marquez, Sileo, Vice Mayor Smith, Mayor Parris

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST:

APPROVED:

Geri K Bryan
GERI K. BRYAN, CMC
City Clerk
City of Lancaster

R. Rex Parris
R. REX PARRIS,
Mayor
City of Lancaster

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF LANCASTER)

CERTIFICATION OF ORDINANCE
CITY COUNCIL

I, _____, _____ City of Lancaster, California, do hereby certify that this is a true and correct copy of the original Ordinance No. 940, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this _____ day of _____, _____.

(seal)