

ORDINANCE NO. 683

**AN UNCODIFIED URGENCY ORDINANCE OF THE COUNTY OF SHASTA,
ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858, EXTENDING
URGENCY ORDINANCE NO. 682, WHICH IMPOSES A TEMPORARY
MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA
DISPENSARIES IN THE UNINCORPORATED AREAS OF THE COUNTY OF
SHASTA, FOR AN ADDITIONAL 10 MONTHS AND 15 DAYS**

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

WHEREAS, the intent of the Compassionate Use Act was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific circumstances, without being subject to criminal prosecution under certain state statutes; and

WHEREAS, on January 1, 2004, Senate Bill 420, codified as Health and Safety Code sections 11362.7 et seq. and entitled "The Medical Marijuana Program," became effective to clarify the scope of the Compassionate Use Act; and

WHEREAS, the term "marijuana" shall have the same meaning as that set forth in Health and Safety Code section 11018; and

WHEREAS, the term "medical marijuana dispensary" shall mean the premises used by a cooperative, or collective of two or more qualified patients or primary caregivers where the primary purpose is the distribution of medical marijuana that has been recommended by a licensed physician, in strict accordance with California Health and Safety Code Section 11362.5 through Section 11362.83, inclusive, commonly referred to as the Compassionate Use Act and The Medical Marijuana Program.

WHEREAS, the term "medical marijuana dispensary" does not include the distribution of medical marijuana to qualified patients by their designated primary caregivers in the following locations and uses, as long as the location is otherwise regulated by the Shasta County Code and/or applicable law and as long as the use complies with the Shasta County Code and/or applicable law, including, but not limited to, the Compassionate Use Act and The Medical Marijuana Program:

1. A clinic licensed pursuant to Chapter 1 (commencing with section 1200) of Division 2 of the Health and Safety Code.
2. A health care facility licensed pursuant to Chapter 2 (commencing with section 1250) of Division 2 of the Health and Safety Code.

3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with section 1568.01) of Division 2 of the Health and Safety Code.
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with section 1569) of Division 2 of the Health and Safety Code.
5. A hospice or a home health agency licensed pursuant to Chapter 8 (commencing with section 1725) of Division 2 of the Health and Safety Code Section.

WHEREAS, it is anticipated that the County of Shasta will receive a number of inquiries and/or applications as to the possibility of establishing medical marijuana dispensaries throughout the unincorporated areas of the County of Shasta; and

WHEREAS, under the current Zoning Plan identified as Title 17 (Zoning) of the Shasta County Code, medical marijuana dispensaries are considered similar to “clubs” and are only permissible in the following zone districts and only upon first securing a use permit:

1. Community Commercial (C-2) zone district
2. Office Commercial (C-O) zone district
3. Mixed Use (M-U) zone district; and

WHEREAS, concerns have been raised that, other than the foregoing, there are no other regulations to address the impact that the development of medical marijuana dispensaries within the unincorporated areas of the County of Shasta may have on the community as a whole; and

WHEREAS, in the recent past, two facilities identifying themselves as medical marijuana dispensaries commenced operations in the unincorporated area of the County of Shasta without obtaining a use permit, but have now ceased operations; and

WHEREAS, other public entities have reported adverse impacts from medical marijuana dispensaries, including, but not limited to, an increase in crime such as burglary and robbery, disagreeable odor, loitering, increases in traffic, noise, and the sale of illegal drugs (including the illegal resale of marijuana from medical marijuana dispensaries) in the areas immediately surrounding such medical marijuana dispensaries; and

WHEREAS, medical marijuana dispensaries could arguably be located in close proximity to residential areas, schools, churches, day care centers, and other sensitive areas; and

WHEREAS, on February 9, 2010, the Shasta County Resource Management Department presented to the Board of Supervisors, for its consideration, proposed Zone Amendment 09-010 to regulate medical marijuana dispensaries; and

WHEREAS, as of February 9, 2010, there are pending court cases that may impact the legality of medical marijuana dispensary operations and otherwise clarify the County of Shasta's ability to regulate and/or permit medical marijuana dispensaries; and

WHEREAS, concerns were raised at the public hearing on February 9, 2010, as to the efficacy of Proposed Zone Amendment 09-010, as well as the legality of Proposed Zone Amendment 09-010 in light of these pending court cases; and

WHEREAS, the County of Shasta has not adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries and the lack of such controls may lead to an establishment of medical marijuana dispensaries and the inability to regulate those establishments in a manner that will protect the general public, homes and businesses adjacent and near such establishments, and the persons who frequent such establishments; and

WHEREAS, in order to allow time for the County of Shasta, through its Resource Management Department, to consider, study, and assess various approaches to regulating medical marijuana dispensaries in light of the concerns raised at the February 9, 2010, public hearing, it is necessary to suspend the establishment of medical marijuana dispensaries that may be in conflict with the development standards and regulations the County of Shasta, through its Resource Management Department, intends to consider or study; and

WHEREAS, on February 23, 2010, the Shasta County Board of Supervisors adopted Urgency Ordinance Number 682 imposing a forty-five (45) day moratorium on the establishment or operation of medical marijuana dispensaries within the unincorporated areas of the County of Shasta in order to consider, study, and assess various approaches to regulating medical marijuana dispensaries, including, but not limited to, considering the results of pending court cases that may impact the legality of medical marijuana dispensary operations and otherwise clarify the County of Shasta's ability to regulate and/or permit medical marijuana dispensaries; and

WHEREAS, this urgency ordinance extends Urgency Ordinance Number 682 for an additional ten (10) months and fifteen (15) days from the date of expiration of the original moratorium; and

WHEREAS, this extension is necessary because the pending court cases have not yet been resolved and the County needs additional time to consider, study, and assess various approaches to regulating medical marijuana dispensaries in order to protect the public health, safety, and welfare from impacts associated with the use of property for medical marijuana dispensaries.

NOW, THEREFORE, the Board of Supervisors of the County of Shasta ordains as follows:

SECTION 1. The Board of Supervisors of the County of Shasta determines as follows:

- A. The above recitals are true and correct and are incorporated herein as if set forth in full and are relied upon independently by the Board of Supervisors for its adoption of this urgency ordinance.
- B. There is a current and immediate threat to public health, safety, and welfare in that the establishment of, or the issuance or approval of any permit, certificate of occupancy, or other entitlement for the establishment of, a medical marijuana dispensary in the unincorporated areas of the County of Shasta will result in land uses and land developments that may conflict with amendments to the Shasta County Code that may be adopted as a result of the study that is being undertaken.
- C. There is no feasible alternative to enactment of this moratorium ordinance that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect.
- D. In order to ensure the effective implementation of the County of Shasta's land use objectives and policies, a temporary moratorium on the establishment and/or approval of medical marijuana dispensaries is necessary.
- E. This ordinance is exempt from environmental review pursuant to State CEQA Guidelines Section 15061(b)(3) in that it can be seen with certainty that there is no possibility that this ordinance or its implementation may have a significant effect on the environment.

SECTION 2. Imposition of Moratorium.

In accordance with Government Code section 65858, for the period of this ordinance, or any extension thereof, a medical marijuana dispensary shall be considered a prohibited use in any zoning district of the unincorporated areas of the County of Shasta. No permits or authorizations shall be approved or issued for the establishment or operation of a medical marijuana dispensary while this ordinance is in effect.

SECTION 3. Written Report.

Ten days prior to the expiration of this ordinance or any extension thereof, the Board of Supervisors shall issue a written report describing the measures taken to alleviate the threat to public health, safety and welfare that led to the enactment of the ordinance.

SECTION 4. Severability.

If any provision of this ordinance or the applications thereof to any person or circumstances is held invalid, the remainder of the ordinance and the applications of such provision will remain in effect to the extent permitted by law.

SECTION 5. Conflicting Laws.

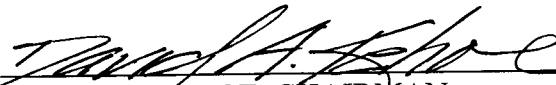
For the term of this ordinance, as set forth in Section 6 below, the provisions of this ordinance shall govern. To the extent that there is any conflict between the provisions of this ordinance and the provisions of any other County code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

SECTION 6. Effective Date and Term.

This ordinance is declared an urgency measure for the immediate protection and preservation of the public peace, health, safety and welfare for the reasons stated in Section 1, and it shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the Board of Supervisors pursuant to Government Code Section 65858 and Government Code Section 25123 (d). This ordinance shall continue in effect for ten (10) months and fifteen (15) days from the date of expiration of the forty-five (45) day temporary moratorium established by Urgency Ordinance Number 682 and shall thereafter be of no further force and effect unless, after notice pursuant to Government Code Section 65090 and a public hearing, the Board of Supervisors extends this ordinance for an additional period of time pursuant to Government Code Section 65858. The clerk shall cause this ordinance to be published as required by law.

DULY PASSED AND ADOPTED this 6th day of April, 2010, by the Board of Supervisors of the County of Shasta by the following vote:

AYES: Supervisors Hartman, Baugh, Kehoe, Moty, and Hawes
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None


DAVID A. KEHOE, CHAIRMAN
Board of Supervisors
County of Shasta
State of California

ATTEST:

LAWRENCE G. LEES
Clerk of the Board of Supervisors

By: 
Deputy