



ORDINANCE No. 2322

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

AN URGENCY ORDINANCE ADOPTING AN EXTENSION OF THE TEMPORARY MORATORIUM ON THE LEGAL ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES IN THE UNINCORPORATED AREA OF NEVADA COUNTY FOR A PERIOD OF ONE YEAR, PURSUANT TO GOVERNMENT CODE SECTION 65858

THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION I: FINDINGS

- A. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, *et seq.* and entitled the Compassionate Use Act of 1996; and
- B. The intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana under State law; and
- C. On January 1, 2004, Senate Bill (SB) 420 went into effect. SB 420, known as the Medical Marijuana Program, was enacted by the legislature to clarify the scope of the Compassionate Use Act and to allow cities and counties to adopt and enforce regulations consistent with SB 420 and the Compassionate Use Act; and
- D. Government Code Section 65858 authorizes cities and counties to adopt an urgency ordinance, to protect the public safety, health, and welfare, after a noticed public hearing, that prohibit land uses which are 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 timeframe; and

- E. The County of Nevada has begun conducting research on the potential impacts of medical marijuana dispensaries and possible amendments to the County's Land Use and Development Code related to such uses and the process is ongoing; and
- F. The County of Nevada has found that other jurisdictions in California that have permitted the establishment of medical marijuana dispensaries have experienced an increase in crime, such as burglary, robbery and sale of illegal drugs in the areas immediately surrounding such medical dispensaries; and
- G. Based on records from the Nevada County Sheriff's Office, there are major crimes that are associated with marijuana in Nevada County; and
- H. The County of Nevada 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 a proliferation of dispensaries and the inability of the County to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent to and near such businesses, and the patients or clients of such establishments; and
- I. Based on the adverse secondary impacts experienced by other cities, and the lack of any regulatory program in the County of Nevada regarding the establishment and operation of medical marijuana dispensaries, it is reasonable to conclude that negative effects on the public health, safety, and welfare may occur in Nevada County as a result of the proliferation of medical marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities; and
- J. A medical marijuana dispensary is currently not expressly permitted or permitted subject to a development or use permit in any zoning district in the County. Such establishments however, may seek to locate in any zoning district disguised as a permitted use or may seek to legalize this use; and
- K. The establishment of a medical marijuana dispensary in the County will result in a direct and immediate threat to the public health, safety and welfare, because the County does not currently regulate the location and operation of medical marijuana dispensaries and does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical marijuana dispensaries in the County.

SECTION II:

Definition. For purposes of this ordinance, “medical marijuana dispensary” shall mean any facility or location where a primary caregiver intends to or does make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. For purposes of this ordinance, the terms “primary caregiver,” “qualified patient,” and “a person with an identification card” shall have the same meaning as that set forth in Health and Safety Code Section 11362.5, *et seq.* A “medical marijuana dispensary” does not include the following uses, as long as the location of such uses are otherwise regulated by the County Land Use and Development Code: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or a home health agency licensed pursuant to Chapter 8 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 *et seq.*

SECTION III:

There is a current and immediate threat to the health, safety and welfare of the citizens of Nevada County if a medical marijuana dispensary locates in the unincorporated County prior to the completion of the comprehensive report addressing appropriate rules and regulations for the use. For the period of this ordinance a medical marijuana dispensary shall be considered a prohibited use in any zoning district of the County, even if located within an otherwise permitted use. No permits or authorizations for a medical marijuana dispensary shall be issued while this ordinance is in effect.

SECTION IV:

The Board of Supervisors finds that this ordinance is not subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to Title 15 of the California Code of Regulations (CEQA Guidelines) §15060(c)(2) (the activity will not result in a direct or unforeseeable indirect physical change to the environment) and §15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment, directly or indirectly, and it prevents changes in the environmental pending the completing of the contemplated Land Use and Development Code review.

SECTION V:

The County Planning Director or her designee shall: (1) review and consider options for the regulation of medical marijuana dispensaries in the County, including but not limited to the development of appropriate rules and regulations governing the location and operation of such establishments in the County; and (2) shall prepare written Land Use and Development Code amendment(s) through the public hearing/ordinance amendment process.

SECTION VI:

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 Board of Supervisors 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.

SECTION VII:

Based on the evidence presented above, this ordinance is an urgency ordinance necessary for the immediate preservation of the public health, safety and welfare, and shall take effect and be in full force immediately upon adoption for a period of one year from and after August 10, 2010. Before the expiration of fifteen (15) days after its passage a summary shall be published once, with the names of the Supervisors voting for and against the same, in The Union, a newspaper of general circulation printed and published in the County of Nevada. This ordinance is passed by at least a 4/5th vote of the Board of Supervisors, pursuant to Government Code Section 65858.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 13th day of July, 2010, by the following vote of said Board:

Ayes: Supervisors Nate Beason, John Spencer,
Hank Weston & Ted S. Owens.
Noes: None.

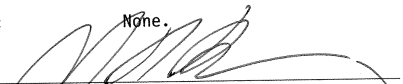
Absent: Ed Scofield.

Abstain: None.

ATTEST:

CATHY R. THOMPSON
Clerk of the Board of Supervisors

By: 


Chair Nathan H. Beason

DATE	COPIES SENT TO
7/15/10	Union
	Counsel
	Planning