

URGENCY ORDINANCE NO. 1235

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND ON THE DISTRIBUTION OF MEDICAL MARIJUANA AT EXISTING BUSINESSES

WHEREAS, the Perris Municipal Code, including the Perris Zoning Code, currently lacks the ability to regulate medical marijuana dispensaries or the sale or distribution of medical marijuana by an existing business; and

WHEREAS, the City of Perris (“City”) has received inquiries from potential business owners regarding the possibility of locating a medical marijuana dispensary in the City; and

WHEREAS, the City Council anticipates that (1) a medical marijuana dispensary may locate in the City before a non-urgency ordinance would become effective, and/or that (2) an existing business may begin selling medical marijuana before a non-urgency ordinance would become effective; and

WHEREAS, if medical marijuana dispensaries were permitted to be established or if existing business were permitted to distribute or sell medical marijuana without appropriate regulation, such uses might be established in areas that would conflict with the requirements of the General Plan, be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare; and if such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding medical marijuana dispensaries; and

WHEREAS, other California cities that have permitted the establishment of medical marijuana dispensaries have witnessed negative secondary effects to public health, safety, and welfare, including increased crime such as burglaries, robberies, or sale of illegal drugs, at the dispensaries and in the areas immediately surrounding the dispensaries; and

WHEREAS, other California cities that have permitted the establishment of medical marijuana dispensaries have experienced federal Drug Enforcement Agency (“DEA”) enforcement raids and prosecution at the dispensaries, displacement of businesses, and vacant tenant spaces as a result of the enforcement raids; and

WHEREAS, City staff requires time to develop appropriate regulations for the sale of medical marijuana in a manner that is consistent with state and federal laws; and

WHEREAS, the City Council desires, on an urgency basis, to temporarily prohibit medical marijuana dispensaries and the sale of medical marijuana at existing businesses within the City; and

WHEREAS, Government Code Sections 36934, 36937 and 65858 expressly authorize the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health or safety and to prohibit a use that is 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.

NOW, THEREFORE, the City Council of the City of Perris does ordain as follows:

SECTION 1. Findings

A. The above recitals are true and correct and are incorporated herein as if set forth in full.

B. In 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Sections 11362.5, *et. seq.*, "The Compassionate Use Act of 1996") ("Act") to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances. Then, in 2003, the State legislature enacted Senate Bill 420 to clarify the scope of the Act, allowing local governments to adopt and enforce rules and regulations consistent with Senate Bill 420.

C. There are currently no ordinances in the Perris Municipal or Zoning Code (collectively, "Code") specifically regulating or monitoring the location, zoning standards, or other aspects of facilities where medical marijuana is dispensed to eligible persons under the Act.

D. Although the City has made a conscientious effort to plan for specific uses within all zoning districts and to anticipate conflicts between competing land uses in order to protect the public's health, safety, and welfare, the Code does not currently provide specific development regulations or definitions relative to the use or placement of dispensaries or existing businesses intended for the distribution of marijuana for medicinal purposes.

E. The City has received inquiries regarding the regulations for medical marijuana dispensaries within the City and has concerns that existing businesses may begin to sell medical marijuana.

F. The establishment of medical marijuana dispensaries without appropriate rules and regulations could result in the creation of negative secondary effects such as an increase in crime in the areas immediately surrounding such dispensaries and an irreversible incompatibility of land uses. Other jurisdictions such as the City of West Hollywood, City of Anaheim, City of Hayward, and Alameda County have received and investigated a number of complaints of violent criminal activity, including armed robberies, burglaries, and other drug-related arrests at or near medical marijuana dispensaries. Such criminal activity is the type of negative secondary effect associated with the presence of medical marijuana facilities that a zoning study will seek to limit.

G. To allow time for the City to consider, study, and enact regulations for medical marijuana dispensaries, it is necessary to temporarily suspend the approval of medical marijuana dispensaries and to prohibit existing businesses from selling medical marijuana as such uses may be in conflict with the development standards and implementation regulations that the City will ultimately impose after the City has considered and studied this issue, which will be accomplished within a reasonable time.

H. A moratorium will provide the City with time to consider, study, draft, and adopt regulations, consistent with the Act and Senate Bill 420, to regulate the location and operation of medical marijuana dispensaries and existing businesses which may seek to supplement their current services offered to include the sale of medical marijuana in a manner that is consistent with the general plan and Code, compatible with surrounding neighborhoods, and in the best interests of the residents of the City.

I. A moratorium will also provide the City with time to evaluate the impact, if any, that the recent United States Court case of *Gonzales, et al. v. Raich, et al.*, 545 U.S. 1 (2005) has on any land use regulations that the City may consider in regulating these facilities. The *Gonzales* case found that federal laws prohibiting the possession, use, and distribution of marijuana are enforceable in California as to those persons who are eligible to use marijuana under the Act because the Commerce Clause gives the federal Congress authority to prohibit the local cultivation and use of marijuana as a controlled substance, even if such activity is for medicinal purposes and complies with California law. The result of this opinion implies that, unless federal Congress acts to change federal law, medical marijuana uses in California will be subject to federal prosecution under existing federal law.

SECTION 2. Interim Prohibition

From and after the date of this ordinance, no use permit, variance, building permit, or any other entitlement for use shall be accepted, processed, approved or issued for the establishment or operation of, and no person shall otherwise establish, a "medical marijuana dispensary" and no existing business shall begin dispensing medical marijuana for a period of 45 days.

For purposes of this ordinance, "medical marijuana dispensary" means any facility or location where marijuana is made available, sold, transmitted, given, or otherwise provided to qualified individuals in accordance with the Act.

SECTION 3. Urgent Need

Based on the foregoing recitals and findings which are all deemed true and correct, this interim ordinance is urgently needed for the immediate preservation of the public safety, health, and welfare. This interim ordinance shall take effect immediately upon adoption and shall be of no further force and effect 45 days following the date of its adoption unless extended in accordance with the provisions set forth in Government Code Section 65858.

SECTION 4. Authority

Government Code Section 65858 provides that an urgency measure in the form of an initial interim ordinance may be adopted without prior public notice by a four-fifths vote of the City Council, and such measure will be effective for 45 days following its date of adoption. Government Code Section 65858 further provides that such urgency measure may be extended following compliance with that section for up to an additional 22 months and 15 days beyond the original 45-day period.

SECTION 5. Penalties

The definitions and penalties for land use violations that are prescribed in the Code apply to violations of the provisions of this Interim Ordinance.

SECTION 6. Severability

If any provision of this Interim Ordinance or the application thereof to any persons or circumstances is held invalid, such invalidity does not affect other provisions or applications of this Interim Ordinance, which can be given effect without the invalid provision or application, and to this end the provisions of this Interim Ordinance are hereby declared to be severable.

SECTION 7. Notice

The City Clerk shall certify to the passage of this Interim Ordinance and shall cause the same to be published and/or posted at the designated locations in the City of Perris.

PASSED, APPROVED, and ADOPTED, this 8th day of January 2008.

Mayor, Daryl R. Busch

ATTEST:

City Clerk, Judy L. Haughney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) SS.
CITY OF PERRIS)

I, Judy L. Haughney, City Clerk of the City of Perris, do hereby certify that the foregoing Ordinance No. 1235 was duly introduced and regularly adopted by the City Council of the City of Perris at a regular meeting held on the 8th day of January 2008, by the following vote of the Council:

AYES:	COUNCILMEMBERS:	LANDERS, MOTTE, ROGERS, BUSCH
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	YARBROUGH
ABSTAIN:	COUNCILMEMBERS:	NONE

City Clerk, Judy L. Haughney