

**ORDINANCE NUMBER 1239**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AMENDING ZONING CODE SECTIONS 19.02.020, LIMITATIONS ON LAND USE, AND 19.08.10, DEFINITIONS, TO PROHIBIT THE ESTABLISHMENT OR USE OF AN EXISTING BUSINESS FOR THE DISTRIBUTION OR SALE OF MEDICAL MARIJUANA WITHIN THE CITY OF PERRIS.**

**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 Council of the City of Perris adopted an Urgency Interim Ordinance on January 8, 2008 to prevent from the date of the ordinance the issuance of any use permit, variance, building permit, or 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; and

**WHEREAS**, the City Council of the City of Perris extended the Medical Marijuana Moratorium on February 12, 2008 for a period of 10 months and 12 days as permitted by state law; and

**WHEREAS**, 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 California Compassionate Use Act of 1996 (Proposition 215); 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 apply to locate in the City after the urgency ordinance expires, and/or that (2) an existing business may begin selling medical marijuana after the moratorium expires; 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

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

**WHEREAS**, City staff has reviewed Proposition 215 (codified as Health and Safety Code Sections 11362.5, *et. seq.*, "The Compassionate Use Act of 1996") ("Act") that enables persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances, and Senate Bill 420 which clarifies the scope of the Act, allowing local governments to adopt and enforce rules and regulations consistent with Senate Bill 420; and

**WHEREAS**, the City has also reviewed the recent United States Court case of *Gonzales, et al. v. Raich, et al.*, 545 U.S. 1 (2005) which may significantly impact land use regulations that the City may consider in regulating medical marijuana facilities, since 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; and

**WHEREAS**, the proposed Ordinance amendment is exempt from environmental review pursuant to the general rule of the California Environmental Quality Act, which exempts minor alterations to land use limitations that do not result in changes in land use or density pursuant to CEQA Guidelines Section 15305; and

**WHEREAS**, the Planning Commission of the City of Perris, after due notice, at the regular public hearing of February 6, 2008, reviewed the proposed ordinance and accompanying attachments, considered testimony regarding the proposed Ordinance, and voted 5-1-1 to recommend approval of the Ordinance to the City Council; and

**WHEREAS**, the City Council of the City of Perris, after due notice, at the regular public hearing of February 26, 2008, reviewed the proposed ordinance and accompanying attachments, and considered testimony regarding the proposed Ordinance; and

**WHEREAS**, all legal prerequisites for the adoption of this Ordinance have occurred;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PERRIS DOES ORDAIN AS FOLLOWS:**

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| <u>Section 1.</u> | The above recitals are all true and correct.  |
| <u>Section 2.</u> | The City Council has reviewed and considered the environmental information included in the staff report prior to action on the Ordinance, finds and determines that |

the proposed land use limitation is categorically exempt from review under Class 5 of the California Environmental Quality Act, and there are no potential environmental impacts, and that the Declarations reflect the independent judgment of the City.

Section 3. Based on the information contained in the staff report and accompanying attachments and exhibits, the City Council hereby finds:

- A. The proposed project will not result in a significant adverse effect on the environment and will support the public health, safety, and welfare
- B. The proposed project is consistent with the goals and policies of the General Plan.
- C. The proposed ordinance amendment will provide regulations for medical marijuana dispensaries and the sale or distribution of medical marijuana by an existing business.

Section 4. The City Council HEREBY AMENDS Zoning Code Chapter 19.02.020, Limitations on Land Use, by adding Section B as follows:

a. PROHIBITION AGAINST THE LOCATION AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES

The establishment of a medical marijuana dispensary for the sale or distribution of medical marijuana or the sale or distribution of medical marijuana by an existing business is prohibited.

No use permit, variance, building permit, or 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," as defined in Chapter 19.08 of the Perris Municipal Code.

The City Council FURTHER AMENDS Zoning Code Chapter 19.08.10, DEFINITIONS, to insert the following definition after "Medical Clinic" and before "Mined-Land Reclamation Projects," as follows:

"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 Proposition 215 (codified as Health and Safety Code Sections 11362.5, *et. seq.*, "The Compassionate Use Act of 1996") ("Act") and Senate Bill 420 which clarifies the scope of the Act."

Section 5. The City Council declares that should any provision, section, paragraph, sentence, or word of this Resolution be rendered or declared invalid by any court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this Resolution shall remain in full force and effect.

Section 6. The Mayor of the City of Perris shall sign and the City Clerk shall certify passage and adoption of the Ordinance, and shall cause the same to be published and posted pursuant to the provisions of law in this regard, and this Ordinance shall take effect thirty (30) days after its final passage.

ADOPTED, SIGNED, and APPROVED this 11<sup>th</sup> day of March, 2008.

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Mayor, Daryl R. Busch

Attest:

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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, CALIFORNIA, DO HEREBY CERTIFY that the foregoing Ordinance Number 1239, introduced at a regular meeting of the City Council of the City of Perris held on the 26<sup>th</sup> day of February, 2008, was duly and regularly adopted by the City Council of the City of Perris at a regular meeting thereof held on the 11<sup>th</sup> day of March, 2008, by the following vote:

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

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City Clerk, Judy L. Haughney