

ORDINANCE NO. 3441 C.S.

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF MONTEREY ESTABLISHING
A MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA
DISPENSARIES PURSUANT TO GOVERNMENT CODE SECTION 65858**

WHEREAS, in 1996 the voters of the State of California approved Proposition 215, entitled the "Compassionate Use Act of 1996" (California Health and Safety Code section 11362.5 *et seq.*), the intent of which was to enable seriously ill residents of California to obtain and use marijuana for medical purposes with the approval of a physician; and

WHEREAS, in 2003, the California Legislature enacted the Medical Marijuana Program (California Health and Safety Code section 11362.7 *et seq.*) to clarify the scope of the Compassionate Use Act of 1996; and

WHEREAS, the Monterey Municipal Code does not expressly address the existence or location of medical marijuana dispensaries in Monterey; and

WHEREAS, California cities that have permitted the establishment of medical marijuana dispensaries have witnessed an increase in crime, such as burglaries, robberies and sales of illegal drugs in the areas immediately surrounding such dispensaries; and

WHEREAS, there is legal uncertainty between federal laws and California laws regarding medical marijuana dispensaries; and

WHEREAS, permitting a use that may not be legal could result in detrimental impacts for City residents, businesses, visitors and for medicinal marijuana patients and their caregivers; and

WHEREAS, the City Council recognizes that medical marijuana dispensaries raise complex issues of law and public policy and that the regulation of such dispensaries requires careful consideration and thorough study; and

WHEREAS, in the recent case of *City of Claremont v. Kruse* (August 27, 2009) 177 Cal.App.4th 1153, the California Court of Appeals held that the Compassionate Use Act of 1996 does not authorize the operation of medical marijuana dispensary or local government from regulating such dispensaries; and

WHEREAS, the Court further held in *City of Claremont*, that the Compassionate Use Act of 1996 did not preempt the City of Claremont's moratorium on medical marijuana dispensaries, enacted by the City of Claremont as an urgency measure for the immediate preservation of the public health, safety and welfare.

WHEREAS, the City is awaiting the Court decision in *Qualified Patients Association v. City of Anaheim* (2008), for guidance concerning its ability to restrict or ban the existence of medical marijuana facilities within the City and that decision should come down within the next several months.

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

SECTION 1: DECLARATION.

- A. The City Council finds that it is necessary to adopt this ordinance pursuant to California Government Code section 65858(a) in order to protect the public health, welfare and safety. This ordinance is intended to prohibit the approval or issuance of any use permit, variance, building permit, business license or other applicable entitlement for the establishment or operation of a medical marijuana dispensary in any zoning district in the City.

- B. The City Council further finds that the following conditions exist which require the immediate preservation of the public health, safety and welfare through a moratorium pursuant to California Government Code section 65858:
 - 1. Numerous other cities in California have adopted ordinances prohibiting or heavily regulating such dispensaries and because a significant portion of the region has prohibited or heavily regulating such dispensaries, and because a significant portion of Monterey County has prohibited or heavily regulated medical marijuana dispensaries, there is a substantially increased likelihood that establishments, in addition to MyCaregiver, Inc., will seek to locate in Monterey;
 - 2. Monterey does not have standards in its Municipal Code relating to the location, operation or concentration of medical marijuana dispensaries within the City;
 - 3. Absent the adoption of this Interim Urgency Ordinance, the establishment and operation of medical marijuana dispensaries in the City of Monterey could result in negative and harmful secondary effects that other cities have experienced as identified in the staff report;
 - 4. Currently, the state and federal laws relating to medical marijuana dispensaries appear to be in conflict and a court decision in Anaheim, that will be issued in the next several months will offer some guidelines as to how to proceed; and,
 - 5. As a result of the conflict in federal and state law on the matter, coupled with the potential negative and harmful secondary effects associated with medical marijuana dispensaries and the potential threat such secondary effects would pose to the public health, safety and welfare, as well as the potential zoning conflicts that would be created by the establishment and operation of medical marijuana dispensaries, it is necessary to enact this moratorium as an urgency measure to go into effect immediately upon its adoption.

- C. Based on the findings set forth herein, the City Council concludes that issuing permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, poses a current and immediate threat to the public health, safety and welfare, and that therefore a temporary moratorium on the issuance of such permits, licenses and entitlements is necessary.

SECTION 2: DEFINITIONS.

For purposes of this ordinance, the terms defined below shall have the following meanings:

- A. "Medical marijuana dispensary" shall mean any facility or location where marijuana (cannabis) is made available for medical purposes and/or distributed to a primary caregiver, qualified patient, or person with an identification card.

- B. "Primary caregiver", "qualified patient", and "person with an identification card" shall be as defined in Health and Safety Code section 11362.7.

SECTION 3: USE PROHIBITED.

A medical marijuana dispensary shall not be permitted within any zoning district in the City of Monterey or within the City limits of Monterey. No use permit, variance, building permit, business license or other applicable entitlement for the establishment or operation of a medical marijuana dispensary shall issue during the effective period of this ordinance.

SECTION 4: SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 5: CEQA FINDINGS.

The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in section 15378) of the CEQA Guidelines. Furthermore, the City Council finds that there is no possibility that the adoption of these regulations could have a significant effect on the environment; therefore, no further environmental review is necessary in accordance with Section 15061(b)(3) of the CEQA Guidelines.

SECTION 6: EFFECTIVE DATE.

In accordance with Government Code section 65858, this ordinance shall become effective at the time of its adoption by a 4/5ths vote of the City Council and shall remain in effect for forty-five days from the date of adoption unless extended by the City Council as provided for in Government Code section 65858.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 19th day of January, 2010, by the following votes:

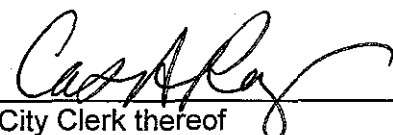
AYES: 4 COUNCILMEMBERS: Della Sala, Downey, Selfridge, Sollecito

NOES: 1 COUNCILMEMBERS: Haferman

ABSENT: 0 COUNCILMEMBERS: None

ATTEST

APPROVED:



City Clerk thereof



Mayor of Said City