

ORDINANCE NO. 659

AN INTERIM URGENCY ORDINANCE OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA ADOPTING A 10 MONTH, 15 DAY EXTENSION OF TIME TO THE PREVIOUSLY ADOPTED MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES

WHEREAS, the voters of the state of California approved Proposition 215 (codified as Health and Safety Code section 11362.5 et. seq., and entitled the "Compassionate Use Act of 1996") legalizing the use of marijuana for specific medical purposes;

WHEREAS, the state of California adopted SB 420 which clarified the scope of the Compassionate Use Act and allowed cities and other governing bodies to adopt and enforce rules consistent with SB 420;

WHEREAS, the City's Municipal Code does not specifically address the regulation or location of medical marijuana dispensaries or list medical marijuana dispensaries as a permitted or conditionally permitted use in any zoning district;

WHEREAS, the City has received a zoning inquiry and business license application from a prospective medical marijuana dispensary operator;

WHEREAS, California cities that have permitted the establishment of medical marijuana dispensaries have observed adverse impacts on public health, safety and welfare, including an increase in crimes such as burglaries, robberies, or sale of illegal drugs at the dispensaries and in the areas immediately surrounding the dispensaries;

WHEREAS, there are several open state law questions regarding the regulation of medical marijuana dispensaries;

WHEREAS, federal law classifies marijuana as a Schedule 1 drug with "no accepted medical value in treatment";

WHEREAS, if medical marijuana dispensaries were allowed to be established without appropriate regulation, such uses might: 1) be established under conditions that would conflict with the requirements of the General Plan, the City's zoning ordinance, forthcoming City regulations and state and/or federal law; 2) be inconsistent with surrounding uses; and 3) be detrimental to the public health, safety and welfare;

WHEREAS, on April 21, 2009, the City Council adopted a forty-five (45) day interim urgency ordinance (Ordinance No. 658) that imposed a moratorium on the establishment and operation of medical marijuana dispensaries in the City to give staff time to study the legality, potential adverse community impacts, and mechanisms for regulation of medical marijuana dispensaries; and

WHEREAS, in accordance with the requirements of Government Code section 65858 a ten (10) month, fifteen (15) day extension of the moratorium is needed for staff to complete the analysis of this issue and establish appropriate policies and regulations.

NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE:

Purpose and Findings.

- A. The above recitals are incorporated herein and are each relied upon independently by the City Council for its adoption of this urgency interim ordinance;
- B. The Calistoga General Plan does not presently contain a goal or policy or textual discussion of the issue of a prospective use of medical marijuana dispensaries;
- C. The Calistoga Municipal Code does not address or regulate the existence or location of medical marijuana dispensaries, operator licensing, or cultivation of marijuana plants;
- D. The City has received an application for a business license application for a Cannabis Center, which includes dispensing of medical marijuana, and a request for a zoning ordinance interpretation to determine whether the Cannabis Center is similar in nature to uses currently permitted or conditionally permitted in the Downtown Commercial and Community Commercial zoning districts;
- E. In cities that have permitted medical marijuana dispensaries, issues and concerns have arisen related to the establishment of medical marijuana dispensaries in close proximity to residential properties, schools and day care facilities. Furthermore, those cities have reported increases in loitering, illegal drug activity, burglaries, robberies, and other criminal activity within and around the dispensaries, as well as increased pedestrian and vehicular traffic, noise and parking violations. Medical marijuana dispensaries have also resulted in increased demands for police response, as well as maintenance of public streets and sidewalks;
- F. The use, possession, cultivation or distribution of marijuana for any purpose remains illegal under federal law;
- G. There are several open questions of state law regarding the regulation of medical marijuana dispensaries, including how to interpret and apply the State Attorney General's August 2008 "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" and the California Supreme Court case *People v. Mentch* (2008) 45 Cal.4th 274. A pending court of appeal case (*Qualified Patients Assn. v. City of Anaheim*, 4th Dist., Div. 3, Case No. G040077) may shed light on these questions in the coming months;
- H. To protect residents and businesses from potential harmful community impacts resulting from medical marijuana dispensaries, City staff needs additional time to study the legality, potential adverse community impacts, and mechanisms for regulation of medical marijuana dispensaries;
- I. If medical marijuana dispensaries are allowed to proceed without appropriate review of location, operational criteria and standards, the dispensaries could conflict with the requirements of the General Plan, the City's Zoning Ordinance, and forthcoming state law and City regulations and result in irreversible incompatibility of land uses

and adverse impacts on residents, businesses and neighborhoods that present a clear and immediate danger to the public health, safety and welfare; and

- J. This urgency interim ordinance extending the moratorium on medical marijuana dispensaries is necessary to avoid the previously identified impacts to the public health, safety and welfare.

SECTION THREE:

Interim Moratorium Imposed.

- A. For a period of ten (10) months and fifteen (15) days, commencing on the day immediately following the final day of the initial forty-five (45) day urgency ordinance period, or until such time as this ordinance may expire subject to an additional extension of this ordinance that the City Council may adopt and approve pursuant to Section 65858 of the Government Code, no zoning ordinance interpretation or amendment, amendment to the City's General Plan or municipal code, use permit, variance, building permit, or any other entitlement for use shall be approved or issued for the establishment or operation of, and no person shall otherwise establish, a "medical marijuana dispensary", as that term is defined below.
- B. For the purposes of this ordinance, "medical marijuana dispensary" includes any site, facility, location, use, cooperative, center or business which distributes, sells, exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers, or physicians pursuant to Proposition 215, Health & Safety Code § 11362.5 *et seq.* or any state regulations adopted in furtherance thereof. Marijuana shall also mean cannabis and all parts of that plant.

SECTION FOUR:

Compliance with California Environmental Quality Act.

The City Council finds that this ordinance falls under the California Environmental Quality Act (CEQA) exemption found at Title 14 California Code of Regulations section 15061(b)(3) because the temporary prohibition of medical marijuana dispensaries does not have the potential to significantly impact the environment.

SECTION FIVE:

Waiver.

The City, on a case by case basis, shall have the authority, upon a showing of good cause by an applicant, to waive the interim moratorium imposed by this ordinance. Good cause shall mean a factual and evidentiary showing by the applicant that the interim moratorium, if not waived, will deprive the applicant of substantially all reasonable use of his/her property.

SECTION SIX:

Urgency Ordinances: Extension.

This ordinance is an urgency ordinance and shall take effect and be enforced immediately following the final day of the initial forty-five (45) day urgency ordinance period. In accordance with California Government Code § 65858, this ordinance shall be in full force and effect for a period of ten (10) months and fifteen (15) days from and after the date of June 6, 2009. Thus the moratorium will expire on April 21, 2010 unless this period is further extended by the City Council in accordance with California Government Code § 65858.

Ten days prior to the expiration of this interim ordinance or any extension thereof, the City Council shall issue a written report describing steps that have been taken to study the relevant issues and establish policies and regulations for medical marijuana dispensaries within the City.

SECTION SEVEN:

Severability.

If any section or portion of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION EIGHT:

Publication.

The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the same to be published in accordance with state law.

SECTION NINE:

THIS ORDINANCE was introduced and adopted as an urgency measure by a four-fifths vote of the City Council of the City of Calistoga at a regular meeting of the City Council on the 19th day of May, 2009 by the following vote:

**AYES: Vice Mayor Dunsford, Councilmembers Kraus, Garcia, Slusser
and Mayor Gingles**

NOES: None

ABSTAIN/ABSENT: None

ATTEST:


SUSAN SNEDDON, City Clerk


JACK GINGLES, Mayor