

**ORDINANCE NO. 1635**

**AN URGENCY INTERIM ORDINANCE OF THE  
CITY COUNCIL OF THE CITY OF PLACERVILLE  
MAKING FINDINGS AND ESTABLISHING A TEMPORARY  
MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES  
IN THE CITY OF PLACERVILLE**

WHEREAS, 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 ('the Act'); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specified circumstances; and

WHEREAS, on January 1 2004, Senate Bill 420 became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, under the U.S. Controlled Substances Act, marijuana is classified as a Schedule 1 drug, meaning it has no accepted medical use; and

WHEREAS, the City of Placerville (the City) currently has in Title 5, Chapter 25, Section 1-25, and Title 10, Chapter 10, Sections 1-3, Ordinances providing for the operation, regulation and location of medical marijuana dispensaries; and

WHEREAS, recent California Supreme Court decisions and California Attorney General Guidelines have affected the ability of the City to enforce these Ordinances in accordance with California State law, thereby necessitating that the City study whether these Ordinances can be effectively revised to protect public health and safety, and whether storefront medical marijuana dispensaries (collectives and cooperatives) can legally operate in California; and

WHEREAS, the City of Placerville (the "City") has recently received inquiries from members of the public as to the permitting process and zoning regulations for operating medical marijuana dispensaries within the City and presently has two pending applications for operating medical marijuana dispensaries; and

WHEREAS, based on recent trends, the City believes that it may receive a growing number of inquiries for such businesses, including an application in the immediate future; and

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

WHEREAS, two medical marijuana dispensaries have operated within the City under its current Ordinances, one of which was denied renewal of its permit because it did not have adequate records to determine if it was operating legally; and

WHEREAS, the City must study and analyze concerns about the potential negative impacts on the public health, safety, and welfare arising from medical marijuana dispensaries, including, but not limited to, criminal incidents, loitering, disturbing the peace and property damage; and

WHEREAS, the City must study the scope of the City's police power and revise the necessary Municipal Code provisions; and

WHEREAS, the issuing of permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to the completion of the City's study of storefront medical marijuana dispensaries and the potential impact of such facilities, poses a current and immediate threat to the public health, safety and welfare, and therefore a temporary moratorium on the issuance of such permits, licenses, and entitlements is necessary; and

WHEREAS, 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 Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly, and in fact prevents changes in the environment pending the completion of the contemplated General Plan adoption and zoning ordinance review; and

WHEREAS, California Government Code Section 65858 authorizes cities to adopt moratoriums on land use entitlements in order to study any uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal; and

WHEREAS, for the protection of the public's health, safety and general welfare, the City desires to adopt this moratorium to provide time for the City to study applicable law, and to determine whether to allow medical marijuana dispensaries to operate within the City and if so, to consider a permit or licensing procedure, the appropriate zoning districts for such uses, and to adopt regulatory standards and conditions to be imposed on such operations; and

WHEREAS, the City desires that such moratorium take effect immediately upon its adoption in accordance with Section 36934 of the California Government Code; and

WHEREAS, notice of the public hearing at which this Ordinance was considered was published in the Mountain Democrat, a newspaper of general circulation within the City of Placerville, in accordance with the requirements of California Government Code Sections 65858(b) and 65090.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLACERVILLE AS FOLLOWS:

Section 1. Imposition of Moratorium.

A. In accordance with Government Code Section 65858, from and after the date of this Ordinance, no use permit, variance, building permit, business license, or other applicable entitlement for use shall be approved or issued for the establishment or operation of a medical marijuana dispensary within the City for a period of forty-five (45) days.

B. The operation of Section 1-25, Chapter 25 of Title 5, and Sections 1-3 of Chapter 10 of Title 10 of the Placerville City Code are hereby suspended during the term of this Interim Urgency Ordinance.

C. 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 “identification card” shall have the same meaning as that set forth in Health and Safety Code Section 11362.7, *et seq.*

D. For purposes of this Ordinance, a medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and as long as such use complies strictly with applicable law, including, but not limited to, Health and Safety Code Section 11362.7, *et seq.*:

(1) a clinic, licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code (commencing with §1200);

(2) a health care facility, licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code (commencing with §1250);

(3) 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 (commencing with §1568.01);

(4) a residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code (commencing with §1569); or

(5) a hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code (commencing with §1725), the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

E. This Ordinance is an interim urgency ordinance adopted pursuant to the authority granted to the City of Placerville by Government Code Section 65858, and is for the immediate preservation of the public health, safety and welfare. The City Council of the City of Placerville hereby finds and declares that there is a need to enact an urgency interim ordinance establishing a moratorium on medical marijuana dispensaries, based upon the following findings:

(1) California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries, and sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries. This potential for increased risk of crime and violence presents a clear and immediate danger to the public health, safety and welfare of the residents of the City of Placerville; and

(2) The City has recently received inquiries from members of the public as to the permitting process and zoning regulations for operating medical marijuana dispensaries within the City and currently has two applications pending for the operation of medical marijuana dispensaries; and

(3) Based on recent trends, the City believes that it may receive a growing number of inquiries for such businesses, including an application in the immediate future; and

(4) The City of Placerville (the City) currently has in Title 5, Chapter 25, Section 1-25, and Title 10, Chapter 10, Sections 1-3, Ordinances providing for the operation, regulation and location of medical marijuana dispensaries; and

(5) Recent California Supreme Court decisions and California Attorney General Guidelines have affected the ability of the City to enforce these Ordinances in accordance with California State law, thereby necessitating that the City study whether these Ordinances can be effectively revised to protect public health and safety, and whether storefront medical marijuana dispensaries (collectives and cooperatives) can legally operate in California; and

(6) It is necessary to study the possible adoption of amendments to the City's Municipal Code in order to adopt legislation which conforms to recent federal and state case law; and

(7) The City must study and analyze concerns about the potential negative impacts on the public health, safety, and welfare arising from medical marijuana dispensaries, including, but not limited to, criminal incidents, loitering, disturbing the peace and property damage; and

(8) Issuing permits and other applicable licenses or entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to the completion of the City's study of the potential impact of such facilities and possible amendments

to the City's Municipal Code poses a current and immediate threat to the public health, safety and welfare; and

(9) The failure to adopt this forty-five- (45-) day moratorium may result in significant irreversible change in the character of the community and the neighborhood surrounding any marijuana dispensary that would be allowed to open under the City's Municipal Code; and

(10) As a result of the negative and harmful secondary effects associated with medical marijuana dispensaries and the current and immediate threat such secondary effects pose to the public health, safety and welfare, it is necessary to establish a temporary, forty-five- (45-) day moratorium on the establishment and operation of medical marijuana dispensaries in the City, pending completion of the City's study of the potential impacts of medical marijuana dispensaries and possible amendments to the City's Municipal Code.

#### Section 2. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any application thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council of the City of Placerville hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.

#### Section 3. No Mandatory Duty of Care.

This Ordinance is not intended and shall not be construed to, or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

#### Section 4. Conflict.

All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

#### Section 5. Effective Date.

This urgency interim Ordinance shall be in force and take effect immediately from and after its passage and approval by at least four-fifths vote of the City Council and shall be in effect for forty-five (45) days from the date of adoption unless extended by the City Council as provided for in Government Code Section 65856. Although not required by law, the City Clerk

shall cause this Ordinance to be published in summary format within fifteen (15) days after adoption in a newspaper of general circulation published and circulated within the City of Placerville.

I, Susan Zito, City Clerk of the City of Placerville, hereby certify that the foregoing Ordinance was duly introduced and passed as an urgency ordinance at a regular meeting of the City Council held on the 9<sup>th</sup> day of February, 2010, by the following vote on roll call:

AYES: Acuna, Hagen, Machado, Rivas

NOES: None

ABSENT: Borelli

ABSTAIN: None

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Mayor Pierre Rivas

ATTEST:

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Susan Zito, City Clerk