

**IN THE CITY COUNCIL OF THE CITY OF LIVERMORE  
STATE OF CALIFORNIA**

**AN URGENCY ORDINANCE EXTENDING A MORATORIUM  
ON MEDICAL MARIJUANA DISPENSARIES**

**RECITALS**

1. On September 12, 2005, the City Council of the City of Livermore adopted Ordinance No. 1773 as an urgency ordinance imposing a forty-five day moratorium on the establishment and operation of medical marijuana dispensaries.
2. Ordinance No. 1773 will, unless extended, expire by operation of law on October 27, 2005.
3. Government Code Section 65858 authorizes an extension of an urgency ordinance, after a noticed public hearing, to protect the public safety, health, and welfare through adoption of an interim ordinance prohibiting any uses that may be 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.
4. Current City zoning provisions do not contain any explicit provisions contemplating the approval of medical marijuana dispensary facilities within the City of Livermore.
5. The City of Livermore has received inquiries regarding the establishment, zoning and regulations for medical marijuana dispensaries in the City. Likewise, other cities near Livermore also have received similar inquiries, and those cities are studying regulations while operating under moratoria.
6. In order to address the community concerns regarding the establishment and operation of medical marijuana dispensaries, it is necessary for the City of Livermore to study the potential impacts such facilities may have on the public safety, health and welfare.
7. Other California cities which have established medical marijuana dispensaries have identified an increase in crime, such as burglary, robbery and sale of illegal drugs in the areas immediately surrounding these medical marijuana dispensaries.
8. City staff, as directed by Council, has commenced a study of the potential impacts of locating a medical marijuana dispensary in the City of Livermore and possible zoning regulations related to the establishment of a dispensary. Staff, in conjunction with a concerned member of the community, has identified several areas for further study and is continuing the process.

9. The City Council finds that it is necessary to study the possible adoption of amendments to the City's Planning and Zoning Code to adopt legislation, to the extent possible, that conforms to the State law (Compassionate Use Act and SB 420) and takes into consideration the existing Federal law and recent decision of the United States Supreme Court in *Gonzales v. Raich*.
10. The City Council has received, considered and adopted a report prepared by City staff describing the study and measures that have been taken to date to alleviate the condition which led to the adoption of the initial urgency ordinance.
11. The City Council finds that it would be detrimental to the public health, safety and welfare of the City to allow or approve any medical marijuana dispensaries until such time as the City has had an opportunity to conclude its study of the appropriateness of medical marijuana dispensaries within the City, including, but not limited to evaluation of the legal authority to establish such facilities and the extent of regulatory controls needed to preserve the safety, health and welfare of the community.
12. The City Council has conducted a noticed public hearing pursuant to Government Code Section 65090 and has complied with Government Code Section 65858 which provides for the adoption of an urgency measure of an interim ordinance to protect public safety, health and welfare, by a four-fifths (4/5) majority vote of the City Council members. Adopting an interim ordinance as an urgency measure to prohibit the establishment or operation of a medical marijuana dispensary facility within the City is consistent with the stated requirements.

THE LIVERMORE CITY COUNCIL FINDS AND ORDAINS AS FOLLOWS:

Section 1. Purpose and Findings.

Medical marijuana dispensaries have been established in several locations in California, and as a consequence, some local agencies have reported increases in secondary effects such as illegal drug activity and sales, robbery of persons leaving dispensaries, loitering in the vicinity of the dispensaries, falsely obtaining "identification cards" to illegally qualify for medical marijuana, and other increases in criminal activity. At the present time, the State of California has not yet implemented a State-wide identification card program for qualified patients and their primary caregivers related to medical marijuana use as required under State law. Additionally, there are still unresolved legal issues related to Federal preemption of State law. The secondary effects specifically associated with a medical marijuana dispensary pose a current and immediate threat to public health, safety and welfare.

Recent inquiries to the City about opening medical marijuana dispensaries have increased and, at the present time, there are no regulatory requirements in effect that specifically address or allow this type of use. It is in the best interest for the health, safety and welfare of the citizens of the City of Livermore to prevent potentially harmful secondary

effects of medical marijuana dispensaries to adopt this urgency ordinance to allow City staff time to study the impacts of permitting medical marijuana dispensaries, potential licensing and regulatory procedures, as well as determine which zoning districts may be appropriate for such a use, and pursuant to what level of discretionary review.

Section 2. Interim Suspension of Permits, Approval, or Other Entitlements.

There shall be an interim moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries, which include any site, facility, location, use, cooperative 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 (1) Proposition 215, the "Compassionate Use Act of 1996" (Health & Safety Code §11362.5) and SB 420 or (2) any State regulations adopted in furtherance thereof. Marijuana shall also mean cannabis and all parts of that plant. Based on the findings set forth herein, no permits, licenses, or other applicable entitlements for use, which has as its result the final approval or allowance of medical marijuana dispensaries within the City of Livermore, shall be granted or approved by any employee, department or commission of the City for a period of ten (10) months and fifteen (15) days immediately following the effective date of this ordinance, unless appealed or extended by a later enacted ordinance.

Section 3. Immediate Threat to Health, Safety and Welfare.

Based on the findings set forth herein, this ordinance is adopted pursuant to California Government Code Section 65858 and is required to address a current and immediate threat to public health, safety and welfare. The City Council has determined that granting land use approvals or building permits for medical marijuana dispensaries would result in a threat to public health, safety, and welfare.

Section 4. Urgency Period.

This ordinance is declared to be an urgency ordinance for preserving the public health, safety and welfare and to take effect and be enforced immediately upon adoption.

Section 5. Constitutionality and Severability.

If any section, subsection, sentence, clause, phrase, or word in this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

Section 6. Effective Date and Publication.

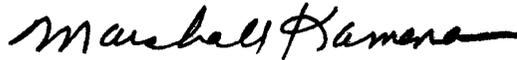
In accordance with California Government Code Section 65858, this ordinance shall be in full force and effect for a period of 10 months and 15 days from the date of adoption. This period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858.

A summary of this ordinance shall be published once within fifteen (15) days after its adoption in a newspaper of general circulation published in the City of Livermore, and the complete ordinance shall be posted for fifteen (15) days in the City Clerk's office within fifteen (15) days after its adoption.

The foregoing ordinance was introduced, read and adopted at the regular meeting of the City Council of the City of Livermore held on October 10, 2005, by the following vote:

On the motion of Councilmember Dietrich, seconded by Vice Mayor Reitter, the foregoing resolution was passed and adopted this 10<sup>th</sup> day of October, 2005, by the following vote:

AYES: Councilmembers Beeman, Dietrich, Leider, Vice Mayor Reitter, and Mayor Kamena  
NOES: None  
ABSENT: None  
ABSTAIN: None



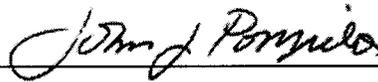
MARSHALL KAMENA, MAYOR

ATTEST:

APPROVED AS TO FORM:



CITY CLERK



CITY ATTORNEY