

ORDINANCE NO. 2011-_____

ORDINANCE OF THE CITY OF CHULA VISTA ENACTING
MUNICIPAL CODE CHAPTER 5.66 (MEDICAL MARIJUANA
DISPENSARIES)

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act ("CUA") (codified as Health and Safety ("H&S") Code Section 11362.5 et seq.); and

WHEREAS, the CUA creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, on January 1, 2004, the "Medical Marijuana Program" ("MMP"), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the State Legislature purporting to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMP; and

WHEREAS, the CUA expressly anticipates the enactment of additional local legislation, and it provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (H&S Code section 11362.5); and

WHEREAS, the City Council takes legislative notice of the fact that several California cities and counties, which have permitted the establishment of medical marijuana distribution facilities or "dispensaries," have experienced serious adverse impacts associated with and resulting from such uses; and

WHEREAS, according to these communities, widely-reported news stories, and medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by minors and other persons without medical need in the areas immediately surrounding such medical marijuana distribution facilities, and

WHEREAS, the City Council reasonably anticipates that the City of Chula Vista will experience similar adverse impacts and effects; and

WHEREAS, a California Police Chiefs' Association compilation of police reports, news stories, and statistical research regarding such secondary impacts is contained in a 2009 white

paper report located at: <http://www.procon.org/sourcefiles/CAPCAWhitePaperonMarijuanaDispensaries.pdf>; and

WHEREAS, the City Council further takes legislative notice that as of December 2010, according to at least one compilation, 103 cities and 14 counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries; and

WHEREAS, the City Council further takes legislative notice that at least 139 cities and 11 counties have adopted prohibitions against medical marijuana dispensaries; and

WHEREAS, the compilation is available at: <http://www.safeaccessnow.org/article.php?id=3165>; and

WHEREAS, the City Council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the state's medical marijuana laws, entitled "GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE (August 2008)" (http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf); and

WHEREAS, the Attorney General has stated in the guidelines that "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law"; and

WHEREAS, the City Council further takes legislative notice that the experience of other cities has been that many medical marijuana distribution facilities or "dispensaries" do not operate as true cooperatives or collectives in compliance with the MMP and the Attorney General Guidelines; therefore, these businesses are engaged in cultivation, distribution and sale of marijuana in a manner that remains illegal under both California and federal law. As a result, of such illegal activity, the City would be obligated to commit substantial resources to regulating and overseeing the operation of medical marijuana distribution facilities to ensure that the facilities operate lawfully and are not fronts for illegal drug trafficking. Additionally, it is uncertain whether even with the dedication of significant resources to the problem, the City would be able to prevent illegal conduct associated with medical marijuana distribution facilities, such as illegal cultivation, transport of marijuana, and the distribution of marijuana between persons who are not qualified patients or caregivers under the CUA and MMP; and

WHEREAS, the City Council further takes legislative notice that concerns about nonmedical marijuana use arising in connection with the CUA and the MMP also have been recognized by state and federal courts. (See, e.g., *Bearman v. California Medical Bd.* (2009) 176 Cal. App. 4th 1588; *People ex rel. Lungren v. Peron* (1997) 59 Cal. App. 4th 1383, 13861387; *Gonzales v. Raich* (2005) 545 U.S. 1); and

WHEREAS, the City Council further takes legislative notice that the use, possession, distribution, and sale of marijuana remain illegal under the federal Controlled Substances Act ("CSA") (*Bearman v. California Medical Bd.* (2009) 176 Cal. App. 4th 1588); that the federal courts have recognized that despite California's CUA and MMP, marijuana is deemed to have no

accepted medical use (Gonzales v. Raich, 545 U.S. 1; United States v. Oakland Cannabis Buyers' Cooperative (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the CUA and MMP (Gonzales v. Raich, 545 U.S. 1); and

WHEREAS, the City Council has been concerned about the adverse effects associated with medical marijuana dispensaries, has discussed such effects, has adopted an interim urgency ordinance that established a moratorium on the legal establishment and operation of medical marijuana dispensaries on July 21, 2009, and has extended it twice pursuant to applicable law on September 1, 2009, and June 22, 2010, which ordinances are incorporated by reference and relied upon in approving this Ordinance; and

WHEREAS, the City of Public Safety Subcommittee held public hearings on medical marijuana with significant public input and commentary on May 18th and June 15th, 2011, and subsequently made a recommendation to the City Council on July 15, 2011; and

WHEREAS, the City Council by a majority vote adopted a resolution which directed staff to take appropriate action to expressly prohibit medical marijuana dispensaries on July 15, 2011; and

WHEREAS, an ordinance prohibiting medical marijuana dispensaries and prohibiting the issuance of any permits or entitlements for medical marijuana dispensaries is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Chula Vista; and

WHEREAS, the City Council is mindful of the needs of medical marijuana patients and has crafted this Ordinance in a manner that does not interfere with a patient's ability to produce his or her own medical marijuana or to obtain medical marijuana from a primary caregiver as expressly allowed under applicable State law; and

WHEREAS, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and

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

SECTION I. The above-listed findings are true and correct.

SECTION II. Chapter 5.66 (Medical Marijuana Dispensaries) is added to the Chula Vista Municipal Code to read as follows:

Chapter 5.66

MEDICAL MARIJUANA DISPENSARIES

Sections:

- 5.66.010 Definitions.
- 5.66.020 Operation of medical marijuana dispensaries prohibited.
- 5.66.030 Violation – Penalty.
- 5.66.040 Public nuisance.

5.66.010 Definitions.

“Medical marijuana dispensary” is any fixed facility or location where, under the purported authority of California Health and Safety Code Section 11362.5 et seq. or otherwise, marijuana is cultivated, made available, sold, transmitted, distributed, given or otherwise provided to, by, or among three or more persons for medical purposes.

“Medical marijuana dispensary” shall not include the following uses, so long as such uses comply with this code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
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.
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
5. A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

“Persons” shall include any individual or entity regardless of status as a qualified patient or primary caregiver.

“Primary Caregiver” shall be defined in the same manner as such term is defined in California Health and Safety Code Section 11362.5

“Qualified Patient” shall be defined as any individual who obtains and uses marijuana for medical purposes upon the recommendation of a physician.

5.66.020 Operation of medical marijuana dispensaries prohibited.

A. The operation of a medical marijuana dispensary, as defined in this chapter, is prohibited in the City of Chula Vista, and no person or association of persons, however formed, shall operate or locate a medical marijuana dispensary in the City. The City shall not issue, approve, or grant any permit, license or other entitlement for the establishment or operation of a medical marijuana dispensary in the City of Chula Vista.

B. This Chapter does not apply where preempted by state or federal law.

5.66.030 Violation – Penalty.

Any person found to be in violation of any provision of this chapter shall not be subject to the criminal enforcement remedies set forth in Chapter 1.20, Chapter 1.24 or any other criminal law violation and enforcement provision set forth in this Code, as a result of such violation.

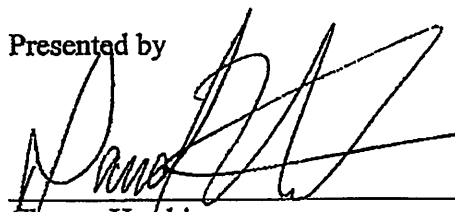
5.66.040 Public nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be, and is hereby declared, a public nuisance, which may be abated by the city pursuant to the procedures set forth in this Code, and be subject to any associated civil remedies.

SECTION III. EFFECTIVE DATE.

This ordinance will take effect and be in full force on the thirtieth day from and after its adoption.

Presented by



Chance Hawkins
Deputy City Attorney

FOR

Approved as to form by



Glen R. Googins
City Attorney

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