

Adopted: April 18, 2011
Effective: May 19, 2011

ORDINANCE NO. MC-1349

AN ORDINANCE OF THE CITY OF SAN BERNARDINO ADDING SAN BERNARDINO MUNICIPAL CODE CHAPTER 5.05 PROHIBITING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES.

The Mayor and Common Council of the City of San Bernardino do ordain as follows:

WHEREAS, Section 40(z) of the City Charter vests the Mayor and Common Council with the power to make and enforce all laws and regulations with respect to municipal affairs, subject only to the restrictions and limitations provided in the Charter or by State law; and

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 ("CUA"); and

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

WHEREAS, Federal law states that the sale, possession, cultivation, and distribution of marijuana is prohibited (21 U.S.C. §§812 and 841, part of the Controlled Substances Act); and

WHEREAS, on May 14, 2001, in *U.S. v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, the United States Supreme Court held that there was no medical necessity exception to the Controlled Substance Act's prohibition on manufacturing and distributing marijuana; and

WHEREAS, several California cities that have permitted the establishment of medical marijuana dispensaries have found that such medical marijuana dispensaries have resulted in negative and harmful secondary effects, including significant increases in traffic, crime, and noise. See "White Paper on Marijuana Dispensaries" published on April 22, 2009, by the California Police Chiefs Association's Task Force on Marijuana Dispensaries; and

WHEREAS, these harmful secondary effects have involved a wide range of activity including burglaries, takeover robberies of dispensaries, robberies of customers leaving dispensaries, an increase in theft and robberies in the vicinity of dispensaries, illegal re-selling of marijuana obtained from dispensaries, physicians issuing apparently fraudulent recommendations for the use of marijuana, dispensary staff selling marijuana to customers with obviously counterfeit patient identification cards, street dealers attempting to sell marijuana to dispensary customers, dispensary customers using marijuana and then driving under its influence, the sale of other illegal narcotics other than marijuana in the dispensaries, sales of marijuana to minors; and

WHEREAS, there is a need for an additional tool for enforcement against the establishment of marijuana dispensaries due to an influx of businesses opening up in violation of San Bernardino Development Code Section 19.06.026; and

1 **AN ORDINANCE OF THE CITY OF SAN BERNARDINO ADDING SAN**
2 **BERNARDINO MUNICIPAL CODE CHAPTER 5.05 PROHIBITING THE**
3 **ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES.**

4 **NOW THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE CITY OF**
5 **SAN BERNARDINO DO ORDAIN AS FOLLOWS:**

6 **Section 1.** San Bernardino Municipal Code Chapter 5.05 is hereby added to read as
7 follows:

8
9 **5.05 Medical Marijuana Dispensaries**

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11 **5.05.010 Medical Marijuana Dispensaries Prohibited**

12 It shall be unlawful for any person or entity to establish, own, manage, conduct, or operate
13 any medical marijuana dispensary, as defined in San Bernardino Municipal Code section 19.06.026
14 (Development Code), or to participate as an employee, contractor, agent, volunteer, or in any other
15 manner or capacity, in any medical marijuana dispensary in the City of San Bernardino.

16
17 **Section 2:** This Ordinance shall in no way limit qualified individuals' rights to possess, use
18 or cultivate marijuana for their own medicinal purposes as is presently authorized by the laws of the
19 State of California as set forth in the applicable provisions of California Health and Safety Code
20 Section 11362.5 et seq.

21
22 **Section 3:** This Ordinance is based upon the recitals and findings set forth above, and the
23 accompanying Staff Report and its attachments to this Ordinance, and is adopted pursuant to the
24 authority granted to the City of San Bernardino in Article 11, Section 7 of the California Constitution,
25 Article III and Section 121 of the Charter of the City of San Bernardino.

26
27 **Section 4:** **Compliance with the California Environmental Quality Act.** The Mayor
28

1 **AN ORDINANCE OF THE CITY OF SAN BERNARDINO ADDING SAN**
2 **BERNARDINO MUNICIPAL CODE CHAPTER 5.05 PROHIBITING THE**
3 **ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES.**

4 and Common Council finds that this ordinance is not subject to the California Environmental Quality
5 Act (CEQA) pursuant to Sections 15061(b)(3) (the activity will not result in a direct or reasonably
6 foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project
7 as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14,
8 Chapter 3, because it has no potential for resulting in physical change to the environment, directly or
9 indirectly.

10 **Section 5: Severability.** If any section, subsection, subdivision, sentence, clause or phrase
11 in this ordinance or any part thereof is for any reason held to be unconstitutional, invalid or ineffective
12 by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of
13 the remaining portions of this ordinance or any part thereof. The Mayor and Common Council hereby
14 declares that it would have adopted each section irrespective of the fact that any one or more
15 subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or
16 ineffective.

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**A NON-URGENCY ORDINANCE OF THE CITY OF SAN BERNARDINO ADDING
SAN BERNARDINO MUNICIPAL CODE CHAPTER 5.05 PROHIBITING THE
ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES.**

I HEREBY CERTIFY that the foregoing Ordinance was duly adopted by the Mayor and
Common Council of the City of San Bernardino at a joint regular meeting thereof, held
on the 18th day of April, 2011, by the following vote, to wit:

COUNCIL MEMBERS:	AYES	NAYS	ABSTAIN	ABSENT
MARQUEZ	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
VACANT	<u> </u>	<u> </u>	<u> </u>	<u> </u>
BRINKER	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
SHORETT	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
KELLEY	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
JOHNSON	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
MC CAMMACK	<u> </u>	<u> </u>	<u> </u>	<u>X</u>

Rachel G. Clark
Rachel Clark, City Clerk

The foregoing Ordinance is hereby approved this 19th day of April, 2011.

PATRICK J. MORRIS
Mayor City of San Bernardino

Approved as to form:

JAMES F. PENMAN
City Attorney

James F. Penman

ORDINANCE NO. MC-1328

AN ORDINANCE OF THE CITY OF SAN BERNARDINO ADDING SAN BERNARDINO MUNICIPAL CODE SECTION 19.06.026 (DEVELOPMENT CODE) PROHIBITING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES AND OTHER SIMILAR USES.

The Mayor and Common Council of the City of San Bernardino do ordain as follows:

WHEREAS, on March 19, 2007, the Mayor and Council unanimously adopted Ordinance No. MC-1243, An Urgency Interim Ordinance of the City of San Bernardino adding San Bernardino Municipal Code Section 19.06.026 (Development Code) and establishing a temporary moratorium on the establishment and operation of Medical Marijuana Dispensaries and other similar uses, declaring the urgency thereof, and taking effect immediately; and

WHEREAS, on April 16, 2007, and February 19, 2008, the Mayor and Council unanimously adopted Ordinance No. MC-1244 and MC-1265, which extended the moratorium until February 19, 2009; and

WHEREAS, on September 21, 2009, the Mayor and Common Council unanimously adopted Ordinance No. MC-1315, An Urgency Interim Ordinance of the City of San Bernardino adding San Bernardino Municipal Code Section 19.06.026 (Development Code) prohibiting the establishment and operation of medical marijuana dispensaries and other similar uses, declaring the urgency thereof, and taking effect immediately, and referred the matter to the Planning Commission for a recommendation on a Development Code Amendment; and

WHEREAS, on January 27, 2010, the City of San Bernardino Planning Commission held a noticed public hearing to consider an amendment to the San Bernardino Municipal (Development) Code to add Section 19.06.026 to prohibit the establishment and operation of medical marijuana dispensaries and other similar uses, and recommended that the Mayor and Common Council approve Development Code Amendment No. 10-01; and

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 ("CUA"); and

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

WHEREAS, Federal law states that the sale, possession, cultivation, and distribution of marijuana is prohibited (21 U.S.C. §§812 and 841, part of the Controlled Substances Act); and

1 WHEREAS, on May 14, 2001, in *U.S. v. Oakland Cannabis Buyers' Cooperative* (2001)
2 532 U.S. 483, the United States Supreme Court held that there was no medical necessity
3 exception to the Controlled Substance Act's prohibition on manufacturing and distributing
4 marijuana; and

4 WHEREAS, on January 1, 2004, California Senate Bill ("SB") 420 went into effect
5 (Health and Safety Code Section 11362.7, *et seq.*). SB 420 was enacted by the Legislature to
6 clarify the scope of the CUA and to allow California cities and counties to adopt and enforce
7 rules and regulations consistent with SB 420 and the CUA. These new regulations and rules
8 became known as the Medical Marijuana Program ("MMP"), which, among other things,
9 enhanced the access of patients and caregivers to medical marijuana through collective,
10 cooperative cultivation projects; and

8 WHEREAS, on June 6, 2005, in *Gonzales v. Raich* (2005) 545 U.S. 1, the United States
9 Supreme Court ruled that the Federal Controlled Substances Act is valid even as applied to the
10 intrastate, noncommercial cultivation, possession and use of cannabis for personal medical use
11 on the advice of a physician; and

11 WHEREAS, in *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798,
12 review denied, cert. denied, the California Court of Appeals upheld the validity of the CUA and
13 the State's MMP, notwithstanding the claim that the CUA and MMP were pre-empted by
14 Federal law; and

14 WHEREAS, these collective case decisions reveal a conflict between Federal and State
15 law as to the legality of the CUA, the MMP, and consequently, medical marijuana dispensaries;
16 and

16 WHEREAS, the City must now, in the face of continuing conflict between State and
17 Federal law, decide for itself whether, as a land use matter, medical marijuana dispensaries
18 should be permitted, regulated or prohibited; and

19 **WHEREAS, the Mayor and Common Council hereby specifically finds as follows:**

20 a. The sale, possession, cultivation, and distribution of cannabis is prohibited by
21 Federal law, specifically 21 U.S.C. §§ 812 and 841, part of the Controlled Substances Act;

22 b. Marijuana continues to be a prohibited Schedule I drug under the Controlled
23 Substance Act for which there is no legally accepted medical use under Federal law;

24 c. Cities in California continue to receive mixed messages from the State and
25 Federal governments regarding the legality of marijuana for medicinal purposes and the
26 establishment and operation of medical marijuana dispensaries. This confusion has increasingly
27 led to wasted taxpayer dollars as cities have been caught in the middle.

26 d. Beyond the legality issue, several California cities that have permitted the
27 establishment of medical marijuana dispensaries have found that such medical marijuana
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1 dispensaries have resulted in negative and harmful secondary effects, including significant
 2 increases in traffic, crime, and noise. See "White Paper on Marijuana Dispensaries" published on
 3 April 22, 2009, by the California Police Chiefs Association's Task Force on Marijuana
 4 Dispensaries, attached to the Staff Report and incorporated herein.

5 e. These harmful secondary effects have involved a wide range of activity including
 6 burglaries, takeover robberies of dispensaries, robberies of customers leaving dispensaries, an
 7 increase in theft and robberies in the vicinity of dispensaries, illegal re-selling of marijuana
 8 obtained from dispensaries, physicians issuing apparently fraudulent recommendations for the
 9 use of marijuana, dispensary staff selling marijuana to customers with obviously counterfeit
 10 patient identification cards, street dealers attempting to sell marijuana to dispensary customers,
 11 dispensary customers using marijuana and then driving under its influence, the sale of other
 12 illegal narcotics other than marijuana in the dispensaries, sales of marijuana to minors; and

13 f. For these reasons and those provided during the hearing on this Ordinance, the
 14 Mayor and Common Council finds that there is a current and immediate threat to the public
 15 health, safety, or welfare, and that the approval of any entitlements for the establishment or
 16 operation of a medical marijuana dispensary or other similar uses would result in that threat to
 17 public health, safety or welfare. The Mayor and Common Council further finds that the adoption
 18 of the Ordinance prohibiting the establishment or operation of medical marijuana dispensaries
 19 and other similar uses is necessary to both protect the public health, safety and welfare and to
 20 comply with Federal law.

21 **NOW THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE CITY**
 22 **OF SAN BERNARDINO DO ORDAIN AS FOLLOWS:**

23 **Section 1. San Bernardino Municipal Code Section 19.06.026 (Development Code)**
 24 **is hereby added to read as follows:**

25 **19.06.026 Medical Marijuana Dispensaries, Prohibited Uses**

26 (A) Notwithstanding any conflicting provision(s) in any other section of the San Bernardino
 27 Municipal Code, including the Development Code, no Conditional Use Permit, Development
 28 Permit, Building Permit, Certificate of Occupancy or Zoning Verification Review (also referred
 to as "Zoning Consistency Review"), shall be issued or granted for the establishment or
 operation of a medical marijuana dispensary or similar use.

(B) As used in this section, the following definitions apply:

1. "Marijuana" means all parts of the plant *Cannabis Sativa L.*, whether growing or not; the
 seeds thereof; the resin extracted from any part of the plant; and every compound
 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It
 includes marijuana infused in foodstuff. It does not include the mature stalks of the plant,
 fiber produced from the stalks, oil or cake made from the seeds of the plant, any other
 compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except

1 the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant which is
2 incapable of germination; as the same is defined in California Health and Safety Code
Section 11018.

3 2. "Medical marijuana dispensary" means any business, association, cooperative, club, coop,
4 delivery service, collective, and any other similar use involved in the sale, possession,
5 cultivation, use, and/or distribution of marijuana for medicinal purposes; sometimes
commonly referred to as a "medical marijuana clinic."

6 **Section 2:** This Ordinance shall in no way limit qualified individuals' rights to possess,
7 use or cultivate marijuana for their own medicinal purposes as is presently authorized by the
laws of the State of California as set forth in the applicable provisions of California Health and
8 Safety Code Section 11362.5 et seq.

9 **Section 3:** This Ordinance is based upon the recitals and findings set forth above, and
10 the accompanying Staff Report and its attachments to this Ordinance, and is adopted pursuant to
the authority granted to the City of San Bernardino in Article 11, Section 7 of the California
11 Constitution, Article III and Section 121 of the Charter of the City of San Bernardino.

12 **Section 4: Compliance with the California Environmental Quality Act.** The Mayor
and Common Council finds that this ordinance is not subject to the California Environmental
13 Quality Act (CEQA) pursuant to Sections 15061(b)(3) (the activity will not result in a direct or
14 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, California Code of
15 Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to
the environment, directly or indirectly).

16 **Section 5: Severability.** If any section, subsection, subdivision, sentence, clause or
17 phrase in this ordinance or any part thereof is for any reason held to be unconstitutional, invalid
18 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 Mayor and
19 Common Council hereby declares that it would have adopted each section irrespective of the fact
that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared
20 unconstitutional, invalid, or ineffective.

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1 AN ORDINANCE OF THE CITY OF SAN BERNARDINO ADDING SAN
 2 BERNARDINO MUNICIPAL CODE SECTION 19.06.026 (DEVELOPMENT CODE)
 3 PROHIBITING THE ESTABLISHMENT AND OPERATION OF MEDICAL
 4 MARIJUANA DISPENSARIES AND OTHER SIMILAR USES.

5 I HEREBY CERTIFY that the foregoing Ordinance was duly adopted by the Mayor and
 6 Council of the City of San Bernardino at a joint regular meeting thereof, held on the
 7 21st day of June, 2010, by the following vote, to wit:

8 COUNCIL MEMBERS:	AYES	NAYS	ABSTAIN	ABSENT
9 MARQUEZ	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
10 DESJARDINS	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
11 BRINKER	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
12 SHORETT	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
13 KELLEY	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
14 JOHNSON	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
15 MC CAMMACK	<u> </u>	<u> </u>	<u> </u>	<u>X</u>

16 Rachel G. Clark
 17 Rachel Clark, City Clerk

18 The foregoing Ordinance is hereby approved this 22nd day of June, 2010.

19
 20 
 21 PATRICK J. MORRIS, Mayor
 22 City of San Bernardino

23 Approved as to form:

24 JAMES F. PENMAN
 25 City Attorney

26 James F. Penman
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