

ORDINANCE NO. _____

AN INTERIM URGENCY ORDINANCE OF THE CITY OF PLACENTIA, CALIFORNIA, AUTHORIZING THE EXTENSION OF INTERIM URGENCY ORDINANCE NO. O-2006-03 WHICH IMPOSES A MORATORIUM ON THE LEGAL ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF PLACENTIA PURSUANT TO GOVERNMENT CODE SECTION 65858.

City Attorney's Summary

This Ordinance extends Interim Urgency Ordinance No. O-2006-03, which imposes a moratorium on the legal establishment and operation of medical marijuana dispensaries and related uses. This extension is necessary to allow the City to review and amend the current ordinance in order to add regulations necessary to protect the public health, welfare, and safety from impacts associated with or implicated by use of property for Medical Marijuana Dispensaries.

THE CITY COUNCIL OF THE CITY OF PLACENTIA FINDS AND DECLARES AS FOLLOWS:

This interim urgency ordinance is necessary because:

A. In 1996 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").

B. The intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law.

C. As a result of Proposition 215, individuals have established medical marijuana dispensaries in various cities.

D. The experiences of California cities in the regulation and policing of medical marijuana dispensaries have varied from city to city. Several California cities have experienced an increase in crime, such as burglary, robbery, loitering around the dispensaries, an increase in pedestrian and vehicular traffic and noise in the vicinity of dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries.

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E. In October 2005, the state Board of Equalization instituted a policy that allows medical marijuana dispensaries to obtain a seller's permit thus enabling the state to collect sales tax on medical marijuana sales.

F. In 2005, the following five cities were polled by the City of Concord regarding secondary effects of medical marijuana dispensaries: Rocklin, Roseville, Oakland, Hayward, and Fairfax. All five cities expressed the same or similar concerns and experiences. These included, but were not limited to: street dealers attempting to sell to patrons entering the dispensaries; smoking marijuana in public areas; driving while under the influence of marijuana; attempted burglaries of marijuana establishments; robberies of clients patronizing establishments; adverse impacts on neighboring businesses; physicians writing prescriptions for any patron regardless of medical infirmity; nuisance behavior of patrons; and illegal drug sales from dispensaries. The City of Davis prepared a report of secondary impacts which included similar experiences.

G. In February 2006, a clinic in Tustin was shut down by the police after an undercover officer was able to buy marijuana without a prescription. In July 2006, several dispensaries were raided in San Diego and San Marcos for selling marijuana to persons without a prescription.

H. A marijuana distribution business was recently found operating in the City. The Placentia Police Department discovered the business located in a residential area, operating without a business license. Pursuant to a lawful search, police confiscated a large quantity of marijuana.

I. The City has not adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries. The lack of such controls may lead to a proliferation of dispensaries and the inability of the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent to and near such businesses, and the patients or clients of such establishments.

J. Based on the adverse secondary impacts experienced by other cities and the lack of any regulatory program in the City regarding the establishment and operation of medical marijuana dispensaries; it is reasonable to conclude that negative effects on the public health, safety, and welfare may occur in Placentia

as a result of the proliferation of medical marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities.

K. A medical marijuana dispensary currently is not an expressly permitted use or a use permitted subject to a conditional use permit in any zoning district in the City of Placentia. However, such establishments may seek to locate in any zoning district disguised as a permitted use, or may seek to legalize this use.

L. The establishment of, or the issuance or approval of any permit, certificate of use and occupancy, or other entitlement for the legal establishment of a medical marijuana dispensary in the City may result in a threat to public health, safety and welfare in that the Placentia Municipal Code does not currently regulate the location and operation of medical marijuana dispensaries and does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical dispensaries in the City.

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

SECTION 1. For purposes of this ordinance, "medical marijuana dispensary" means any for profit or not-for-profit facility or location, whether permanent or temporary, where the owner(s) or operator(s) intends to or does possess and distribute marijuana for any purpose. A "medical marijuana dispensary" includes a marijuana club as described in People v. Peron, (1997) 59 Cal.App.4th 1383, and further includes medical marijuana cooperatives. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by the City's Municipal Code: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice; or a home health agency licensed pursuant to Chapter 8 of the Health & Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.5 et seq.

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SECTION 2. For the period of this ordinance a medical marijuana dispensary shall be considered a prohibited use in any zoning district of the City, even if located within an otherwise permitted use. No permits or authorizations for a medical marijuana dispensary shall be issued while this ordinance is in effect.

SECTION 3. The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) (Title 14, of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated Municipal Code review.

SECTION 4. The City Administrator or his designees shall: (1) review and consider options for the regulation of medical marijuana dispensaries in the City, including, but not limited to the development of appropriate rules and regulations governing the location and operation of such establishments in the City; (2) meet with medical patients, advocates, law enforcement representatives, and other interested parties; and (3) shall file a written report describing the measures which the City has taken to address the conditions which led to the adoption of this ordinance with the City Council ten (10) days prior to the expiration of this interim urgency ordinance, or any extension thereof, and such report shall be made available to the public.

SECTION 5. Pursuant to Section 65858 of the Government Code, a written report has been issued by the City Council of the City of Placentia describing the measures that have been taken thus far to alleviate the condition which led to the adoption of the interim urgency ordinance.

SECTION 6. Ten (10) days prior to the expiration of this extension of the interim urgency ordinance or any additional extension thereof, the City Council shall issue a written report describing the measures that the City has taken to alleviate the condition which led to the adoption of this Ordinance.

SECTION 7. This interim urgency ordinance is adopted pursuant to Section 615 of the Charter of the City of Placentia. This interim urgency ordinance is also adopted pursuant to Section 65858 of the California Government Code.

SECTION 8. This interim urgency ordinance shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council. This extension of the interim urgency ordinance shall continue in effect for ten (10) months and fifteen (15) days from September 29, 2006, which is the expiration date of the original 45-day interim urgency ordinance, and shall thereafter be of no further force and effect. Unless otherwise extended, this Ordinance shall expire on August 13, 2007.

SECTION 9. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or word in this Ordinance or any part 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 of effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, subdivision, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or words be declared unconstitutional.

PASSED and ADOPTED this 19th day of September, 2006.

SCOTT P. BRADY, MAYOR

ATTEST:

PATRICK J. MELIA, CITY CLERK

I, PATRICK J. MELIA, City Clerk of the City of Placentia, do hereby certify that the foregoing Extension of the Interim Urgency Ordinance was introduced and adopted at a regular meeting of the City Council held on the 19th day of September, 2006, by the following vote:

AYES: COUNCILMEMBERS:

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NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

PATRICK J. MELIA, CITY CLERK

APPROVED AS TO FORM

THOMAS F. NIXON, CITY ATTORNEY