



Legislation Text

File #: 16-541, **Version:** 1

URGENCY ORDINANCE Establishing a Moratorium that Prohibits the Issuance of Greater Than Three Medical Cannabis Dispensary Permits

Section 1. Authority. This Ordinance is adopted pursuant to the provisions set forth in California Government Code Section 36937(b) and pursuant to all other applicable laws.

Section 2. Findings.

WHEREAS, Health and Safety Code Section 11362.5, the Compassionate Use Act of 1996 (“CUA”), adopted by the voters in the State of California, authorizes a limited defense to criminal charges for the use, possession or cultivation of cannabis for medical purposes when a qualified patient has a doctor’s recommendation for the use of cannabis. Health and Safety Code Section 11362.7 et seq., the Medical Cannabis Program Act (“MMPA”), was adopted by the state legislature and offers some clarification on the scope of the Compassionate Use Act of 1996, and Health and Safety Code Section 11362.777 specifically authorizes cities and other governing bodies to adopt and enforce rules and regulations related to cultivation of medical cannabis; and

WHEREAS, California Business and Professions Code section 19300 et seq., the Medical Cannabis Regulation and Safety Act (“MCRSA”), went into effect January 1, 2016, and consists of three separate bills, which were enacted together on Sept 11, 2015. The bill creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis. All licenses must also be approved by local governments; and

WHEREAS, the law went into effect on January 1, 2016, but the state has said it will need until January 2018 to set up the necessary agencies, information systems, and regulations to actually begin issuing licenses; and

WHEREAS, neither the CUA nor the MMPA nor the MCRSA prevent a city from enacting general regulations or prohibitions, nuisance regulations, or land use regulations regarding the dispensing, the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis; and

WHEREAS, the San Leandro Zoning Code is adopted and operates under the principles of permissive zoning, and any use that is not expressly permitted is prohibited; and

WHEREAS, the San Leandro City Council desires to confirm that passage of municipal code regulations related to medical cannabis establishes that any land uses not specifically identified or addressed related to medical cannabis are also not expressly permitted land uses under the San Leandro Zoning Code, and are therefore prohibited throughout the City; and

WHEREAS, the San Leandro City Council recognizes Health and Safety Code Section 11362.777(g), such that it does not wish to prohibit individual cultivation and dispensing for personal use; and

WHEREAS, Health and Safety Code Section 11362.777(g) does not apply to a primary caregiver cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 500 square feet and he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765. The area used to cultivate marijuana must be measured by the aggregate area of vegetative growth of live marijuana plants on the premises; and

WHEREAS, the San Leandro City Council desires to retain local control, including prohibition thereof, over the dispensing of medical cannabis except as permitted by Health and Safety Code Section 11362.777(g) and the City permits already awarded under City of San Leandro Municipal Code Chapter 4-33, and therefore desires to adopt an urgency land use ordinance prohibiting the issuance of additional medical cannabis dispensary permits; and

WHEREAS, the illicit dispensing of medical and recreational cannabis in San Leandro has resulted in calls for service to the police department, including calls for robberies and thefts, and the fire department, including calls to abate fires caused by the misuse of electrical wiring and loads at illegal cultivation, distribution and dispensing facilities; and

WHEREAS, the City Council desires that the three permitted medical cannabis dispensaries begin operations before issuing additional land use permits, and desires that staff establish the internal controls, best practices, and procedures to properly monitor, audit, and enforce the City's stringent operational and reporting requirements upon the three permitted dispensaries; and

WHEREAS, the City Council finds, upon advice of staff, that if it does not establish a moratorium on the issuance of additional medical cannabis dispensary permits, there is a high likelihood that the City will not be able to properly enforce its medical cannabis dispensary ordinance, which includes monitoring and regulating all activities related to the dispensing of medical cannabis, including but not limited to medical cannabis and medical cannabis product testing and quality control requirements, safety and security of property, patients, and employees dispensing medical cannabis, and secondary effects related to illegal loitering, increased traffic, and rubbish upon neighboring properties; and

WHEREAS, based upon specific facts and circumstances to which the Chief of Police and various other peace officers of the City can and would attest, there is a threat to the public health, safety and welfare of the community if further medical cannabis dispensing occurs in the City without proper regulations or enforcement thereof, and such unregulated dispensing will result in harmful effects to property owners, visitors, businesses and residents of the City; and

WHEREAS, Article XI, Section 7 of the California Constitution provides a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.

NOW THEREFORE IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 36937, and pursuant to the findings and declarations of facts stated herein, the City Council of the City of San Leandro does ordain as follows:

Section 1. **Ordinance**

1. All of the facts and declarations above are true, correct, incorporated herein and made a part hereof such that there exists a current and immediate threat to the public health, safety, and welfare requiring immediate implementation of an urgency ordinance to prohibit the issuance of additional medical cannabis dispensary permits beyond those already permitted within the City of San Leandro.

2. This urgency ordinance is necessary for the immediate preservation of public health, safety and welfare because the unregulated dispensing of medical cannabis in San Leandro has the strong potential to result in increased calls for service to the police department, including calls for robberies and thefts; such unregulated dispensing operations pose safety risks to surrounding neighbors, including but not limited to, risks of violent confrontation in connection with attempts to steal medical cannabis and medical cannabis derived products, and risks of low quality medical cannabis and related products entering the community that may be harmful to public health.

3. Subsection (c) of Section 4-33-200 of the City of San Leandro's Municipal Code is hereby amended as follows:

The City shall issue no more than three (3) valid permits for the operation of dispensaries in the City. This section may only be amended by an action of the City Council to repeal the moratorium -- unless it has expired on its own terms -- and establishing by ordinance a change to the number of valid permits.

5. Notwithstanding this ordinance, the City Council declares that pursuant to the principles of permissive zoning, except for the legal dispensing of medical cannabis pursuant to a permit issued under San Leandro Municipal Code Chapter 4-33, and that which is allowed under California Health & Safety Code Section 11362.777, all land uses regarding or related to the cultivation, manufacture, retail sale, transport, distribution, delivery and testing of medical and recreational cannabis are not a permitted use or activity of or upon land within the City of San Leandro, such that it is prohibited under the City's Zoning Code. Therefore, the State, and any of its agencies charged with the regulation and permitting of medical cannabis cultivation, manufacture, retail sale, transport, delivery, distribution, and testing of medical cannabis may not issue a license, permit or entitlement for the same within the City of San Leandro unless and until the City issues its own permit for such activities.

Section 2. Environmental Review. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the statutory exemption set forth in Section 15061(b)(3) (specific actions necessary to prevent or mitigate an emergency) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this ordinance is in direct response to the new state legislation that went into effect January 1, 2016.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this

ordinance. The City Council hereby declares that it would have passed this ordinance and each of every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 4. Effective Date and Duration. This ordinance is an urgency ordinance enacted under California Government Code Sections 36934 and 36937(b). This urgency ordinance is effective upon adoption by a four-fifths (4/5) vote of the City Council. This urgency ordinance shall remain in full force and effect until it is repealed by a new regulatory scheme by the City Council.

Section 5. Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

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