

ORDINANCE NO. 1711

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDENA, CALIFORNIA, AMENDING CHAPTERS 18.04 AND 18.42 OF THE GARDENA MUNICIPAL CODE PROHIBITING THE OPERATION OF MEDICAL MARIJUANA DISPENSARIES

WHEREAS, on November 5 1996 the voters of the state of California approved Proposition 215, which enacted the Compassionate Use Act of 1996, codified at California Health and Safety Code Section 11362.5. The Compassionate Use Act permits possession and cultivation of marijuana for certain medical purposes under limited and specified circumstances; and

WHEREAS, in 2003 the California Legislature enacted Senate Bill 420 (“SB 420”), which added Article 2.5 (“Medical Marijuana Program”) to Division 10, Chapter 3, of the California Health and Safety Code, to clarify the scope of the Compassionate Use Act of 1996. SB 420 created a state approved voluntary medical marijuana identification card program, established the quantity of marijuana that a qualified patient or primary caregiver may possess, and provided for additional immunities from state marijuana laws. SB 420 also allows cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420; and

WHEREAS, a goal of the Compassionate Use Act and the Medical Marijuana Program is “[t]o encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana;” and

WHEREAS, the Medical Marijuana Program does not authorize medical marijuana dispensaries and does not require local governments to authorize medical marijuana dispensaries; and

WHEREAS, nothing in either the Compassionate Use Act or the Medical Marijuana Program contains an affirmative mandate that cities allow or permit medical marijuana dispensaries within their city limits; and

WHEREAS, the Federal Controlled Substances Act (21 USC §§801, et seq.) classifies marijuana as a “Schedule I Drug,” which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for its use under medical supervision; and

WHEREAS, Section 841 the Federal Controlled Substances Act (21 USC §841) makes it unlawful for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense marijuana. The Controlled Substances Act contains no statutory exemption for the possession of marijuana for medical purposes; and

WHEREAS, in 2001, the United States Supreme Court issued its decision in *United States v Oakland Cannabis Buyers Cooperative*, 532 U.S. 483, in which the Court held that there is no medical necessity defense or exemption for the possession of medical marijuana under the Controlled Substances Act; and

WHEREAS, in 2005, the United States Supreme Court further held in *Gonzalez v Raich*, 545 U.S. 1, that the United States Congress has authority under the Commerce Clause of the United States Constitution to prohibit the manufacture, cultivation, distribution and possession of marijuana pursuant to the Controlled Substances Act, even as such prohibitions apply to marijuana manufactured cultivated distributed or possessed within the State of California under the auspices of the Compassionate Use Act; and

WHEREAS, on November 14, 2006, the City Council of the City of Gardena adopted Urgency Ordinance No. 1687, creating an interim moratorium on the establishment and operation of medical marijuana dispensaries pursuant to Government Code section 65858, and subsequently adopted Urgency Ordinance 1688 on December 12, 2006, and Urgency Ordinance 1697 on November 13, 2007, extending said interim moratorium; and

WHEREAS, existing City ordinances and regulations, other than the interim moratorium established by Ordinance No. 1687 and extended by Ordinance No. 1688 and Ordinance No. 1697, do not expressly address the zoning regulation or control of medical marijuana dispensaries; and

WHEREAS, there are currently no existing medical marijuana dispensaries in the City; and

WHEREAS, medical marijuana dispensaries are not currently listed as either a permitted or prohibited use of property in any zone under the Zoning Ordinance of the City of Gardena, set forth in Title 18 of the Gardena Municipal Code. Without any zoning restrictions, medical marijuana dispensaries could be established in the City pursuant to approval of conditional use permits which would subject residents and businesses of the City to harmful secondary impacts from these types of businesses; and

WHEREAS, other cities with medical marijuana dispensaries have reported an increase in pedestrian and vehicular traffic and noise, increased loitering around dispensary locations, increased incidents of burglary, and increased complaints from neighbors regarding operation of the dispensaries; and

WHEREAS, other California cities that have permitted the establishment of medical marijuana dispensaries have also experienced an increase in crime, such as burglary, robbery and sale of illegal drugs in the areas immediately surrounding such medical marijuana dispensaries; and

WHEREAS, following the adoption of the interim moratorium established by Ordinance No. 1687, as extended by Ordinance No. 1688 and Ordinance No. 1697, the City Council, the

City Attorney's Office, and City Staff, with input from the City Police Department and other law enforcement professionals, have studied the public health and safety issues relating to, and adverse secondary effects associated with, the operation of medical marijuana dispensaries and the zoning, regulation or control of medical marijuana dispensaries; and

WHEREAS, during the moratorium, City Planning staff, working in conjunction with the City Attorney's office, also reviewed the ordinances and reported the regulatory experiences of several California cities with a long and documented history of public health and safety problems and adverse secondary effects associated with the operation of medical marijuana dispensaries; and

WHEREAS, the California Police Chiefs Association has compiled an extensive report detailing a number of the negative secondary effects associated with medical marijuana dispensaries; and

WHEREAS, medical marijuana dispensaries negatively impact the health, safety and welfare of the community because of the potential for increases in illegal drug use and sales, robbery of dispensaries and dispensary operators, employees and clients; loitering, falsely obtained identification cards, and other increases in criminal activity related to the operation of medical marijuana dispensaries; and

WHEREAS, California Health and Safety Code Section 11362.5(b)(2) expressly provides that nothing in the Compassionate Use Act shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes; and

WHEREAS, persons residing in City of Gardena who are entitled to possess and use medical marijuana under the Compassionate Use Act have access to dispensaries within Los Angeles County which provide medical marijuana to qualified patients; and

WHEREAS, at a duly noticed public hearing and public meeting in accordance with Government Code Section 65854, on September 16, 2008, the Planning and Environmental Quality Commission reviewed the proposed amendments to the City of Gardena Zoning Ordinance and recommended adoption of the proposed amendments by the City Council.

THE CITY COUNCIL OF THE CITY OF GARDENA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings.

A. Based on documentation, investigation and reports compiled by City staff, the cultivation and distribution of medical marijuana through medical marijuana dispensaries contributes directly to undesirable secondary impacts on neighboring land uses, including, but not limited to, excessive traffic and noise, attraction of criminality and criminal elements, trespass, disturbance calls, diversion of marijuana for illegitimate non-medical or recreational

purposes, dependency, addiction and substance abuse, vehicular violations, burglary, theft, display and discharge of firearms, loitering, vagrancy, and on-site consumption of marijuana and marijuana enhanced products.

B. The report compiled by the California Police Chiefs Association, available for review at the Community Development Department, contains further persuasive and documented evidence that medical marijuana dispensaries pose a threat to public health safety and welfare.

C. Based on the foregoing, there is a threat to the public health safety or welfare from the operation of medical marijuana dispensaries within the City and the secondary effects of those dispensaries, and this Ordinance is necessary to alleviate and address that threat and to ensure that the operation of medical marijuana dispensaries is prohibited within the City.

D. Based on the public health, safety or welfare concerns and the adverse impact of medical marijuana dispensaries on the level of quality and character of the City's residential neighborhoods and on other existing land uses within the City, and the potential negative economic impact on existing land uses, among other things, as described herein, the establishment, maintenance and/or operation of medical marijuana dispensaries within the City conflicts with the general purposes of the Zoning Ordinance to protect and promote the public health, safety, and general welfare, and to implement the policies and the land use plan map of the City of Gardena General Plan, as well as the specific purposes set forth in Section 18.02.020 of the Gardena Municipal Code.

E. Because of the documented threat to public health, safety and welfare relating to the operation of medical marijuana dispensaries, it is in the best interest of the citizens of the City of Gardena that the City prohibit the establishment and operation of medical marijuana dispensaries within the City and the use of property within the City for the operation of medical marijuana dispensaries.

F. Prohibiting medical marijuana dispensaries is consistent with the City of Gardena General Plan and each element thereof.

SECTION 2. Chapter 18.04 of the Gardena Municipal Code is hereby amended by adding Section 18.04.143 thereto, which section shall read as follows:

“18.04.143. Dispensary, Medical Marijuana.

A. A medical marijuana dispensary is a facility or location where medical marijuana is made available to, distributed by, or supplied to one or more of the following: (1) more than a single qualified patient, (2) more than a single person with an identification card, or (3) more than a single primary caregiver. The term “Medical marijuana dispensary” includes a medical marijuana cooperative.

B. Unless otherwise regulated by ordinance or applicable law, and to the extent that such use strictly complies with applicable law, including but not limited to Section 11362.5 and

Article 2.5 of Chapter 6 of Division 10 of the California Health & Safety Code, a “medical marijuana dispensary” shall not be construed to include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health & Safety Code, (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health & Safety Code, (3) a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health & Safety Code, (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health & Safety Code, (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health & Safety Code,

C. A medical marijuana cooperative is two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.

D. All terms used in this definition of medical marijuana dispensary, including but not limited to “medical marijuana,” “qualified patient,” “identification card,” and “primary caregiver,” shall be as defined in Section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the California Health & Safety Code.”

SECTION 3. Section 18.42.040 of the Gardena Municipal Code is hereby amended by adding subsection E thereto, which subsection shall read as follows:

“E. Unlawful uses. Uses such as medical marijuana dispensaries that are unlawful under Federal or State law shall not be treated as permitted uses, and shall not be determined to be similar uses pursuant to this section.”

SECTION 4. Environmental Determination.

A. Pursuant to the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines (Chapter 3 of Title 14 of the California Code of Regulations), the City staff determined that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. The City staff bases its determination on the fact that the amendment to the City’s zoning ordinance will impose greater limitations on development in the City, and will thereby serve to reduce potentially significant adverse environmental impacts. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

B. The City Council has reviewed City staff’s determination and, based on the whole record before it, finds that there is no substantial evidence that the project will have a significant effect on the environment. The City Council further finds that this determination of exemption reflects the independent judgment and analysis of the City Council. City staff is hereby directed to file with the County Clerk a notice of exemption within three (3) working days of the adoption of this Ordinance.

SECTION 5. Severability. If any section, subsection, subdivision, paragraph,

sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 6. Certification. The City Clerk shall certify the passage of this ordinance and shall cause the same to be entered in the book of original ordinances of said City; shall make a minute passage and adoption thereof in the records of the meeting at which time the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published as required by law, in a local weekly newspaper of general circulation and which is hereby designated for that purpose.

PASSED, APPROVED AND ADOPTED, this _____ day of _____, 2008.

PAUL K. TANAKA, Mayor

ATTEST:

MARIA ELENA MARQUEZ, City Clerk

APPROVED AS TO FORM:

STEPHEN M. FISCHER, Assistant City Attorney

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