
ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF BRADBURY, CALIFORNIA, EXTENDING A
MORATORIUM ON THE ESTABLISHMENT OF
MEDICAL MARIJUANA DISPENSARIES FOR ONE YEAR,
AND DIRECTING THE PLANNING COMMISSION TO
INITIATE A STUDY REGARDING DEVELOPMENT OF
APPROPRIATE ZONING REGULATIONS GOVERNING
SUCH USES**

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 (“the Act”); and

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

WHEREAS, on January 1, 2004, Senate Bill 420 became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, under the U.S. Controlled Substances Act, marijuana is classified as a Schedule 1 drug, meaning it has no accepted medical use; and

WHEREAS, the California Supreme Court has recently issued a ruling that calls into question the legality of most medical marijuana dispensaries in California in People v. Mentch (2008) 45 Cal.4th 274.

WHEREAS, medical marijuana dispensaries raise issues of first impression for the City, which currently does not address or regulate in any manner the existence or location of medical marijuana dispensaries in its Municipal Code; and

WHEREAS, based on recent trends, the City believes that it may receive a growing number of inquiries for such businesses, including an application, in the immediate future; and

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

WHEREAS, the City has commenced studying and analyzing concerns about the potential negative impacts on the public health, safety, and welfare arising from medical

marijuana dispensaries, including, but not limited to, criminal incidents, loitering, disturbing the peace, and property damage, but has not had sufficient time to complete that processor to take the issue before the Planning Commission; and

WHEREAS, the City has commenced studying the scope of the City's police power and drafting the necessary municipal code provisions, but has not had the opportunity to complete that process; and

WHEREAS, if medical marijuana dispensaries were allowed to be established in the City without appropriate regulation, such uses might be established in areas that would conflict with the Bradbury General Plan, be inconsistent with surrounding uses, or be detrimental to the public health, safety, and welfare; and if such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding medical marijuana dispensaries; and

WHEREAS, the issuing of permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to the completion of the City's study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety, and welfare, and a temporary moratorium on the issuance of such permits, licenses, and entitlements is therefore necessary; and

WHEREAS, this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, 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 General Plan adoption and zoning ordinance review; and

WHEREAS, California Government Code §65858 authorizes cities to adopt moratoriums on land use entitlements in order to study any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal; and

WHEREAS, for the protection of the public's health, safety, and general welfare, the City desires to adopt this moratorium to maintain the current status quo and to provide time for the City to study applicable law, a permit or licensing procedure, the appropriate zoning districts for such uses, and adopt regulatory standards and conditions to be imposed on such operations; and

WHEREAS, Proposition 19 on the November, 2010 ballot, would, if passed, provide for limited legalization of marijuana for non-medical use, and would permit cities to regulate, license and tax establishments distributing marijuana, and the City Council may desire to incorporate provisions regarding such businesses into its permanent ordinance; and

WHEREAS, on October 20, 2009, the City Council adopted Ordinance Number 311, an urgency ordinance imposing a moratorium on the establishment of medical marijuana dispensaries for a forty-five day period; and

WHEREAS, on November 17, 2009, the City Council adopted Ordinance Number 314, an urgency ordinance extending a moratorium on the establishment of medical marijuana dispensaries for a period of ten months, fifteen days; and

WHEREAS, the City Council desires to extend Ordinance Number 314 for a period of one year while it studies and determines whether a permanent ordinance should be adopted; and

WHEREAS, the City Council desires that such moratorium take effect immediately upon its adoption in accordance with Section 36934 of the California Government Code.

NOW, THEREFORE, BE IT ORDAINED BY THE BRADBURY CITY COUNCIL AS FOLLOWS:

Section 1. Imposition of Moratorium.

A. In accordance with Government Code Section 65858, from and after the date of adoption of this Ordinance, no use permit, variance, building permit, business license, or other applicable entitlement for use shall be approved or issued for the establishment or operation of a medical marijuana dispensary for a period of one year.

B. For purposes of this Ordinance, “medical marijuana dispensary” shall mean any facility or location where a primary caregiver intends to or does make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. For purposes of this ordinance, the terms “primary caregiver,” “qualified patient,” and “identification card” shall have the same meaning as those set forth in Health and Safety Code Section 11362.7, et seq.

C. For purposes of this Ordinance, a medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and as long as such use complies strictly with applicable law, including, but not limited to, Health and Safety Code Section 11362.7, et seq.: (1) a clinic, licensed pursuant to Chapter 1, Division 2 of the Health and Safety Code (commencing with §1200); (2) a health care facility, licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code (commencing with §1250); (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 (commencing with §1568.01); (4) a residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code (commencing with §1569); or (5) a hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code (commencing with §1725), the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

D. This Ordinance is an interim urgency ordinance adopted pursuant to the authority granted to the City of Bradbury by Government Code Section 65858 and is for the immediate preservation of the public health, safety, and welfare. The City Council of the City of Bradbury

hereby finds and declares that there is a need to enact an urgency interim ordinance establishing a moratorium on medical marijuana dispensaries, based upon the following findings:

(1) California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries, and sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries. This potential for increased risk of crime and violence presents a clear and immediate danger to the public health, safety and welfare of the residents of the City of Bradbury; and

(2) California cities that have adopted strict ordinances that require, as a condition of obtaining a business license, that the business comply with state and local laws in their practices have not encountered problems with such businesses.

(3) The City does not currently have standards in its Municipal Code relating to the location, operation, and concentration of medical marijuana dispensaries within the City, or specific requirements for business licensing of such businesses; and

(4) The Los Angeles County Sheriff and the Los Angeles County District Attorney have requested that cities within the County adopt ordinances strictly regulating dispensaries.

(5) If medical marijuana dispensaries were allowed to be established without appropriate review of location and operational criteria and standards, such uses might be established in areas that would conflict with the General Plan under consideration by the Planning Commission and the City Council, be inconsistent with surrounding uses, or could have potential adverse secondary effects on neighborhoods in the City and be detrimental to the public health, safety, and welfare; and

(6) The failure to adopt this one year moratorium may result in significant irreversible change in the character of the community and the neighborhood surrounding any marijuana dispensary that would be allowed to open under the City's Municipal Code; and Permitting a marijuana dispensary to open while the City is studying and considering a new General Plan as well as zoning regulations to regulate and/or prohibit this use would defeat the purpose of studying these impacts in the first place; and

(7) As a result of the negative and harmful secondary effects associated with medical marijuana dispensaries and the current and immediate threat such secondary effects pose to the public health, safety, and welfare, it is necessary to establish a temporary, one year moratorium on the establishment and operation of medical marijuana dispensaries in the City, pending completion of the City's study of the potential impacts of medical marijuana dispensaries and possible amendments to the City's Municipal Code.

Section 2. 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

or invalid 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 City Council of the City of Bradbury 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 sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.

Section 3. No Mandatory Duty of Care. This Ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 4. Conflict. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 5. Effective Date. This urgency Ordinance shall be posted as required by law, and shall be in force and take effect immediately from and after its passage and approval by at least four-fifths vote of the City Council and shall be in effect for one year from the date of adoption unless extended by the City Council as provided for in Government Code section 65858.

Approved this 21st day of September, 2010.

Attest:

Richard T. Hale, Jr.
Mayor

Claudia Saldana
City Clerk

Approved to Form:

Cary S. Reisman
City Attorney

State of California)
) ss.
County of Los Angeles,)

I, Claudia Saldana, City Clerk of the City of Bradbury, do hereby certify that Ordinance No. ____ was adopted as an urgency ordinance at a regular meeting of the City Council of the City of Bradbury held September 21, 2010 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Claudia Saldana
City Clerk