

ORDINANCE NO. 1540(07)

**An Ordinance of the City of Lompoc,
County of Santa Barbara, State of California
Prohibiting Medicinal Marijuana Dispensaries
And Unlawful Activities within the City**

THE CITY COUNCIL OF THE CITY OF LOMPOC HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS. The City Council of the City of Lompoc hereby finds that:

- A. In 1996 the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996." This legislation provides a defense to criminal prosecution to eligible patients who cultivate and possess small amounts of marijuana for specific medical reasons, when recommended by a licensed physician under limited circumstances.
- B. In 2003 the State Legislature enacted SB400 to add Sections 11362.7 – 11362.9 to the California Health and Safety Code (the "Medical Marijuana Program") for the purposes of clarifying the scope of the Compassionate Use Act, establishing a statewide registration program, and authorizing public entities to adopt and enforce local rules and regulations consistent with state law.
- C. Marijuana presently is categorized as a Schedule I controlled substance. Schedule I drugs are classified as having a "high potential for abuse" and "no currently accepted medical use."
- D. The Controlled Substances Act, a federal law codified at 21 United States Code Section 841, makes it unlawful for any person to manufacture, distribute, or dispense marijuana, or to possess marijuana with the intent to manufacture, distribute, or dispense this drug. Marijuana used for medical purposes is not exempt from the Controlled Substances Act, and therefore persons choosing to follow the provisions of California laws are subject to prosecution under federal laws for possession and use of an unlawful controlled substance.
- E. In 2001, the United States Supreme Court decided *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001), holding that there is no medical necessity exception to the federal Control Substances Act. Consequently, medical marijuana dispensaries can be barred from producing and distributing this drug, whether for profit or not for profit.
- F. As authorized by Government Code Section 65858, on April 19, 2005, the Council of the City of Lompoc enacted, as an urgency measure immediately effective, Interim Ordinance No. 1508(05), prohibiting the establishment and/or operation of any medicinal marijuana dispensary within the City of Lompoc, and further prohibiting the modification of any existing use to add a medicinal marijuana dispensary ("the Moratorium"), pending receipt of judicial clarification of inconsistencies between the laws of the United States and of the State of California.

- G. Prior to the expiration of Ordinance No. 1508(05) on June 2, 2005, City staff reported that more time was required in order to prepare, present, and study the above-described proposal and, as required by Government Code Section 65858, the Council of the City of Lompoc, on May 17, 2005, issued a written report describing the measures to be taken to alleviate the threat to the public health, safety, and welfare leading to the adoption of Interim Ordinance No. 1508(05).
- H. Pursuant to Government Code Section 65858, after a duly noticed public hearing on May 17, 2005, the Council of the City of Lompoc enacted Interim Ordinance No. 1512(05) to extend the prohibitions of Ordinance No. 1508(05), pending receipt of judicial clarification of inconsistencies between the laws of the United States and of the State of California.
- I. Prior to expiration of the Moratorium, it was apparent that additional time was required for judicial opinions and/or legislative actions to provide reliable guidance regarding appropriate and lawful regulation of medicinal marijuana dispensaries so that the public health, safety, and welfare could be safeguarded while the rights of eligible medicinal marijuana users would not be infringed. Pursuant to Government Code Section 65858, on March 21, 2006, the Council of the City of Lompoc issued a written report describing the measures to be taken to alleviate the threat to the public health, safety, and welfare leading to the adoption of Interim Ordinance No. 1512(05).
- J. On June 6, 2005, the United States Supreme Court issued its decision in *Gonzalez v. Raich*, 545 U.S. 1 (2005), holding that Congress has the power, under the Commerce Clause of the United States Constitution, to prohibit the manufacture, distribution, and possession of marijuana pursuant to the United States Controlled Substances Act, even as such prohibitions apply to marijuana manufactured, distributed, or possessed within the state of California.
- K. Although the *Raich* decision did not specifically invalidate the Compassionate Use Act, following publication of the decision, the State of California suspended its medicinal marijuana identification card program for a short time, while this and other uncertain issues related to medicinal marijuana were analyzed by State officials.
- L. Within the month following publication of the decision in the *Raich* case, the United States House of Representatives again considered an amendment to federal law that would block the Justice Department from prosecuting individuals in the eleven states with medicinal marijuana laws. By a vote of 259-163, the House disapproved any such relaxation of federal law.
- M. Due to continuing uncertainty, pursuant to Government Code Section 65858, after a duly noticed public hearing on March 21, 2006, the Council of the City of Lompoc enacted Interim Ordinance No. 1522(06) to extend the prohibitions of Ordinance No. 1512(05), pending receipt of judicial clarification of inconsistencies between the laws of the United States and of the State of California.
- N. During the Moratorium, the City Attorney has closely monitored numerous developments across the state and country relating to the Compassionate Use Act and its conflicts with federal law, and, in particular, has reviewed the opinions of

state and federal courts, as well as the actions of other municipalities and counties as their staffs responded to conflicting laws governing medicinal marijuana.

- O. On April 20, 2006, the United States Food and Drug Administration announced its conclusions that, after review by federal drug enforcement, regulatory, and research agencies, “no sound scientific studies” supported medical use of marijuana and that “smoked marijuana has no currently accepted or proven medical use in the United States and is not an approved medical treatment.”
- P. Medicinal marijuana dispensaries have been established in several locations in California, and, as a consequence, some local agencies have reported increases in illegal drug use, illegal drug sales, robbery of persons leaving dispensaries, loitering near dispensaries, burglaries of dispensaries, forging or falsely obtaining identification cards to qualify for medicinal marijuana, assumption of false primary caregiver identities by drug traffickers to obtain and sell marijuana, advertisements of product to school students, and other criminal activity, a sampling of which is set forth at Exhibit A, which is hereby incorporated in this Ordinance by this reference.
- Q. The Councils of the Cities of Modesto and Roseville have enacted and later repealed their ordinances permitting the operation of medicinal marijuana dispensaries.
- R. The City of Los Angeles, which allows the operation of medicinal marijuana clinics, had four dispensaries in November, 2005; that number rose to 98 by November, 2006. Los Angeles Police Chief William J. Bratton now is seeking a moratorium on new medicinal marijuana dispensaries while stricter regulations are drafted to respond to the secondary effects of such dispensaries.
- S. The uncertainties surrounding the dispensing of medicinal marijuana to large numbers of patients have resulted in litigation in several cities, including Concord, Fresno, Pasadena, and Susanville.
- T. The City Council hereby finds and determines that events in other cities and counties have demonstrated that substantial harmful secondary effects have arisen from the operation of medicinal marijuana dispensaries, including but not limited to increased crime rates that place additional burdens on already strained law enforcement resources.
- U. The City Council further finds and determines that the public necessity, convenience, and general welfare require the adoption of this Ordinance, given that the Ordinance promotes the public health, safety, comfort, and welfare throughout the City by providing a safe environment free from potential law enforcement actions by the United States and legal sanctions due to federal laws.
- V. Therefore this Ordinance is enacted pursuant to the City’s police power, granted by Article XI, Section 7 of the Constitution of the State of California, in order to promote the health, safety, and welfare of the residents of Lompoc.
- W. In enacting this Ordinance, it is the Council’s intention that nothing contained herein be construed to allow persons to engage in conduct that endangers others or causes a public nuisance, nor to allow any activity related to the cultivation, distribution, or consumption of marijuana that is illegal.

- X. In light of these facts, the City Council finds that it is contrary to the public health, safety, and welfare to permit the operation of medical marijuana dispensaries, as defined herein, within the City of Lompoc because the operation of such activities constitutes illegal activity under federal law.
- Y. California Government Code Section 37100 prohibits cities from passing ordinances in conflict with the respective Constitutions and laws of California and of the United States, and the adoption of an ordinance authorizing or regulating dispensaries within the City of Lompoc would conflict with the laws of the United States.
- Z. Furthermore, the City Council finds that neither the Compassionate Use Act nor the Medical Marijuana Program contemplates or requires the establishment of medicinal marijuana dispensaries, and therefore this Ordinance does not constitute refusal to enforce state law, as prohibited by Article III, Section 3.5 of the Constitution of the State of California.
- AA. This Ordinance is categorically exempt from environmental review pursuant to Section 15321(b) of the CEQA Guidelines, as this legislation authorizes law enforcement activities by peace officers acting under a law that provides a criminal sanction.

SECTION 2. MEDICAL MARIJUANA DISPENSARIES PROHIBITED. Based upon the foregoing findings, which are hereby incorporated by this reference, Article 6 is hereby added to Chapter 21 of the Lompoc City Code, to read as follows:

“Article 6. Prohibition of Medical Marijuana Dispensaries.

“Section 2142. Prohibition.

“Notwithstanding any contrary provision of the Lompoc City Code, no medical marijuana dispensary shall be established or located or operated within the City of Lompoc, nor shall any building permit, use permit, zoning clearance, business tax receipt, or other entitlement for use be issued for any medical marijuana dispensary, nor shall any existing uses be modified to add a medical marijuana dispensary.

“No person shall establish, operate, or permit to be operated a Medical Marijuana Dispensary in or upon any premises in the City, nor operate such a dispensary as a mobile vendor. It is a violation of this Ordinance for any person to knowingly allow property of which he or she is the tenant or owner to be used as a medicinal marijuana dispensary.

“Section 2143. Definitions.

“For the purposes of this Article, unless otherwise apparent from the context, the following definitions apply:

- A. “Marijuana” means all parts of organically grown Cannabis plants, 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 seed, or its resin. “Marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, or any other

compound, manufacture, salt, derivative, mixture, or preparation of mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

- B. "Medicinal marijuana" is marijuana authorized in strict compliance with California Health and Safety Code Sections 11362.5 – 11362.9.
- C. "Medical marijuana dispensary," "medicinal marijuana dispensary," "dispensary," "medical marijuana clinic" and "clinic" means any facility, site, location, or mobile vending vehicle where medical marijuana is distributed, sold, exchanged, given away, distributed, or made available to three or more persons in the following categories: primary caregiver, qualified patient, or person with a valid identification card, in strict accordance with California Health and Safety Code Sections 11362.5 – 11362.9, but does not include the following uses, so long as such uses and the location of such uses comply with applicable laws, including but not limited to California Health and Safety Code Sections 11362.5 – 11362.9 and the Lompoc City Code:
 - 1. A clinic licensed pursuant to Chapter 1 of Division 2 (Sections 1200 *et seq.*) of the Health and Safety Code;
 - 2. A health facility licensed pursuant to Chapter 2 of Division 2 (Sections 1250 *et seq.*) of the California Health and Safety Code;
 - 3. A residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 (Sections 1568.01 *et seq.*) of the California Health and Safety Code;
 - 4. A residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 (Sections 1569.2 *et seq.*) of the California Health and Safety Code; and
 - 5. A residential hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 (Sections 1725 *et seq.*) of the California Health and Safety Code.
- D. "Primary caregiver" means the individual (or individuals) older than eighteen years of age, designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that qualified patient.
- E. "Qualified patient" means a seriously ill person who obtains a recommendation from a physician, licensed to practice medicine in the State of California, to use marijuana for personal medical purposes. In addition, persons currently under the care of a physician for certain medical conditions including, but not limited to, HIV/AIDS, cancer, glaucoma, epilepsy or other spasticity related illnesses, migraine, anorexia, severe nausea are presumed to be "qualified patients."
- F. "Identification card" means a document issued by the California Department of Health Services, or by a county in the state of California, that identifies a person authorized to engage in the medical use of marijuana and that person's primary caregiver, if any.

“Section 2145. Public Nuisance.

“Any use or condition caused or permitted to exist in violation of any of the provisions of this Article shall be and is hereby declared to be a public nuisance that may be summarily abated by the City.

“Section 2146. Penalties. The following nonexclusive remedies may be used by the City as penalties for violations of this Article.

- A. Criminal. Violation of any provision of this Article, or the causing or permitting another to violate any provision of this Article, is a misdemeanor.
- B. Civil. The violation of any provision of this Article shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief as well as any other available civil remedies.
- C. Separate Offense for Each Day. Any person who violates any provision of this Article is guilty of a separate offense for each day during any portion of which such person commits, continues, permits, or causes a violation of this Article and shall be penalized accordingly.”

SECTION 3. CONSISTENCY WITH STATE AND FEDERAL LAW. Article 7 is hereby added to Chapter 21 of the Lompoc City Code, to read as follows:

“Article 7. Consistency with State and Federal Law.

“Section 2147. Consistency with State and Federal Law.

“Notwithstanding any provision of this Code to the contrary, any use, entitlement, authorization, license, or permit allowed or issued under this Code shall be consistent with applicable state and federal law.”

SECTION 4. SEVERABILITY. If any section, subsection, paragraph, sentence, clause, phrase, or word of this Ordinance is declared by a court of competent jurisdiction, after adjudication to a final determination, to be void, this Council finds that said voided part is severable, and that this Council would have adopted the remainder.

SECTION 5. ENVIRONMENTAL REVIEW. This Ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations Section 15321(b), because it authorizes law enforcement activities by peace officers under a law that provides criminal sanctions.

SECTION 6. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published once in a newspaper of general circulation in the City of Lompoc.

SECTION 7. EFFECTIVE DATE. This Ordinance is effective on and after the thirty-first day after its adoption.

This Ordinance was introduced on February 20, 2007, and duly adopted by the City Council of the City of Lompoc at its duly noticed regular meeting on _____, 2007, by the following electronic vote:

AYES: Councilmember(s):

NOES: Councilmember(s):

Dick DeWees, Mayor
City of Lompoc

ATTEST:

Donna N. Terrones, City Clerk
City of Lompoc