

**ORDINANCE NO. 2008-03**

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF AMERICAN CANYON, CALIFORNIA, MAKING FINDINGS AND ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES**

**WHEREAS**, Government Code Section 65858 provides that for the purpose of protecting the public safety, health and welfare, the City Council may adopt, without following the procedures otherwise required prior to the adoption of a zoning ordinance, as an urgency measure, an interim ordinance, by a vote of four-fifths (4/5) majority, prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time; and

**WHEREAS**, under the American Canyon Municipal Code, a question has been posed regarding what type of application would be required to open a medical marijuana dispensary and what zone a medical marijuana dispensary could legally operate.

**NOW, THEREFORE**, the American Canyon City Council does hereby ordain as follows:

**SECTION 1: Findings**

- A. 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").
- B. The intent of Proposition 215 was to enable persons who are in need of medical marijuana for medical purposes to obtain and use it under limited, specified circumstances.
- C. On January 1, 2004, SB 420 went into effect. SB 420 was enacted by the Legislature 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.
- D. The American Canyon General Plan does not presently contain a goal or policy or textual discussion of the issue of a prospective use of medical marijuana dispensaries.
- E. The American Canyon Municipal Code does not address or regulate in any manner the existence or location of medical marijuana dispensaries.
- F. Other California cities that have permitted the establishment of medical marijuana dispensaries have witnessed an increase in crime, such as burglaries, robberies, and sales of illegal drugs in the areas immediately surrounding such dispensaries.
- G. The United States Supreme Court addressed marijuana use in California in *United States v. Oakland Cannabis Buyers' Cooperative*, (2001) 532 US 483. The U.S. Supreme Court held that the federal Controlled Substances Act

continues to prohibit marijuana use, distribution, and possession, and that no medical necessity exception exists to these prohibitions. Further, the U.S. Supreme Court is currently reviewing the California case of *Raich v. Ashcroft*, (2003) 352 F.3d 1222, and is considering the validity of the federal Controlled Substances Act. Therefore, it appears there is currently a conflict between federal laws and California laws regarding the legality of medical marijuana dispensaries, which the U.S. Supreme Court should be resolving in an opinion due this summer.

- H. To address the apparent conflict in state and federal laws, as well as the community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City to study the potential impacts such facilities may have on the public health, safety, and welfare.
- I. Based on the foregoing, the City Council finds that issuing permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to (1) the U.S. Supreme Court resolving the conflict in state and federal laws on the subject, (2) the City's completion of its study of the legality, potential impact, and regulation of such facilities; and (3) resolving any zoning conflicts based on the fact that no zoning currently exists in the City for such dispensaries, would pose a current and immediate threat to the public health, safety, and welfare, and that a temporary moratorium on the issuance of such permits, licenses, and entitlements is thus necessary.

## **SECTION 2: Imposition of Moratorium**

- A. In accordance with the authority granted the City of American Canyon by the City Charter and Government Code Section 65858, from and after the date 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 forty-five (45) days.
- 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 "person with an identification card" shall have the same meaning as that set forth in Health and Safety Code Section 11362.5, *et seq.*
- C. This ordinance is an interim urgency ordinance adopted pursuant to the authority granted to the City of American Canyon by Government Code Section 65858, and is for the immediate preservation of the public health, safety, and welfare. The facts constituting the urgency are:
  - (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;

- (2) After receiving inquiries from persons interested in establishing medical marijuana dispensaries, numerous other cities in California have adopted ordinances prohibiting or heavily regulating such dispensaries, and because a significant portion of the region has prohibited or heavily regulated medical marijuana dispensaries, there is a substantially increased likelihood that such establishments will seek to locate in the City of American Canyon;
- (3) The City of American Canyon does not currently have adopted goals or policies in its General Plan, or standards in its Municipal Code relating to the location, operation, and concentration of medical marijuana dispensaries within the City;
- (4) Absent the adoption of this interim urgency ordinance, the establishment and operation of medical marijuana dispensaries in the City of American Canyon would result in the negative and harmful secondary effects other cities have experienced, as identified above;
- (5) Currently the state and federal laws relating to medical marijuana dispensaries appear to be in conflict, and the United States Supreme Court is due to render an opinion to clarify and resolve this apparent conflict this summer; and
- (6) As a result of the conflict in state and federal laws on the matter, coupled with negative and harmful secondary effects associated with medical marijuana dispensaries, the current and immediate threat such secondary effects pose to the public health, safety, and welfare, and the zoning conflicts that would be created by the establishment and operation of a medical marijuana dispensary, it is necessary to establish a temporary, forty-five (45) day moratorium on the establishment and operation of new medical marijuana dispensaries in the City, pending resolution of the conflict of laws by the U.S. Supreme Court, completion of the City's study of the legality, potential impacts and regulation of medical marijuana dispensaries, and possible amendments to the City's zoning ordinances.

### **SECTION 3: Planning Study**

The Planning Department with the assistance of the City Attorney's Office is directed to analyze the appropriateness of such facilities within the City of American Canyon, including but not limited to, evaluating conflicts in state and federal law, the legality of such facilities, the legal authority to establish such facilities, the desirability of such facilities, and the extent of regulatory controls, should such facilities be thought appropriate.

### **SECTION 4: Amendments to Ordinance**

The City Council by ordinance after notice of public hearing, by the affirmative vote of at least four-fifths (4/5) of the voting City Council Members may modify, amend, delete or

add to this ordinance upon a finding that such action will implement and enforce the goals, policies, and purposes of this Ordinance.

**SECTION 5: Compliance with California Environmental Quality Act**

The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to 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) 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; and it prevents changes in the environment pending the completion of the contemplated municipal code review.

**SECTION 6: Waiver**

The City, on a case by case basis, shall have the authority, upon a showing of good cause by an applicant, to waive the interim prohibition/moratorium imposed by this ordinance. Good cause shall mean a factual and evidentiary showing by the applicant that the interim prohibition/moratorium, if not waived, will deprive the applicant of substantially all reasonable use of his/her property.

**SECTION 7: Urgency Ordinances; Extension**

This interim urgency ordinance shall by operation of law be of no further force and effect forty five (45) days from and after the date of this adoption on April 15, 2008; provided, however, that after notice of public hearing the City Council Members may by a four-fifths (4/5) of the voting City Council Members extend this interim or urgency ordinance for an initial period of time up to ten (10) months and fifteen (15) days. Thereafter, after hearing a further one (1) year extension is also permitted.

**SECTION 8: Severability**

The City Council hereby declares that if any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 9: Effective Date**


This ordinance is hereby declared to be an urgency measure and shall be enforced and be in effect immediately upon its adoption.


**SECTION 10: Publication**

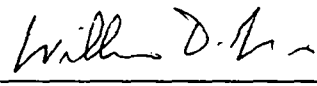
The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper of the City of American Canyon within fifteen (15) days of its adoption.

This Ordinance was introduced and adopted as an urgency measure at a regular meeting of the City Council of the City of American Canyon held on the 15th day of April, 2008, and adopted on the 15th day of April, 2008, by the following vote, to-wit:

<b>AYES:</b>	<b>Garcia, Bennett, Callison, Coffey, West</b>
<b>NOES:</b>	<b>None</b>
<b>ABSTAIN:</b>	<b>None</b>
<b>ABSENT:</b>	<b>None</b>

  
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**Leon Garcia, Mayor**

**ATTEST:**  
  
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**Dorothy Roadman City Clerk**

**APPROVED AS TO FORM:**  
  
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**William D. Ross, City Attorney**