



ORDINANCE NO. 2009- 05

AN INTERIM URGENCY ORDINANCE OF THE CITY OF AMERICAN CANYON, CALIFORNIA, MAKING FINDINGS AND EXTENDING FOR TWELVE (12) MONTHS A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES AND COOPERATIVES

WHEREAS, American Canyon City Charter Section 2.06 and Government Code Section 65858 provide for the adoption as an urgency measure of interim ordinances for certain expressed purposes and by a vote of four-fifths (4/5) majority of the voting City Council members; and

WHEREAS, the City Council, on April 15, 2008, enacted Ordinance No. 08-03, for certain expressed purposes for a period of forty five (45) days; and

WHEREAS, the City Council, on May 20, 2008, enacted Ordinance No. 08-05, for certain expressed purposes for a period of ten (10) months and fifteen (15) days; and

WHEREAS, a notice of public hearing to consider extending the urgency measure for an additional twelve (12) months has been placed in a newspaper of general circulation in American Canyon; and

WHEREAS, the City Council finds that an extension of the urgency ordinance for ten (12) months would provide adequate time for public review of proposed options to regulate medical marijuana dispensaries, and for City Council consideration and adoption of an appropriate ordinance therefore, while the moratorium remains in effect; and

WHEREAS, Section 65858(a) of the California Government Code permits the City Council to extend this interim urgency ordinance for a period of twelve (12) months; and

WHEREAS, the City Council finds that it would be detrimental to the public health, safety and welfare of the City to allow the establishment and approval of any medical marijuana medical dispensaries until such time as the Planning Commission, the City Council, and the public have had an opportunity to determine the appropriateness of such facilities within the City of American Canyon, including but not limited to evaluating the legal authority to establish such facilities, the desirability of such facilities, and the extent of regulatory controls, should such facilities be thought appropriate; and

WHEREAS, Government Code §65858 allows the City Council, without following the procedures otherwise required prior to the adoption of a zoning ordinance, to protect the public safety, health and welfare, by adopting as an urgency measure an interim ordinance prohibiting the approval of any application for the approval of a medical marijuana dispensary facility within the City of American Canyon.

NOW, THEREFORE, THE AMERICAN CANYON CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Purpose and 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: 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 3: 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 4: 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 5: Urgency Ordinances; Extension.

This interim urgency ordinance shall by operation of law be of no further force and effect twelve (12) months from and after the date of this adoption on March 17, 2009.

SECTION 6: Severability.

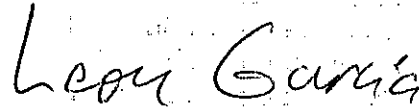
The City Council hereby declares that if any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby 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 7: 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 17th day of March, 2009, and adopted on the 17th day of March, 2009, by the following vote, to-wit:

AYES: Garcia, Callison, Bennett, Caffey, West
NOES: None
ABSTAIN: None
ABSENT: None



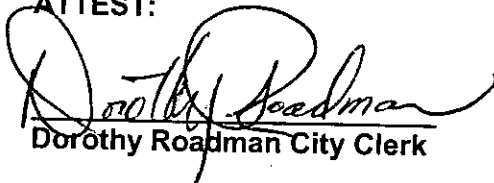
Leon Garcia, Mayor

APPROVED AS TO FORM:



William D. Ross, City Attorney

ATTEST:


Dorothy Roadman City Clerk