

ORDINANCE NO. 2011-01

**ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SAN JUAN BAUTISTA ADDING CHAPTER
5-14.5 TO THE SAN JUAN BAUTISTA MUNICIPAL
CODE TO PERMANENTLY PROHIBIT
MEDICAL MARIJUANA DISPENSARIES**

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WHEREAS, this Council previously (Ordinance No. 2010-01 and Ordinance No. 2010-02) has established a moratorium on the issuance of permits, entitlements, licenses, or approvals regarding medical marijuana dispensaries; and

WHEREAS, this Council has determined that it is in the best interests of the City of San Juan Bautista, its citizens, and its visitors, that medical marijuana dispensaries should be prohibited within the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Chapter 5-14.5 hereby is added to the San Juan Bautista Municipal Code, to read as follows:

“5-14.5-010 Findings and purpose.

(A) In enacting this Chapter, the City Council finds as follows:

- (1) In 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States.
- (2) In 1996, the voters of the State of California approved Proposition 215 (“the Act”), codified as California Health and Safety Code (“H&S Code”), section 11362.5 et seq.
- (3) The Act creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.

- (4) On January 1, 2004, SB 420 went in to effect. SB 420, known as the “Medical Marijuana Program” (codified at H&S Code sections 11362.7-11362.83) (“MMP”) was enacted by the state legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420.
- (5) The Act expressly anticipates the enactment of additional local legislation. It provides: “Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.” H&S Code section 11362.5.
- (6) The City Council takes legislative notice, based on the materials presented to the Council during the legislative process leading to the enactment of this Chapter, of the fact that several California cities and counties that have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. According to these communities and according to news stories widely reported, medical marijuana dispensaries have resulted in and/or caused an increase in crime and use of marijuana by minors and others without medical need in areas surrounding medical marijuana dispensaries. The City of San Juan Bautista reasonably could anticipate experiencing similar adverse impacts and effects.
- (7) The City Council further takes legislative notice that as of the date of this Ordinance, several cities and counties in California have adopted moratoria on or permanent prohibition of medical marijuana dispensaries.
- (8) The Drug Enforcement Agency (“DEA”), the federal agency charged with enforcing the CSA, has expressed its view that state medical marijuana laws like Proposition 215 and the MMP impede DEA’s ability to enforce the CSA; have “caused conflict and confusion among the law enforcement community;” are “viewed as jeopardizing the historical cooperation between federal, state, and local drug enforcement officials;” and “undercut enforcement of the Controlled Substances Act.” While the City Council in no manner intends or undertakes by the adoption of this chapter to enforce federal law, the City Council is concerned that the comments by the DEA reflect to some extent the

- adverse secondary impacts identified above. The City is also concerned about interference and conflict with federal law enforcement efforts.
- (9) The City Council further takes legislative notice that concerns about non-medical marijuana use arising in connection with Proposition 215 and the MMP also have been recognized by state and federal courts. See, e.g., *People ex rel. Lundgren v. Peron* (1997) 59 Cal.App.4th 1383, 1386-1387; *Gonzales v. Raich* (2005) 545 U.S. 1.
- (10) The City Council further takes legislative notice that the use, possession, distribution, and sale of marijuana remain illegal under the CSA; that the federal courts have recognized that despite California's Act and MMP, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich* (2005) 545 U.S. 1; *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Buyers' Cooperative* (2001) 532 U.S. 483); that the federal government properly may enforce the CSA despite the Act and MMP (*Gonzales v. Raich* (2005) 545 U.S. 1; and that the Act and MMP do not preempt regulation, including prohibition, of marijuana dispensaries (*City of Claremont v. Kruse* (2009) 177 Cal.App.4th ; *James v. City of Costa Mesa* (2010) Federal District Court, Cent. Dist. of California, No. SACV 10-0402 AG (MLGx)).
- (11) The City Council further takes legislative notice that allowing and regulating medical marijuana dispensaries pursuant to the Act and MMP would require passage and adoption of ordinances, and that such ordinances would be in violation of California Government Code section 37100, authorizing cities to pass ordinances provided they are not in conflict with the constitutions and laws of the state or the United States. Activities of medical marijuana dispensaries, i.e. possession, distribution and sale of marijuana, are illegal per the CSA.
- (12) An ordinance prohibiting medical marijuana dispensaries, and prohibiting the issuance of any permits, licenses, and entitlements for medical marijuana dispensaries, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of the City of San Juan Bautista.

(B) The purpose of this Chapter is to prohibit the operation of medical marijuana dispensaries in the City of San Juan Bautista given the negative and detrimental effects and impacts on communities of medical marijuana dispensaries, and given that many of the activities of medical marijuana dispensaries are necessarily in violation of federal law, i.e. the CSA.

5-14.5-020 Medical marijuana dispensary defined.

For the purpose of this Chapter, “medical marijuana dispensary” shall mean a facility or location where medical marijuana is cultivated or by any other means made available to and/or distributed by or to one (1) or more of the following: a primary caregiver, a qualified patient, or a person with an identification card in strict accordance with California Health and Safety Code sections 11362.5 et seq. and 11362.7 et seq.

5-14.5-030 Medical marijuana dispensaries prohibited.

- (A) Medical marijuana dispensaries are prohibited in the City of San Juan Bautista and no medical marijuana dispensary shall operate, locate, or otherwise be permitted within the City of San Juan Bautista.
- (B) The City shall not consider, issue, approve, or grant any permit license, or other entitlement for the establishment or operation of a medical marijuana dispensary.
- (C) In the event of conflict or inconsistency between any provisions of this Chapter and any other law, rule, or regulation of the City, including without limitation the San Juan Bautista Municipal Code, the provisions of this Chapter shall prevail.”

SECTION 2. Severability. The City Council declares that each section, subsection, paragraph, subparagraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, subsection, paragraph, subparagraph, sentence, clause, and phrase of this ordinance. If any section, subsection, paragraph, subparagraph, sentence, clause or phrase of this ordinance is held invalid, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of the portion held invalid, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated.

SECTION 3. Environmental assessment. Pursuant to the California Environmental Quality Act (“CEQA”), California Public Resources Code section 21000 et seq., and the “CEQA Guidelines” promulgated thereunder, Title 14 of the California Administrative Code, Section 15000 et seq., the City Council finds and declares that this ordinance is exempt from the dictates of CEQA for the following reasons: (1) this ordinance is not subject to CEQA pursuant the CEQA Guidelines, subsection 15060(c), in that this ordinance approves no activity that will result in a direct or reasonably foreseeable indirect physical change in the environment; (2) this ordinance is not a “project” within the meaning of CEQA Guidelines section 15378 in that it has no potential for resulting in a physical change in the environment, directly or ultimately; (3) this ordinance is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and it can be seen with certainty there is no such possibility with respect to passage of this ordinance. The Planning Director is hereby authorized and directed to file, within five (5) working days of the adoption date of this ordinance, a Notice of Exemption with the County Clerk, according to the procedures and requirements set forth in CEQA Guidelines section 15062.

SECTION 4. Effective date. This ordinance shall go into effect thirty days after the date of its adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the San Juan Bautista City Council on the 18th day of January, 2011, and was adopted at a regular meeting of the San Juan Bautista City Council on the 15 day of February, 2011, by the following vote:

AYES: Moore, Bilich, Cosio, Boch, Edge

NOES: None

ABSENT: None

ABSTAIN: None

Andy Moore, Mayor

ATTEST:

Trish Paetz, Deputy City Clerk