

ORDINANCE NO. 2010-01

AN URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA MAKING FINDINGS AND ESTABLISHING FOR A PERIOD OF 45 DAYS A MORATORIUM ON THE ISSUANCE OF PERMITS, ENTITLEMENTS, LICENSES, AND APPROVALS REGARDING MEDICAL MARIJUANA DISPENSARIES

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THAT THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA DOES ORDAIN AS FOLLOWS:

1. Findings and Declaration of Intent. The City Council hereby adopts the following findings to support the adoption of the Urgency Interim Ordinance to limit the establishment and operation of medical marijuana dispensaries:
  - a) In 1996 the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et seq. and entitled “The Compassionate Use Act of 1996”;
  - b) The Intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified 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 State to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420.
  - d) The City of San Juan Bautista Municipal Code is silent with regard to the regulation and location of medical marijuana dispensaries.
  - e) The City has received inquiries regarding the permitting and establishment of medical marijuana dispensaries.
  - f) Other California cities and counties that have permitted the establishment of medical marijuana dispensaries have recognized negative secondary effects including an increase in crimes

such as burglary, robbery and the sale of illegal drugs in the areas immediately surrounding such medical marijuana dispensaries.

g) In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City to study the potential impacts such facilities have upon the public health, safety and welfare.

h) The City Council finds that it is necessary to study the possible adoption of amendments to the City's Municipal Code in order to address SB 420 as well as recent State and Federal case law.

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 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 that therefore a temporary moratorium on the issuance of such permits, licenses and entitlements is necessary.

j) The Planning Director, in conjunction with the City Manager and City Attorney, shall immediately begin to take steps to conduct a study of the potential impacts of medical marijuana dispensaries and possible amendments to the City's Municipal Code related to medical marijuana dispensaries.

2. Purpose of Ordinance. It is the purpose and intent of this Ordinance to establish a moratorium, in accordance with the authority granted the City of San Juan Bautista under Government Code 65858. From and after the date of this ordinance, no use permit, variance, building permit, license, certificate, or any other applicable entitlement for use, shall be approved or issued for the establishment or operation of a medical marijuana provider association dispensary for a period of 45 days. This moratorium will allow studies to be conducted to determine the needs assessment and issues (e.g. security protocols, traffic impacts, etc.) for the orderly preparation of

attendant Municipal Code amendments that would pertain to medical marijuana provider association dispensaries.

3. Medical Marijuana Dispensary Defined. For the purpose of this ordinance, a “Medical Marijuana Provider Association Dispensary” shall mean any facility or location providing education, referral, network services, facilitation or assistance in the lawful possession, acquisition, and distribution of medical cannabis to two (2) or more “Qualified Patients” and/or “Primary Caregivers”, in strict accordance with Health and Safety Code Section 11362.5 et seq., including but not limited to Health & Safety Code Section 11362.7 (d) and (f). The terms “primary caregiver” and “qualified patient” shall be as defined in Health and Safety Code Section 11362.5 et seq.

4. Limitation of Uses. Notwithstanding any other provision of the Municipal Code or any other ordinances or regulations of the City to the contrary, no permit or other entitlement for use or environmental document which either directly or indirectly has as its result the approval or allowance of a medical marijuana dispensary, shall be approved, or granted while this ordinance remains in effect.

5. Environmental Assessment.

a) 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 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).

2) This ordinance is not a "project" within the meaning of Section 15378 of the CEQA Guidelines because it has no potential for resulting in a physical change in the

environment, directly or ultimately. The ordinance prevents changes in the environment pending the completion of the above described zoning review.

3) This ordinance is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect to the environment. For the reasons set forth in subparagraphs 1) and 2) above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment and, therefore, this ordinance is not subject to CEQA.

b) 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 Section 15062 of the CEQA Guidelines.

5. Urgency Measure; Effective Date. Pursuant to Government Code Section 65858 and based on the facts stated in Section 1 above, this Interim Ordinance is hereby declared to be an urgency measure necessary for the protection of the public health and welfare, shall become effective immediately upon its adoption, and shall remain in full force and effect through April 29, 2010.

6. 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.

7. Posting of Ordinance. Within fifteen days after the passage of this ordinance, the City Clerk shall cause it to be posted in the three places in the City designated by the Council.

PASSED AND ADOPTED by the City Council of the City of San Juan Bautista at a regular meeting duly held on March 16, 2010, by the following vote:

AYES: Laverone, Bilich, Hill, Edge, Moore

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST:

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Ed Laverone, Mayor

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Trish Paetz, Deputy City Clerk

APPROVED AS TO FORM:

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George Thacher, City Attorney