

ORDINANCE NO. U-1587

**AN INTERIM ORDINANCE OF THE CITY OF SAN FERNANDO
PROHIBITING THE ESTABLISHMENT OF MARIJUANA
DISPENSARIES IN ANY ZONING DISTRICT WITHIN THE CITY AND
DECLARING THE URGENCY THEREOF**

THE CITY COUNCIL OF THE CITY OF SAN FERNANDO DOES ORDAIN AS
FOLLOWS:

SECTION 1. Moratorium established. The City of San Fernando hereby establishes an interim moratorium on marijuana dispensaries, stores, and co-ops in all zoning districts in the City. For purposes of this interim ordinance the term “marijuana dispensary, store or co-op” shall be broadly and liberally interpreted to mean and include any location, structure, facility, vehicle, residence, or similar entity used, in full or in part, as a place at or in which marijuana is sold, traded, exchanged, bartered for in any way, made available, located, stored, placed, or cultivated, including any of the foregoing if used in connection with the delivery of marijuana, for all purposes.

SECTION 2. Moratorium defined. No marijuana dispensary, store, or co-op shall locate, commence, obtain license for or be entitled by the City, in any zone, or any parcel, or at any place, public or private, within the City. This interim ordinance shall in no way limit qualified individuals’ right to possess, use or cultivate marijuana for their own medicinal purposes as is presently authorized by the laws of the State of California as set forth in the applicable provisions of the Health and Safety Code.

SECTION 3. Moratorium term. This Ordinance shall expire, and the moratorium established hereby shall terminate, 45 days after the date of adoption unless extended by the City Council, at a regularly noticed public hearing, pursuant to California Government Code Section 65858.

SECTION 4. CEQA Finding. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance, and establishment of a moratorium hereby, may have a significant effect on the environment, because the moratorium will maintain the current environmental conditions arising from the current land use regulatory structure. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

SECTION 5. Penalty. Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. In addition to the foregoing, any violation of this Ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

SECTION 7. Legislative Findings. In 1996 the California voters approved Proposition 215, the Compassionate Use Act (the “CUA”), legalizing the use of marijuana for medical purposes under certain conditions. In 2003, the California Legislature passed Senate Bill 420

("SB 420"), which clarified the scope of the CUA and authorized cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420 and the CUA. Citing the authority of SB 420, numerous dispensaries have opened in California to distribute marijuana to individuals with various illnesses.

In some cities containing medical marijuana dispensaries, there has been an increase in crime, such as burglaries, robberies, and sales of illegal drugs in the areas immediately surrounding such dispensaries. Furthermore, the United States Department of Justice's California Medical Marijuana Information report has advised that large-scale drug traffickers have been posing as "care givers" to obtain and sell marijuana. A medicinal marijuana dispensary opened briefly in a city after providing false information regarding the nature of the use to the city in a business license application and to its landlord in an application to rent business space. If any of these circumstances were repeated in San Fernando, it could increase the likelihood that parties would traffic in illegal drugs in the City, thereby endangering the public health, safety and welfare.


There is a conflict between state and federal law with regard to the possession and use of marijuana for medicinal purposes. While there have been a number of cases attempting to address this issue, this conflict continues to be a subject of pending litigation and legislative discussion. Moreover, the City of Anaheim and other public entities are currently involved in litigation regarding the scope of local public agencies' authority to regulate medicinal marijuana. To fully understand the impact of the apparent conflict between federal and state law, as well as the community and statewide concerns regarding the impacts associated with the establishment of medical marijuana dispensaries, and the fact that federal legislation and enforcement is currently in flux, it is necessary for the City to continue to study the potential impacts such facilities may have on the public health, safety, and welfare.

Other local cities have received recent inquiries regarding their requirements for medical marijuana facilities. The establishment of medical marijuana facilities before appropriate procedures and regulations are enacted has the potential to cause adverse impacts to surrounding development and to risk the public health, safety and welfare of the City's residents and the general public. It is therefore urgent that the City develop regulations governing the location and operation of medical marijuana facilities to prevent adverse impact to the public health, safety and welfare that may result from unregulated placement and operation of such uses in the City.

The City Council finds that additional planning and research are urgently necessary to develop appropriate standards to regulate medical marijuana facilities. The City intends to undertake such a study within a reasonable time. The City Council finds that operators of medical marijuana facilities and others are likely to submit applications for such uses during the course of the study and planning process and the development of medical marijuana facilities before appropriate regulations and safeguards are in place may be incompatible with the result of this planning process. Given the time required to undertake the study and planning this situation calls for, the City Council finds that it is necessary that this temporary moratorium be declared to ensure that no medical marijuana facilities that may be in conflict with the contemplated new development policies are permitted in the interim. The City Council has the authority to adopt an interim ordinance pursuant to Government Code Section 65858 in order to protect the public health, safety, or welfare.


Based on the foregoing, the City Council finds that the approval of use permits, variances, building permits, business licenses or any other applicable entitlement providing for the establishment and/or operation of marijuana dispensaries prior to (1) resolving whether federal law will be routinely enforced against medical marijuana dispensaries; (2) the City's completion of its study of the potential impact 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 result in a current and immediate threat to the public health, safety, and welfare. This Ordinance is an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Section 36937(b) and therefore shall be passed immediately upon its introduction and shall become effective immediately upon its adoption.

PASSED, APPROVED AND ADOPTED upon second reading this 2nd day of March, 2009.



STEVEN VERES, MAYOR

ATTEST:



ELENA G. CHÁVEZ, CITY CLERK

APPROVED AS TO FORM:

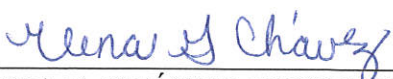


MICHAEL ESTRADA
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF SAN FERNANDO)

I, Elena G. Chávez, City Clerk of the City Council of the City of San Fernando, do hereby certify that the foregoing Ordinance was duly adopted by the City Council at its regular meeting held on the 2nd day of March, 2009 and carried by the following roll call vote:

AYES: Veres, De La Torre, Hernández, Esqueda - 4
NOES: None
ABSENT: Martinez - 1



ELENA G. CHÁVEZ, CITY CLERK