

## ORDINANCE NO. U-1597

### AN INTERIM ORDINANCE OF THE CITY OF SAN FERNANDO FURTHER EXTENDING THE INTERIM ORDINANCE PROHIBITING MARIJUANA DISPENSARIES IN ALL ZONING DISTRICTS AND DECLARING THE URGENCY THEREOF

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

**Section 1. Legislative Findings.** The City Council of the City of San Fernando, as the legislative body of the City, makes the following findings in support of the immediate adoption and application of the further extension of the provisions of the interim zoning ordinance prohibiting the establishment of medical marijuana dispensaries in any zoning district within the City:

A. In 1996, the California voters adopted Proposition 215, the Compassionate Use Act ("Prop 215"), legalizing the use of marijuana for medical purposes. Prop 215 was codified at Section 11362.5 of the California Health and Safety Code. Widespread implementation of Prop 215 was delayed, however, due to several ensuing court cases challenging its validity. While the California Supreme Court has stated that Prop 215 makes the possession of marijuana for medical purposes legal (*People v. Mower* (2002) 28 Cal.4th 457), the federal courts have not recognized such a medical necessity exception under federal law (*United States v. Oakland Cannabis Buyer's Cooperative* (2001) 532 U.S. 483). The United States Supreme Court recently ruled that the cultivation, use and transfer of marijuana completely within the State of California for noncommercial purposes under the Compassionate Use Act (Prop 215) fell within the powers of the federal Commerce Clause and could be banned under the Controlled Substances Act (*Gonzales v. Raich* (2005) 162 L.Ed.2d 1).

B. Subsequent cases have attempted to further define the breadth and limitations of Proposition 215 and also Senate Bill 420, which was legislation enacted in 2003 to clarify the scope of the CUA. For example, medical marijuana dispensaries have declared themselves as "primary caretakers" of qualified patients, but at least one court has held that an individual "who merely supplies a patient with marijuana" fails to meet the test in Section 11362.5. (*People v. Windus* (2 Dist. 2008) 165 Cal.App.4th 634, 644; *see also, People v. Mentch* (2008) 45 Cal. 4<sup>th</sup> 274 [where caregiving consisted principally of supplying marijuana and instructing on its use, along with taking some patients to medical appointments on a sporadic basis, defendant did not qualify as a primary caretaker under the CUA]). Recently, the City of Anaheim was challenged for its prohibition of medical marijuana dispensaries within the City (providing "[i]t shall be unlawful for any person or entity to own, manage, conduct or operate any Medical Marijuana Dispensary or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any Medical Marijuana Dispensary in the City of Anaheim." [Section. 4.20.030, Chapter 4.20, Title 4]). The court ruled in favor of the City, upholding its prohibition. (*Qualified Patient's Association v. City of Anaheim*, Case No. G040077) This case is currently on appeal. Oral arguments were heard in September of 2009. On December 21, 2009, the Court issued an order requesting further briefing. A decision is expected by late April of 2010.

C. On March 2, 2009, the City Council adopted Urgency Ordinance No. U-1587, prohibiting the establishment of medical marijuana dispensaries in any zone in the City for a period of forty-five (45) days. On April 6, 2009, the City Council adopted Urgency Ordinance No. U-1588 extending the temporary moratorium for ten (10) months and fifteen (15) days. The ordinance will expire March 3, 2010.

D. The City has not yet established any express criteria regarding the establishment, location or scope of operations for medical marijuana dispensary uses. City staff continues to consider various approaches to this controversial land use and continues to monitor developments in both the Courts of the State of California and the Federal Courts relating to the legality and regulation of medical marijuana dispensaries.

E. The City has continued to receive inquiries regarding the City's requirements for medical marijuana dispensaries since adoption of Urgency Ordinance No. U-1587 and 1588. The City expects these inquiries will continue given recent litigation and pronouncements by the federal government. The establishment of medical marijuana dispensaries, before appropriate procedures and regulations are enacted or the validity of Prop 215 under federal law is further clarified, 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. The City Council again hereby determines that it lacks sufficient information regarding the permissibility of medical marijuana dispensaries as permissible and beneficial land uses. Further, the City Council continues to find that it lacks sufficient information to determine the proper land use and locational criteria for medical marijuana dispensaries, if such are to be permitted, and any potential adverse impacts associated with such a use. Finally, this City Council continues to lack sufficient information to develop and impose regulatory, land use, and operational criteria for and upon medical marijuana dispensaries. The City Council does not want to act without adequate information as such would be acting in an arbitrary and capricious manner. Adoption of criteria in such circumstances would negatively impact the general health, safety, and welfare of the City as presently developed and negatively impact future development in the City. Alternatively, allowing marijuana dispensaries without having adequately studied the land use and its consequences would also be a failure to adequately govern and protect the health, safety, and welfare of the City of San Fernando.

F. The City Council continues to find that additional planning and research are necessary before the City adopts any regulation governing medical marijuana dispensaries. The City will undertake additional study. During the course of the study and planning process, the City Council finds that operators of medical marijuana dispensaries and others are likely to submit applications for such uses and/or proceed with the development of medical marijuana dispensaries before appropriate regulations and safeguards are in place which may be incompatible with the result of this planning process. Given the time required to undertake the study and planning, the City Council finds that it is necessary that this moratorium be further extended to ensure that no marijuana dispensaries, which may be in conflict with the contemplated new development policies, are permitted in the interim. The City Council has the authority to adopt and extend an interim ordinance pursuant to Government Code Section 65858 in order to protect the public health, safety or welfare.

G. Accordingly, the City Council continues to find that there is a current and immediate threat to the public health, safety and welfare presented by the unregulated development of medical marijuana dispensaries in the City. In the absence of immediate effectiveness, the approval of building permits, conditional use permits or any other applicable entitlements for such uses will frustrate the City's ability to adopt and enforce appropriate regulations designed to protect surrounding development and the public health, safety and welfare from the potential adverse impacts of medical marijuana dispensaries. Due to the foregoing circumstances, the City Council again finds and determines that the immediate preservation of the public health, safety and welfare requires that this interim ordinance be extended as an urgency ordinance pursuant to Government Code Section 65858 and take effect immediately upon adoption, and its urgency is hereby declared.

**Section 2.** Public Hearing. On February 1, 2010, the City Council held a duly noticed public hearing regarding the proposed extension of the moratorium, and after taking all written and oral testimony, closed the public hearing.

**Section 3.** Public Report Supporting Extension. On January 25, 2010, the City prepared and made available for public review a report regarding the status of San Fernando's moratorium on medical marijuana dispensaries as required by Government Code Section 65858(d). The City Council hereby approves the report.

**Section 4.** CEQA Finding. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of the Ordinance may have a significant effect on the environment, because the moratorium will impose greater limitations on development in the City, and will thereby serve to reduce potentially significant adverse environmental impacts. 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.** Moratorium further extended. The moratorium enacted pursuant to City of San Fernando Ordinance No. U-1587 and U-1588 is hereby extended pursuant to Government Code Section 65858 for one (1) year past the initial expiration date of Ordinance No. U-1588 so as to extend the moratorium until March 3, 2011. Therefore, this ordinance shall expire and terminate at midnight on March 3, 2011.

**Section 6.** Moratorium defined. Notwithstanding any other ordinance or provision of the San Fernando City Code, no person shall establish a medical marijuana dispensary and no application for a building permit, conditional use permit, or any other entitlement for the establishment of a medical marijuana dispensary shall be approved during the term of the moratorium further extended by this Ordinance in any zone, on any parcel, or at any place, public or private within the City. For purposes of this interim ordinance, the term "marijuana dispensary" 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. However, the interim ordinance shall in no way limit qualified



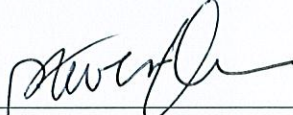
individuals' right to possess, use or cultivate marijuana for their own medicinal purposes as is presently authorized by the laws of the State of California as set forth in the applicable provisions of the Health and Safety Code.

**Section 7. 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 8. Direction to staff.** The City Council hereby directs staff to continue to study and consider potential revisions to the zoning and business regulations of the City of San Fernando, including analysis of the issues regarding the permissibility, and if permitted, the location, scope, and operational criteria that should be imposed upon medical marijuana dispensaries, and further, the structuring of zoning and other necessary regulatory controls to cause such land uses to be beneficial land uses rather than uses that are detrimental to or cause blight to occur within the City of San Fernando.

**Section 9.** This Ordinance shall be posted in accordance with Section 36933 of the Government Code of the State of California with the names of the City Councilmembers voting for and against it.

PASSED, APPROVED AND ADOPTED by the City Council of the City of San Fernando at a regular meeting held on this 1<sup>st</sup> day of February 2010.

  
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STEVEN VERES, MAYOR

ATTEST:

  
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ELENA G. CHÁVEZ, CITY CLERK

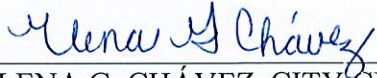
APPROVED AS TO FORM:

  
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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 forgoing Ordinance was duly adopted by the City Council at its regular meeting held on the 1<sup>st</sup> day of February, 2010 and carried by the following roll call vote:

AYES: Veres, M. Hernández, E. Hernández, Esqueda, De La Torre – 5  
NONE: None  
ABSENT: None

  
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ELENA G. CHÁVEZ, CITY CLERK