

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the matter of:

**AN INTERIM URGENCY ORDINANCE)
OF THE TOWN COUNCIL OF THE)
TOWN OF MORAGA ADOPTING A)
TEMPORARY MORATORIUM ON)
THE ESTABLISHMENT AND)
OPERATION OF MEDICAL)
MARIJUANA DISPENSARIES)**

ORDINANCE NO. ____

WHEREAS, in November of 1996, California voters enacted the Compassionate Use Act of 1996 (Proposition 215) adopting Health and Safety Code section 11362.5 which allows persons to legally use marijuana for medical purposes with a doctor's recommendation, without violating state cultivation or possession laws; and

WHEREAS, in October 2003, the State Legislature adopted SB 420 adopting a Medical Marijuana Program (codified in Health and Safety Code section 11362.7 et seq.) which establishes additional regulations for a voluntary identification card program for qualified patients and primary caregivers, limits on the amount of dried marijuana or marijuana plants per qualified patient, and confidentiality and privacy restrictions; and

WHEREAS, Proposition 215 and SB 420 have resulted in the establishment of medical marijuana dispensaries in communities throughout the State of California; and

WHEREAS, California cities that have permitted the establishment of medical marijuana dispensaries have observed adverse impacts on public health, safety and welfare, including an increase in crimes such as burglaries, robberies, or sale of illegal drugs at the dispensaries and in the areas immediately surrounding the dispensaries; and

WHEREAS, there are several unresolved state law questions regarding the regulation of medical marijuana dispensaries; and

WHEREAS, federal law classifies marijuana as a Schedule 1 drug with "no accepted medical value in treatment"; and

WHEREAS, the Town has received an inquiry regarding the permits or approvals required to operate a medical marijuana dispensary within the Town of Moraga and where such use could be located in the Town. It is expected that there will be additional similar inquiries in the future; and

WHEREAS, the Town of Moraga Municipal Code does not specifically address the regulation or location of medical marijuana dispensaries or list medical marijuana dispensaries as a permitted use in any zoning district; and

WHEREAS, the Town Council has directed Town staff to begin studying and analyzing potential zoning regulations for medical marijuana dispensaries and to bring to the Planning Commission and Town Council proposed zoning regulations regarding the permissible location,

hours of operation, security and signage for medical marijuana dispensaries together with other appropriate regulations; and

WHEREAS, the Town Council does not want the Town to approve any permits or licenses or otherwise allow any medical marijuana dispensaries to begin operations until such time as the Town has had an opportunity to adopt new zoning regulations; and

WHEREAS, Government Code section 65858 authorizes the Town Council to adopt as an urgency measure an interim zoning ordinance without following the procedures otherwise required prior to the adoption of a zoning ordinance; and

WHEREAS, the interim zoning ordinance shall be adopted in accordance with the requirements of Government Code section 65858 to protect the public safety, health, and welfare by prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the Town Council, Planning Commission or planning department is considering or studying or intends to study within a reasonable time.

THE TOWN COUNCIL OF THE TOWN OF MORAGA DOES HEREBY ORDAIN:

SECTION 1. Findings.

A. The above recitals are incorporated herein and are each relied upon independently by the Town Council for its adoption of this urgency interim ordinance.

B. The Town is contemplating a zoning ordinance amendment to regulate medical marijuana dispensaries to be implemented in the near future.

C. The potential proliferation of medical marijuana dispensaries within the Town, without sufficient regulation, poses a current and immediate threat to the public health, safety and welfare.

D. As a result of medical marijuana dispensaries that have been established in several locations in California, some local agencies have reported increases in illegal drug activity, illegal drug sales, robbery of persons leaving dispensaries, loitering around dispensaries, falsely obtaining "identification cards" to qualify for medical marijuana, and other increases in criminal activity.

E. The United States Department of Justice's (DOJ) California Medical Marijuana Information report has advised that large-scale drug traffickers have been posing as "caregivers" to obtain and sell marijuana. Furthermore, the State of California has not yet implemented its State-wide identification card program for qualified patients and their primary caregivers, related to medical marijuana.

F. Discrepancies between state and federal law relating to preemption and interstate commerce are unresolved.

G. To protect residents and businesses from harmful secondary effects of medical marijuana dispensaries, Town staff needs time to study licensing and criminal background check procedures, analyze which zoning districts may be appropriate for such a use, and study the appropriate level of discretionary review which should be required for these uses.

H. If medical marijuana dispensaries are allowed to proceed without appropriate review of location, operational criteria and standards, the dispensaries could conflict with the requirements of the General Plan, the Town's zoning ordinance, and forthcoming state law and Town regulations and result in irreversible incompatibility of land uses and adverse impacts on residents, businesses and neighborhoods that present a clear and immediate danger to the public health, safety and welfare.

I. This urgency interim ordinance establishing a moratorium on medical marijuana dispensaries is necessary to avoid the previously identified impacts to the public health, safety and welfare.

SECTION 2. Interim Moratorium Imposed.

A. For a period of forty-five (45) days, commencing on the date of adoption of this urgency interim ordinance, or until such time as this ordinance may expire subject to any extension of this ordinance that the Town Council may adopt and approve pursuant to Section 65858 of the Government Code, no zoning ordinance interpretation or amendment, amendment to the Town's General Plan or municipal code, use permit, variance, building permit, or any other entitlement for use shall be approved or issued for the establishment or operation of, and no person shall otherwise establish, a "medical marijuana dispensary", as that term is defined below.

B. For the purposes of this ordinance, "medical marijuana dispensary" includes any site, facility, location, use, cooperative or business which distributes, sells, exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers, or physicians pursuant to Proposition 215, Health & Safety Code § 11362.5 *et seq.* or any state regulations adopted in furtherance thereof. Marijuana shall also mean cannabis and all parts of that plant.

SECTION 3. Compliance with California Environmental Quality Act.

The Town Council finds that this ordinance falls under the California Environmental Quality Act (CEQA) exemption found at Title 14 California Code of Regulations section 15061(b)(3) because the temporary prohibition of medical marijuana dispensaries does not have the potential to significantly impact the environment.

SECTION 4. Waiver.

The Town, on a case by case basis, shall have the authority, upon a showing of good cause by an applicant, to waive the interim moratorium imposed by this ordinance. Good cause shall mean a factual and evidentiary showing by the applicant that the interim moratorium, if not waived, will deprive the applicant of substantially all reasonable use of his/her property.

SECTION 5. Urgency Ordinances; Extension.

This ordinance is an urgency ordinance and shall take effect and be enforced immediately upon adoption. In accordance with California Government Code § 65858, this ordinance shall be in full force and effect for a period of forty-five (45) days from and after the date of its adoption on February 10, 2010. Thus the moratorium will expire on March 27, 2010 unless this period is extended by the Town Council in accordance with California Government Code § 65858.

Ten days prior to the expiration of this interim ordinance or any extension thereof, the Town Council shall issue a written report describing steps that have been taken to study the relevant issues and establish policies and regulations for medical marijuana dispensaries within the Town.

SECTION 6. Severability.

If any section or portion of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 7. Publication.

The Mayor shall sign and the Town Clerk shall attest to the passage of this ordinance. The Town Clerk shall cause the same to be published in accordance with state law.

The foregoing Ordinance was introduced and adopted as an urgency measure by a four-fifths vote of the Town Council of the Town of Moraga at a regular meeting of the Town Council held on February 10, 2010 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ken Chew, Mayor

Attest:

Marty C. McInturf, Town Clerk