

ORDINANCE NO. 2734

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
AMENDING TITLE 9 CHAPTER 08 OF THE GARDEN GROVE MUNICIPAL CODE TO
ADD SECTION 110 PERTAINING TO MEDICAL MARIJUANA DISPENSARIES

City Attorney's Summary

This Ordinance adds Section 110 to Title 9 Chapter 08 of the Garden Grove Municipal Code to prohibit the establishment and operation of medical marijuana dispensaries in the city.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE FINDS AND DETERMINES AS FOLLOWS:

A. 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.

B. In 1996, the voters of the State of California approved Proposition 215, known as the "Compassionate Use Act" ("Act") (codified as Health and Safety (H & S) Code section 11362.5 et seq.).

C. The Act creates a limited exception from criminal liability under California law as opposed to federal law 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.

D. On January 1, 2004, SB 420 went into effect. SB 420, known as the "Medical Marijuana Program Act" (codified as Health and Safety Code Sections 11362.7 through 11362.63) ("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; it does not, however, address the role of dispensaries, nor does it require municipalities to provide for medical marijuana dispensaries.

E. The City Council takes legislative notice, based on the materials presented to the City Council during the legislative process leading to the enactment of this Ordinance, of the fact that several California cities and counties which have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. According to these communities, according to news stories widely reported, and according to medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately

surrounding such medical marijuana dispensaries. The City of Garden Grove reasonably could anticipate experiencing similar adverse impacts and effects.

F. The Drug Enforcement Agency ("DEA"), the federal agency charged with enforcing the federal Controlled Substances Act, has expressed its view that "[l]ocal and state law enforcement counterparts cannot distinguish between illegal marijuana grows and grows that qualify as medical exemptions" and that "many self-designated medical marijuana growers are, in fact, growing marijuana for illegal, 'recreational' use." While the City Council in no manner intends or undertakes by the adoption of this ordinance to enforce federal law, the City Council recognizes that the comments by the DEA reflect to some extent the adverse secondary impacts identified above.

G. 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. Lungren v. Peron*, 59 Cal. App. 4th 1383, 1386-1387 (1997); *Gonzales v. Raich*, 125 S.Ct. 2195, 2214 n. 43 (2005).

H. The City Council further takes legislative notice that the use, possession, distribution, and sale of marijuana remain a federal crime 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*, 125 S. Ct. 2195; *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001)); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the Act and MMP. (*Gonzales v. Raich*, 125 S. Ct. 2195.)

I. Allowing medical marijuana dispensaries and issuing permits or other entitlements providing for the establishment and/or operation of medical marijuana dispensaries results in increased demands for police patrols and responses, which the City's police department is not adequately staffed to handle and further poses a significant threat to the public health, safety and welfare.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Title 9 Chapter 08 of the Garden Grove Municipal Code is hereby amended to add Section 110 to read as follows:

SECTION 110: MEDICAL MARIJUANA DISPENSARIES PROHIBITED

(a) Purpose and Findings.

The City Council finds that in order to serve the public health, safety, and welfare of the residents and businesses within the city, the declared purpose of this chapter is

to prohibit medical marijuana dispensaries from locating in the city as stated in this section.

(b) Definitions.

The following terms and phrases, whenever used in this section, shall be construed as defined in this section:

"Identification card" is a document issued by the State Department of Health Services and/or the County of Orange Health Care Agency, which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

"Medical marijuana" is marijuana used for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other serious medical condition for which marijuana is deemed to provide relief as defined in subsection (h) of Health and Safety Code Section 11362.7.

"Medical marijuana dispensary" or "dispensary" is any facility or location where medical marijuana is made available to and/or distributed by or to three or more individuals who fall into one or more of the following categories: a qualified patient, a person with an identification card, or a primary caregiver. Each of these terms is defined herein and shall be interpreted in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq. as such sections may be amended from time to time.

"Primary caregiver" is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

"Physician" is an individual who meets the definition as set forth in California Health and Safety Code Section 11362.7(a), as such section may be amended from time to time, which as of the date of this ordinance is "an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate."

"Qualified patient" is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

(c) Medical Marijuana Dispensary Prohibited.

It 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 Garden Grove.

(d) Use or Activity Prohibited By State Law or Federal Law.

Nothing contained in this chapter shall be deemed to permit or authorize any use or activity, which is otherwise prohibited by any state or federal law.

(e) Establishment or Maintenance of Medical Marijuana Dispensaries Declared a Public Nuisance.

The establishment, maintenance, or operation of a medical marijuana dispensary as defined in this section within the city limits of the City of Garden Grove is declared to be a public nuisance and enforcement action may be taken and penalties assessed pursuant to Title 1, Chapter 04 of the Garden Grove Municipal Code, and/or any other law or ordinance that allows for the abatement of public nuisances.

SECTION 2. Compliance with California Environmental Quality Act. The City Council finds that 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) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly and concerns general policy and procedure making.

SECTION 3. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City

Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the ____ day of _____ 2008.

ATTEST:

MAYOR

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced and presented on September 23, 2008, with vote as follows:

AYES: COUNCIL MEMBERS: (4) BROADWATER, JONES, NGUYEN, DALTON
NOES: COUNCIL MEMBERS: (1) ROSEN
ABSENT: COUNCIL MEMBERS: (0) NONE