

2010 MAY 20 PM 5: 52

4/5 VOTE REQUIRED FOR PASSAGE

Approved as to form and legality

**DRAFT**

INTRODUCED BY COUNCILMEMBER REID

CITY ATTORNEY

Ordinance No. \_\_\_\_\_ C.M.S.

**AN INTERIM ORDINANCE OF THE CITY OF OAKLAND ADOPTED  
AS AN URGENCY MEASURE PURSUANT TO CALIFORNIA  
GOVERNMENT CODE SECTION 65858 MAKING FINDINGS AND  
ESTABLISHING A TEMPORARY MORATORIUM ON THE  
ESTABLISHMENT OF ANY NEW ACTIVITY OR FACILITY  
CULTIVATING AND/OR MANUFACTURING MEDICAL CANNABIS**

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**WHEREAS**, the City of Oakland has an overriding interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods. Without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with tragic consequences to social, environmental and economic values; and

**WHEREAS**, in 1996, California voters approved Proposition 215, (The Compassionate Use Act), which legalized the use of marijuana for medical purposes and allows persons to grow or possess marijuana based on the recommendation of a licensed physician. The State enacted supplemental medical marijuana legislation, Senate Bill 420, which was intended to clarify the application and scope of the Compassionate Use Act and enhance the access of qualified patients and primary caregivers to medical marijuana through collective, cooperative cultivation projects;

**WHEREAS**, in 1998, the City of Oakland passed the Medical Cannabis ordinance that recognized and protected the rights of qualified patients, their caregivers, physicians, and medical cannabis provider associations, and to ensure access to safe and affordable medical cannabis pursuant to the Compassionate Use Act of 1996.

**WHEREAS**, in 2004, the City of Oakland passed the Medical Cannabis Dispensary Permits ordinance defined Cannabis Dispensaries and required such uses to obtain business permits.

**WHEREAS**, there is a growing concern about how to ensure that qualified patients and licensed dispensaries can gain access to medical cannabis that is safe and nontoxic.

**WHEREAS**, there is growing concern that medical cannabis cultivation and manufacturing activities and facilities present a significant health and safety risk to neighboring residences and businesses.

**WHEREAS**, the City of Oakland's City Council is currently contemplating regulations relating to permit medical cannabis cultivation and manufacturing activities and facilities; and

**WHEREAS**, it is the City's intent, in consideration of other existing and potential uses within the City, to assure a degree of compatibility between the location of activities and facilities cultivating and/or manufacturing medical cannabis and surrounding properties. This intent will be effectuated by a comprehensive study possibly resulting in additional revisions to the Oakland Municipal Code; and,

**WHEREAS**, the City is concerned that absent the adoption of an emergency moratorium, activities, facilities and establishments that conflict with contemplated changes to the City's regulatory schemes could be established thereby frustrating the realization of the goals of that study; and

**WHEREAS**, until such time that the City concludes its review and adopts new land use controls over such activities or facilities cultivating and/or manufacturing medical cannabis, the community is in jeopardy that such activities and facilities could be instituted prior to the imposition of new controls necessary for the protection of public health and welfare; and

**WHEREAS**, issuance or approval of any building, planning, business or other permit for activities or facilities cultivating and/or manufacturing medical cannabis prior to the City's completion of such investigation would result in a current and immediate threat to the public health, safety or welfare; and

**WHEREAS**, pursuant to Government Code Section 65858 a city, including a charter city, may adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan or zoning proposal that the legislative body is considering or intends to study within a reasonable time; and

**WHEREAS**, for the reasons set forth above, this ordinance is declared by the Council to be necessary for preserving the public peace, health, or safety and to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the

"Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity and urgency.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND does ordain as follows:**

**SECTION 1.** The City Council finds and determines the foregoing recitals to be

true and correct and hereby makes them a part of this ordinance.

**SECTION 2.** The City Council finds and determines, for the reasons stated in the recitals, the adoption of this ordinance is exempt from CEQA under Sections 15060 (c)(3), 15061(b)(3), 15301, 15303, and 15307 of the State CEQA Guidelines.

**SECTION 3.** Until such time as the City concludes the review described above, and adopts new land use controls pertaining to activities or facilities cultivating and/or manufacturing medical cannabis, the City of Oakland hereby declares a moratorium on the permitting or approval of any uses or facilities cultivating and/or manufacturing medical cannabis as defined in section 4 below.

**SECTION 4.** For purposes of this Ordinance, the following definitions shall apply:

Medical cannabis cultivation and manufacturing activities are defined as any activity involves possessing, cultivating, processing, and/or manufacturing of medical cannabis in excess of the individuals limits **within the boundaries of one parcel of land.**

Medical cannabis cultivation and manufacturing facilities are defined as any structure, open area, or other physical contrivance or object that contains an activity that involves possessing, cultivating, processing, and/or manufacturing of medical cannabis in excess of individual limits **within the boundaries of one parcel of land.**

**SECTION 5.** In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of 45 days from the date of its adoption. This 45-day period may be extended by the City Council in accordance with the provisions of California Government Code § 65858.

**SECTION 6.** During the term of this ordinance as set forth in Section 5 hereof, no use permit, building, zoning or other permit that has been issued for any activity or facility as set forth in section 4 above for which rights to proceed with the permit have not vested pursuant to the provisions of State law shall proceed, and no use permit, building, zoning or other permit shall be issued by any department, agency, employee or agent of the City of Oakland to allow for any activities or facilities as set forth in section 4 above.

**SECTION 7.** Any qualified patient, primary caregiver, collective, cooperative, or cooperative that engages in medical cannabis cultivation and manufacturing activities involving more than (96) square feet of cultivation area or Thirty-six (36) ounces dried marijuana **within the boundaries of one parcel of land** while this Ordinance is in full force and effect shall not be eligible to apply for any use permit, building, zoning or other permit.

**SECTION 8.** The City Clerk shall certify to the passage and adoption of this Ordinance causing it to be posted, as required by law, and it shall thereafter be in full force and effect. This Ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety and welfare.

**SECTION 9.** For the term of this ordinance, as set forth in Section 5 hereof, the provisions of this ordinance shall govern, to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, and all such conflicting provisions shall be suspended.

**SECTION 10.** This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, Article XI of the California Constitution and Government Code section 65858.

**SECTION 11.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

**In Council, Oakland, California, \_\_\_\_\_, 2010,**

**Passed By The Following Vote:**

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,  
QUAN, REID, and PRESIDENT BRUNNER

NOTES-

ABSENT-

ABSTENTION-

Attest: \_\_\_\_\_

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**NOTICE AND DIGEST**

By this ordinance, the Oakland City Council imposes an interim moratorium, for a 45-day period, on any activities or facilities cultivating and/or manufacturing medical cannabis.