

ORDINANCE NO. 27-2009

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE REPEALING ELK GROVE MUNICIPAL CODE CHAPTER 4.16

The City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose and Authority

The purpose of this urgency ordinance is to repeal Chapter 4.16 of the Elk Grove Municipal Code, "Medical Marijuana Dispensaries". The City has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7.

Section 2: Findings.

On December 9, 2009, the City Council of the City of Elk Grove adopted an urgency ordinance creating a moratorium on the issuance of land use entitlements for medical marijuana dispensaries within the City limits of the City of Elk Grove. In adopting the moratorium, the City Council made the following findings:

In 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 ("CUA" or the "Act"). The Act was subsequently codified as California Health and Safety Code section 11362.5. The Act was designed to provide a defense to persons charged with possessing or cultivating marijuana for the personal medical use of patients who have received a recommendation from a physician that the use of marijuana may be beneficial in the treatment of that patient. CUA further prevented criminal prosecution of doctors who recommend the use of marijuana by patients for medical purposes.

The state legislature subsequently enacted the "Medical Marijuana Program", also codified as Health and Safety Code section 11362.7 (the "Program"). The Medical Marijuana Program provides guidance for the use and cultivation of medical marijuana. The hallmark of the Program is that it prohibits the arrest of any qualified patient (or that patient's primary caregiver) for the possession, transportation, delivery or cultivation of medical marijuana. In order to qualify for this immunity, the person must possess an identification card issued by the State Department of Health Services through a voluntary program. However, at this time, the State of California has yet to implement a statewide identification card program for qualified patients and their primary caregivers.

Despite CUA and the Program, the possession, sale and distribution of marijuana are still criminal offenses under both California state and Federal law. Moreover, no provision of California law authorizes the sale or distribution of cannabis by medical marijuana dispensaries to any primary care giver, a qualified patient, or a person with a valid identification card obtained under the auspices of the Program.

Neither CUA nor the Program expressly authorize or address the role of dispensaries in the scheme of providing medical marijuana to qualified patients and/or their primary caregivers. Despite this, local agencies throughout California have seen medical marijuana dispensaries established in their communities. Once established, these locations have created a number of secondary effects associated with them, including:

- ✓ Illegal drug activity and drug sales in the vicinity of dispensaries*
- ✓ Robbery of persons leaving dispensaries;*
- ✓ Driving under the influence of controlled substances obtained from dispensaries;*
- ✓ Persons acquiring marijuana from a dispensary and then selling it to non-qualified persons;*
- ✓ Burglaries and robberies; and*
- ✓ Increased vacancies in the commercial areas near such dispensaries.*

These impacts have been compiled in an extensive report prepared by the California Police Chiefs Association. A copy of that report is attached to this Ordinance as Exhibit "A" and is incorporated herein by this reference. The City Council of the City of Elk Grove hereby finds that the report contains persuasive anecdotal and documented evidence that medical marijuana dispensaries pose a threat to the public health, safety and welfare.

At present, the City of Elk Grove Zoning Code does not contain any explicit provisions contemplating the approval of medical marijuana dispensary facilities within the City of Elk Grove. Moreover, the City has experienced a recent increase in the number of contacts received by the City about opening medical marijuana dispensaries. The City Council hereby finds that it is in the best interest for the health, safety and welfare of the residents of the City of Elk Grove to prevent potentially harmful secondary effects of medical marijuana dispensaries to adopt this urgency ordinance to allow City staff time to study the impacts of permitting medical marijuana dispensaries, as well as to determine which zoning districts may be appropriate for such use, and what level of discretionary review may be required for approval of such use.

At the present time, Chapter 4.16 creates a statutory scheme where an applicant could obtain a City of Elk Grove business license to operate a medical marijuana dispensary. Because of the inherent conflict between the lack of zoning regulation and the possibility of the issuance of a license to conduct such a business within the City of Elk Grove, the City Council of the City of Elk Grove hereby finds that the public peace, safety and health require the immediate repeal of Chapter 4.16 of the Elk Grove Municipal Code in order to avoid the identified negative impacts associated with the commencement and continuation of medical marijuana dispensaries in the City of Elk Grove.

Section 3: Application.

Chapter 4.16 of the Elk Grove Municipal Code is hereby repealed in its entirety.

Section 4: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 6: Effective Date and Publication

This Ordinance is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

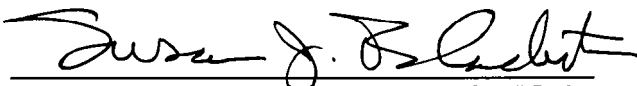
ORDINANCE: 27-2009
ADOPTED: December 9, 2009
EFFECTIVE: December 9, 2009



PATRICK HUME, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



SUSAN J. BLACKSTON, CITY CLERK



SUSAN COCHRAN, CITY ATTORNEY

Date signed: December 17, 2009

CERTIFICATION
ELK GROVE CITY COUNCIL URGENCY ORDINANCE NO. 27-2009

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing Urgency Ordinance, published and posted in compliance with State law, was duly approved and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on December 9, 2009 by the following vote:

AYES : **COUNCILMEMBERS:** *Hume, Scherman, Cooper, Davis, Detrick*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*

A summary of the ordinance was published pursuant to GC 36933(c) (1).



Susan J. Blackston, City Clerk
City of Elk Grove, California