

CITY COUNCIL ORDINANCE NO. 731

AN ORDINANCE OF THE CITY OF MILLBRAE ADDING CHAPTER 5.120 TO THE MILLBRAE MUNICIPAL CODE PROHIBITING MEDICAL MARIJUANA DISPENSARIES PENDING FURTHER EVALUATION AND COMPLETION OF STUDIES OF THE IMPACTS ASSOCIATED WITH SUCH DISPENSARIES.

BE IT ORDAINED by the City Council of the City of Millbrae:

SECTION 1. CHAPTER 5.120 ADDED TO THE MILLBRAE MUNICIPAL CODE.

Chapter 5.120 is hereby added to the Millbrae Municipal Code to read as follows:

Chapter 5.120 Medical Marijuana Dispensaries

Section 5.120.010. Findings and purpose.

A. In enacting this chapter, the City Council finds as follows:

1. 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.
2. In 1996, the voters of the State of California approved Proposition 215 (the "Act" (codified as Health and Safety (H&S) Code section 11362.5 et. seq.).
3. The Act creates a limited exception from criminal liability 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.
4. On January 1, 2004, SB 420 went into effect. SB 420, known as the "Medical Marijuana Program" (codified as H&S Code sections 11362.7-11362.83) 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.
5. The Act expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes." (H&S Code § 11362.5.)

6. The City Council takes legislative notice 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 Council reasonably anticipates that the City of Millbrae will experience similar adverse impacts and effects.
7. The City Council further takes legislative notice that as of July 2009, at least 29 cities and two counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The City Council further takes legislative notice that as of July 2009, at least 111 cities and seven counties in California have adopted permanent prohibitions against medical marijuana dispensaries.
8. The City Council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the State's medical marijuana laws, entitled "*GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE* (August 2008)." (http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf.) The Attorney General has stated in the guidelines that "[a]lthough medical marijuana "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law."
9. The Drug Enforcement Agency ("DEA"), the federal agency charged with enforcing the CSA, has expressed its view that state medical marijuana laws like Proposition 215 and the MMP impede its ability to enforce the CSA; have "caused conflict and confusion among the law enforcement community;" are "viewed as jeopardizing the historical cooperation between federal, state, and local drug enforcement officials;" and "undercut enforcement of the Controlled Substances Act." While the City Council in no manner intends or undertakes by the adoption of this chapter to enforce federal law, the City Council is concerned that the comments by the DEA reflect to some extent the adverse secondary impacts identified above. The City also is concerned about interfering with federal law enforcement efforts.
10. 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* (1997) 59 Cal.App.4th 1383, 1386-1387 ; *Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2214 n.43.)

11. The City Council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal 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* (2001) 532 U.S. 483); 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.)
12. In order to address these and other community concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City first to further study the potential impacts such facilities may have on the City's health, safety and welfare.
13. Allowing medical marijuana dispensaries, and issuing permits, business licenses or other applicable licenses or entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to the completion of such further studies of the potential impact of such facilities, poses a threat to the public health, safety and welfare.
14. An ordinance prohibiting medical marijuana dispensaries, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana dispensaries, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Millbrae pending the completion of further studies.

B. The purpose of this chapter is to prohibit the operation and location of medical marijuana dispensaries in the City of Millbrae pending the availability of additional information, further evaluation, and the completion of additional studies concerning the effects and impacts on communities of medical marijuana dispensaries.

5.120.020. Definitions and exceptions.

A. For the purposes of this chapter, "marijuana" shall have the same meaning as set forth in California Health & Safety Code § 11018 as of the effective date of this chapter and as subsequently amended. Currently under § 11018, "marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the

plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

B. For the purposes of this chapter, “medical marijuana dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is provided, sold, made available, or otherwise distributed to one or more of the following: a primary caregiver, a qualified patient or a person with an identification card.

C. For the purposes of this chapter, the terms “primary caregiver”, “qualified patient”, and “person with an identification card” shall be as defined in California Health & Safety Code § 11362.7.

C. For purposes of this chapter, a “medical marijuana dispensary” shall not include the following uses, provided that the location of such uses are otherwise regulated by applicable law, and further provided any such use complies strictly with applicable law including, but not limited to, California Health & Safety Code § 11362.5 et. seq. and California Health & Safety Code § 11362.7 et. seq.:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health & Safety Code.
2. A healthcare facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code.
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code.
4. A residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code.
5. A residential hospice, or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code.

5.120.030. Medical marijuana dispensaries prohibited pending additional studies.

A. Medical marijuana dispensaries are prohibited in the City of Millbrae until additional studies have been completed and presented to the City Council, and the Council determines on the basis of such studies to amend this chapter to permit a medical marijuana dispensary within the City. No medical marijuana dispensary shall operate, locate or otherwise be permitted within the City of Millbrae until such studies have been completed and presented to the City Council, and the Council determines on the basis of such studies to amend this chapter to permit a medical marijuana dispensary within the City.

B. The City shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a medical marijuana dispensary until such studies have been completed and presented to the City Council, and the Council determines on the basis of such studies to amend this chapter to permit one or more medical marijuana dispensary within the City.

C. The City Council may by resolution authorize staff to obtain and/or undertake studies to assist the community in understanding the issues and impacts associated with medical marijuana dispensaries.

D. The City Manager shall report to the City Council periodically on issues associated with medical marijuana dispensaries, including without limitation any experiences learned from other communities, as well as the estimated effort and expense that would be required to undertake additional studies.

E. Nothing in this chapter shall be construed as imposing on the City any mandatory obligation to undertake, complete or fund any study.

SECTION 2. SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases may be held unconstitutional, invalid or unenforceable.

SECTION 3. CEQA.

This ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to §§ 15060 (c)(2) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060 (c)(3) the activity is not a project as defined in § 15378 of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated studies. This ordinance also is exempt from CEQA pursuant to the “common sense” exemption under § 15061(b)(3) of the CEQA Guidelines, because the City Council hereby determines and finds that there is no possibility that the ordinance may have a significant effect on the environment.

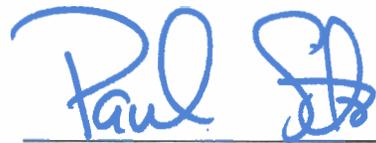
SECTION 4. EFFECTIVE DATE AND PUBLICATION.

This ordinance shall be in full force and effect thirty days from and after its passage. At least five days prior to its adoption and within fifteen days after its adoption,

a summary of this ordinance shall be published once in a newspaper of general circulation printed and published in the County of San Mateo and circulated in the City of Millbrae.

INTRODUCED at a regular meeting of the city council of the City of Millbrae held on February 9, 2010.

PASSED and ADOPTED at a regular meeting of the city council of the City of Millbrae held on February 23, 2010.

A handwritten signature in blue ink, appearing to read "Paul", followed by a stylized monogram or initials.

MAYOR

ATTEST:

A handwritten signature in blue ink that reads "Angela Lewis, Acting".
CITY CLERK

I do hereby certify that the foregoing Ordinance was duly and regularly passed and adopted by the City Council of the City of Millbrae this 23rd day of February, by the following vote:

AYES:	COUNCILMEMBERS:	Seto, Quigg, Colapietro, Papan, and Holober
NOES:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None
ABSTAIN:	COUNCILMEMBERS:	None
EXCUSED:	COUNCILMEMBERS:	None


CITY CLERK