

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Ordinance of the City Council of the City of)
Lafayette amending Chapter 6-4 and 6-5 of the) Ordinance 601
Lafayette Municipal Code, prohibiting the establishment)
and operation of medical marijuana dispensaries)
within all land use (zoning) districts ("ZT02-09"))

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, et seq. and entitled the Compassionate Use Act of 1996 ("the Act"); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of medical marijuana for medical purposes to obtain it and use it under limited, specified circumstances; and

WHEREAS, on January 1, 2004, SB 420 went into effect. SB 420 was enacted by the Legislature to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, the California Legislature enacted the Medical Marijuana Program Act ("MMPA"), which was codified as Health and Safety Code Section 11362.7, et seq., to clarify the implementation of the Act; and

WHEREAS, the Act expressly anticipates local regulation of medical marijuana, providing "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 nonmedical purposes," (Health and Safety Code Section 11362.5(b)(2)); and

WHEREAS, the MMPA also expressly anticipates local regulation of medical marijuana, providing "Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article," (Health and Safety Code Section 11362.83); and

WHEREAS, the Legislature recently amended the MMPA to prohibit the establishment of medical marijuana dispensaries within 600-feet of a school, and in doing so, expressly anticipated local regulations restricting the establishment of medical marijuana dispensaries by providing "Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider," (Health and Safety Code Section 11362.768(f)); and

WHEREAS, California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries, homicides, attempted homicide, aggravated assault, fights, disturbing the peace, sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries, odor, excessive noise, fires, loitering around the dispensaries, and an increase in driving while under the influence of marijuana; and

WHEREAS, to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it was necessary for the City of Lafayette to study the potential impacts such facilities may have on the public health, safety, and welfare; and

WHEREAS, based on the foregoing, on July 27, 2009, the City Council found that issuing permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to completion of the City's contemplated study of the potential impact of such facilities posed a current and immediate threat to the public health, safety, and welfare, and that a forty-five (45) day temporary moratorium on the issuance of such permits, licenses, and entitlements was thus necessary; and

WHEREAS, on August 10, 2009, after a duly noticed public hearing the City Council adopted Urgency Ordinance 588, extending the temporary moratorium on the establishment and operation of medical marijuana dispensaries for ten (10) months and fifteen (15) days to July 27, 2010; and

WHEREAS, on May 24, 2010, after a duly noticed public hearing the City Council adopted Urgency Ordinance 595, extending the temporary moratorium on the establishment and operation of medical marijuana dispensaries for one (1) calendar year to July 27, 2011; and

WHEREAS, approximately seven municipalities throughout Contra Costa and Alameda counties expressly permit the establishment and operation of medical marijuana dispensaries and others do not regulate the use, existing dispensaries in other jurisdictions provide delivery services, and qualifying patients and their care givers may cultivate their own marijuana, enabling seriously ill patients in Lafayette access to medical marijuana; and

WHEREAS, the Lafayette Municipal Code currently does not specifically address or regulate medical marijuana dispensaries; and

WHEREAS, the City wishes to clarify that a medical marijuana dispensary is not a "general retail sales activity," "home occupation", or "residential business"; and

WHEREAS, the City prepared a Zoning Text Amendment ZT02-09 to amend Chapters 6-4 and 6-5 of the Lafayette Municipal Code ("LMC") to prohibit the establishment and operation of medical marijuana dispensaries within Lafayette; and

WHEREAS, on June 6, 2011, the Planning Commission of the City of Lafayette conducted a duly noticed public hearing pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with ZT02-09 were heard and ZT02-09 was fully studied; and

WHEREAS, on June 27, 2011, the City Council conducted a duly noted public hearing to review the amendments to Chapter 6-4 and 6-5 of the Lafayette Municipal Code, at which time all persons wishing to testify in connection with the amendment were heard and considered; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW THEREFORE BE IT RESOLVED THAT:

Section 1. Adoption of Amendment. Based on the record before the City Council, all written

and oral evidence presented to the Council, and the findings made in this Ordinance, the City Council hereby approves ZT02-09 amending Chapters 6-4 and 6-5 of the Lafayette Municipal Code, as described in Exhibit "A" attached hereto and incorporated herein by reference.

Section 2. Public Records. The location and custodian of the documents and any other material which constitute the record of proceedings upon which the City Council based its decision is as follows: City Clerk, City of Lafayette, 3675 Mt. Diablo Blvd. #210, Lafayette, California 94549.

Section 3. Findings. Pursuant to Lafayette Municipal Code Section 6-213 and based on the record before the City Council and all written and oral evidence presented to the Council, the City Council hereby makes and adopts the following findings:

A. The Amendment is compatible with the General Plan and all elements therein because:

1. Multiple California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries, homicides, attempted homicide, aggravated assault, fights, disturbing the peace, sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries, odor, excessive noise, fires, loitering around the dispensaries, and an increase in driving while under the influence of marijuana. Prohibiting medical marijuana dispensaries will serve to discourage the aforementioned activities from occurring and help implement General Plan Goal LU-9 to "maintain the Downtown as a convenient and safe commercial area..."; and

2. Prohibiting medical marijuana dispensaries will decrease the dependence upon the City's police force by discouraging crime associated with medical marijuana dispensaries, thus serving to implement General Plan Policy S-7.1 to "review development proposals for their demand on police services and require mitigating measures..."

B. The Amendment is compatible with the uses authorized in, and the regulations prescribed for, the land use districts for which it is proposed and with the regulations for other land use districts. The prohibition of medical marijuana dispensaries is universally applied amongst all land use (zoning) districts.

C. There is community need to amend Chapters 6-4 and 6-5 of the Lafayette Municipal Code in an effort to maintain and protect the public, health, safety, and welfare of the citizens of Lafayette by preventing the aforementioned negative and harmful secondary effects of medical marijuana dispensaries.

Section 4. CEQA. The City finds and determines with certainty that the amendments described in ZT02-09 are not subject to the requirements of the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines Section 15060(c)(2) as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and Section 15060(c)(3) as the activity is not a project as defined in Section 15378 because it has no potential for resulting in physical change to the environment.

Section 5. Notice of Exemption. The City Council directs staff to prepare and file a Notice of Exemption no more than ten (10) working days after adoption of the Ordinance.

Section 6. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

Section 7. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 8. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

Section 9. Certification. The Secretary shall certify to the adoption of this Ordinance.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting on July 11, 2011, by the following vote:


AYES: Anduri, M. Anderson and Tatzin
NOES: None
ABSENT: Federighi and B. Andersson
ABSTAIN: None

ATTEST:



Joanne Robbins, City Clerk

APPROVED:



Carl Anduri
Mayor, City of Lafayette

EXHIBIT "A"

AMENDMENTS TO CHAPTERS 6-4 & 6-5
OF THE CITY OF LAFAYETTE MUNICIPAL CODE

[Strike-through and underlined version]

Chapter 6-4
ACTIVITY CLASSIFICATIONS

6-429.5 Medical marijuana dispensary.

"Medical marijuana dispensary" means any facility or location where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 (Proposition 215).

Chapter 6-5
GENERAL PROVISIONS
Article 1. Miscellaneous

6-528 Helicopter facilities. Prohibited uses and activities.

The following uses and activities are prohibited in all land use classification (zoning) districts:

- (a) Any use or activity which is prohibited by local, regional, state, or federal law;
- (b) The construction and or use of helicopter landing pads, heliports and all other helicopter facilities are prohibited in all land use classification (zoning) districts.;
- (c) Establishment or operation of medical marijuana dispensaries, as defined in Section 6-429.5;
and
- (d) Cultivation or production of medical marijuana.

Joanne

Contra Costa Times

PO Box 4147
Walnut Creek, CA 94596
(925) 935-2525

Lafayette, City Of
Accounts Payable, 3675 Mt. Diablo Blvd., #210
Lafayette CA 94549-3793

PROOF OF PUBLICATION

FILE NO. Ordinance 601

In the matter of

Contra Costa Times

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter.

I am the Principal Legal Clerk of the Contra Costa Times, a newspaper of general circulation, printed and published at 2640 Shadelands Drive in the City of Walnut Creek, County of Contra Costa, 94598

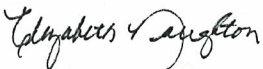
And which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Contra Costa, State of California, under the date of October 22, 1934. Case Number 19764.

The notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

6/22/2011

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.



Signature

Legal No.

0004048494

NOTICE AND SUMMARY OF PROPOSED AMENDMENTS TO THE LAFAYETTE MUNICIPAL CODE CONSISTING OF ORDINANCE 601 AMENDING CHAPTER 6-4 "ACTIVITY CLASSIFICATIONS" & 6-5 "GENERAL PROVISIONS"

Notice is given that on **Monday, June 27, 2011** the City Council of the City of Lafayette will introduce and conduct a public hearing commencing at **7:00 p.m.** in the **Community Hall at the Lafayette Library & Learning Center, 3491 Mt. Diablo Blvd.** Ordinance 601 (ZT02-09), if adopted, will include the following amendments to Lafayette Municipal Code:

1. Define and prohibit "medical marijuana dispensaries."
2. Prohibit uses and activities prohibited by local, regional, state, and federal law.
3. Prohibit the cultivation or production of medical marijuana.

Note: The above is a summary of the major highlights of the ordinance. A reading of the entire ordinance is necessary to obtain a full understanding of the ordinances. Certified copies of the full text of the ordinances are posted in the City Clerk's office at 3675 Mt. Diablo Boulevard, Lafayette, California 94549. A copy may be obtained from that office upon payment of the fee based on the City's actual cost of providing the copy.

Publish Date:
June 22, 2011
Joanne Robbins
City Clerk
CCT# 4048494
June 22, 2011

Ord 601

Orig to Joanne 7/29

Contra Costa Times

PO Box 4147
Walnut Creek, CA 94596
(925) 935-2525

Lafayette, City Of
Accounts Payable, 3675 Mt. Diablo Blvd., #210
Lafayette CA 94549-3793

PROOF OF PUBLICATION FILE NO. Ordinance 601

In the matter of

Contra Costa Times

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter.

I am the Principal Legal Clerk of the Contra Costa Times, a newspaper of general circulation, printed and published at 2640 Shadelands Drive in the City of Walnut Creek, County of Contra Costa, 94598

And which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Contra Costa, State of California, under the date of October 22, 1934. Case Number 19764.

The notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

7/15/2011

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.
On this 27th day of July, 2011.

Boyer
Signature

Legal No. 0004081134

NOTICE AND SUMMARY OF ADOPTED ZONING TEXT AMENDMENTS TO THE LAFAYETTE MUNICIPAL CODE CONSISTING OF ORDINANCE 601 AMENDING CHAPTER 6-4 "ACTIVITY CLASSIFICATIONS" & 6-5 "GENERAL PROVISIONS"

Notice is hereby given that on Monday, July 11, 2011 the City Council of the City of Lafayette adopted Ordinance No. 601, amending Chapter 6-4 "Activity Classifications" and 6-5 "General Provisions" of the Lafayette Municipal Code. The following is a summary of the Ordinance:

1. Define and prohibit "medical marijuana dispensaries".
2. Prohibit uses and activities prohibited by local, regional, state, and federal law.
3. Prohibit the cultivation or production of medical marijuana.

On Monday, July 11, 2011, the City Council adopted Ordinance No. 601 by the following vote:

Ayes: Anduri, M. Anderson, and Tatzin
Noes: None
Abstain: None
Absent: B. Andersson and Federighi

Note: The above is a summary of the major highlights of the ordinance. A reading of the entire ordinance is necessary to obtain a full understanding of the ordinances. Certified copies of the full text of the ordinances are posted in the City Clerk's office at 3675 Mt. Diablo Boulevard, Lafayette, California 94549. A copy may be obtained from that office upon payment of the fee based on the City's actual cost of providing the copy.

Publish Date: July 15, 2011
Joanne Robbins
City Clerk
CCT# 4081134 July 15, 2011