

ORDINANCE NO. 885-2011

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF BARSTOW ADDING SECTION 19.44.050
TO THE BARSTOW MUNICIPAL CODE TO PROHIBIT MEDICAL
MARIJUANA USES

THE CITY COUNCIL OF THE CITY OF BARSTOW DOES ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Section 19.44.050, to be entitled, "Medical Marijuana" is hereby added to Chapter 19.44 of the Municipal Code entitled, "Special Provisions", and shall read as follows:

"19.44.050. Medical Marijuana

A. The following uses are prohibited in all zones established by this title and may not be conducted anywhere in the city: medical marijuana dispensaries or any other facility or use which involves the distribution of drugs or other substances which it is illegal to distribute or possess under state or federal law.

B. No conduct which is protected from criminal liability pursuant to the Compassionate Use Act (Health & Safety Code, § 11362.5) and the Medical Marijuana Program Act (Health & Safety Code, §§ 11362.7 through 11362.83) shall be made criminal by this code. Such conduct that violates the requirements of this code shall be subject to non-criminal remedies only, including, but not limited to, enforcement pursuant to Chapter 6.30, entitled "Administrative Fines and Penalties."

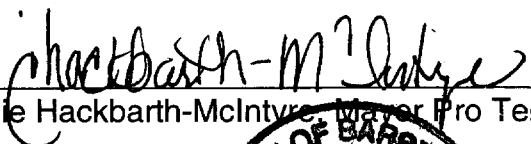
Section 2. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 3. Effective Date. This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

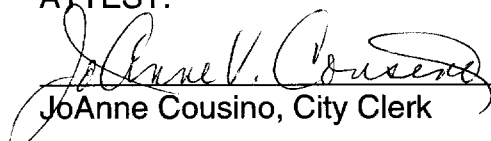
Section 4. Construction. To the extent the provisions of the Barstow Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this ordinance, they shall be read as continuations of those earlier provisions and not as new enactments.

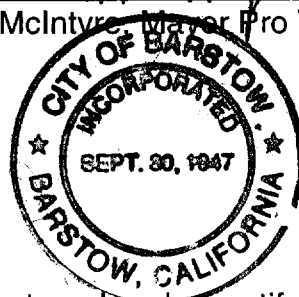
Section 5. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

DATED: August 15, 2011


Julie Hackbarth-McIntyre, Mayor Pro Tem


ATTEST:

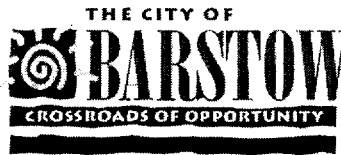

JoAnne Cousino, City Clerk



I, JoAnne Cousino, City Clerk of the City of Barstow, hereby certify that the foregoing ordinance was duly passed at a regular meeting of the City Council of the City of Barstow held on the 15th day of August 2011 by the following vote on roll call:

Ayes:	Council Members Saenz, Silva and Mayor Pro Tem Hackbarth-McIntyre
Noes:	Council Member Hailey and Mayor Gomez
Absent:	None
Abstain:	None


JoAnne Cousino, City Clerk

**AGENDA MATTER:**

SECOND READING – ORDINANCE NO. 885-2011 ADOPTING AN ORDINANCE TO AMEND TITLE 19 “ZONING” AND CHAPTER 19.44 “SPECIAL PROVISIONS,” SPECIFICALLY ADDING SECTION 19.44.050 “MEDICAL MARIJUANA” TO THE BARSTOW MUNICIPAL CODE (BMC)

EXECUTIVE SUMMARY:

On August 1, 2011, the City Council introduced Ordinance No. 885-2011 to adopt an ordinance to amend Title 19 “Zoning” and Chapter 19.44 “Special Provisions” by adding Section 19.44.050 “Medical Marijuana” to the Barstow Municipal Code.

DISCUSSION:

On July 25, 2011 the Planning Commission adopted Resolution No. 531 recommending to the Council to adopt an amendment to the Barstow Municipal Code (file PORA-11-0001) to add Section 19.44.050 to address medical marijuana dispensaries.

On August 1, 2011 the Council introduced Ordinance No. 885-2011 as a follow-up to urgency ordinances the Council adopted in 2009 and 2010. At this meeting staff introduced information between Washington State and the US Attorney General’s office. Staff contacted the State of Washington regarding their letter to US Attorney General Eric Holder, and the US Attorney General’s office to determine the City’s liability if we passed an ordinance allowing dispensaries. At the time of this printing, no responses have been received.

At the August 1 Council meeting, the question was asked of how many ID cards had been issued for Barstow. According to the Assistant Director of the Department of Public Health, we have four active medical marijuana cards for individuals residing in the City limits (See Map under Supplemental Information), a mere 0.00018% of our April 1, 2010 Census Population Count (22,639) and the Department of Finance January 1, 2011 estimates (22,839).

In order to clarify the progression on the issue of marijuana for medical purposes:

- Proposition 215 (Compassionate Use Act of 1996) was adopted to allow the use of marijuana to relieve or reduce symptoms of chronic illness.

See Next Page

BA: Silva/Hackbart-
McIntyre
3-2-0-0 Approved

RECOMMENDED ACTION:

That the City Council adopt Ordinance No. 885-2011, amending Title 19 “Zoning” and Chapter 19.44 “Special Provisions” and adding Section 19.44.050 “Medical Marijuana,” read by title only and waive the full reading.

(Gomez & Hailey No)

PROPOSED BY	FUNDS BUDGETED	FUNDS AVAILABLE	MEETING DATE
Michael Massimini	N/A	N/A	August 15, 2011
C.M. APPROVAL	AMOUNT REQUIRED	CATEGORY	ITEM NUMBER
Charles C. Mitchell	N/A	CEDD Planning Department	12

- SB 420 was adopted in 2003/2004, recognizing the patients' and caregivers' rights to associate collectively to cultivate medical marijuana; disallows smoking in zones 1,000 feet from schools or youth centers, on school buses, in a motor vehicle or boat while being operated; protects patients and caregivers from arrest for transportation and other miscellaneous charges not covered in Prop. 215; and required counties to implement the medical marijuana card provision.
- In 2005 (*Gonzales v. Raich*), it was determined that the Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail. The High Court declared that despite the attempts of states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug. Subsequently in 2007 (*Raich v. Gonzales*), the 9th Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to use medical marijuana.
- In 2006 and 2007, co-author of Proposition 215 Reverend Scott T. Imler was quoted as saying "(w)e created Prop. 215 so patients would not have to deal with black market profiteers. But today it is all about the money. Most of the dispensaries operating in California are a little more than dope dealers with store fronts." (*Alternatives Magazine, Fall, 2006, Issue 39*). He was further quoted as saying "(w)hen we wrote 215, we were selling it to the public as something for seriously ill people...it's turned into a joke. I think a lot of people have medicinalized their recreational use." (*San Gabrielle Valley Tribune, February 15, 2007*).
- In 2008, then Attorney General Edmund G. (Jerry) Brown Jr. published the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use. In this document, it is stated that "(n)either Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition."
- In January 2011, the DEA published The DEA Position on Marijuana where they indicate that "(t)here is no standard composition or dosage; no appropriate prescribing information; no quality control; no accountability for the product; no safety regulation; no way to measure its effectiveness (besides anecdotal stories); and no insurance coverage. Science, not popular vote, should determine what medicine is."
- On April 14, 2011 and June 29, 2011, both US Attorneys Jenny A. Durkan and Michael C. Ormsby (April 14) and Deputy Attorney General James Cole, indicated that (p)ersons who are in the business of cultivating, selling or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law. Additionally, it indicated that (s)tate laws or local ordinances are not a defense to civil or criminal enforcement of federal law with respect to such conduct, including enforcement of the CSA. Those who engage in transactions involving the proceeds of such activity may also be in violation of federal laundering statutes and other federal financial laws.

Facts:

- California decriminalized, not legalized marijuana for medical use.
- California did not legalize marijuana dispensaries. Neither Proposition 215 nor SB 420 addresses dispensaries. SB 420 addresses collectives only.
- Marijuana has medical benefits. Although there is some evidence to support this, it also has adverse effects for long-term use. The FDA will not support it as medicine because:
 - Marijuana contains over 400 chemicals, including the most hazardous chemicals found in tobacco smoke.
 - There are no FDA-approved medications that are smoked because it is generally a poor way to deliver medicine and difficult to administer safe, regulate dosages of medicine in smoked form and the harmful chemicals and carcinogens that are byproducts of smoking create entirely new health problems (i.e., 4 times the level of tar in a marijuana cigarette than a tobacco cigarette). Dosages cannot be regulated because of the various

varieties/hybrids available, cultivation methods (including fertilization, etc.) and processing can affect the strength of the marijuana.

- Today's marijuana is considerably stronger than that of the 1970's. Before, the THC levels ranged between 2-4%. Today, the average is over 10%, up to 20%, and new resin preparations are up to 30% THC.
- When reviewing the pros and cons of medicinal marijuana, for every pro, there's a con. For every study supporting it, there's a study disclaiming its benefits.

It is important to reiterate that neither Proposition 215 nor SB 420 discusses allowing dispensaries, only the use by individuals, and provisions for their caretakers. The proposed ordinance does not take away anything that is currently permitted pursuant to Proposition 215 and SB 420 for a patient or their caregiver. However, dispensaries, are a land use issue that the cities have a right to regulate (including prohibiting them). SB 420 indicates that "nothing in this article shall prevent a city or other local governing body from adopting enforcing laws consistent with this article." This includes regulating, as well as prohibiting this land use. We caution the permission of dispensaries as a land use as it is inconsistent with both state and federal law, and an illegal use pursuant to federal law, the supreme law of the land. The City has the right to prohibit dispensaries as verified in the case *The City of Claremont v. Darrell Kruse, et al.* This case reasserts that the City retains the power to declare what best protects the health and safety of its residents.

High Desert jurisdictions (San Bernardino) that do not allow dispensaries:

- San Bernardino County
- Adelanto
- Apple Valley
- Hesperia
- Victorville

According to the San Bernardino County, there are 24 incorporated cities and towns within the County, of which 4 have moratoria currently in place (Barstow, Big Bear, Loma Linda and Needles) and 20 have permanently prohibited dispensaries. (*Ref.: Hesperia staff report dated July 14, 2011*)

As of March 24, 2011, there are 27 dispensaries listed within the High Desert, all of which are illegal. Twenty-six (26) of them are in the cities of Hesperia, Apple Valley, and Victorville. (*Ref.: Hesperia staff report dated July 14, 2011*)

Additionally, Section 5.04.060 of the Barstow Municipal Code indicates that "All licenses issued hereunder, shall be in compliance with all ordinances of the city and all the laws of the state of California and the United States of America" whereas Section 5.04.030 requires a license for businesses who conduct, engage in, transact or operate any business within the corporate limits (exceptions: insurance companies). Staff cannot recommend allowing a land use that is illegal pursuant to the Controlled Substance Act.

Attached is a copy of a "White Paper on Marijuana Dispensaries" prepared by the California Police Chiefs Association's Task Force on Marijuana Dispensaries (2009). On page 33, the question is asked if an individual board or council member can be found to be acting illegally and subject to federal criminal charges, including aiding and abetting, or state criminal charges. The answer is that individual members of the legislative bodies may be held criminally liable under state or federal law, as local legislators are only immune from civil liability under federal law. Although it is unlikely that the DEA would go after such members, this position could change.

Also attached is a PowerPoint slide presentation from the "Summit on the Impact of California's Medical Marijuana Laws." It should be noted that some dispensaries offer baked goods. These goods are not approved by any health inspector. Additionally, some are named similar to (and have similar packaging to) those of brand-name products typically purchased by children and adults, such as "Tri-Chrome 'Crunch,'" "Pot Tarts," "Stoney Rancher" and others that young children may not realize isn't the product

they are wanting. This presentation also outlines what is required for a Barber's license, liquor license, pharmacist license and a dispensary license (pages 21 and 22).

Recently, Hesperia experienced a crime involving one of the illegal dispensaries. What is important to note is not the robbery (most businesses will experience robberies or thefts) or the fact that it is an illegal business, but its impact on an adjacent business. The article from the *Hesperia Star* is included as a reference.

In order to enact the ordinance, it is necessary to approve the second reading.

Additional information is provided at:

<http://www.justice.gov/dea/ongoing/marinol.html>

<http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0000403/>

<http://media.photobucket.com/image/marinol/GotH22/marinol.jpg>

<http://medicalmarijuana.procon.org/view.answers.php?questionID=000090>

<http://medicalmarijuana.procon.org/view.answers.php?questionID=91>

http://www.californiapolicechiefs.org/files/marijuana_files/Press.html

<http://rlongwith.wordpress.com/2011/03/02/can-a-city-ban-medical-marijuana-dispensaries/>

<http://www.time.com/time/printout/0,8816,1552034,00.html>

FISCAL IMPACT: None.

PROOF OF PUBLICATION

(2015.5 C.C.P.)

STATE OF CALIFORNIA, County of San Bernardino

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 clerk of the publisher of the DESERT DISPATCH, a newspaper of general circulation, published in the City of Barstow, County of San Bernardino, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Bernardino, State of California, under the date of February 27, 1996, Case Number BVC 02359, that 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:

August 8

All in the year 2011.

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

Dated this: 8th day of August, 2011.

Signature

Leslie Jacobs

This space is the County Clerk's Filing Stamp

RECEIVED

AUG 11 2011

City of Barstow
City Clerks Office

Proof of Publication of ORDINANCE NO. 885-2011

ORDINANCE NO.
885-2011

AN ORDINANCE OF THE
CITY COUNCIL OF THE
CITY OF BARSTOW
ADDING SECTION
19.44.050
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MUNICIPAL CODE TO
PROHIBIT MEDICAL
MARIJUANA USES

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Section 2. Severability.
Section 3. Effective Date.
Ordinance 885-2011 will
become effective thirty
days after its adoption
scheduled for August 15,
2011 as provided by Gov-
ernment Code Section
36937.

Section 4. Construction.
Section 5. Certification.

I, JoAnne Cousino, City
Clerk of the City of Bar-
stow, hereby certify that
the foregoing ordinance
was introduced at the
regular meeting of the
City Council of the City of
Barstow held on the 1st
day of August, 2011 and
is scheduled for adoption
at the August 15, 2011
meeting:

INTRODUCTION AND FIRST READING WAS APPROVED BY THE FOLLOWING VOTE:

Ayes: Council Members
Saenz, Silva and Mayor
Pro Tem Hackbarth-McIn-
tyre

Noes: Council Mem-
ber Hailey and Mayor Go-
mez

Absent: None
Abstain: None

This ordinance along with
all ordinances are avail-
able for public viewing
during regular business
hours in the City Clerk's
Office. Copies are avail-
able electronically or in
print upon request at no
charge.

/s/JoAnne Cousino,
City Clerk

Published in the
Desert Dispatch
August 8, 2011
(M-35)