

## ORDINANCE NO. 10-344

### AN ORDINANCE OF THE CITY OF LOS ALTOS ADDING A NEW CHAPTER 4.45 ENTITLED "MEDICAL MARIJUANA DISPENSARIES AS A PROHIBITED USE" TO THE LOS ALTOS MUNICIPAL CODE TITLE 4, ENTITLED "BUSINESS LICENSES AND REGULATIONS."

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

WHEREAS, the State enacted SB 420 in 2003 to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420; and

WHEREAS, in May 2001, the United States Supreme Court issued its decision in *United States v. Oakland Buyers' Cooperative and Jeffrey Jones* holding that distribution of medical marijuana is illegal under the Federal Controlled Substances Act 21 USC Section 841 (CSA) and there is no medical necessity defense allowed under federal law; and

WHEREAS on June 6, 2005, the California Supreme Court issued its decision in *Gonzales v. Raich* which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and, under the CSA, power to prohibit local cultivation and use of marijuana even though it would be in compliance with California law; and

WHEREAS, in light of these decisions, the City Council finds that it would be inconsistent and contrary to the public health, safety, and welfare to permit the establishment of medical marijuana dispensaries, as defined herein, within the City insofar as to permit such activities may subject the City and/or its officials and employees to prosecution under federal law and would otherwise constitute illegal activity under federal law; and

WHEREAS, until such inconsistency is resolved between the federal and state laws with respect to medical marijuana, it is the intent of the Council to prohibit medical marijuana dispensaries within the City of Los Altos; and

WHEREAS, the City Council further finds that it has a substantial interest in preserving the health, safety and welfare of the citizens of the City and that this prohibition is not intended to proscribe the procedures and protections set forth in Proposition 215; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the Guidelines implementing the California Environmental Quality Act of 1970, as amended.

The City Council of the City of Los Altos does hereby ordain as follows:

**SECTION 1. AMENDMENT OF CODE:** Title 4 of the LAMC entitled "BUSINESS LICENSES AND REGULATIONS" is hereby amended to add a new Chapter 4.45, Section 4.45.010 to read as follows:

**4.45.010 Medical Marijuana Dispensary as a Prohibited Use.**

- A. "Medical Marijuana Dispensary" or "Dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to or distributed by or distributed to one (1) or more of the following:
1. A primary caregiver;  
A qualified patient; or
  3. A patient with an identification card.
- All three of these terms are identified in strict accordance with California Health and Safety Code Section 11362.5 *et seq.*
- B. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law:
1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;
  2. A healthcare facility licensed pursuant to Chapter 2 of Divisions 2 of the Health and Safety Code;
  3. A facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
  4. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;
  5. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code;
  5. A residential hospice; or
  6. A home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law, including but not limited to, Health and Safety Code Section 11362.5 *et seq.*
- C. A medical marijuana dispensary as defined above is prohibited in all zones and no conditional use permit shall be issued therefore.

**SECTION 2. CONSTITUTIONALITY.** If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

**SECTION 3. PUBLICATION.** This ordinance shall be published as provided in Government Code section 36933.

**SECTION 5. EFFECTIVE DATE.** This ordinance shall become effective upon the commencement of the thirty-first day following the date the adopted ordinance is attested by the City Clerk.

The foregoing ordinance was duly and regularly introduced at a meeting of the City Council of the City of Los Altos on December 8, 2009 and was thereafter, at a regular meeting held on January 12, 2010 passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
David C. Casas, MAYOR

Attest:

\_\_\_\_\_  
Susan Kitchens, CITY CLERK

Date: \_\_\_\_\_