

ORDINANCE NO. 4388

AN INTERIM URGENCY ZONING ORDINANCE AMENDING TITLE 9 OF THE ORDINANCE CODE OF THE COUNTY OF SAN JOAQUIN, REGARDING THE OPERATION OF MEDICAL CANNABIS DISPENSARIES WITHIN THE UNINCORPORATED AREA OF SAN JOAQUIN COUNTY TO BE IMMEDIATELY EFFECTIVE AS AN URGENCY ORDINANCE.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN ORDAINS AS FOLLOWS:

**Section 1.** The Board of Supervisors finds as follows:

Currently, the County has no explicit rules or regulations governing medical cannabis or dispensaries of medical cannabis. The County has historically interpreted Title 9 of the San Joaquin County Code to be exclusionary in nature, to wit any proposed land use not specifically approved by the County is a prohibited use. A medical marijuana dispensary has opened in the City of Stockton and the San Joaquin County Community Development Department has received inquiries from prospective operators of such dispensaries about opening such a dispensary in the unincorporated area of the County. There is insufficient time for the County to adopt a regular, non-urgency ordinance applicable to such dispensaries. Unless adopted on an urgency basis, such a dispensary may open without any specific regulation applicable to it and create inconsistent and incompatible land use. Such dispensaries require careful consideration and regulation of the location and manner in which they are to operate, if the County should approve the operation of such dispensaries, so as to prevent impacts on nearby residents and businesses. Federal law prohibits such dispensaries and use of cannabis, regardless of the reason for such use; while state law allows the use of medical cannabis on limited terms and conditions. This Ordinance both complies with applicable state law, as well as imposing reasonable rules and regulations protecting the public health, safety, and welfare of the residents and businesses within the unincorporated area of San Joaquin County.

**Section 2.** The Board of Supervisors finds as follows:

A. 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"). The intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances. Further, effective January 1, 2004 the State Legislature enacted SB 420 to clarify the scope of the Compassionate Use Act of 1996 and to allow counties and other governing bodies to adopt and enforce rules and regulations laws consistent with SB 420.

B. The Court of Appeal of California, Second Appellate District rendered a decision in the matter of City of Claremont v. Darrell Kruse on August 27, 2009. In that decision the Court opined that neither the California Compassionate Use Act of 1996 nor the California Medical Accommodation Program compels the establishment of local regulations to accommodate medical marijuana dispensaries.

C. To protect the public health, safety, and welfare, it is the desire of the Board of Supervisors to modify the Ordinance Code of San Joaquin County consistent with SB 420, regarding the location and operation of medical cannabis dispensaries.

D. It is the Board of Supervisors' intention that nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, nor to otherwise permit any activity that is prohibited under that Act. It is further the Board of Supervisors' intention that

nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance, (2) allow the use of cannabis for non-medical purposes, or (3) allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal.

E. This Ordinance codifies existing interpretations of the Ordinance Code of San Joaquin County prohibiting the establishment of any use that violates state or federal law, including prohibiting the establishment of store front facilities for the distribution (including selling, serving, storing, keeping, manufacturing, exchanging or giving away) of medical marijuana within the unincorporated area of San Joaquin County; and

F. This Ordinance is hereby found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3).

**Section 3.** Division 1, Title 9 of the San Joaquin County Ordinance Code is hereby amended by adding Chapter 9-125 to read as follows:

## CHAPTER 9-125

### MEDICAL CANNABIS DISPENSARY REGULATIONS

#### Sections:

**9-125.1 Intent**

**9-125.2 Definition**

**9-125.3 Prohibition**

#### **9-125.1 INTENT**

The intent of this Chapter is to codify existing interpretations of the Ordinance Code of San Joaquin County that the San Joaquin County Development Title is exclusionary in nature and that uses which violate state or federal law are prohibited. Further, the intent of this Chapter is to prohibit the establishment of store front facilities for the distribution (including selling, serving, storing, keeping, manufacturing, exchanging or giving away) of medical marijuana within the unincorporated area of San Joaquin County, irrespective of Health and Safety Code Section 11362.765(a) as it applies to Health and Safety Code Section 11570. It is not the intent of this Chapter to otherwise prohibit or inhibit the right of seriously ill people to obtain and use marijuana for medicinal purposes pursuant to The Compassionate Use Act of 1996 and The Medical Marijuana Program of the Health and Safety Code. Nor is it the intent of this Chapter to prohibit or inhibit such a right in hospitals, clinics, residential care facilities, or similar facilities, licensed pursuant to the Health and Safety Code.

#### **9-125.2 DEFINITION**

The following definition applies to this chapter in addition to those definitions in Section 9-110.4 of this Title:

**Medical Cannabis Dispensary.** "Medical Cannabis Dispensary" means any storefront facility where medical cannabis is made available pursuant to Health and Safety Code Sections 11362.5 through 11362.9 (The Compassionate Use Act of 1996) or Sections 11362.7 through 11362.83 (Medical Marijuana Program). This definition does not include clinics, health care facilities, residential care facilities, or similar facilities, licensed pursuant to the Health and Safety Code.

**9-125.3 PROHIBITION**

Medical Cannabis Dispensaries are prohibited.

**Section 4.** If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

**Section 5.** This Ordinance is an urgency measure to prevent a current and immediate threat to the public health, safety, or welfare, adopted pursuant to Section 65858 of the Government Code of the State of California, and is effective immediately. Prior to the expiration of fifteen (15) days from the passage thereof, this Ordinance shall be published once (1) in the Stockton Record, a newspaper of general circulation published in the County of San Joaquin, State of California, with the names of the members of the Board of Supervisors voting for and against the same.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of San Joaquin, State of California, on this 2<sup>nd</sup> day of March, 2010, by the following vote of the Board of Supervisors, to wit:

AYES: **Bestolarides, Vogel, Ruhstaller, Ornellas, Villapudua**

NOES: **None**

ABSENT: **None**



CARLOS VILLAPUDUA, CHAIRMAN  
Board of Supervisors  
County of San Joaquin  
State of California

ATTEST: LOIS M. SAHYOUN  
Acting Clerk of the Board of  
Supervisors of the County of  
San Joaquin, State of California

By Carolineguzo (SEAL)  
Deputy Clerk