

ORDINANCE NO. 09-09

EXTENSION OF INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES, STATE OF CALIFORNIA, IMPOSING A MORATORIUM ON THE LEGAL ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE TOWN OF MAMMOTH LAKES PURSUANT TO GOVERNMENT CODE SECTION 65858

WHEREAS, in 1996 the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11365.5 et seq. and entitled "The Compassionate Use Act of 1996").

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under State law.

WHEREAS, as a result of Proposition 215, individuals have established medical marijuana dispensaries in various cities.

WHEREAS, in October 2005, the State Board of Equalization instituted a policy that allows medical marijuana dispensaries to obtain a seller's permit thus enabling the State to collect sales tax on medical marijuana sales.

WHEREAS, the Town has not adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries.

WHEREAS, based on the adverse secondary impacts experienced by other cities and the lack of any regulatory program in the Town regarding the establishment and operation of medical marijuana dispensaries; it is reasonable to conclude that negative effects on the public health, safety, and welfare may occur in the Town of Mammoth Lakes as a result of the proliferation of medical marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities.

WHEREAS, a medical marijuana dispensary currently is not an expressly permitted use or a use permitted subject to a conditional use permit in any zoning district in the Town of Mammoth Lakes. However, such establishments may seek to locate in any zoning district disguised as a permitted use, or may seek to legalize this use.

WHEREAS, the establishment of, or the issuance or approval of any permit, certificate of use and occupancy, or other entitlement for the legal establishment of a medical marijuana dispensary in the

Town may result in a threat to public health, safety, and welfare in that the Town of Mammoth Lakes Municipal Code does not currently regulate the location and operation of medical marijuana dispensaries and does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical dispensaries in the Town.

WHEREAS, on November 18, 2009, the Town Council of the Town of Mammoth Lakes adopted AN INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES, STATE OF CALIFORNIA, IMPOSING A MORATORIUM ON THE LEGAL ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE TOWN OF MAMMOTH LAKES PURSUANT TO GOVERNMENT CODE SECTION 65858, Ordinance No. 09-08, ("Urgency Ordinance") pursuant to California Government Code Section 65858 which Urgency Ordinance expires on January 2, 2010.

WHEREAS, California Government Code Section 65858 authorizes extension of the Urgency Ordinance for a period of ten months and fifteen days.

AND WHEREAS, the Town Council of the Town of Mammoth Lakes finds and determines that the extension of the Urgency Ordinance is in the best interests of the people of the Town of Mammoth Lakes and is required to protect the public health, safety and welfare.

NOW, THEREFORE, the Town Council of the Town of Mammoth Lakes ordains as follows:

SECTION 1. For purposes of this ordinance, "medical marijuana dispensary" means any for profit or not-for-profit facility or location, whether permanent or temporary, where the owner(s) or operator(s) intends to or does possess and distribute marijuana for any purpose. A "medical marijuana dispensary" includes a marijuana club as described in *People v. Peron*, (1997) 59 Cal. App. 4th 1383, and further includes medical marijuana cooperatives. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by the Town's Municipal Code: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; 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; a residential hospice; or a home or health agency licensed pursuant to Chapter 8 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

SECTION 2. Urgency Ordinance No. 09-08 is hereby extended to November 17, 2010 for all purposes pursuant to California Government Code Section 65858.

SECTION 3. For the period of this ordinance a medical marijuana dispensary shall be considered a prohibited use in any zoning district of the Town, even if located within an otherwise permitted use. No permits or authorizations for a medical marijuana dispensary shall be issued while this ordinance is in effect.

SECTION 4. The Town Council finds that this ordinance extension is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060 (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060 (c)(3) (the activity is not a project as defined in Section 15378) (Title 14, 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 Municipal Code review.

SECTION 5. The Town Manager or his designee shall: (1) review and consider options for the regulation of medical marijuana dispensaries in the Town, including, but not limited to the development of appropriate rules and regulations governing the location and operation of such establishments in the Town; (2) meet with medical patients, advocates, law enforcement representatives, and other interested parties; (3) file a written report describing the measures which the Town has taken to address the conditions which led to the adoption of this ordinance with the Town Council ten (10) days prior to the expiration of this extension of the Urgency Ordinance, and such report shall be made available to the public.

SECTION 6. Pursuant to Section 65858 of the Government Code, a written report has been issued by the Town Council of the Town of Mammoth Lakes describing the measures that have been taken thus far to alleviate the condition which led to the adoption of the Urgency Ordinance.

SECTION 7. Ten (10) days prior to the expiration of this extension of the Urgency Ordinance, the Town Council shall issue a written report describing the measures that the Town has taken to alleviate the condition, which led to the adoption of this ordinance extension.

SECTION 8. This extension of the Urgency Ordinance is adopted pursuant to Section 65858 of the California Government Code, after notice given pursuant to Section 65090 of the California Government Code, and after the holding of a public hearing.

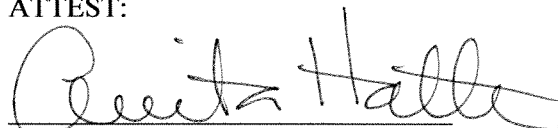
SECTION 9. This extension of the Urgency Ordinance shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the Town Council. This extension of the Urgency Ordinance shall expire on November 17, 2010.

SECTION 10. If any section, subsection, subdivision, paragraph, sentence, clause, phrase, or word in this ordinance or any part thereof is for any reason, held to be unconstitutional or invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portion of this ordinance or any part thereof. The Town Council hereby declares that it would have passed this ordinance and each section, subsection, subdivision, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or words be declared unconstitutional.

The foregoing extension of the ordinance was PASSED, APPROVED AND ADOPTED on the 16th day of December, 2009.


NEIL MCCARROLL, Mayor

ATTEST:


ANITA HATTER, Town Clerk

TOWN OF MAMMOTH LAKES

Notice is hereby given that on December 16, 2009 the Town Council adopted an Ordinance entitled:

ORDINANCE NO. 09-09

EXTENSION OF AN INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF
THE TOWN OF MAMMOTH LAKES, STATE OF CALIFORNIA, IMPOSING A
MORATORIUM ON THE LEGAL ESTABLISHMENT AND OPERATION OF MEDICAL
MARIJUANA DISPENSARIES WITHIN THE TOWN OF MAMMOTH LAKES PURSUANT
TO GOVERNMENT CODE SECTION 65858.

by the following vote:

AYES: Councilmembers Bacon, Harvey, Sugimura, Mayor Pro Tem Eastman, and Mayor McCarroll

NOES: None

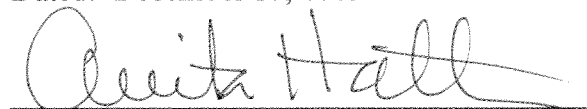
ABSENT: None

ABSTAIN: None

DISQUALIFICATION: None

A certified copy of the complete text of the Ordinance is posted and may be read at the Town Offices, Minaret Mall, Old Mammoth Road, Mammoth Lakes, and /or a copy may be obtained from the office of the Town Clerk at a nominal charge.

Dated: December 17, 2009



ANITA HATTER, Town Clerk
Town of Mammoth Lakes

STATE OF CALIFORNIA)
COUNTY OF MONO)
TOWN OF MAMMOTH LAKES) ss.

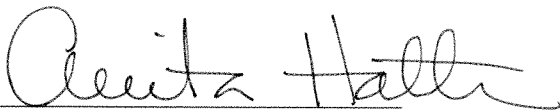
I, ANITA HATTER, Town Clerk of the Town of Mammoth Lakes, DO HEREBY CERTIFY under penalty of perjury that the foregoing is a true and correct copy of the Extension of Interim Urgency Ordinance No. 09-09, which was adopted at a meeting of the Town Council on December 16, 2009 by the following vote:

AYES: Councilmembers Bacon, Harvey, Sugimura, Mayor Pro Tem Eastman and Mayor
 McCarroll

NOES: None

ABSENT: None

DISQUALIFICATION: None


ANITA HATTER, Town Clerk

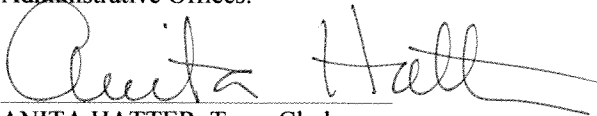
STATE OF CALIFORNIA)
COUNTY OF MONO)
TOWN OF MAMMOTH LAKES) ss.

AFFIDAVIT
OF PUBLISHING
AND POSTING

ANITA HATTER, being first duly sworn, deposes and says: That she is the duly appointed Town Clerk of the Town of Mammoth Lakes; that in compliance with State laws of the State of California, Extension of Interim Urgency Ordinance No. 09-09, being:

EXTENSION OF AN INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF
MAMMOTH LAKES, STATE OF CALIFORNIA, IMPOSING A MORATORIUM ON THE LEGAL
ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE TOWN
OF MAMMOTH LAKES PURSUANT TO GOVERNMENT CODE SECTION 65858.

was published in full in The Mammoth Times newspaper on December 24, 2009 and was posted at the Town Administrative Offices.


ANITA HATTER, Town Clerk