

## **ORDINANCE NO. 15-03**

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, ADOPTING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES

**WHEREAS**, in 2008, the City adopted a regulatory process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which potentially allows medical marijuana dispensaries in the City's community commercial (CC) and professional and administrative office (PA) zoning districts; and

**WHEREAS**, to date, the City does not have any medical marijuana dispensaries operating within its jurisdiction; and

**WHEREAS**, under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City's regulatory process for issuance of a permit to operate a medical marijuana dispensary calls for the City's Police Chief (provided under contract with the Orange County Sheriff's Department) to approve components of the applicant's "security plan", make a determination as to the "acceptability" of the applicant's background, and make a determination as to the "suitability" of the proposed location of the dispensary; and

**WHEREAS**, in a letter dated August 24, 2015, the Orange County Sheriff's Department advised the City that it does not believe that the tasks assigned to it under the City's medical marijuana dispensary permitting ordinance are included within the City's law enforcement services contract, and except as to limited background investigations specifically called for under such contract, the Orange County Sheriff declines to perform such services, for the reasons stated in the letter; and

**WHEREAS**, the Orange County Sheriff Department's letter also advised that, in its experience, medical marijuana dispensaries have numerous "adverse secondary effects" on communities, many of which, should they be legitimately ascribed to the presence of medical marijuana dispensaries, would present an immediate threat to public health, safety, or welfare; and

**WHEREAS**, in 2013, the California Supreme Court ruled in *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* that cities can prohibit

medical marijuana dispensaries in their jurisdictions as part of their “broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction’s borders” (56 Cal.4th 729, 738); and

**WHEREAS**, the California Supreme Court’s decision in *City of Riverside* did not address the extent to which State and Federal law “forbid[] a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would ‘conflict with the ... laws of ... the United States’” (*Id.*, at 762, fn. 14); and

**WHEREAS**, to date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in its jurisdiction; and

**WHEREAS**, the City is in the process of a broad analysis and updating of its General Plan, zoning, and land use regulations, which has included adoption of a Safety Element, a Climate Adaptation Plan, a Conservation Element, and a Building and Planning Services Fee Schedule. In addition, City Council has included in the Fiscal Year 2015-16 Budget and Work Plan a comprehensive update of the General Plan and Commercial Zoning Code Uses and Parking Standards Update; and assessment of the compatibility of medical marijuana dispensary uses in various zoning districts of the City, or at all, is timely given the revisions and analysis the City is undertaking with respect to other land uses in its jurisdiction; and

**WHEREAS**, in light of the foregoing, among other issues, the City has determined that it is appropriate to suspend the allowance of medical marijuana dispensaries, and any establishment, location, or operation of any such facility, in order to undertake further investigation and study on the following issues relating to the potential siting and operation of a medical marijuana dispensary within the city limits of Laguna Woods:

1. The scope of the City’s authority under both federal and state law to allow and/or issue permits to medical marijuana dispensaries, pursuant to its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.
2. The extent to which it is safety feasible to implement or amend a permitting process in a manner that will accommodate the Orange County Sheriff’s Department refusal to approve components of an applicant’s “security plan” or make determinations as to the “acceptability” of the applicant and the “suitability” of the proposed location of the dispensary.

3. The potential adverse secondary effects of medical marijuana dispensaries, including those adverse secondary effects recited by the Orange County Sheriff in her letter of August 24, 2015, as well as other land-use related impacts, such as impacts to traffic, parking, and surrounding uses.
4. What experience other cities with medical marijuana dispensaries operating or formerly operating in their jurisdictions have had regarding the compliance of such medical marijuana dispensaries with the provisions of California law governing the use of medical marijuana, and the adverse secondary effects recited by the Orange County Sheriff.
5. Whether appropriate land use regulations might be adopted to mitigate potential adverse secondary effects from medical marijuana dispensaries, such as parking, access, security, lighting, hours of operation, distance requirements from potentially sensitive surrounding uses, the nature, format, and availability of security camera monitoring, and others.
6. The compatibility of medical marijuana dispensaries with other land uses that are permitted in the zoning districts where medical marijuana dispensaries are or may be permitted.
7. The extent to which an agreement for indemnification to the City from medical marijuana dispensary applicants, operators, and property owners can be required to provide protection to the City for whatever range of land use authority discretion it is permitted under the law with respect to the regulation and permitting of medical marijuana dispensaries.

**WHEREAS**, based on the foregoing, the City Council finds and declares there is a current and immediate threat to the public health, safety, or welfare that calls for a temporary moratorium on any allowance or permitting of medical marijuana dispensaries within the City's jurisdiction; and

**WHEREAS**, pursuant to Government Code sections 36934, 36937 and 65858, a City may adopt an urgency ordinance to impose a moratorium as an interim measure for the immediate preservation of the public health, safety, and welfare, to prohibit any uses that may be in conflict with a contemplated zoning proposal that the legislative body, planning commission, or city planning department is considering or intends to study within a reasonable time; and

**WHEREAS**, adoption of this Urgency Ordinance will allow City staff to effectively study, and City staff intends to study in the near future and within a reasonable time, the issues set forth above.

**THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. In adopting this Urgency Ordinance, the City Council finds and determines that each of the recitals to this Urgency Ordinance are true and correct, are adopted herein as findings, and that the adoption of this Urgency Ordinance is necessary to protect the public safety, health and welfare, as those terms are defined in Government Code Sections 36937(b) and 65858(a) in at least the following respects:

A. In 1996, California voters approved Proposition 215 (Health and Safety Code section 11362.5, et. seq.), entitled “The Compassionate Use Act of 1996” (“Act”), to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances.

B. In 2003, the State legislature enacted Senate Bill 420 to clarify the provisions of the Act and empower local governments to adopt and enforce regulations consistent with Senate Bill 420 in this field.

C. In 2008, the City adopted a permitting process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which allows medical marijuana dispensaries in the City’s community commercial (CC) and professional and administrative office (PA) zoning districts, subject to the issuance of a regulatory permit.

D. Under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City cannot issue a permit to operate a medical marijuana dispensary unless the Orange County Sheriff’s Department, acting as the City’s Police Chief, has approved components of the applicant’s “security plan”, made a determination as to the “acceptability” of the applicant’s background, and made a determination as to the “suitability” of the proposed location of the dispensary. In a letter dated August 24, 2015, the Orange County Sheriff’s Department advised the City that it “will not review or approve any security plan of a dispensary, and will not determine the ‘acceptability’ of any applicant and the ‘suitability’ of the proposed location.”

E. The Orange County Sheriff Department's letter also indicated that, in its experience, medical marijuana dispensaries have numerous "adverse secondary effects" on communities.

F. While the City has made a conscientious effort to plan for specific uses within all zone districts and to anticipate conflicts between competing land uses in order to protect the public's health, safety and welfare, the City Council is concerned that the City's current permitting process for medical marijuana dispensaries may not be effective without the contemplated participation of the Orange County Sheriff's Department, and may not provide sufficient development regulations for the establishment, location, or operation of medical marijuana dispensaries.

G. In 2013, the California Supreme Court ruled that cities and counties can *prohibit* medical marijuana dispensaries in their jurisdictions as part of their "broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders." (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 738.)

H. The California Supreme Court did not address the extent to which State and Federal law may "*forbid*[]" a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would 'conflict with the ... laws of ... the United States.'" (*City of Riverside, supra*, at 762, fn. 14.)

I. To date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in their jurisdiction.

J. The City Council finds that allowing the establishment, location, and operation of medical marijuana dispensaries without the ability to implement existing security safeguards in the Laguna Woods Municipal Code, and in the face of assertions that permitting such facilities could result in the creation of adverse secondary effects.

K. Among other issues, City staff needs time to study:

1. The scope of the City's authority under both federal and state law to allow and/or issue permits to medical marijuana dispensaries, pursuant to its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.
2. The extent to which it is safety feasible to implement or amend a permitting process in a manner that will accommodate the Orange County

Sheriff's Department refusal to approve components of an applicant's "security plan" or make determinations as to the "acceptability" of the applicant and the "suitability" of the proposed location of the dispensary.

3. The potential adverse secondary effects of medical marijuana dispensaries, including those adverse secondary effects recited by the Orange County Sheriff in her letter of August 24, 2015, as well as other land-use related impacts, such as impacts to traffic, parking, and surrounding uses.
4. What experience other cities with medical marijuana dispensaries operating or formerly operating in their jurisdictions have had regarding the compliance of such medical marijuana dispensaries with the provisions of California law governing the use of medical marijuana, and the adverse secondary effects recited by the Orange County Sheriff.
5. Whether appropriate land use regulations might be adopted to mitigate potential adverse secondary effects from medical marijuana dispensaries, such as parking, access, security, lighting, hours of operation, distance requirements from potentially sensitive surrounding uses, the nature, format, and availability of security camera monitoring, and others.
6. The compatibility of medical marijuana dispensaries with other land uses that are permitted in the zoning districts where medical marijuana dispensaries are or may be permitted.
7. The extent to which an agreement for indemnification to the City from medical marijuana dispensary applicants, operators, and property owners can be required to provide protection to the City for whatever range of land use authority discretion it is permitted under the law with respect to the regulation and permitting of medical marijuana dispensaries.

L. In order to allow the City to consider, study, and adopt any appropriate regulations for medical marijuana dispensaries, it is necessary to suspend the operation and effectiveness of Section 13.26.025 of the Laguna Woods Municipal Code, and to temporarily prohibit businesses from the establishment, location, and operation of medical marijuana dispensaries within the City's jurisdiction.

M. A moratorium will provide the City time to study the effect of medical marijuana dispensaries on the community, and to assess its ability to draft and adopt

regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

SECTION 2. The City Council hereby declares a temporary moratorium prohibiting the establishment and operation of medical marijuana dispensaries within the City. All operation of Section 13.26.025 of the Laguna Woods Municipal Code is hereby suspended, and the City may not issue any regulatory permits in furtherance of, the establishment, location, or operation of a medical marijuana dispensary within the City for the life of the moratorium.

SECTION 3. The penalties that are set forth in the Laguna Woods Municipal Code shall apply to violations of the provisions of this Urgency Ordinance.

SECTION 4. This Ordinance is declared to be an Urgency Ordinance by authority conferred on the City Council of the City of Laguna Woods by Government Code sections 36934, 36937, and 65858, and shall be in full force and effect immediately upon its adoption by a four-fifths vote of the City Council.

SECTION 5. This Urgency Ordinance shall be of no further force and effect forty-five (45) days from and after the date of its adoption unless the same is extended pursuant to the authority conferred upon the City Council by Government Code Section 65858.

SECTION 6. If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance 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 or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 7. The Deputy City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

PASSED, APPROVED AND ADOPTED this 10<sup>th</sup> day of September 2015.

  
CYNTHIA S. CONNERS, Mayor

ATTEST:

  
YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

  
DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA       )  
COUNTY OF ORANGE       ) ss.  
CITY OF LAGUNA WOODS    )

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do  
HEREBY CERTIFY that the foregoing **Ordinance No. 15-03** was duly adopted and  
passed at a special meeting of the City Council on the 10<sup>th</sup> day of September 2015  
by the following vote to wit:

AYES:       COUNCILMEMBERS: Hack, Horne, Moore, Hatch, Conners  
NOES:       COUNCILMEMBERS: -  
ABSENT:    COUNCILMEMBERS: -

  
YOLIE TRIPPY, Deputy City Clerk