ORDINANCE NO. 1885

AN UNCODIFIED INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI IMPOSING A MORATORIUM ON 1) THE OUTDOOR CULTIVATION OF MEDICAL MARIJUANA WITHIN THE CITY OF LODI AND 2) THE INDOOR CULTIVATION OF MEDICAL MARIJUANA THAT CREATES A PUBLIC NUISANCE

==========

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

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specified circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 (Medical Marijuana Program Act) became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, Health and Safety Code Section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with SB 420; and

WHEREAS, under the federal Controlled Substances Act (21 U.S.C. §841), marijuana is classified as a Schedule 1 drug, meaning it has no accepted medical use; and

WHEREAS, Government Code Section 65858 authorizes cities to adopt moratoriums on land use entitlements in order to study any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal; and

WHEREAS, Government Code Sections 65850(a) and 65850(c)(4), provide the authority of the City of Lodi to regulate by ordinance the uses of land and the intensity of land use; and

WHEREAS, the City of Lodi Police Department and residents of the City of Lodi have reported adverse impacts from the outdoor cultivation of medical marijuana within the City of Lodi, including offensive odors detectable beyond the property boundaries, increased risk of trespassing, violent crime, burglary, and theft; and

WHEREAS, the strong odor of marijuana plants, which increases in intensity as the plants mature, is highly offensive to many individuals and creates an attractive nuisance, alerting people to the presence and location of marijuana plants, creating an increased risk of burglary, robbery, or armed robbery because of the monetary value of the plants; and

WHEREAS, the presence of marijuana plants is an attractive nuisance to minors, creating a potential hazard in areas frequented by minors, such as schools, parks, recreation centers, and similar facilities; and

WHEREAS, the cultivation of medical marijuana raise issues of first impression for the City, which currently does not address or regulate in any manner the cultivation of medical marijuana in its Municipal Code; and

WHEREAS, there is not sufficient time for the City of Lodi to adopt a regular, non-urgency ordinance regulating the outdoor and indoor cultivation of medical marijuana; and

WHEREAS, it is the intention of the City Council of the City of Lodi that nothing in this Ordinance be deemed to conflict with the federal Controlled Substances Act (21 U.S.C. §841), by permitting or otherwise allowing any activity which is prohibited under the Act; and

WHEREAS, the City Council of the City of Lodi is aware that the cultivation and possession of marijuana for medical purposes by Qualified Patients and Primary Caregivers as defined under California law (Health & Saf. Code, §§11362.7(f) and 11362.7(d), respectively), it is the intention of the Council that nothing in this Ordinance be construed, in any way, to expand the rights of anyone to cultivate, possess or use marijuana under state law, engage in any public nuisance, violate the federal Controlled Substance Act, or engage in any activity regarding the cultivation, distribution, use or consumption of marijuana that is otherwise prohibited by law; and

WHEREAS, it is the purpose and intent of this Ordinance to ensure that marijuana grown for medical purposes remains secure and does not find its way to persons other than Qualified Patients or Primary Caregivers, or illicit markets; and

WHEREAS, it is the purpose and intent of this Ordinance to assist law enforcement personnel to perform their duties effectively and in accordance with California law; and

WHEREAS, this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Government Code section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, 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 General Plan adoption and zoning ordinance review; and

WHEREAS, for the protection of the public's health, safety, and general welfare, the City Council on November 7, 2012, adopted Ordinance No. 1867, an Uncodified Interim Urgency Ordinance of the City Council of the City of Lodi, making findings and imposing a forty-five (45) day moratorium on 1) the outdoor cultivation of medical marijuana within the City of Lodi and 2) the indoor cultivation of medical marijuana that creates a public nuisance; and

WHEREAS, for the continued protection of the public's health, safety, and general welfare, the City Council on May 7, 2012, adopted Ordinance No. 1868 entitled an Uncodified Interim Urgency Ordinance of the City Council of the City of Lodi, making findings and imposing an additional moratorium of ten (10) months and fifteen (15) days on 1) the outdoor cultivation of medical marijuana within the City of Lodi and 2) the indoor cultivation of medical marijuana that creates a public nuisance; and

WHEREAS, the City desires to extend Ordinance No. 1868 for an additional one year period, as permitted by Government Code Section 65858, to maintain the current status quo and to provide time for the City to continue to meet with members of the public and to study and analyze the complicated and evolving legal and practical issues involved in regulating the cultivation of marijuana for medical use, including a review of the City's General Plan and zoning ordinances, and to make recommendations for consideration by the City Council.

NOW, THEREFORE, BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

Section 1. The City Council finds that in accordance with the terms and provisions of Section 65858 of the Government Code, the following notice given in the time and manner required by law, it held a public hearing on the extension of Ordinance No. 1868 on November 6, 2013. After hearing all applicable evidence, the City Council finds that the conditions and findings cited in Ordinance No. 1868 continue to exist and that further study by City staff, including meeting with members of the public, is necessary in order to study and analyze the complicated and evolving legal and practical issues involved in regulating the cultivation of marijuana for medical use, including a review of the City's General Plan and zoning ordinances, and to adopt regulatory standards and conditions to be imposed on the outdoor and indoor cultivation of medical marijuana.

Section 2. Imposition of Moratorium.

A. In accordance with Government Code Section 65858, from and after the date of the expiration of Ordinance No. 1868, the outdoor cultivation of marijuana, for any purpose, within the incorporated area of the City of Lodi is hereby prohibited for an additional one-year period. Further, in accordance with Government Code Section 65858, from and after the date of the expiration of Ordinance No. 1868, any indoor cultivation of medical marijuana by a Qualified Patient or Primary Caregiver within the incorporated area of the City of Lodi that creates a public nuisance resulting from the visibility of marijuana from the public right-of-way or the odor of marijuana beyond the property line of the property where the indoor cultivation is taking place is prohibited for an additional one-year period.

B. Any property found to be in violation of this Ordinance shall be declared to be a public nuisance and may be summarily abated by the City of Lodi pursuant to Civil Code Section 731. Nothing in this Ordinance shall be deemed to prevent the city attorney from bringing a civil action for injunctive relief and civil penalties pursuant to Lodi Municipal Code Chapter 1.10. In any civil action brought under Chapter 1.10, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party.

C. For purposes of this Ordinance, the terms "Primary Caregiver," "Qualified Patient" shall have the same meaning as that set forth in Health and Safety Code Sections 11362.7(f) and 11362.7(d), respectively.

D. This Ordinance is an interim urgency ordinance adopted pursuant to the authority granted to the City of Lodi by Government Code Section 65858 and is for the immediate preservation of the public health, safety, and welfare. The City Council of the City of Lodi hereby finds and declares that there is a need to enact an urgency interim

ordinance establishing a moratorium banning the outdoor cultivation of medical marijuana within the City of Lodi and the indoor cultivation of medical marijuana by a Qualified Patient or Primary Caregiver within the City of Lodi that creates a public nuisance resulting from the visibility of marijuana from the public right-of-way or the odor of marijuana beyond the property line of the property where indoor cultivation is taking place, based upon the findings set forth hereinabove and incorporated herein.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of 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 or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council of the City of Lodi hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.

Section 4. No Mandatory Duty of Care. This Ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5. Conflict. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 6. Effective Date. This urgency Ordinance shall be published one time in the "Lodi News Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall be in force and take effect immediately upon passage and approval by at least four-fifths vote of the City Council and the expiration of Ordinance No. 1868 (November 6, 2013), and shall be in effect for a period of one year to and including November 5, 2014, unless repealed or extended by the City Council as provided for in Government Code section 65858.

Approved this 6th day of November, 2013

ALAN NAKANISHI
Mayor

ATTEST:

RANDI JOHL-OLSON
City Clerk

State of California
County of San Joaquin, ss.

I, Randi Johl-Olson, City Clerk of the City of Lodi, do hereby certify that Ordinance No.1885 was adopted as an urgency ordinance at a regular meeting of the City Council of the City of Lodi held November 6, 2013, and was thereafter passed, adopted, and ordered to print by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, and Mayor Nakanishi

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Mounce

ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1885 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL-OLSON, City Clerk

Approved to Form:

JANICE D. MAGDICH
Deputy City Attorney