

ORDINANCE NO. 1003

REZONE NO. 213

AN INTERIM URGENCY ORDINANCE AMENDING SECTION 25.213 OF THE RED BLUFF CITY CODE PROHIBITING USES –PROHIBITING MEDICAL MARIJUANA DISPENSARIES, COLLECTIVES, AND COOPERATIVES IN ANY ZONING DISTRICT ALONG WITH AMENDING RED BLUFF CITY CODE SECTION 25.239 DEFINITIONS BY ADDING A DEFINITION FOR MEDICAL MARIJUANA DISPENSARIES, COLLECTIVES, AND COOPERATIVES

THE CITY COUNCIL OF THE CITY OF RED BLUFF DOES HERBY ORDAIN AS FOLLOWS:

SECTION 1. This interim urgency ordinance is adopted pursuant to California Constitution, article XI, section 7 and Government Code section 65858.

SECTION 2. The City Council of the City of Red Bluff, by four-fifths vote, hereby finds and declares the following:

(A) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled “The Compassionate Use Act of 1996”). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances.

(B) In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes.

(C) The federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.

(D) Facilities which dispense marijuana have the potential to cause serious harmful effects on the neighborhoods in which they are located, to owners of

property in such neighborhoods, and to citizens living, visiting, shopping, conducting business or otherwise present in the area, as reported by several other California Counties and Cities. Such effects are due to such factors as the illegal nature of the activity under federal law, the presence of large quantities of marijuana at the dispensaries, the presence of large amounts of cash, the presence of weapons, and other factors. Harmful effects at the dispensaries and the surrounding areas have included an increase in burglaries, robberies, illegal sales of drugs, use or possession of marijuana by unauthorized persons, attacks on persons entering or leaving the premises, loitering, smoking marijuana in public places, and driving while under the influence of marijuana. These harmful "secondary effects" are further detailed in the *White Paper on Marijuana Dispensaries by California Police Chief's Association Task Force on Marijuana Dispensaries* dated April 22, 2009. The violent January 2009 home invasion burglary and homicide in Los Molinos, targeting the substantial amounts of marijuana possessed by the home's occupant ostensibly for medical purposes, is one recent local example of the "secondary effects" of concentrating substantial amounts of marijuana in one place.

(E) Recently, the U.S. Attorney General stated that federal law enforcement officials would ease enforcement at California medical marijuana facilities. For this reason, among others, there is burgeoning interest in establishing marijuana dispensaries in the State of California, and in the region of the County of Tehama. In response, numerous cities and counties around the state are enacting regulations. Among the cities located within Tehama County, and among other counties adjacent to Tehama County, many agencies have recently enacted ordinances either prohibiting, regulating, or establishing a moratorium on marijuana dispensaries. These regulations can be expected to have the effect of redirecting persons desirous of establishing such dispensaries, to consider doing so in the City of Red Bluff.

(F) Proposition 215 and Senate Bill 420 do not preempt local zoning or nuisance regulations affecting marijuana-related land uses; rather, Senate Bill 420 (Health and Safety Code section 11362.83) expressly allows Cities and Counties to adopt and enforce ordinances that are consistent with state law. The scope of local regulatory power continues to be challenged by proponents of marijuana-related land uses. Local regulatory power over marijuana dispensaries was recently upheld by the California Court of Appeal in the case known as *City of Claremont v. Darrell*, 177 Cal.App.4th 1153 (2009).

(G) Under the current provisions of the Red Bluff City Zoning Code (Title 25 of the Red Bluff City Code), Marijuana Dispensaries are not identified as a permitted use, or a use permitted subject to a use permit, in any zoning district in the City. While the City interprets these provisions to mean that such uses are prohibited, numerous other local governments, including the Cities of Corning, Anderson, Claremont, and Corona, have faced arguments that Marijuana Dispensaries are permitted uses under similar ordinances, or are encompassed within generic permitted uses, such as "miscellaneous retail" or "medical clinics."

(H) Other local governments in the region, including the Cities of Corning and Anderson, whose ordinances did not clearly address Marijuana Dispensaries, witnessed the rapid establishment of such facilities, whose operators then claimed exemption from later-enacted regulations.

(I) The City intends to consider and study possible means of regulating or prohibiting Marijuana Dispensaries, including zoning regulations and other regulations, and by this Ordinance shall direct the immediate commencement of such consideration and study.

(J) If Marijuana Dispensaries are allowed to be established, developed, constructed, maintained, or operated in the City without appropriate regulation, such uses may be established in areas, or operated in a manner, that would conflict with the proposed regulations to be considered and studied by the City, and would therefore defeat the purpose of the proposal to study and adopt new regulations regarding Marijuana Dispensaries.

(K) The establishment, development, construction, maintenance, or operation of Marijuana Dispensaries, and the continued approval of use permits, variances, building permits, or any other applicable entitlements authorizing their establishment, would result in a current and immediate threat to the public health, safety and welfare, because such uses threaten to cause the harmful "secondary effects" identified above within the City of Red Bluff, and because such uses may frustrate the accomplishment of the goals of the Marijuana Dispensary regulations that the City will consider and study. It is therefore necessary to adopt this Ordinance to prohibit their establishment, development, construction, maintenance, or operation during the period of such consideration and study.

SECTION 3. In order to protect the public health, safety and welfare of the residents of the City of Red Bluff from a current and immediate threat, Section 25.213 is amended to add the following:

§25.213 PROHIBITED USES

(K) A Medical Marijuana Dispensary or Dispensary as defined in Section 25.239 is prohibited in all zones and districts of the City of Red Bluff and shall be considered a nuisance as defined in Section 15.1 of this Code.

(L) A medical Marijuana Collective as defined in Section 25.239 is prohibited in all zones and districts of the City of Red Bluff and shall be considered a nuisance as defined in Section 15.1 of this Code.

(M) A medical Marijuana Cooperative as defined in Section 25.239 is prohibited in all zones and districts of the City of Red Bluff and shall be considered a nuisance as defined in Section 15.1 of this Code.

SECTION 4. In order to protect the public health, safety and welfare of the residents of the City of Red Bluff from a current and immediate threat, Section 25.239 is amended to add a definition for Medical marijuana dispensary or dispensary to read as follows:

MEDICAL MARIJUANA DISPENSARY OR DISPENSARY. 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 or more of the following: a "primary caregiver," a "qualified patient," or 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. 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: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a healthcare facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a 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 illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or a residential hospice, or 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. (Ord. 1059 § 2 (part), 2006)

SECTION 5. In order to protect the public health, safety and welfare of the residents of the City of Red Bluff from a current and immediate threat, Section 25.239 is amended to add a definition for Medical marijuana collectives to read as follows:

MARIJUANA COLLECTIVES. Marijuana Collectives means any group consisting of two or more patients, and/or their primary caregivers, who choose to associate together in the use or cultivation of medical cannabis/marijuana, or who facilitate the use of cannabis/marijuana for patients and/or their caregivers.

SECTION 6. In order to protect the public health, safety and welfare of the residents of the City of Red Bluff from a current and immediate threat, Section 25.239 is amended to add a definition for medical marijuana cooperative to read as follows:

MARIJUANA COOPERATIVE. *Marijuana Cooperative* means any group consisting of two or more patients, and/or their primary caregivers, who choose to associate together in the use or cultivation of medical cannabis/marijuana, or who facilitate the use of cannabis/marijuana for patients and/or their caregivers.

SECTION 7. This interim urgency ordinance is not a project under the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) ("CEQA"), and accordingly is not subject to its provisions. Nevertheless, to the extent that this interim urgency ordinance may be construed as a project, it is exempt from CEQA under the general rule that it can be seen with certainty that prohibiting the establishment or operation of marijuana dispensaries on an interim basis has no possibility of having a

significant effect on the environment, as set forth in California Code of Regulations, title 14, section 15061, subdivision (b)(3). Further, this interim urgency ordinance is exempt from CEQA pursuant to the provisions of Public Resources Code section 21080, subdivision (b)(4) and California Code of Regulations, title 14, sections 15307 and 15308.

SECTION 8. This Ordinance is an urgency ordinance necessary for the immediate preservation of the public peace, health, and safety. Pursuant to Government Code section 36937, this ordinance shall take effect immediately upon adoption by four-fifths of the City Council, and prior to the expiration of fifteen (15) days from the adoption thereof shall be published at least one time in the Red Bluff Daily News, a newspaper of general circulation.

The foregoing Ordinance was duly passed and adopted at a regular adjourned meeting of the Red Bluff City Council on _____ by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT OR NOT VOTING:

Wayne Brown, MAYOR

ATTEST: _____
Jo Anna Lopez, City Clerk

APPROVED AS TO FORM:

Richard Crabtree, City Attorney