

ORDINANCE NO. 2011-03

AN INTERIM URGENCY ORDINANCE OF THE CITY OF FERNDALE AUTHORIZING THE EXTENTION OF INTERIM URGENCY ORDINANCE NO 2010-03 WHICH IMPOSES A MORATORIUM ON THE LEGAL ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF FERNDALE PURSUANT TO GOVERNMENT CODE SECTION 65858.

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THE CITY COUNCIL OF THE CITY OF FERNDALE DOES ORDAIN AS FOLLOWS:

ARTICLE 1: SHORT TITLE, PURPOSE AND SCOPE

- §1.01 This ordinance shall be known and cited as the “Medical Marijuana Dispensary” Ordinance.
- §1.02: Purpose: It is declared that this article is enacted for the purpose of extending the urgency ordinance imposing a moratorium on the legal establishment and operation of medical marijuana dispensaries and related uses. This would allow the City to continue to review, add and/or amend ordinances in order to protect the public health, welfare, and safety from impacts associated with or implicated by use of property for Medical Marijuana Dispensaries.
- §1.03: Scope: This ordinance shall apply to any and all locations within the city limits of Ferndale.
- §1.04: The provisions adopted in this ordinance shall not be exclusive but shall be cumulative and complementary to any other provisions of Ferndale City ordinances and County, State and Federal laws. Nothing in this ordinance shall be read, interpreted or construed so as to limit any existing right or power of the City.

ARTICLE 2: STATUTORY AUTHORITY / ENFORCEMENT AUTHORITY

§2.01: Statutory and Enforcement Authority is granted in the following from the Health and Safety Code Section 11362.5 et seq. and Government Code Section 65858.

ARTICLE 3: ADMINISTRATION AND ENFORCEMENT

§3.01 Administration and Enforcement

- 3.01.1 The Chief of Police of the City is the chief law enforcement officer for the City. The Chief of Police shall carry out the additional powers and duties imposed by this ordinance.

ARTICLE 4: DEFINITIONS

§4.01 Definitions.

- 4.01.1 For the purpose of this ordinance, “medical marijuana dispensary” (MMD) means any 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 MMB includes a marijuana club as describe in People v. Peron, (1997) 59 Cal. App. 4th 1383, and further includes medical marijuana cooperatives. A MMB shall not include the following uses, as long as the location of such uses are otherwise regulated by the City’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 care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a residential hospice; or a home 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.

ARTICLE 5: NECESSITY

- §5.01 In 1996 the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 112362.5 et seq. and entitled it “The Compassionate Use Act of 1996”).
- 5.01.1 The intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law.
- 5.01.2 As a result of Proposition 215, individuals have established MMDs in various cities.
- 5.01.3 The experiences of California cities in the regulation and policing of MMDs have varied from city to city. Several California cities have experienced an increase in crime, such as burglary, robbery, loitering around the dispensaries, an increase in pedestrian and vehicular traffic and noise in the vicinity of the dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries in the areas immediately surrounding such MMDs.
- 5.01.4 In October 2005, the State Board of Equalization instituted a policy that allows MMDs to obtain a seller’s permit thus enabling the State to collect sales tax on medical marijuana sales.
- 5.01.5 Recent surveys with several California cities regarding the secondary effects of MMDs indicated the following mutual issues: street dealers attempting to sell to patrons entering/exiting dispensaries; smoking marijuana in public areas; driving while under the influence of marijuana; attempted burglaries of marijuana establishments; robberies of clients patronizing establishments; adverse impacts on neighboring businesses; physicians writing prescriptions for any patrol regardless of medical infirmity; nuisance behavior of patrons; and illegal drug sales from dispensaries.
- 5.01.6 The City has not adopted rules and regulations specifically applicable to the establishment and operation of MMDs. The lack of such controls may lead to a proliferation of dispensaries and the inability of the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent to and near such businesses, and the patient or clients of such establishments.
- 5.01.7 Based on the adverse secondary impacts experience by other cities and the lack of any regulatory program in the City regarding the establishment and operation of MMDs, it is reasonable to conclude that negative effects on the public health, safety and welfare may occur in Ferndale as a result of the proliferation of MMDs and the lack of appropriate regulations governing the establishment and operation of such facilities.
- 5.01.8 A MMD currently is not an expressly permitted use or a use permitted subject to a conditional use permit in any zoning district in the City of Ferndale. However, such establishments may seek to locate in any zoning district disguised as a permitted use or may seek to legalize this use.

5.01.10 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 MMD in the City may result in a threat to public health, safety and welfare in that the Ferndale Municipal Code does not currently regulate the location and operation of MMDs and does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of MMDs in the City.

§5.02 Enactment

- 5.02.1 For the period of this ordinance a MMD shall be considered a prohibited use in any zoning district of the City, even if located within an otherwise permitted use. No permits or authorizations for a MMD shall be issued while this ordinance is in effect.
- 5.02.2 The City Council finds that this ordinance 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. Conversely, it prevents changes in the environment pending the completion of the contemplated municipal code review.
- 5.02.3 The City Manager or his/her designee/s/ may: (1) review and consider options for the regulation of MMDs in the City, including, but not limited to the development of appropriate rules and regulations governing the location and operation of such establishments in the City; (2) meet with medical patients, advocates, law enforcement representatives, and other interested parties; and (3) shall file a written report describing the measures which the City has taken to address the conditions which led to the adoption of this ordinance with the City Council ten (10) days prior to the expiration of this interim urgency ordinance, or any extension thereof, and such report shall be made available to the public.
- 5.02.4 Pursuant to Section 65858 of the Government Code, a written report has been issued by the City Council of the City of Ferndale describing the measures that have been taken thus far to alleviate the condition that led to the adoption of the interim urgency ordinance.
- 5.02.5 This interim urgency ordinance is adopted pursuant to Section 65858 of the California Government Code.
- 5.02.6 This interim urgency ordinance shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council. This extension of the interim urgency ordinance will remain in effect for one (1) year from March 30, 2011, which is the expiration date of the 10-month, 15-day interim urgency ordinance extension and shall thereafter be of no further

force and/or effect. Unless otherwise extended as allowed by law, this ordinance shall expire on March 30, 2012.

ARTICLE 6: SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this ordinance.

ARTICLE 7: EFFECTIVE DATE: This interim urgency ordinance becomes effective thirty (30) days after the date of its enactment.

ARTICLE 8: POSTING REQUIREMENT: The City Clerk shall cause publication of this ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city, and posted in at least three public places in the city.

ARTICLE 9: ENACTING DATE AND SIGNATURES: Passed, approved and adopted by the City Council of the City of Ferndale at a regular meeting on March 3, 2011 by the following vote: (Maxwell/Titus)

AYES:	Farley, Titus, Lorenzen, Maxwell, Mierzwa
NOES:	0
ABSENT:	0
ABSTAIN:	0

Jeffrey Farley, Mayor

ATTEST:

Nancy Kaytis-Slocum, City Clerk