

**ORDINANCE NO. 2011-93**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENIFEE  
MAKING FINDINGS AND ADDING CHAPTER 5.50 TO THE  
MENIFEE MUNICIPAL CODE PROHIBITING  
MEDICAL MARIJUANA DISPENSARIES**

The City Council of the City of Menifee does ordain as follows:

Section 1. Findings

The City Council finds as follows:

- A. In 1996, the voters of the State of California adopted Proposition 215, the Compassionate Use Act (Health & Safety Code Section 11362.5) which provides for the medical use of marijuana; and
- B. In 2003 the Legislature passed the "Medical Marijuana Program Act" (Health & Safety Code 11362.5 et seq) which established a voluntary system for qualified patients and their caregivers to obtain identification cards to insulate them from arrest for violations of California law relating to medical marijuana use, and the Attorney General issues guidelines as well regarding collectives and cooperatives; and
- C. On June 6, 2005, the Supreme Court issued its decision in *Gonzales v. Raich* (2005) 545 US 1, holding that Congress, under the Commerce Clause of the United States Constitution, has the authority and, under the Federal Controlled Substances Act (21 USC Section 841), power to prohibit local cultivation and use of marijuana even though it would be in compliance with California law; and
- D. Several California courts appellate courts have upheld a temporary ban on medical marijuana dispensaries which created a documented threat to public health and safety as regulated under a city's police power (*Claremont v. Kruse* (2009) 177 Cal. App 4th 1153 which follows *Corona v. Naulls* (2008) 166 Cal. App. 4th 418); and
- E. A number of surrounding cities have banned such dispensaries, including the County of Riverside, Wildomar, Temecula, Murrieta, Perris and Lake Elsinore; and
- F. On June 16, 2009, as extended on July 21, 2009 and June 15, 2010, the City Council adopted an interim urgency ban on the location of medical marijuana dispensaries within the City, all of which ordinances were adopted prior to January 1, 2011; and
- G. The City has received a number of inquiries regarding establishing medical marijuana dispensaries (including as storefronts) as well as collective or cooperatives but has no pending applications for such dispensaries;
- H. The City has studied the primary and secondary impacts of such uses over the previous two year period; and
- I. City staff has reviewed the White Paper on Marijuana Dispensaries promulgated by the California Police Chief's Association documenting the potential adverse secondary

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effects from dispensaries as destructive social problems, including, but not limited to an increase in ancillary crimes such as armed robberies, burglaries, drug dealing and murders, poisonings, the exposure of children to marijuana, the loss of trade for surrounding businesses, the deterioration of neighborhoods, the involvement of organized crime in the ownership and operation of dispensaries as well as an increase in loitering, traffic congestion, parking problems, noise and firearm violations and income tax evasion, which White Paper is included in the record of this public hearing; and

- J. The neighboring City of Lake Elsinore has also reported the negative consequences of such facilities, which are supported by information from the Riverside County Sheriff's office; and
- K. Based upon that research conducted by the City and/or by other cities, medical marijuana dispensaries pose a current and immediate threat to the public health, safety and welfare from both primary and secondary impacts as described herein; and
- L. The provisions of AB 2650 and Health & Safety Code section 11362.768 subdivisions (f) and (g) provide restrictions on location of such facilities within 600 feet of schools (as defined therein), but also provide that local agencies may adopt stricter ordinances regarding the location of such facilities and that local ordinances adopted prior to January 1, 2011 are not preempted; and
- M. On April 26, 2011, the Planning Commission conducted a duly noticed public hearing at which all those wishing to be heard were allowed to testify and after discussion recommends to the City Council the adoption of this ordinance; and
- N. On May 17, 2011, the City Council conducted a duly noticed public hearing at which all those wishing to be heard were allowed to testify and after discussion the City Council approved first reading of the ordinance.

Section 2. Chapter 5.50 is added to the Menifee Municipal Code to read as follows:

- Section 5.50.010 - Definitions
- Section 5.50.020 - Prohibition


5.50.010. Definitions. "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 (1) 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 Divisions 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 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 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.

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5.50.020. Prohibition. A medical marijuana dispensary as defined in Section 5.50.010 is prohibited within the City. No permit of any kind, including but not limited to a conditional use permit, a building permit or business license, shall be issued to any person or entity seeking to establish such a dispensary. Notwithstanding, this Chapter shall in no way limit the right to possess, use or cultivate marijuana for medicinal purposes as authorized by the laws of the State of California as set forth in the Health and Safety Code, as those may be amended from time to time.

Section 3. This ordinance shall take effect 30 days from the date of its adoption.

PASSED, APPROVED AND ADOPTED this 7<sup>th</sup> day of June, 2011.

  
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Wallace W. Edgerton, Mayor

Attest:

  
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Kathy Bennett, City Clerk

Approved as to form:

  
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Karen Feld, City Attorney