ORDINANCE NO. 2220

AN ORDINANCE OF THE PEOPLE OF THE CITY OF CAMPBELL AMENDING SECTION 8.38.030 OF THE CAMPBELL MUNICIPAL CODE REGARDING MEDICAL MARIJUANA

The People of the City of Campbell do ordain as follows:

Section 1: Title. This ordinance shall be known as the Campbell Responsible Regulation of Medical Marijuana Act.

Section 2: Findings and Declarations.

A. Many people find that marijuana provides them with relief from a number of ailments.

B. However, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful; and many California cities, as well as the City of Campbell, have reported negative impacts of marijuana processing and dispensing activities, including but not limited to:

1. Dispensaries are home to marijuana crops and large amounts of cash, thereby making them targets for criminal activity. Jurisdictions with medical marijuana dispensaries report crime such as armed robberies, felony assaults, organized crime (particularly in the supply chain), and money laundering;

2. Many California cities, as well as the City of Campbell, have experienced trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests related to marijuana cultivation and dispensing;

3. Quality of life concerns also associated with dispensaries include, loitering, diversion of marijuana to non-patients (e.g. "shoulder tapping"), increased prevalence of marijuana smoking in public and increased use of marijuana by minors;

4. Marijuana grown or stored onsite can create strong odors which are offensive to many people and detectable far beyond property boundaries;

5. The strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery;
6. The indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building; and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants;

7. According to information from the City of San Jose, it is not uncommon for medical marijuana dispensaries to have between 500 and 700 customers on a daily basis. This is approximately 50 people per hour who arrive on foot and in vehicles, which can have a substantial impact on traffic congestion and parking in both residential and business districts; and

It would cost the City of Campbell an estimated $968,537 in staff costs annually to regulate up to 3 dispensaries.

C. The Statewide ballot measure known as Proposition 64, requires all cities to allow the cultivation of up to 6 marijuana plants per residence for the personal use of the residents;

D. In order to balance the needs of qualified patients with the adverse impacts of the cultivation, dispensing and processing of medical marijuana, the City Council of the City of Campbell adopted a series of ordinances that:

1. Allow for delivery of medical marijuana to qualified patients in the City;

2. Limits the cultivation of the 6 plants per residence allowed under State law to indoor cultivation, subject to restriction designed to protect the safety and integrity of the surrounding neighborhoods, as well as the safety of the residential structures;

3. Prohibits marijuana dispensaries and processing, and the commercial sale or distribution of marijuana for non-medical purposes.

E. An initiative petition has qualified for a special election in the City of Campbell that would allow up to 3 dispensaries in the City, and increased cultivation of marijuana. Under the initiative petition:

1. Dispensaries could be located in Planned Development zoning districts, which includes areas developed for residential use;

2. Dispensaries could abut residentially zoned properties, except on the side of the dispensaries on which the dispensary has entrances or exits, or where the entrance or exit is on a side that shares a corner with a residential zoned property. Dispensaries could also abut legally existing residences that currently exist in non-residential zoning districts;

3. Dispensaries could be located near daycare operation, parks, and homes;
4. Patients could cultivate up to 100 square feet of marijuana plants without a license from the City;

5. Caregivers could cultivate up to 500 square feet of marijuana plants without a license from the City; and

6. No restriction is placed on where cultivation can take place.

Section 3: Purpose. This measure is intended to balance the needs of qualified patients to obtain medical marijuana with the need to preserve the quality of life for all of the citizens of the City of Campbell. Under the laws currently adopted in Campbell, qualified patients enjoy the ability to have medical marijuana delivered directly to them, as well as the right to grow up to 6 plants for their personal use. Allowing patients to obtain medical marijuana in this fashion has a far less intensive impact on the City than allowing dispensaries. The City needs time to assess whether or not the ability to obtain medical marijuana through deliveries and limited, personal cultivation provides adequate access for qualified patients, as well as to fully study the impacts marijuana dispensaries in other communities, and learn from their experiences. In order to further this intent, this measure would continue the City's current ban on dispensaries up through at least January 1, 2019. After January 1, 2019, the Campbell City Council would have discretion to allow a reasonable and appropriate number of dispensaries in the City, provided that the dispensaries could not be located near any sensitive use or other dispensary.

Section 4: Dispensaries. Campbell Municipal Code section 8.38.030 is hereby amended to read as follows:

8.38.030 Prohibited Activities; Exceptions.

A. Except as provided in subsections B, C, D and E of this section, Marijuana Processing, Marijuana Delivery, Marijuana Cultivation, and Marijuana Dispensaries shall be prohibited activities in the City. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of Marijuana Processing, Marijuana Delivery, Marijuana Cultivation, or the establishment or operation of a Marijuana Dispensary in the City, and no person shall otherwise establish or conduct such activities in the City.

B. The prohibitions set forth in subsection A shall not apply to the extent that such prohibitions are preempted by applicable State or Federal law.
C. Notwithstanding subsection A, Marijuana Cultivation is allowed for personal medical use to the same extent and under the same restrictions as allowed for personal use pursuant to Campbell Municipal Code section 8.40.040.

D. Notwithstanding subsection A, Marijuana Delivery shall be allowed from Marijuana Dispensaries located outside of the City of Campbell to Qualified Patients in the City of Campbell, subject to the following restrictions:

1. Only Marijuana Dispensaries that are licensed under the applicable laws of the State of California, including but not limited to the Medical Cannabis Regulation and Safety Act (California Business and Professions Code sections 19300 et. seq.,) and are operating in compliance with the applicable laws of the local jurisdiction in which the Marijuana Dispensary is located shall be allowed to provide Marijuana Delivery to a Qualified Patient in the City of Campbell;

2. Prior to commencing Marijuana Deliveries to Qualified Patients in the City of Campbell, the Marijuana Dispensary shall register with the Police Department of the City of Campbell, and provide proof that the Marijuana Dispensary is licensed under the applicable laws of the State of California and operating in compliance with the applicable laws of the local jurisdiction in which the Marijuana Dispensary is located;

3. Prior to commencing Marijuana Deliveries to Qualified Patients in the City of Campbell, the Marijuana Dispensary shall provide the Campbell Police Department with the names and driver’s license numbers of all persons who will be conducting the deliveries; and the Marijuana Dispensary shall notify the Campbell Police Department of any changes in the identities of the persons conducting the deliveries within twenty-four hours of any change in that information; and

4. Annually, prior to July 1st of each year, the Marijuana Dispensary shall provide the Campbell Police Department with proof that the Marijuana Dispensary’s license under the applicable laws of the State of California and authorization to operate in the local jurisdiction in which the Marijuana Dispensary is located is current and in effect.

E. Notwithstanding anything contained in this section or section 8.40.040 to the contrary, on or after January 1, 2019, but not before then, the City Council may adopt an ordinance prescribing rules
and regulations allowing for the operation of a reasonable and appropriate number of Marijuana Dispensaries, provided that:

1. No Marijuana Dispensary shall be located within any zoning district zoned for residential use;

2. No Marijuana Dispensary shall be located within any Planned Development or Condominium Planned Development zoning district;

3. All Marijuana Dispensary operations must be conducted within a secured, fully enclosed building;

4. No part of any building containing a Marijuana Dispensary shall be located within 100 feet of the closest property boundary of any property zoned for residential use or on which a legally existing residential use is being conducted;

5. No part of any building containing a Marijuana Dispensary shall be located within 100 feet of the closest property boundary of any Planned Development or Condominium Planned Development zoning district;

6. No part of any building containing a Marijuana Dispensary shall be located within 600 feet of the closest property boundary of any property on which child day care facility or preschool is located;

7. No part of any building containing a Marijuana Dispensary shall be located within 600 feet of the closest property boundary of any property on which any schools—K—12, whether public or private are located;

8. No part of any building containing a Marijuana Dispensary shall be located within 600 feet of the closest property boundary of any park or the Campbell Community Center; and

9. No property on which a Marijuana Dispensary is located shall be located shall be within 600 feet of any other property on which a Marijuana Dispensary is located, as measured from the closest property boundaries.

Nothing contained in this section shall preclude the City Council from adopting more restrictive provisions should the Council determine that such provisions are necessary to protect the public health, safety, or welfare.

**Section 5: Prevalence Over Competing Measure.** This measure is, and is intended to be wholly in conflict with the provisions of the initiative measure submitted
by Proponent Kale Schulte entitled in section 1 of the petition as the “Campbell Medical Marijuana Regulation and Safety Act of 2016” that proposes adding Chapter 5.56 to the Campbell Municipal Code to allow up to three marijuana dispensaries in the City. In the event that both measures receive a majority of the votes cast in favor of the measures, but this City Council initiative entitled herein in section 1 as the “Campbell Responsible Regulation of Medical Marijuana Act” receives a higher number of affirmative votes than the measure entitled the “Campbell Medical Marijuana Regulation and Safety Act of 2016,” the provisions of this Campbell Responsible Regulation of Medical Marijuana Act shall supersede the measure entitled the “Campbell Medical Marijuana Regulation and Safety Act of 2016” in its entirety, and the addition of Chapter 5.56 to the Campbell Municipal Code shall be null and void.

Section 6: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared, invalid or unconstitutional.

Section 7: The City Council finds the approval of 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) 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. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 8: Effective Date. This ordinance shall become effective upon approval of a majority of voters voting on the measure for approval of this ordinance at the election to be held on April 25, 2017.