

**ORDINANCE NO. 28843**

**AN URGENCY INTERIM ORDINANCE OF THE CITY OF SAN JOSE ESTABLISHING A TEMPORARY MORATORIUM, IN THE EVENT THAT STATE OF CALIFORNIA PROPOSITION 19 PASSES BY A MAJORITY OF THE ELECTORATE PARTICIPATING IN THE NOVEMBER 2, 2010 STATEWIDE ELECTION, ON THE ESTABLISHMENT OR EXPANSION OF BUSINESSES INVOLVING THE CULTIVATION, PROCESSING, DISTRIBUTION, TRANSPORTATION, SALE, POSSESSION OR CONSUMPTION OF MARIJUANA THAT MAY BE ALLOWED UNDER PROPOSITION 19, PENDING THE REVIEW AND POSSIBLE AMENDMENT BY THE CITY OF SAN JOSE OF LAND USE AND OTHER REGULATIONS APPLICABLE TO SUCH BUSINESSES OR USES, AND SETTING FORTH THE LEGISLATIVE FINDINGS TO SUPPORT SUCH TEMPORARY MORATORIUM AND THE FACTS CONSTITUTING SUCH URGENCY**

**WHEREAS**, pursuant to the provisions of Title 21 of the San José Municipal Code and the provisions of the California Environmental Quality Act of 1970, all as amended to date (collectively, "CEQA"), the provisions of this Ordinance were found to be not a project under CEQA under File No. PP10-068(c) issued by the Director of Planning, as being an ordinance whose adoption would involve no physical changes to the environment; and

**WHEREAS**, the people of the State of California are scheduled to consider on November 2, 2010 a statewide ballot measure designated as Proposition 19, entitled "Legalizes Marijuana Under California But Not Federal Law. Permits Local Governments to Regulate and Tax Commercial Production, Distribution, and Sale of Marijuana. Initiative Statute," which would enact "The Regulate, Control and Tax Cannabis Act of 2010" ("Prop 19"); and

**WHEREAS**, if Prop 19 passes by a majority of the electorate participating in the November 2, 2010 statewide election, it would become effective on November 3, 2010

and the City does not have in place a regulatory framework, as allowed under Prop 19, to control, license, regulate, permit or otherwise authorize the cultivation, processing, distribution, transportation, sale, possession or consumption of marijuana, including without limitation the necessary zoning and land use regulations to address locations, sizes, hours of operation, and land use compatibility issues, posed by businesses engaged in such activities that may be allowed under Prop 19; and

**WHEREAS**, as noted in Prop 19, these City regulations are necessary and appropriate to protect the public health, safety and welfare; and

**WHEREAS**, the absence of such City regulations would be detrimental to and not protect or preserve the public health safety and welfare of residents of and visitors to the City of San José; and

**WHEREAS**, the City presently is experiencing challenges and growing concerns pertaining to the operation of approximately eighty (80) facilities located in the City providing marijuana for purportedly medical purposes in violation of current Municipal Code provisions, specifically but not limited to Title 20 of the San José Municipal Code (the City's "Zoning Code"), and negative behaviors and impacts in connection with these operations, such as loitering, violence, armed robberies, fires, and building code violations, reported by neighbors of these operations, City's Police Department and City's Code Enforcement Division; and

**WHEREAS**, there is a realistic possibility that current owners and operators of those existing establishments that dispense marijuana for purportedly medical purposes will be confused about the scope of what behaviors and activities are or can be allowed under Prop 19 if Prop 19 passes by a majority of the electorate on November 2, 2010, and City desires to minimize that confusion; and

**WHEREAS**, City needs time in the event that Prop 19 passes to identify and examine the public health, safety and welfare issues posed by the activities that are allowed and that may be allowed under Prop 19 and to develop appropriate regulations and policies, including without limitation land use regulations and policies, to address those public health, safety and welfare issues; and

**WHEREAS**, the City Council desires, in the event that Prop 19 passes, that the City Administration undertake a comprehensive review and examination of those public health, safety and welfare issues and to make a report and recommendation to the City Council on appropriate City regulations and policies to address those issues, including without limitation land use issues and land use compatibility issues, posed by the activities and operations that are allowed or that may be allowed under Prop 19; and

**WHEREAS**, during such period of review and examination, the community would be in jeopardy of new illegal businesses commencing, or of existing businesses illegally expanding, prior to the potential adoption of new City regulations intended to address, preserve and protect the public health, safety and welfare issues posed by the activities that City can consider allowing under Prop 19; and

**WHEREAS**, in fairness to all businesses and citizens, the City Council desires to establish a temporary moratorium on the establishment or expansion in the City of businesses that involve the cultivation, processing, distribution, transportation, sale, possession or consumption of marijuana that may be allowed under Prop 19 while the City Administration and City Council are conducting their reviews and formulating regulations or policies on this matter and until such time as the City Council has made a decision on the appropriate land use and other regulations applicable to marijuana-related establishments that may be allowed under Prop 19; provided, however, that this ordinance is in no way intended to legalize any future or pre-existing operation, activity or behavior that is otherwise unlawful under applicable laws; and

**WHEREAS**, pursuant to California Government Code Section 65858, City may adopt an ordinance temporarily prohibiting uses that may conflict with a contemplated zoning ordinance amendment that City wishes to study and consider within a reasonable period of time where City finds that there is a current and immediate threat to the public health, safety, or welfare and approval of such uses would result in that threat to public health safety or welfare, and City desires to adopt such an ordinance and set forth such related findings; and

**WHEREAS**, the City Council of the City of San José is the decision-making body for this proposed Ordinance; and

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

**SECTION 1.** A temporary moratorium is hereby established and imposed to be effective as of the passage of Prop 19 by a majority of the electorate of the State of California participating in the statewide election on November 2, 2010 on any or all of the following activities:

- A. The acceptance or processing of an application for any permit, or the issuance of any permit, under the San Jose Municipal Code for the establishment or expansion of a business involving the cultivation, processing, distribution, transportation, sale, possession or consumption of marijuana that may be allowed under Prop 19; or
- B. The establishment or expansion of a business involving the cultivation, processing, distribution, transportation, sale, possession or consumption of marijuana that may be allowed under Prop 19; or

- C. Conducting any business activity to the extent that the cultivation, processing, distribution, transportation, sale, possession or consumption of marijuana that may be allowed under Prop 19 occurs.

**SECTION 2.** This temporary moratorium applies to business activities pertaining to the cultivation, processing, distribution, transportation, sale, possession or consumption of marijuana that may be allowed under Prop 19. This temporary moratorium does not apply to and shall not prohibit purely individual and personal activities in connection with the cultivation, processing, transportation, or possession of marijuana for personal consumption that occurs in full compliance with Prop 19 and other applicable state laws. While this moratorium does not expressly apply to facilities that include the cultivation, processing, distribution, transportation, possession or consumption of marijuana solely for purportedly medical purposes, this ordinance also in no way legalizes those facilities or activities.

**SECTION 3.** The moratorium imposed hereunder: (a) shall be imposed only if Prop 19 has passed by a majority of the electorate of the State of California who voted in the November 2, 2010 statewide election, and (b) shall become effective as of the date and time that Prop 19 becomes effective. The moratorium imposed hereunder shall be of no further force and effect as of the earliest to occur of the following dates or events: (a) forty-five (45) days from the date of adoption of this interim Ordinance (December 17, 2010), or (b) the adoption by City Council and the effective date of an ordinance extending the moratorium imposed under this Ordinance, or (c) the adoption by City Council and the effective date of an ordinance setting forth the appropriate land use and other City regulations applicable to businesses that cultivate, process, distribute, transport, sell, possess or allow consumption of marijuana as that activity may be allowed under Prop 19. Nothing in this Ordinance precludes the City Council from taking a later action to extend the term of this temporary moratorium in accordance with the provisions of applicable law.

**SECTION 4.** Pursuant to the provisions of California Government Code Section 65858, the City Council of the City of San Jose hereby finds that there is a current and immediate threat to the public health, safety and/or welfare of City that warrants the imposition of this temporary moratorium on the establishment or expansion of businesses that cultivate, process, distribute, transport, sell, possess or allow the consumption of marijuana in a manner that may be allowed under Prop 19, which finding is based upon all of the following elements:

- A. The City presently lacks a regulatory framework related to the cultivation, processing, distribution, transportation, sale, possession or consumption of marijuana, as those activities may be allowed by businesses under Prop 19, and believes that regulatory controls pertaining to such business activities are necessary in order to address, protect and preserve the public health, safety and welfare in connection with issues that arise as a result of those activities; and
- B. As noted in that certain staff report dated October 22, 2010 and presented to City Council in connection with this Ordinance, recent violence, armed robberies, fires and building code violations already have been occurring at existing facilities in the City operating in violation of the San José Municipal Code that cultivate or dispense marijuana; and
- C. There exists a real potential for the existence of land use incompatibility issues arising out of the operation of businesses that cultivate, process, distribute, transport, sell, possess or allow the consumption of marijuana, which issues require careful study; and
- D. This Council has heard community and staff concerns that the serious public health, safety and welfare issues related to business activities involving the cultivation, processing, distribution, transport, sale, possession and consumption of marijuana as may be allowed under Prop

19 must be examined in order to inform legislative decisions related to appropriate land use and other regulations applicable to these business activities; and

- E. Without a temporary moratorium prohibiting the establishment or expansion of businesses involving the cultivation, processing, distribution, transport, sale, possession and consumption of marijuana as may be allowed under Prop 19 while community health and safety concerns are being examined and appropriate regulations and other legislative decisions are being developed and considered, there remains a real current and immediate threat that businesses will unlawfully commence or expand in a manner that would involve the cultivation, processing, distribution, transportation, sale, possession or consumption of marijuana and in a manner that is detrimental to the public health, safety or welfare because businesses mistakenly believe that those activities are allowed under Prop 19.

**SECTION 5.** In addition, this Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth in SECTION 4 of this Ordinance.

**SECTION 6.** This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San Jose and shall remain effective until the effective date of the superseding ordinance or December 17, 2010, whichever date first occurs.

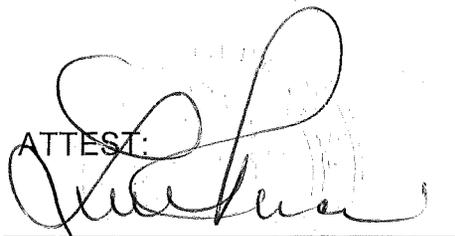
**ADOPTED** this 2nd day of November, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,  
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

ATTEST:  


LEE PRICE, MMC  
City Clerk



CHUCK REED  
Mayor