

**IN THE CITY COUNCIL OF THE CITY OF VALLEJO
ORDINANCE NO. 1714 N.C. (2d)**

**AN ORDINANCE AMENDING CHAPTER 5.05.250 OF THE VALLEJO MUNICIPAL CODE
PERTAINING TO COLLECTION OF TAX FROM MEDICAL MARIJUANA
DISPENSARIES**

WHEREAS, the Compassionate Use Act adopted by voters in 1996, and the Medical Marijuana Program Act, enacted by the state legislature in 2003, provided California's qualified patients and their primary caregivers with limited immunities to specified criminal prosecutions under state law for purposes including to ensure that qualified patients and their primary caregivers who obtain and use marijuana for medical purposes are not subject to state criminal prosecution; and

WHEREAS, in November 2011, City of Vallejo voters passed Measure C, a marijuana business tax-revenue ordinance which provides that payment of a business license tax and its acceptance by the City shall not entitle any person to carry on a marijuana business in a zone or locality in which the conduct of such marijuana business is in violation of any law; and

WHEREAS, the zoning ordinance of the City of Vallejo does not allow medical marijuana dispensaries or any marijuana business as a use, which renders any such use an illegal public nuisance per se; and

WHEREAS, in recent years, according to police sightings, neighborhood complaints, and internet information, more than 40 medical marijuana businesses operated or are operating in the City of Vallejo without any land use approval under the Vallejo Municipal Code, and an unknown number of these businesses continue to open, close, and reopen in Vallejo with no regulatory authorization from the City; and

WHEREAS, on April 28, 2015, Ordinance No. 1707 N.C. (2d) was adopted, which amended the marijuana tax ordinance to stop collection of the marijuana tax until the earlier of an effective date of a regulatory ordinance or October 20, 2015; and

WHEREAS, a regulatory ordinance, Ordinance No. 1709 N.C. (2d), was adopted by City Council on May 26, 2015, and subsequently suspended when a referendum petition was filed and certified by the City Clerk; and

WHEREAS, the City wishes to resume collection of marijuana tax and also address the continued proliferation of unauthorized medical marijuana dispensaries in the City by accepting tax from, and granting limited immunity from enforcement of its prohibition on medical marijuana dispensaries under the Vallejo Municipal Code to, those medical marijuana dispensaries that meet certain criteria, until the number of medical marijuana dispensaries is reduced to no more than four (4) medical marijuana dispensaries and until such time as the California Supreme Court rules on what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with court decision; and

WHEREAS, medical marijuana dispensaries are not legal within the City of Vallejo because Vallejo's zoning ordinance does not allow 'medical marijuana' as a use and therefore by law such use is prohibited; and

WHEREAS, despite the prohibition medical marijuana dispensaries have opened their doors and continue to operate in the City of Vallejo; and

WHEREAS, neither electrical or building permits, nor fire inspections, nor payment of taxes in any way bestows a legal right to use land for a medical marijuana dispensary; and

WHEREAS, all medical marijuana dispensaries currently operating are operating in violation of local law and therefore each such operation constitutes a nuisance; and

WHEREAS, Vallejo Municipal Code section 1.12.020 provides that uses contrary to the ordinances of the City of Vallejo constitute a public nuisance; and

WHEREAS, the City nevertheless recognizes that the availability of medical marijuana through a limited number of regulated medical marijuana dispensaries is a valid governmental interest to ensure access to those sick people who have a doctor's recommendation in compliance with state law while ensuring that the impacts of those dispensaries on the neighborhood are regulated, as detailed in staff reports; and

WHEREAS, the City expects that a number of medical marijuana dispensaries will close over time as a result of economics and/or competition, and the City wishes to minimize the diversion of City resources to lawsuits to close dispensaries.

NOW, THEREFORE, THE CITY OF VALLEJO CITY COUNCIL DOES ORDAIN as follows:

SECTION 1. Vallejo Municipal Code Chapter 5.05.250 is amended to read as follows:

5.05.250 – Amount of business tax owed.

D. Beginning September 20, 2015, no marijuana business tax shall be accepted by the City from any marijuana business that does not comply with Chapter 7.100.

SECTION 2. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after adoption.

FIRST READ at a special meeting of the Council of the City of Vallejo held on the 21st day of July, 2015 and finally passed and adopted at a regular meeting of the Council held on the 28th day of July, 2015 by the following vote:

AYES: Vice Mayor Malgapo, Councilmembers Dew-Costa, McConnell, Miessner, Sampayan and Verder-Aliga
NOES: Mayor Davis
ABSTAIN: None
ABSENT: None



OSBY DAVIS, MAYOR

ATTEST:



DAWN G. ABRAHAMSON, CITY CLERK

2 July 29, 2015