ORDINANCE NO. 2009-1703

AN INTERIM URGENCY ORDINANCE TEMPORARILY PROHIBITING ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SOLANO, DECLARING THE URGENCY THEREOF AND THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT

The Board of Supervisors of the County of Solano ordains as follows:

SECTION 1. Findings

A. The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law.

B. The manufacture, distribution, or possession of marijuana is a federal offense under the Controlled Substances Act (CSA), a federal regulatory system designed to combat recreational drug abuse.

C. In November 1996, California voters approved “The Compassionate Use Act of 1996” (Proposition 215), an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana.

D. The Courts have held that Proposition 215 does not conflict with the federal Controlled Substances Act because, in adopting these state laws, California did not “legalize” marijuana but instead exercised the state’s reserved powers not to punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition.

E. In 2003, the Legislature enacted Senate Bill 420 to clarify the scope of Proposition 215. Senate Bill 420 required the California Attorney General to adopt guidelines to ensure the security and non-diversion of marijuana grown for medical use.

F. In February 2007, the California State Board of Equalization issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit.

G. In August 2008, the California Attorney General published “Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use.” Section IV of this document provides guidelines regarding collectives and cooperatives. In this section, the Attorney General states: “Although medical marijuana ‘dispensaries’ have been operating in California for years, dispensaries, as such, are not recognized under state law.”
H. The sale or distribution of legal prescription and non-prescription drugs and medical remedies is generally an acceptable type of land use in most commercial zoning districts in the incorporated and unincorporated areas of Solano County.

I. Pharmacies are a land use allowed by right in the County’s Business and Professional Office (C-O) zoning district, although the structure used for such a business must comply with all applicable zoning standards and building codes, and the operator must obtain a business license.

J. There are currently no ordinances in Section 28 of the Solano County Code (“Zoning Regulations”) specifically regulating or monitoring the location, zoning standards, or other aspects of the facilities where medical marijuana may be dispensed to eligible persons under Proposition 215. The Zoning Regulations do not provide specific development regulations or definitions relative to the use or placement of dispensaries intended for the distribution of marijuana for medical purposes.

K. Several of the cities within Solano County, including Fairfield and Benicia, have enacted ordinances temporarily or permanently prohibiting the establishment or operation of any business that would distribute marijuana.

L. The County’s Department of Resource Management has recently received inquiries from individuals seeking to establish and operate medical marijuana dispensaries within the unincorporated area due, in part, to the legal difficulties of establishing such businesses within the incorporated cities.

M. The establishment of medical marijuana collectives, cooperatives, or other types of dispensaries without appropriate rules and regulations could result in the creation of negative secondary effects such as an increase in crime in the areas immediately surrounding such facilities and an irreversible incompatibility of land uses.

N. In order to allow time for the County to consider and study possible enactment of the implementing regulations, it is necessary to suspend the approval of all medical marijuana dispensaries that may be in conflict with development standards and implementing regulations the County intends to consider or study within a reasonable time.

O. A moratorium on all forms of medical marijuana dispensaries will provide the County time to draft and adopt regulations consistent with Proposition 215, Senate Bill 420, and the Attorney General’s Guidelines that will regulate the location and operation of such dispensaries while being consistent with the General Plan, Zoning Regulations, and compatible with surrounding land neighborhoods.
SECTION 2. Interim Prohibition

From and after the date of this ordinance, no use permit, variance, building permit, business license, or any other entitlement for use shall be approved or issued for the establishment or operation of a “medical marijuana dispensary” for a period of 45 days. For purposes of this ordinance, “medical marijuana dispensary” shall mean any facility or location where marijuana is made available, sold, transmitted, given, or otherwise provided to or between qualified individuals in accordance with the Compassionate Use Act of 1996 (Proposition 215).

SECTION 3. Urgent Need

This interim ordinance is urgently needed for the immediate preservation of the public health, safety, and general welfare, and it shall take effect immediately upon adoption, and it shall be of no further force and effect 45 days following the date of its adoption unless extended in accordance with the provisions set forth in California Government Code section 65858.

SECTION 4. Authority

California Government Code section 65858 provides that an urgency measure in the form of an initial interim ordinance may be adopted by a four-fifths vote of the board of supervisors, which shall be effective for only 45 days following its date of adoption. Government Code section 65858 further provides that such an urgency measure may be extended following compliance with that section for up to an additional 22 months and 15 days beyond the original 45-day period.

SECTION 5. Penalties

The definitions and penalties for land use violations that are prescribed in Section 28 of the Solano County Code shall apply to violations of the provisions of this interim ordinance.

SECTION 6. Severability

If any provision of this interim ordinance or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the interim ordinance are hereby declared to be severable.
PASSES AND ADOPTED by the Solano County Board of Supervisors at its regular meeting on September 22, 2009, by the following vote:

AYES: SUPERVISORS: Reagan, Seifert, Spering, and Chair Vasquez

NOES: SUPERVISORS: Kondylis

EXCUSED: SUPERVISORS: None

ATTEST:
Michael D. Johnson, Clerk of the Board

By: Patricia J. Crittenden, Chief Deputy Clerk