

**ORDINANCE NO. 174-10**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILLIAMS, CALIFORNIA AMENDING SECTIONS 5.04.010 AND 5.04.040 OF AND ADDING SECTIONS 17.04.235 AND 17.06.330 TO THE WILLIAMS MUNICIPAL CODE PROHIBITING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES AND OTHER BUSINESSES AND USES PROHIBITED BY STATE OR FEDERAL LAW**

**WHEREAS**, the City Council wishes to allow various and diverse uses of land, operations and businesses within Williams; and

**WHEREAS**, the City Council recognizes that certain uses of land, operations and businesses may be prohibited under state law or under federal law; and

**WHEREAS**, the City Council wishes to ensure that all land uses, operations and businesses within the City are permitted under both state and federal law, in order to protect the health and welfare of residents and visitors to Williams; and

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, et seq., and entitled the Compassionate Use Act of 1996 (“the Act”), and decriminalizing the use of marijuana for medical purposes; and

**WHEREAS**, on January 1, 2004, SB 420 went into effect, enacted by the Legislature to clarify the scope of the Act; and

**WHEREAS**, neither the Act nor SB 420 authorizes medical marijuana dispensaries nor requires the City to provide for medical marijuana dispensaries; and

**WHEREAS**, some California cities that have permitted the establishment of medical marijuana dispensaries have witnessed an increase in crime, such as burglaries, robberies, and sales of illegal drugs in the areas immediately surrounding such dispensaries, as shown in the studies and reports from the California Chiefs of Police Association, the Riverside County District Attorney’s Office, the City of Rocklin, and reports of various news agencies; and

**WHEREAS**, the United States Department of Justice’s California Medical Marijuana Information report has advised that large-scale drug traffickers have been posing as “caregivers” to obtain and sell marijuana; and

**WHEREAS**, in May 2001, the United States Supreme Court issued its decision in *United States v. Oakland Buyers’ Cooperative* (2001) 532 U.S. 483, holding that distribution of medical marijuana is illegal under the Federal Controlled Substances Act and there is no medical necessity defense allowed under federal law; and

**WHEREAS**, on June 6, 2005, the United State Supreme Court issued its decision in

*Gonzales v. Raich* (2005) 545 U.S. 1, which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and, under the Federal Controlled Substances Act, 21 U.S.C. section 841, the power to prohibit local cultivation and use of marijuana even though it would be in compliance with California law; and

**WHEREAS**, the City Council wishes to amend the Williams Municipal Code by amending sections 5.04.010 and 5.04.040 to clarify that no business which is illegal under state or federal law, including medical marijuana dispensaries, may be licensed or operated in Williams, and amending various provisions of title 17 to prohibit in all zones medical marijuana dispensaries and other land uses that violate either federal or state law (collectively, the “Zoning Amendment”); and

**WHEREAS**, at a duly noticed public hearing and public meeting in accordance with Government Code Section 65854, on March 16, 2010 the Planning Commission reviewed the Zoning Amendment and recommended its adoption by the City Council; and

**WHEREAS**, the Zoning Amendment is necessary to preserve the public health, safety and general welfare of the City and is not in conflict with the general laws.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WILLIAMS DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Authority.** The City Council enacts this Ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution.

**SECTION 2. Recitals.** The City Council hereby adopts the recitals and findings set forth above and in the staff report prepared in connection with this ordinance.

**SECTION 3. Amendment.** Section 5.04.010 of the Williams Municipal Code is hereby amended to read in full as follows:

**5.04.010 Purpose.**

- A. Subject to the provisions of this chapter, there is imposed upon all businesses, trades, professions, callings, occupations and gainful activities engaged in or carried on in the city, a business license tax.
- B. This chapter is enacted to raise revenue for municipal purposes and to provide for the health, safety and general welfare of the people of the city by assuring:
  - 1. Compliance with minimum standards for safe buildings;
  - 2. Compliance with building code provisions concerning the alteration and modification of the premises;
  - 3. Compliance with zoning regulations;
  - 4. Compliance with fire regulations;
  - 5. Monitoring the use and storage of hazardous materials; and
  - 6. Compliance with all federal, state and city laws and regulations.

**SECTION 4. Amendment.** Section 5.04.040 of the Williams Municipal Code is hereby amended to read in full as follows:

**5.04.040 Business license certificate required.**

- A. It is unlawful for any person to commence, transact, engage in or carry on any business, trade, profession, calling, occupation or gainful activity within the city without first having obtained a valid business license certificate and having paid the business license tax imposed and prescribed by this chapter, and/or without complying with any and all applicable provisions of this chapter.
- B. When a certificate specifies the location of the business licensed, the holder may conduct such business only at the location specified in the certificate.
- C. When any person, by the use of signs, circulars, cards, telephone books, or newspapers shall advertise, hold out, or represent that the person is in business in the city, or when any person makes a sale, takes an order, renders a commercial service, or performs any other similar act within the city, and such person fails to deny by a sworn statement given to the collector that the person is not conducting a business in the city after being requested to do so by the collector, then such facts shall be considered prima facie evidence that the person is conducting a business in the city.
- D. This chapter does not and shall not construed to license or permit the establishment or carrying on of any unlawful business, game or other activity. Every such unlawful business, game or other activity is prohibited and no license shall be authorized or issued therefor. Any business, game and activity shall be considered unlawful pursuant to this section if it violates federal or state law or any provision of this code.

**SECTION 5. Addition.** Section 17.04.235 of the Williams Municipal Code is hereby added to read in full as follows:

**17.04.235 Medical Marijuana Dispensaries.**

A Medical Marijuana Dispensary or any land use that violates either federal or state law is not a permitted use anywhere in the city. It shall be unlawful for any person or entity to own, manage, establish, conduct, or operate, or permit to be established, conducted, operated, owned, or managed as a landlord or property owner, any Medical Marijuana Dispensary, or to participate as a landlord, owner, employee, contractor, agent or volunteer, or in any other manner or capacity, in any Medical Marijuana Dispensary, in the city.

**SECTION 6. Addition.** Section 17.06.330 of the Williams Municipal Code is hereby added to read in full as follows:

**17.06.330 Medical Marijuana Dispensary.**

“Medical Marijuana Dispensary” means any facility or location where marijuana is stored, placed, cultivated, sold, traded, exchanged, bartered, made available to and/or distributed by or to one or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, whether or not in accordance with California Health and Safety Code Section 11362.5 et seq. However, Medical Marijuana Dispensary shall not include the following uses, as long as the locations of such uses are 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 health care 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 any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

**SECTION 7. Findings.** Based on the entire record before the City Council, and all written and oral evidence presented to the City Council, the City Council hereby makes and adopts the following findings:

The public necessity, convenience and general welfare require the adoption of the Zoning Amendment because: (i) the Zoning Amendment will help avoid the adverse secondary impacts created by medical marijuana dispensaries and other types of businesses that are illegal under state or federal law, including burglaries and takeover robberies, robberies of customers leaving such businesses, an increase in crime in the vicinity of such businesses, illegal re-selling of medical marijuana and other products obtained from such businesses, employees of such businesses selling medical marijuana to customers with obviously counterfeit identification cards, street dealers attempting to sell marijuana to customers of such businesses, customers using medical marijuana and other intoxicating products obtained from such businesses and then driving under the influence of such products, the sale of illegal products by such businesses, and sales of medical marijuana to minors, that have been observed in communities where medical marijuana dispensaries and other businesses that are illegal under state or federal law have been allowed to operate; and (ii) the Zoning Amendment will ensure that land uses that are illegal under federal or state law are not established in Williams.

**SECTION 8. CEQA.** Adoption of this Ordinance is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the CEQA Guidelines (14 CCR 15061(b)(3)). CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. It is therefore found and declared that the adoption of the regulations in this Ordinance will not have a significant effect on the environment.

**SECTION 9. Severability.** If any provision of this Ordinance or the application thereof to any person 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 this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

**SECTION 10.**        **Effective Date and Publication.** The City Clerk shall certify to the adoption of this Ordinance, and the City Clerk shall cause this Ordinance to be posted or published as prescribed by law. This Ordinance shall take effect thirty (30) days following its adoption.

**PASSED AND ADOPTED** this 21st day of April, 2010 by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

\_\_\_\_\_  
Angela Plachek-Fulcher, Mayor

**ATTEST:**

\_\_\_\_\_  
Rene Miles, City Clerk

**APPROVED AS TO FORM:**

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Ann M. Siprelle, City Attorney