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DATE: April 21, 2010

TO: Honorable Mayor and Members of the City Council

FROM: Development Services Department

SUBJECT: **ONE-YEAR EXTENSION OF AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE ESTABLISHING A MORATORIUM ON THE OPERATION OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF OCEANSIDE, PURSUANT TO GOVERNMENT CODE SECTION 65858**

**SYNOPSIS**

Staff recommends that the City Council extend by one year an interim urgency ordinance to continue a moratorium on the operation of medical marijuana dispensaries within the City of Oceanside and directs the City Manager to review and consider options for the regulation of medical marijuana dispensaries in the City.

**BACKGROUND**

On May 13, 2009, City Council adopted an Interim Urgency Ordinance by a vote of 4-to-0. This urgency ordinance was originally set to expire on June 27, 2009, but was extended at the June 17, 2009, City Council meeting for an additional ten months and fifteen days. That extension is set to expire on May 12, 2010, unless action of the City Council is taken to further extend the ordinance.

This proposal is comprised of one component, which is to extend for one year an interim urgency ordinance. This extension would continue the moratorium on the legal establishment and operation of medical marijuana dispensaries while staff prepares a report and recommendation for regulating this land use.

Since the adoption of the interim urgency ordinance, the City has not adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries. However, since May 13, 2009, staff has begun the process of reviewing and considering options for the regulation of medical marijuana dispensaries in the City, including, but not limited to, the development of appropriate rules and regulations governing the location and operation of such establishments in the City. These efforts have resulted in the basis for a preliminary draft of a report and will lead to preparing a comprehensive written report describing the measures which the City has taken to address the conditions which led to the adoption of this interim urgency ordinance.

The direction given by the City Council on May 13, 2009, and June 17, 2009, includes gathering public input prior to developing a recommendation. Preparing a report and possible amendment to regulate a land use that is subject to federal and state statutes requires additional time. The proposed extension of this ordinance would allow for the time needed to write a thoughtful report. The extension, which would upon adoption conclude on May 12, 2011, will provide additional time for garnering public input, conducting meetings, completing research and considering regulations for these establishments in a manner that will protect the general public, residents and businesses adjacent to and near such businesses, and the patients or clients of such establishments.

The adoption of an interim urgency ordinance is not subject to environmental review under the California Environmental Quality Act pursuant to Title 14 of the California Code of Regulations Sections 15060(c)(2) and 15060(c)(3). The adoption of an interim urgency ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. The adoption of the ordinance is not a project as defined in Section 15378, because it has no potential for resulting in physical change to the environment.

## **ANALYSIS**

### **1. General Plan**

The proposed extension of the interim urgency ordinance would affect most land use designations and lands within the City's jurisdiction. Proposing an extension for the interim ordinance conforms to the goals, objectives, and policies of the Land Use Element of the General Plan as follows:

#### **Land Use Element I Community Enhancement**

Goal: The consistent, significant, long-term preservation and improvement of the environment, values, aesthetics, character and image of Oceanside as a safe, attractive, desirable and well-balanced community.

Objective 1.1 Community Values: To ensure the enhancement of long-term community and neighborhood values through effective land use planning.

#### **Policies**:

- A. Land uses shall be attractively planned and benefit the community.
- B. Land uses shall not significantly distract from nor negatively impact surrounding conforming land uses.
- C. The City shall support and encourage the fulfillment of widespread neighborhood and community values.

The proposed extension of the moratorium on the legal establishment and operation of medical marijuana dispensaries provides the City Council the opportunity to direct staff to prepare a report describing how this land use would or would not 1) ensure the long-term community and neighborhood values; 2) comply with Oceanside's community enhancement goal, objective, and policies as stated in the General Plan; and 3) describe measures which the City has taken to address the conditions that led to the adoption of an interim urgency ordinance. The proposed interim ordinance complies with Objective 1.1 of the Land Use Element Community Enhancement Goal. The proposed extension will also allow the City to await judicial opinion expected in a case currently before the Fourth District Court of Appeal *Qualified Medical Patients vs. City of Anaheim* on the constitutionality of medical marijuana dispensary bans. Although oral argument was originally scheduled for that case in August 2009, it was not heard until September 2009. Following oral argument, the Court requested further briefing from the parties, and as of the date of this report, a decision has not yet been reached in that case. There is no current estimate when an opinion might be rendered, and thus, cities are left in a "holding" pattern awaiting the outcome of what should be a seminal case providing guidance to cities with regard to the limitations of their ability to regulate medical marijuana dispensaries.

## **2. Zoning Ordinance**

The proposed extension of the interim ordinance would continue a moratorium on the legal establishment and operation of medical marijuana dispensaries that was established on May 13, 2009, and extended on June 17, 2009. This use would not be permitted in any Zoning District within the City during the moratorium.

*Pursuant to Section 4502 of the Zoning Ordinance*, amendments to the zoning regulations, including changes to permit a use, shall be initiated by motion of the City Council.

*Pursuant to Section 4506.C of the Zoning Ordinance*, after the public hearing, the Council shall approve, modify, or reject the interim ordinance. Prior to adoption of an ordinance, the Council must make findings that the proposed regulation is consistent with the policies of the General Plan and the notice and hearing provisions of the Zoning Ordinance. If these findings cannot be made, then the ordinance would be denied.

### **FISCAL IMPACT**

Does not apply.

### **COMMISSION OR COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

In order to protect the public safety, health and welfare, the City Council, after a public hearing, may extend the interim urgency ordinance prohibiting the establishment of medical marijuana dispensaries within the City if it finds that such uses may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the Development Services Department is studying. The City Council may extend the interim ordinance if it finds that the approval of any medical marijuana dispensaries in the City would result in a threat to the public health, safety or welfare. The City Council shall hear testimony from staff and any interested parties regarding the extension of the interim ordinance, after which the City Council shall adopt or reject the proposed extension. Extension of the interim ordinance requires a super-majority (four-fifths) vote of the City Council.

If the full twelve-month extension is granted, then the interim ordinance shall be of no further force and effect 12 months after the expiration of the current ordinance, or May 12, 2011.

The City Attorney's Office has reviewed the proposed ordinance and approved it as to form.

**RECOMMENDATION**

Staff recommends that the City Council extend by one year an interim urgency ordinance to continue a moratorium on the operation of medical marijuana dispensaries within the City of Oceanside and directs the City Manager to review and consider options for the regulation of medical marijuana dispensaries in the City.

PREPARED BY

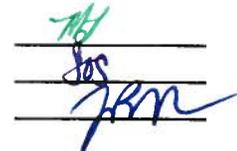
  
\_\_\_\_\_  
Jerry Hittleman  
City Planner

SUBMITTED BY

  
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Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager  
George Buell, Development Services Director  
John Mullen, City Attorney

  
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**ATTACHMENT:**

- 1. City Council Ordinance



1           WHEREAS, the establishment of a medical marijuana dispensary in the City will result  
2 in a direct and immediate threat to the public health, safety and welfare because the City does  
3 not currently regulate the location and operation of medical marijuana dispensaries and does not  
4 have a regulatory program in effect that will appropriately regulate the location, establishment,  
5 and operation of medical dispensaries in the City.

6           WHEREAS, the City Manager was directed to prepare a report describing the measures  
7 which the City would take to address the conditions which led to the adoption of the interim  
8 urgency ordinance and has prepared and submitted a preliminary report. Twelve months has  
9 proven to be insufficient time to prepare a comprehensive report because the City is awaiting an  
10 appellate court ruling from the 4<sup>th</sup> District on the Constitutionality of dispensary bans and until  
11 that seminal question is answered, the direction to hold public meetings, meet with interested  
12 parties, and review and consider options for the regulation of medical marijuana dispensaries in  
13 the City is premature. The extension proposed would allow sufficient time for the Court to rule  
14 on the issues in *Qualified Medical Patients vs. the City of Anaheim*.

15           NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

16           SECTION 1. Definition. For purposes of this ordinance, “medical marijuana  
17 dispensary” shall mean any facility or location where a primary caregiver intends to or does  
18 make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of  
19 the following: a qualified patient, a person with an identification card, or a primary caregiver.  
20 For purposes of this ordinance, the terms “primary caregiver,” “qualified patient,” and “a person  
21 with an identification card” shall have the same meaning as that set forth in Health and Safety  
22 Code Section 11362.5, et seq. A “medical marijuana dispensary” does not include the  
23 following uses, as long as the location of such uses are otherwise regulated by the City’s  
24 Municipal Code: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety  
25 code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety  
26 code; a residential care facility for persons with chronic life-threatening illness licensed  
27 pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code; a residential care facility  
28 for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a

1 residential hospice; or a home health agency licensed pursuant to Chapter 8 of the Health &  
2 Safety Code, as long as any such use complies strictly with applicable law including, but not  
3 limited to, Health & Safety Code Section 11362.5 et seq.

4 SECTION 2. There is a current and immediate threat to the health, safety and welfare of  
5 the citizens of the City of Oceanside if a medical marijuana dispensary locates in the City prior  
6 to the completion of the comprehensive report addressing appropriate rules and regulations of  
7 same. For the period of this ordinance a medical marijuana dispensary shall be considered a  
8 prohibited use in any zoning district of the City, even if located within an otherwise permitted  
9 use. No permits or authorizations for a medical marijuana dispensary shall be issued while this  
10 ordinance is in effect.

11 SECTION 3. The City Council finds that this ordinance is not subject to environmental  
12 review under the California Environmental Quality Act pursuant to Title 14 of the California  
13 Code of Regulations (CEQA Guidelines) §15060(c)(2) (the activity will not result in a direct or  
14 reasonably foreseeable indirect physical change in the environment) and §15060(c)(3) (the  
15 activity is not a project as defined in Section 15378) because it has no potential for resulting in  
16 physical change to the environment, directly or indirectly, it prevents changes in the  
17 environment pending the completion of the contemplated Municipal Code review.

18 SECTION 4. The City Manager or his designee shall: (1) review and consider options  
19 for the regulation of medical marijuana dispensaries in the City, including, but not limited to the  
20 development of appropriate rules and regulations governing the location and operation of such  
21 establishments in the City; (2) meet with medical patients, advocates, law enforcement  
22 representatives, and other interested parties; and (3) shall file a written report describing the  
23 measures which the City has taken to address the conditions which led to the adoption of this  
24 ordinance with the City Council ten (10) days prior to the expiration of this interim ordinance,  
25 or any extension thereof. The City Council shall make such report available to the public.

26 SECTION 5. This interim ordinance is extended pursuant to Section 65858 of the  
27 California Government Code.

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1 SECTION 6. Effective Date. This ordinance shall become effective immediately upon  
2 the expiration of the current moratorium and shall extend such moratorium by 12 months and  
3 upon its adoption by a four-fifths (4/5) vote of the City council pursuant to Government Code  
4 Section 65858.

5 SECTION 7. Expiration. This moratorium shall be of no further force or effect upon the  
6 expiration of twelve months from the date of expiration of the current moratorium adopted  
7 May 13, 2009, and extended June 17, 2009, and currently expires on May 12, 2010.

8 SECTION 7. Severability. If any section, sentence, clause or phrase of this Ordinance is  
9 for any reason held to be invalid or unconstitutional by a decision of any court of competent  
10 jurisdiction, such decision shall not affect the validity of the remaining portions of this  
11 Ordinance. The City Council hereby declares that it would have passed this ordinance and  
12 adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the  
13 fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid  
14 or unconstitutional.

15 INTRODUCED, PASSED AND ADOPTED at a regular meeting of the City Council of  
16 the City of Oceanside, California, held on the 21<sup>st</sup> day of April, 2010, by the following vote:

17 AYES:

18 NAYS:

19 ABSENT:

20 ABSTAIN:

21 MAYOR OF THE CITY OF OCEANSIDE

22  
23 ATTEST:

APPROVED AS TO FORM:

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25 \_\_\_\_\_  
26 CITY CLERK

27   
28 \_\_\_\_\_  
CITY ATTORNEY

27 TO EXTEND AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE EXTENDING BY 12 MONTHS A  
28 MORATORIUM ON THE OPERATION OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF OCEANSIDE PURSUANT TO  
GOVERNMENT CODE SECTION 65858