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DATE: May 13, 2009

TO: Honorable Mayor and Members of the City Council

FROM: Community Development Department/Planning Division

SUBJECT: **ADOPTION OF AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE PLACING A MORATORIUM ON THE LEGAL ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF OCEANSIDE PURSUANT TO GOVERNMENT CODE SECTION 65858.**

**SYNOPSIS**

Staff recommends that the City Council adopt an interim urgency ordinance placing a moratorium on the legal establishment and operation of medical marijuana dispensaries and direct the City Manager to review and consider options for the regulation of medical marijuana dispensaries in the City; to meet with interested parties; and to file a written report describing the measures which the City has taken to address the conditions that led to the adoption of this interim urgency ordinance.

**BACKGROUND**

In 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996. The purposes of the Act are as follows:

- To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.
- To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.
- To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

Since codifying the proposition, individuals have established medical marijuana dispensaries in various cities and there remains no state regulation or standard on the cultivation and or distribution of medical marijuana.

Local jurisdictions may establish local guidelines in accord with unique local concerns. A medical marijuana dispensary currently is not expressly permitted or permitted subject to a conditional use permit in any zoning district in the City. However, such establishments may seek to locate in any zoning district disguised as a permitted use, or may seek to legalize this use.

In March 2009, the U.S. Attorney General stated that federal law enforcement officials would ease enforcement at California medical marijuana establishments.

**Project description:** The proposal is comprised of one component, which is to adopt an interim urgency ordinance placing a moratorium on the legal establishment and operation of medical marijuana dispensaries within the City.

The City has not adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries. The lack of such controls may lead to a proliferation of dispensaries and the inability of the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent to and near such businesses, and the patients or clients of such establishments.

Following the adoption of the interim urgency ordinance and with direction from Council, the City Manager shall:

1. Review and consider 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;
2. Meet with medical patients, advocates, law enforcement representatives, and other interested parties; and
3. File a written report describing the measures which the City has taken to address the conditions which led to the adoption of this ordinance with the City Council ten (10) days prior to the expiration of this interim urgency ordinance, or any extension thereof.

The City Council shall make such report available to the public.

The proposed ordinance is subject to the following:

1. California Government Code
2. General Plan
3. Zoning Ordinance
4. California Environmental Quality Act (CEQA)

**Environmental Issues:** 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. California Government Code**

Pursuant to Section 65858 of the California Government Code, a City may adopt an interim urgency ordinance. The proposal complies with Government Code Section 65858 as follows:

California Government Code Section 65858. Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a ... city ... to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time.

There is sufficient evidence that the City shall protect public health, safety, and welfare by adopting as an urgency measure an interim ordinance prohibiting the legal establishment and operation of medical marijuana dispensaries within the City of Oceanside. Several California cities wherein medical marijuana dispensaries have been established have experienced an increase in crime, such as burglary, robbery, loitering around the dispensaries, an increase in pedestrian and vehicular traffic and noise in the vicinity of the dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries. For example:

- In 2005, five California cities (Rocklin, Roseville, Oakland, Hayward and Fairfax) were polled by the City of Concord regarding secondary effects of medical marijuana dispensaries in the cities, and such secondary effects included street dealers attempting to sell to patrons entering the dispensaries; smoking marijuana in public areas; driving while under the influence of marijuana; attempted burglaries of marijuana establishments; robberies of clients patronizing establishments; adverse impacts on neighboring businesses; physicians writing prescriptions for any patron regardless of medical infirmity; nuisance behavior of patrons; and illegal drug sales from dispensaries. The City of Davis prepared a report of secondary impacts which included similar experiences.
- In February 2006, a clinic in Tustin was shut down by the police after an undercover officer was able to buy marijuana without a prescription.
- In July 2006, several dispensaries were raided in San Diego and San Marcos for selling marijuana to persons without a prescription.
- In July 2007, narcotics agents shut down Natures Medicinal, Inc., a medical marijuana dispensary in the City of Bakersfield, and an employee of that clinic pleaded guilty in 2008 to conspiring to distribute and to possess with intent to distribute approximately 188 pounds of marijuana.
- In May 2008 a CHP officer was critically injured and another motorist killed in Ventura after an individual drifted onto the shoulder and struck the officer during a traffic stop. The driver was charged with driving while intoxicated, and an

investigation into the incident found that he had a large amount of marijuana in the vehicle that he had purchased from a dispensary in Compton.

A use where the owner possess and distributes marijuana for any purpose (including a medical marijuana dispensary, club, or cooperative) may be in conflict with a contemplated general plan, zoning ordinance, specific plan amendment that the City Council intends to study within a reasonable time. Therefore, the proposed urgency measure to adopt an interim ordinance prohibiting the establishment and or operation of a marijuana dispensary is consistent with California Government Code Section 65858.

## **2. General Plan**

The proposed interim urgency ordinance would affect all land use designations and lands within the City's jurisdiction. Proposing an interim urgency 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.
- D. The City shall support and encourage the fulfillment of widespread neighborhood and community values.

The proposed moratorium on the legal establishment and operation of medical marijuana dispensaries provides the City Council the opportunity to direct the City Manager to prepare a report describing how this land use ensures the long term community and neighborhood values; complies with Oceanside's community enhancement goal, objective, and policies as stated in the General Plan; and describes 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.

**3. Zoning Ordinance**

The proposed interim urgency ordinance would place a moratorium on the legal establishment and operation of medical marijuana dispensaries. 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 shall 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.

The establishment of a medical marijuana dispensary in the City will result in a threat to public health, safety and welfare because the City does not currently regulate the location and operation of medical marijuana dispensaries and does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical dispensaries in the City.

Staff finds that the proposed interim ordinance is consistent with the policies of the General Plan. Staff finds that the notice and hearing provisions of the Zoning Ordinance are supplanted by California Government Code 65858 due to the urgency to protect the public health, safety, and welfare.

**FISCAL IMPACT**

Not applicable.

**COMMISSION OR COMMITTEE REPORT**

Not applicable.

**CITY ATTORNEY’S ANALYSIS**

Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the City Council, to protect the public safety, health and welfare, may adopt as an urgency measure an interim 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 adopt 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 introduction and adoption of the

interim ordinance, after which the City Council shall adopt or reject the proposed interim ordinance. Adoption of an urgency measure requires a super-majority (four-fifths) vote of the City Council.

The interim ordinance shall be of no further force and effect 45 days from its date of adoption. However, after notice pursuant to California Government Code Section 65090 and public hearing, the City Council may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a supermajority (four-fifths) vote for adoption.

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

**RECOMMENDATION**

It is staff's recommendation that the City Council adopt the attached interim urgency ordinance placing a moratorium on the legal establishment and operation of medical marijuana dispensaries and direct the City Manager to review and consider options for the regulation of medical marijuana dispensaries in the City; to meet with interested parties; and to file a written report describing the measures which the City has taken to address the conditions that led to the adoption of this interim urgency ordinance.

PREPARED BY

SUBMITTED BY



Juliana von Hacht  
Associate Planner



Peter A. Weiss  
City Manager

**REVIEWED BY:**

Michelle Skaggs-Lawrence, Deputy City Manager  
George Buell, Development Services Director  
Jerry Hittleman, City Planner



**ATTACHMENTS:**

1. City Council Ordinance



1 patronizing establishments; adverse impacts on neighboring businesses; physicians writing  
2 prescriptions for any patron regardless of medical infirmity; nuisance behavior of patrons; and  
3 illegal drug sales from dispensaries. The City of Davis prepared a report of secondary impacts  
4 which included similar experiences.

5 WHEREAS, in February 2006, a clinic in Tustin was shut down by the police after an  
6 undercover officer was able to buy marijuana without a prescription. In July 2006, several  
7 dispensaries were raided in San Diego and San Marcos for selling marijuana to persons without  
8 a prescription;

9 WHEREAS, in July 2007, narcotics agents shut down Natures Medicinal, Inc., a medical  
10 marijuana dispensary in the city of Bakersfield and an employee of that clinic pleaded guilty in  
11 2008 to conspiring to distribute and to possess with intent to distribute approximately 188  
12 pounds of marijuana;

13 WHEREAS, in May 2008 a CHP officer was critically injured and another motorist  
14 killed in Ventura after an individual drifted onto the shoulder and struck the officer during a  
15 traffic stop. The driver was charged with driving while intoxicated, and an investigation into  
16 the incident found that he had a large amount of marijuana in the vehicle that he had purchased  
17 from a dispensary in Compton;

18 WHEREAS, in March 2009, the U.S. Attorney General stated that federal law  
19 enforcement officials would ease enforcement at California medical marijuana establishments;

20 WHEREAS, the City of Oceanside has not adopted rules and regulations specifically  
21 applicable to the establishment and operation of medical marijuana dispensaries and the lack of  
22 such controls may lead to a proliferation of dispensaries and the inability of the City to regulate  
23 these establishments in a manner that will protect the general public, homes and businesses  
24 adjacent to and near such businesses, and the patients or clients of such establishments;

25 WHEREAS, based on the adverse secondary impacts experienced by other cities and the  
26 lack of any regulatory program in the City of Oceanside regarding the establishment and  
27 operation of medical marijuana dispensaries, it is reasonable to conclude that negative effects  
28 on the public health, safety, and welfare may occur in Oceanside as a result of the proliferation

1 of medical marijuana dispensaries and the lack of appropriate regulations governing the  
2 establishment and operation of such facilities;

3 WHEREAS, a medical marijuana dispensary currently is not expressly permitted or  
4 permitted subject to a conditional use permit in any zoning district in the City. However, such  
5 establishments may seek to locate in any zoning district disguised as a permitted use, or may  
6 seek to legalize this use;

7 WHEREAS, the establishment of a medical marijuana dispensary in the City will result  
8 in a direct and immediate threat to the public health, safety and welfare because the City does  
9 not currently regulate the location and operation of medical marijuana dispensaries and does not  
10 have a regulatory program in effect that will appropriately regulate the location, establishment,  
11 and operation of medical dispensaries in the City.

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

13 SECTION 1. Definition. For purposes of this ordinance, “medical marijuana  
14 dispensary” shall mean any facility or location where a primary caregiver intends to or does  
15 make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of  
16 the following: a qualified patient, a person with an identification card, or a primary caregiver.  
17 For purposes of this ordinance, the terms “primary caregiver,” “qualified patient,” and “a person  
18 with an identification card” shall have the same meaning as that set forth in Health and Safety  
19 Code Section 11362.5, et seq. A “medical marijuana dispensary” does not include the  
20 following uses, as long as the location of such uses are otherwise regulated by the City’s  
21 Municipal Code: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety  
22 code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety  
23 code; a residential care facility for persons with chronic life-threatening illness licensed  
24 pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code; a residential care facility  
25 for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a  
26 residential hospice; or a home health agency licensed pursuant to Chapter 8 of the Health &  
27 Safety Code, as long as any such use complies strictly with applicable law including, but not  
28 limited to, Health & Safety Code Section 11362.5 et seq.

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

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

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

24 SECTION 5. This interim urgency ordinance is adopted pursuant to Section 65858 of the  
25 California Government Code.

26 SECTION 6. Effective Date. This ordinance shall become effective immediately upon  
27 the date of its adoption by a four-fifths (4/5) vote of the City Council pursuant to Government  
28 Code Section 65858.

1 SECTION 7. Expiration. This moratorium shall be of no further force or effect upon the  
2 expiration of forty-five (45) days from the date of adoption, unless extended in accordance with  
3 Government Code Section 65858.

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

11 INTRODUCED, PASSED AND ADOPTED at a regular meeting of the City Council of  
12 the City of Oceanside, California, held on the \_\_\_\_ day of \_\_\_\_\_, 2009, by the  
13 following vote:

14 AYES:

15 NAYS:

16 ABSENT:

17 ABSTAIN:

18 MAYOR OF THE CITY OF OCEANSIDE

19  
20 ATTEST:

APPROVED AS TO FORM:

21  
22  
23 \_\_\_\_\_  
CITY CLERK

  
\_\_\_\_\_  
CITY ATTORNEY

24  
25 AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE PLACING A  
26 MORATORIUM ON THE LEGAL ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES  
27 WITHIN THE CITY OF OCEANSIDE PURSUANT TO GOVERNMENT CODE SECTION 65858  
28

