ITEM NO. 14

STAFF REPORT

CITY OF OCEANSIDE

DATE: June 17, 2009

TO: Honorable Mayor and Members of the City Council

FROM: Development Services Department/Planning Division

SUBJECT: **EXTEND AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE EXTENDING A MORATORIUM ON THE LEGAL ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF OCEANSIDE**

SYNOPSIS

Staff recommends that the City Council extend by 10 months and 15 days an interim urgency ordinance which places a moratorium on the legal establishment and operation of medical marijuana dispensaries 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 shall expire on June 27, 2009, unless the Interim Ordinance is extended.

The proposal is comprised of one component, which is to extend for ten months and fifteen days 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. 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, 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, 2010, 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 Patients Assn v City of Anaheim) on the constitutionality of medical marijuana dispensary bans. Oral argument is scheduled for that case in August with an opinion expected by November, 2009.

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. 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

Not applicable.

COMMISSION OR COMMITTEE REPORT

Not applicable.

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.

The interim ordinance shall be of no further force and effect 12 months after the initial adoption, if the interim urgency ordinance is extended for the full 10 months, 15 days.

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 extend the interim ordinance and continue the moratorium on the legal establishment and operation of medical marijuana dispensaries for an additional ten months and fifteen days. Staff also recommends that the City Council 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

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SUBMITTED BY

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City Manager

REVIEWED BY:

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

ATTACHMENT:

1. City Council Ordinance

ORDINANCE NO.

TO EXTEND AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE EXTENDING BY 10 MONTHS AND 15 DAYS A MORATORIUM ON THE LEGAL ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF OCEANSIDE PURSUANT TO GOVERNMENT CODE SECTION 65858

WHEREAS, in 1996 the voters of the state of California approved Proposition 215 (codified as Health and Safety Code section 11362.5 et seq., and entitled "The Compassionate Use Act of 1996");

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law;

WHEREAS, as a result of Proposition 215, individuals have established medical marijuana dispensaries in various cities;

WHEREAS, there is no state regulation or standard on the cultivation and/or distribution of medical marijuana and each local jurisdiction may establish local guidelines in accord with unique local concerns.

WHEREAS, in October 2005, the State Board of Equalization instituted a policy that allows medical marijuana dispensaries to obtain a seller's permit, thus enabling the state to collect sales tax on medical marijuana sales;

WHEREAS, in March 2009, the US Attorney General stated that federal law enforcement officials would ease enforcement at California medical marijuana establishments;

WHEREAS, the City of Oceanside has not adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries and 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;

WHEREAS, a medical marijuana dispensary currently is expressly prohibited by an interim urgency ordinance.

WHEREAS, the establishment of a medical marijuana dispensary in the City will result in a direct and immediate threat to the 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.

WHEREAS, the City Manager was directed to prepare a report describing the measures which the City would take to address the conditions which led to the adoption of the interim urgency ordinance and has prepared and submitted a preliminary report. Forty-five days has proven to be insufficient time to prepare a comprehensive report because of the direction to hold public meetings, meet with interested parties, and review and consider options for the regulation of medical marijuana dispensaries in the City requires diligence. The extension proposed would allow sufficient time to complete said report.

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

SECTION 1. Definition. For purposes of this ordinance, "medical marijuana dispensary" shall mean any facility or location where a primary caregiver intends to or does make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. For purposes of this ordinance, the terms "primary caregiver," "qualified patient," and "a person with an identification card" shall have the same meaning as that set forth in Health and Safety Code Section 11362.5, et seq. A "medical marijuana dispensary" does not include the following uses, as long as the location of such uses are otherwise regulated by the City's Municipal Code: 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 & 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 & Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice; or a home health agency licensed pursuant to Chapter 8 of the Health &

Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.5 et seq.

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

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

SECTION 4. The City Manager or his designee 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) shall 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 ordinance, or any extension thereof. The City Council shall make such report available to the public.

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

SECTION 6. Effective Date. This ordinance shall become effective immediately upon the expiration of the current 45 day moratorium and shall extend such moratorium by 10 months

and 15 days upon its adoption by a four-fifths (4/5) vote of the City council pursuant to Government Code Section 65858.

SECTION 7. Expiration. This moratorium shall be of no further force or effect upon the expiration of ten months and fifteen days from the date of expiration of the 45 day moratorium adopted May 13, 2009, unless extended in accordance with Government Code Section 65858.

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

INTRODUCED, PASSED AND ADOPTED at a regular meeting of the City Council of the City of Oceanside, California, held on the 17th day of June, 2009, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

CITY ATTORNEY

TO EXTEND AN INTERIM 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