

AGENDA NO. 5

PLANNING COMMISSION



STAFF REPORT

DATE: May 5, 2014

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department/Planning Division

SUBJECT: **CONSIDERATION OF A ZONE AMENDMENT (ZA13-00005) TO AMEND THE 1992 OCEANSIDE ZONING ORDINANCE, ADDING MEDICAL MARIJUANA DISPENSARIES AS A NEW LAND USE WITHIN ARTICLE 4 AND ADDING SECTION 3043 "MEDICAL MARIJUANA DISPENSARIES" ESTABLISHING REGULATIONS AND PERFORMANCE STANDARDS TO ARTICLE 30 "SITE REGULATIONS". – APPLICANT: GEORGE SADLER – NATURE'S LEAF COLLECTIVE.**

RECOMMENDATION

Staff recommends that the Planning Commission adopt PC Resolution No. 2014-P10 recommending denial of Zone Amendment (ZA13-00005) and forward the recommendation to the City Council for final action.

As detailed below, staff makes this recommendation because although the State of California has adopted the Compassionate Use Act (CUA) and the Medical Marijuana Program (MMP) to ensure access of patients and caregivers to medical marijuana without being subject to prosecution, the subject use remains recognized by the Federal Government as an illegal activity. Further, the Oceanside Police Department considers the presence of Medical Marijuana Dispensaries in the City to be detrimental to public safety. Adding a Land Use that is in conflict with Federal Law, and contrary to the recommendation of local law enforcement would not be good public stewardship and in keeping with the best interest of the citizens of Oceanside.

The applicant does not agree with staff's recommendation of denial, and has requested that staff move the project forward to the Planning Commission. Pursuant to section 15270 "Projects which are Disapproved" of the CEQA guidelines, CEQA review is not required. If the Planning Commission decides to recommend approval of ZA13-00005, and the City Council ultimately approves in concept the Zone Amendment, the project would need to then return to the Planning Division for completion of the environmental review process.

PROJECT DESCRIPTION AND BACKGROUND

Application Background: On September 5, 2013, the City of Oceanside after having secured multiple permanent injunctions prohibiting operation of dispensaries within the City's boundaries, received an application for a Zone Amendment (ZA13-00005). The proposed zone amendment is a request to amend the 1992 Oceanside Zoning Ordinance, adding Medical Marijuana Dispensaries as a new land use within Article 4 and adding Section 3043 "Medical Marijuana Dispensaries" establishing regulations and performance standards to Article 30 "Site Regulations". **(Attachment 1)** The subject request is proposed to be implemented City-wide with the exception of properties located within the Coastal Zone, including the Downtown District Area (Former Redevelopment Area).

LEGAL ANALYSIS

Staff has focused their review and analysis based upon applicable case law and how the Compassionate Use Act and Medical Marijuana Program has been legally interpreted throughout the State. The following synopsis provides an overview of the State Acts and how Local Land Use Regulations and Control of the subject use are not pre-empted by the Acts':

COMPASSIONATE USE ACT

In 1996, California voters adopted Proposition 215 known as the Compassionate Use Act ("CUA"), codified as Health and Safety Code section 11362.5. The stated purposes of the CUA are:

1. 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. §11362.5, subd. (b)(1)(A).
2. To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes are not subject to criminal prosecution or sanction. §11362.5, subd. (b)(1)(B).
3. To encourage the state and federal government to implement a plan to provide for the safe and affordable distribution of medical marijuana. §11362.5, subd. (b)(1)(C).

The CUA exempts patients and their “primary caregivers” from criminal liability under state law for the possession and cultivation of marijuana for personal medical use. A qualified patient is an individual who has received a physician’s recommendation for the use of marijuana for a medical purpose, and the primary caregiver is someone who has consistently assumed responsibility for the housing, health, or safety of a patient. (§11362.5, subd. (e); see also *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 771). This limited criminal defense does not extend to those who supply marijuana to qualified patients and their caregivers; furthermore, selling, giving away, transporting, and growing large quantities of marijuana remain criminal notwithstanding the adoption of the CUA. (*Id.* at 772). The CUA does provide protection to physicians who “recommend” marijuana to qualified patients. Physicians, however, cannot issue a prescription because marijuana is illegal under federal law. (§11362.5, subd. (c)).

THE MEDICAL MARIJUANA PROGRAM

In 2003, the Legislature adopted the Medical Marijuana Program (“MMP”) to clarify the scope of lawful medical marijuana practices. The MMP was intended to:

1. Clarify the scope of the application of the CUA and facilitate prompt identification of qualified patients and their primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers;
2. Promote uniform and consistent application of the CUA among the counties within the state;
3. Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects; and
4. Address additional issues that were not included in the CUA in order to promote the fair and orderly implementation of the Act. (Stats. 2003, ch. 875, §1 (Sen. Bill No. 420)).

Additional terms are added to the MMP, including “qualified patient,” defined as a “person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.” (§11362.7, subd. (f)). There is also an expanded definition of “primary caregiver,” which retains the same language as that in the CUA, but provides examples of individuals who may act as a primary caregiver, including owners and operators of clinics and care facilities. This definition also added the requirement that a primary caregiver must, with limited exceptions, be at least 18 years of age. (§11362.7, subd. (e)).

The MMP also provided additional narrow immunities to specified individuals for specific conduct related to the provision of medical marijuana to qualified patients: “As part of its effort to clarify and smooth implementation of the [Compassionate Use] Act, the Program immunizes from prosecution a range of conduct ancillary to the provision of

medical marijuana to qualified patients.” (*People v. Mentch* (2008) 45 Cal.4th 274, 290 (citing § 11362.765). This “range of conduct” is carefully circumscribed and includes transportation of marijuana by qualified patients for their own personal medical use under §11362.765, subdivision (b) (1). The MMP also immunizes from criminal liability a “designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.” (§11362.765, subd. (b)(2)). On the “sole basis” of this immunized range of conduct under Section 11362.765, the specified individuals are not subject to criminal liability under the enumerated Health and Safety Code sections relating to marijuana.

Section 11362.775 of the MMP provides additional immunities to specific individuals who associate to collectively or cooperatively cultivate medical marijuana: “Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.” Like section 11362.765, section 11362.775 authorizes specific conduct (associating to collectively or cooperatively cultivate marijuana) by specific individuals (qualified patients with or without identification cards and their designated primary caregivers) and provides that, “solely on the basis of that fact,” such individuals are not subject to criminal sanction for violation of state marijuana laws.

A key aspect of the medical marijuana laws, however, is that there is no criminal immunity for commercial or for-profit distribution. Section 11362.765(a) provides “nothing in this section shall authorize ... any individual or group to cultivate or distribute marijuana for profit.”

LAND USE REGULATION AND LOCAL CONTROL

“Land use regulation in California historically has been a function of local government under the grant of police power contained in article XI, section 7 of the California Constitution.” (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1151). Article XI, section 7 provides that, “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” The California Supreme Court “has recognized that a city’s or county’s power to control its own land use decisions derives from this inherent police power, not from the delegation of authority by the state.” (*Id.* at 1151 (quoting *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 782)). “The power of cities and counties to zone land use in accordance with local conditions is well entrenched.” (*IT Corp. v. Solano County Bd. Of Supervisors* (1991) 1 Cal.4th 81, 89). “In enacting zoning ordinances, the

municipality performs a legislative function, and every intendment is in favor of the validity of such ordinances.” (*Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453, 460). Subject to the limitation that it not act contrary to state law, the police power of a city is as broad as the police power exercised by the state Legislature itself. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 140).

Based upon published case law as it exists today, medical marijuana activities can be regulated using local land use authority. For example, the court of appeal in *City of Corona v. Naulls*, affirmed the issuance of a preliminary injunction to close Ronald Naulls’ marijuana distribution facility, which was operating without a valid zoning designation. (*City of Corona v. Naulls* (2008) 166 Cal.App.4th 418). The court held that “where a particular use of land is not expressly enumerated in a city’s municipal code as constituting a *permissible* use, it follows that such use is *impermissible*.” Accordingly, “Naulls, by failing to comply with the City’s various procedural requirements, created a nuisance *per se*, subject to abatement in accordance with the City’s municipal code.” (*Id.* at 433).

The court of appeal upheld the trial court’s issuance of the preliminary injunction, opining that “Naulls did not comply with the City’s requirements, failing to take any steps to obtain approval before opening his doors for business. As a consequence, operation of marijuana dispensary violated the City’s municipal code and, as such, constituted a nuisance *per se*.” (*Id.* at 428). Importantly, the court of appeal rejected Naulls’ argument that the trial court erred in finding that any use not enumerated in the City’s zoning code was presumptively prohibited. The City’s Specific Plan listed all permissible and impermissible uses within each zoning district; neither selling nor distributing medical marijuana was among them. A prospective licensee could apply for a Planning Commission determination of the proper zoning, if any, for such miscellaneous uses. Naulls thus needed to obtain a “similar use” determination or an amendment to the Specific Plan. He did neither. (*Id.*).

In *City of Claremont v. Kruse*, the court specifically analyzed whether there was express or implied preemption by the CUA or the MMP that would prevent local regulations, such as zoning laws, from restricting the establishment of marijuana distribution facilities. (*City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1172-1176). The court of appeal held:

Zoning and licensing are not mentioned in the findings and declarations that precede the CUA’s operative provisions. Nothing in the text or history of the CUA suggests it was intended to address local land use determinations or business licensing issues. *The CUA accordingly did not expressly preempt the City’s enactment of the moratorium or the enforcement of local zoning and business licensing requirements.* (177 Cal.App.4th at 1175 (emph. added)).

The *Kruse* court's holding was not based solely on the existence of a temporary moratorium. Rather, the court plainly based its decision on the city's zoning and licensing authority found in Claremont's municipal code. "Neither the CUA nor the MMP compels the establishment of local regulations to accommodate medical marijuana dispensaries. The City's enforcement of its licensing and zoning laws ... does not conflict with the CUA or the MMP." (*Id.* at 1176; *see also City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal. 4th 729 (city's zoning prohibition was not preempted by state law).

Thus, the MMP provides an exception, under certain specified circumstances, to what was once deemed to be the *illegal* use and distribution of marijuana, but does not affirmatively grant marijuana users the "legal right" to open dispensaries and sell marijuana in clear violation of local laws. (*See e.g., People v. Urziceanu* (2005) 132 Cal.App.4th 747, 774 ("[T]he [CUA] created a limited defense to crimes, not a constitutional right to obtain marijuana."). As the appellate courts have already recognized, "the statute does not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose." (*County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 868-69; *Browne v. County of Tehema* (2013) 213 Cal.App.4th 704 (cultivation may be locally regulated).

Moreover, section 11362.83 of the MMP specifically provides:

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following: (a) Adopting local ordinances that regulate the location, operation, or establishment of medical marijuana cooperative or collective. (H&S Code § 11362.83(a)).

Similarly, section 11362.768, effective January 1, 2011, provides: "Nothing in this section shall prohibit a city . . . from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider. (H&S Code § 11362.768(f) (emph. added)).

Thus, as the court in *County of Los Angeles v. Hill* stated, "If there was ever any doubt about the Legislature's intention to allow local governments to regulate marijuana dispensaries, and we do not believe there was, the newly enacted section 11362.768 has made clear that local government may regulate dispensaries." (*County of Los Angeles v. Hill*, 192 Cal.App.4th at 868; *see also Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1153 [holding zoning ordinance was not preempted where state regulations "expressly preserve and plainly contemplate the exercise of local authority"]; *Candid Enterprise v. Grossmont Union HS District* (1985) 39 Cal.3d 878, 888 ["Preemption by implication of legislative intent may not be found where the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations"]; *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal. 4th 729).

The City of Oceanside

Pursuant to the City of Oceanside's zoning ordinance, a storefront marijuana dispensary is not considered a "permitted use." The City's ordinance is consistent with the MMP, as the City is not trying to criminalize what the Legislature has determined will no longer be criminal; nor is the City attempting to impose sanctions on qualified patients or designated primary caregivers "'solely on the basis of [the] fact' that [such individuals] have associated collectively or cooperatively to cultivate marijuana for medical purposes." (*County of Los Angeles v. Hill*, supra, 192 Cal.App.4th at 869 (citing § 11362.775)). Instead, the City is regulating the establishment of medical marijuana *distribution* businesses within its boundaries, something the MMP specifically states it can do. (*See Conejo Wellness Center, Inc. v. City of Agoura Hills*, (2013) 214 Cal. App. 4th 1534, 1550 (complete ban upheld, finding that the MMP does not interfere with local zoning authority to ban medical marijuana collectives and cooperatives)).

Oceanside's municipal code, like Claremont and Corona's municipal codes, lists all of the permitted uses within each zoning district, but does not include dispensing marijuana through a storefront among the classified uses. (*Naulls*, 166 Cal.App.4th at 431; *Kruse*, 177 Cal.App.4th at 1159-60; OZO, Article 11, § 1120). Under a permissive zoning code such as Oceanside's, any use not enumerated in the code is presumptively prohibited. (OZO § 420; *see also Naulls*, 166 Cal.App.4th at 425). Persons seeking to use their property for a non-enumerated use in Oceanside are required to follow specified procedures for obtaining the approval of such use. (OZO, Article 45). If they fail to secure such an amendment, yet continue to operate within the City, such operation may be enjoined as a nuisance *per se*. (177 Cal.App.4th at 1164-65).

The City of Oceanside's zoning ordinance and business license codes are applied equally to all uses and all businesses. All businesses which desire to operate in the City are required to comply. The Attorney General has recognized that "failure to follow local ... laws applicable to similar businesses" is one indicia that a collective or cooperative is operating unlawfully. (2008 Attorney General Guidelines for the Security and Non-Diversion of Marijuana Grown for Medicinal Use ("Guidelines"), p.11, section C.2 (emph. added); *see also County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 868-69 ("The limited statutory immunity from prosecution . . . does not prevent the County from applying its nuisance laws to MMD's that do not comply with its valid ordinances"))).

Section 17.3(m) of Oceanside's municipal code, expressly states that any condition caused or permitted to exist in violation of its provisions constitutes a public nuisance. (OCC §17.3; *see also Naulls*, 166 Cal.App.4th at 433 (holding that substantial evidence supported trial court's conclusion that defendant's failure to comply with city's procedural requirements before operating a medical marijuana dispensary "created a nuisance *per se*" and upheld the issuance of a preliminary injunction); *Kruse*, 177 Cal.App.4th at 1159 (dispensary was a nuisance *per se* subject to injunction)).

Pursuant to its zoning and abatement powers, the City has filed numerous cases seeking permanent injunctions to close illegally-operating marijuana dispensaries. In every such case, except those still pending, the City has secured a permanent injunction prohibiting operation of the dispensary within the City's boundaries. Recently, the City secured money judgments against two such operations in excess of \$800,000.00. (*People v. Green Vine, et. al*, CN 37-2013-00047878; *People v. Miller, et. al*, CN 37-2013-00034450).

PUBLIC SAFETY ANALYSIS

The Oceanside Police Department considers the presence of medical marijuana dispensaries within the City of Oceanside a detriment to public safety. In addition to the public safety factor, the Federal Justice System does not recognize any form of legalized marijuana and considers the substance contraband. During 2013, the Drug Enforcement Agency conducted enforcement operations against several medical marijuana dispensaries located within Oceanside.

During 2013, Oceanside Police investigated at least twenty six (26) robberies related to the sale/purchase of marijuana. Sixteen (16) were committed using firearms, six (6) were committed with the use of Tasers, knives and pepper spray and finally, three (3) were determined to be strong armed. Ten (10) of these were classified as Home Invasion, including one that occurred on a boat in the Oceanside Harbor. Thirteen (13) were classified as street robberies, and three (3) were classified as a Kidnapping, Carjacking, and Commercial Robbery.

The commercial robbery incident took place at 2525 South Vista Way (Natures Leaf dispensary). At least one armed suspect entered the business, held the victim at gunpoint and stole cash and marijuana. The business and victim(s) were less than cooperative during the investigation and gave varying information regarding how much cash and product were actually stolen. Since the incident, the business has hired a security guard; however, we have still received several calls for service including, most recently on December 7th, another call of an armed robbery which they denied took place.

Lack of cooperation with Law Enforcement is a common theme with dispensaries. During a business inspection at 909-913 South Coast Highway (Green Vine Collective) Detectives were denied access by an employee. This, despite a court mandated cease and desist order. Another dispensary at 1925 South Coast Highway (Levi's Actor Studio) was found, in 2012, to be furnishing marijuana to a subject who did not possess a Medical Marijuana card. The subject, who was arrested, admitted to purchasing marijuana from this dispensary on at least ten (10) occasions without a card.

Another concern regarding medical marijuana dispensaries is their sale of instruments to facilitate the use of Honey Oil. Honey Oil is a very concentrated form of Cannabis, the active ingredient in marijuana, which is obtained by a highly dangerous and explosive

extraction method utilizing white gas. While we have not seen dispensaries selling Honey Oil, which is illegal under both state and federal law, it does cause concern that it encourages the use of Honey Oil.

KEY PLANNING ISSUES

GENERAL PLAN CONFORMANCE

The 1992 Zoning Ordinance should not be amended because the creation of a new Land Use Designation referred to as “Medical Marijuana Dispensaries” citywide is inconsistent with the goals and objectives of the City’s General Plan. Staff analyzed the subject request to amend the Zoning Ordinance for consistency with the General Plan as follows:

A. 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.

1.11 Balanced Land Use

Policy B: The City shall analyze proposed land uses for assurance that the land use will contribute to the proper balance of land uses within the community or provide a significant benefit to the community.

Staff has reviewed the proposed Zoning Ordinance change, and has determined that the proposed land use would lessen the character and image of the City of Oceanside as a safe, attractive, and desirable community. Increase in illegal activities in close proximity to this type of Land Use have been heavily documented by the Oceanside Police Department and would not provide for a significant benefit to the community, but would rather create additional service impacts to Public Safety.

ENVIRONMENTAL DETERMINATION

Pursuant to Section 15270 (a) of the CEQA guidelines, CEQA does not apply to projects which a public agency rejects or disapproves. In addition, Section 15270 (b) allows for the initial screening of projects on the merits for quick disapprovals prior to initiation of the CEQA process where the agency can determine that the project cannot be approved. Should staff’s recommendation to deny be overturned, the project would need to be returned to staff in order to conduct the required CEQA review prior to any discretionary action on the project application.

RECOMMENDATION

Staff recommends that the Planning Commission adopt PC Resolution No. 2014-P10 recommending denial of Zone Amendment (ZA13-00005) and forward the recommendation to the City Council for final action.

PREPARED BY:



Richard Greenbauer,
Senior Planner

SUBMITTED BY:



Marisa Lundstedt,
City Planner

ML/RG/fil

Attachments:

1. Proposed Text Amendment Language
2. PC Resolution No. 2014-P10

City of Oceanside
Proposed Zoning Text Amendment
(Medical Marijuana Dispensaries)

General Description: To amend the Zoning Ordinance of the City of Oceanside to add use classifications for Medical Marijuana Dispensaries.

Rationale: Allowing Medical Marijuana Dispensaries to operate within the City of Oceanside is congruent with the General Plan of Oceanside and the City's goal of being conducive to good health and well-being. Permitting well-regulated Medical Marijuana Dispensaries will enable Oceanside's numerous qualified patients to obtain safe access to a crucial, low-impact source of medication recommended by their doctors.

Proposed additions/changes to the Zoning Ordinance of the City of Oceanside:

1. Addition of subpart "FF" to Section 450 of Article 4 of the Zoning Ordinance of the City of Oceanside:

FF. Medical Marijuana Dispensary: Any site, facility, location, use, collective, association, cooperative or business that distributes, dispenses, stores, sells, exchanges, processes, delivers, gives away, possesses and/or cultivates marijuana for medical purposes to, with, for and/or from qualified patients, health care providers, primary caregivers or physicians pursuant to Health and Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any state regulations adopted in furtherance thereof. These establishments shall be regulated by performance standards set forth in section 3043 of Article 30, as well as the location guidelines of Article 36.

2. Addition of "Medical Marijuana Dispensaries" to the list of uses permitted by Conditional Use Permit to zoning classifications CG and CS-HO in Article 11 of the Zoning Ordinance of the City of Oceanside.

3. Addition of "AA. Medical Marijuana Dispensaries" to the list of regulated uses in Section 3602 of Article 36 of the Zoning Ordinance of the City of Oceanside, and the addition of the following definition to Section 3603:

AA. Medical Marijuana Dispensary: Any site, facility, location, use, collective, association, cooperative or business that distributes, dispenses, stores, sells, exchanges, processes, delivers, gives away, possesses and/or cultivates marijuana for medical purposes to, with, for and/or from qualified patients, health care providers, primary caregivers or physicians pursuant to Health and Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any state regulations adopted in furtherance thereof.

4. Addition of Section 3043 to Article 30 of the Zoning Ordinance of the City of Oceanside, as follows:

Section 3043 – Medical Marijuana Dispensaries

The following regulations and performance standards shall apply to the operation of Medical Marijuana Dispensaries, as defined in section 450 of Article 4.

- A. Purpose. These regulations are designed to assure that the operations of Medical Marijuana Dispensaries are in compliance with California law and to mitigate the adverse effects from unregulated operation of Medical Marijuana Dispensaries, all to promote the public's health, safety and welfare.
- B. Definitions.
1. "Medical Marijuana Dispensary" shall mean a collective, cooperative, association or similar entity that cultivates, distributes, dispenses, stores, exchanges, processes, delivers, makes available or gives away marijuana for medical purposes to qualified patients, or primary caregivers of qualified patients pursuant to Health and Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any State regulations adopted in furtherance thereof, including Health and Safety Code Section 11362.7 et seq., (adopted as the "Medical Marijuana Program Act").
 2. "Marijuana" shall have the same meaning as used in Health and Safety Code Section 11018.
- C. Security Guard. During all hours of operation, there shall be at least one licensed, uniformed security guard on the premises of each Medical Marijuana Dispensary. Such guard(s) shall be licensed by the State of California Department of Consumer Affairs in a manner compliant with all applicable state and local laws.
- D. Hours of Operation. Hours of operation shall be limited to between the hours of 9:00 a.m. and 8:00 p.m., each day of the week.
- E. Location Criteria. Each Medical Marijuana Dispensary shall be located in compliance with the following requirements:
1. The use must be within a CG or CS-HO zoning classification area as described in Article 11 of the Zoning Ordinance of the City of Oceanside.
 2. No Medical Marijuana Dispensary may operate within a 600-foot radius from any "playground" (as defined in Health and Safety Code Section 104495(a)(1)) or "school" (as defined in Health and Safety Code Section 11362.768(h)), with such distance determination measured in accordance with Health and Safety Code Section 11362.768(c). If any playground or school begins operating within a 600-foot radius of any Medical Marijuana Dispensary after such dispensary has received permission to operate at the location in question, the use shall remain lawful.
 3. Medical Marijuana Dispensaries may not operate within a 1,000-foot radius from each other, with such distance determination measured in accordance with Health and Safety Code Section 11362.768(c).
- F. Dispensing of Marijuana. Medical Marijuana Dispensaries shall only dispense medical marijuana to qualified patients and/or their primary caregivers as defined by Health and Safety Code Section 11362.5, et seq.
- G. No Alcohol or Tobacco Sales. No alcohol or tobacco may be sold by Medical Marijuana Dispensaries.
- H. Mandatory Warning Sign. A sign shall be posted in a conspicuous location inside each Medical Marijuana Dispensary stating as follows: "The diversion of marijuana for non-medical purposes is a

violation of State law, as is loitering at this location for an illegal purpose. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery."

- I. No Marijuana Visible from Outside. No marijuana may be visible by the naked eye from the exterior of any Medical Marijuana Dispensary.
- J. No On-Site Consumption. No marijuana may be ingested, consumed or used on the premises of any Medical Marijuana Dispensary.
- K. No Excessive Dispensing. Per visit, each person obtaining medical marijuana from a Medical Marijuana Dispensary shall not be provided with an amount in excess of the end-user's personal medical needs, which shall be determined in the reasonable discretion of the Medical Marijuana Dispensary.
- L. Restriction on Underage Dispensing. No Medical Marijuana Dispensary may dispense marijuana to anyone under the age of 18 unless he or she is a qualified patient and is accompanied by a parent or legal guardian in accordance with California law.
- M. No Excessive Cash On-Site Overnight. Medical Marijuana Dispensaries shall not keep more than \$500.00 in cash overnight on the premises.
- N. Appearance. The exterior appearance of the structure housing any Medical Marijuana Dispensary shall be compatible with surrounding structures in the immediate vicinity, to ensure against blight, deterioration, or substantial diminishment or impairment of property values in the area.
- O. City Enforcement Access. All local code enforcement officers, police officers, and other agents or employees of the City of Oceanside requesting admission for the sole purpose of determining compliance with the provisions of this Section shall be given unrestricted access upon reasonable notice.
- P. Numerical Limit. There shall be no more than 10 Medical Marijuana Dispensaries in the City of Oceanside.
- Q. Indemnification of City. To the fullest extent permitted by law, the City of Oceanside shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to any medical marijuana dispensed through any Medical Marijuana Dispensary, or for the activities of any Medical Marijuana Dispensary. Upon receiving a conditional use permit, the primary operator (or officer or board, depending on the legal structure) of each Medical Marijuana Dispensary shall sign an agreement indemnifying and holding the City of Oceanside harmless to the fullest extent permitted by law, on behalf of the Medical Marijuana Dispensary.
- R. No Convicted Felons. No person who has been convicted of a felony under federal or state law within the past 7 years may operate or otherwise work at a Medical Marijuana Dispensary.
- S. Records and Inspection. All Medical Marijuana Dispensaries shall maintain sufficiently detailed written records regarding their processes for ensuring that medical marijuana is dispensed only to qualified patients and primary caregivers under Health and Safety Code Section 11362.5 et seq. Such records are subject to inspection by local police, upon reasonable notice, to ensure compliance with this Section.
- T. Confidential Patient Information. All approval and inspection processes conducted pursuant to this Section shall preserve to the maximum extent possible all legal protections and privileges of the parties involved, consistent with reasonably verifying the qualifications and status of qualified patients

and their primary caregivers. Disclosure of any patient information to assert facts in support of qualified status shall not be deemed a waiver of confidentiality of that information under any provision of law.

U. No "Profit" Permitted. No Medical Marijuana Dispensary may make a "profit" as contemplated under California law. Non-profit operations are permitted, including reasonable compensation for officers and employees, payment of all overhead expenses, and cash reserves as approved by the board of directors, officers, and/or members of each Medical Marijuana Dispensary, as applicable.

1 PLANNING COMMISSION
2 RESOLUTION NO. 2014-P10

3 A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY
4 OF OCEANSIDE, CALIFORNIA RECOMMENDING DENIAL OF A
5 ZONE AMENDMENT

6 APPLICATION NO: ZA13-00005
7 APPLICANT: Natures Leaf Collective, George Stadler
8 LOCATION: City-Wide with the Exception of the Coastal Zone

9 THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES
10 HEREBY RESOLVE AS FOLLOWS:

11 WHEREAS, there was filed with this Commission a verified petition on the forms
12 prescribed by the Commission requesting a Zone Amendment under the provisions of Articles
13 45 of the Zoning Ordinance of the City of Oceanside to permit the following:

14 amendment of the 1992 Oceanside Zoning Ordinance, adding Medical Marijuana
15 Dispensaries as a new land use within Article 4 and adding Section 3043 "Medical
16 Marijuana Dispensaries" establishing regulations and performance standards to Article
17 30 "Site Regulations" as shown in the attached Exhibit "A";

18 City-wide with the exception of all real property within the Coastal Zone.

19 WHEREAS, the Planning Commission, after giving the required notice, did on the 5th
20 day of May, 2014 conduct a duly advertised public hearing as prescribed by law to consider said
21 application;

22 WHEREAS, Pursuant to Section 15270 (a) of the CEQA guidelines, CEQA does not
23 apply to projects which a public agency rejects or disapproves. In addition, Section 15270 (b)
24 allows for the initial screening of projects on the merits for quick disapprovals prior to initiation
25 of the CEQA process where the agency can determine that the project cannot be approved;

26 WHEREAS, studies and investigations made by this Commission and on its behalf
27 reveal the following facts:

28 FINDINGS:

1. The creation of a new Land Use referred to as "Medical Marijuana Dispensaries" within the City of Oceanside Zoning Ordinance and establishment of regulations and performance standards that would allow dispensing, storage, cultivation, and/or selling of a controlled

1 substance would create a land use that is not recognized by the Federal Justice System and
2 would establish a land use that has proven to be a detriment to public safety.

3 2. Statistical data provided by the Oceanside Police Department has confirmed that the
4 addition of a new Land Use referred to as "Medical Marijuana Dispensaries" would
5 directly result in public service impacts associated with Police Services due to the trend that
6 such establishments increases criminal activity associated with this particular type of use.

7 3. The creation of a new Land Use referred to as "Medical Marijuana Dispensaries" is
8 inconsistent with the General Plan Land Use Element goal to ensure the consistent,
9 significant, long term preservation and improvement of the environment, values,
10 aesthetics, character, and image of Oceanside as a safe, attractive, desirable, and well-
11 balanced community. Creation of the subject land use would not be a significant benefit
12 to the City and would actually lessen the character and image of the City of Oceanside
13 as a safe, attractive, and desirable community by allowing a land use that is known to
14 increase illegal activities in close proximity to this type of land use.

15 NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby
16 recommend denial of Zone Amendment (ZA13-00005) to the City Council for final action.

17 PASSED AND ADOPTED Resolution No. 2014-P10 on May 5, 2014 by the following

18 vote, to wit:

19 AYES:

20 NAYS:

21 ABSENT:

22 ABSTAIN:

23 _____
24 Robert Neal, Chairperson
25 Oceanside Planning Commission

26 ATTEST:

27 _____
28 Marisa Lundstedt, Secretary

I, MARISA LUNDSTEDT, Secretary of the Oceanside Planning Commission, hereby certify that
this is a true and correct copy of Resolution No. 2014-P10.

Dated: May 5, 2014

100718



Application for Discretionary Permit

Development Services Department / Planning Division
 (760) 435-3520
 Oceanside Civic Center 300 North Coast Highway
 Oceanside, California 92054-2885

STAFF USE ONLY

ACCEPTED _____ BY _____

Please Print or Type All Information

HEARING _____

PART I - APPLICANT INFORMATION

1. APPLICANT <i>Nature's Leaf Collective</i>	2. STATUS <i>N/A</i>
3. ADDRESS <i>2525 Vista Way, 92054</i>	4. PHONE/FAX/E-mail <i>719-609-8978</i>
5. APPLICANT'S REPRESENTATIVE (or person to be contacted for information during processing) <i>George Sadler</i>	
6. ADDRESS <i>2525 Vista Way, 92054</i>	7. PHONE/FAX/E-mail

GPA	
MASTER/SP.PLAN	
ZONE CH. <i>2A13-00005</i>	<i>S/R/L</i>
TENT. MAP	
PAR. MAP	
DEV. PL.	
C.U.P.	
VARIANCE	
COASTAL	
O.H.P.A.C.	

PART II - PROPERTY DESCRIPTION

8. LOCATION <i>N/A</i>		9. SIZE <i>N/A</i>	
10. GENERAL PLAN <i>N/A</i>	11. ZONING <i>N/A</i>	12. LAND USE <i>N/A</i>	13. ASSESSOR'S PARCEL NUMBER <i>N/A</i>
14. LATITUDE <i>N/A</i>		15. LONGITUDE <i>N/A</i>	

PART III - PROJECT DESCRIPTION

16. GENERAL PROJECT DESCRIPTION <i>To amend the Zoning Ordinance of the City of oceanside to add use classifications for Medical Marijuana Dispensaries.</i>				
17. PROPOSED GENERAL PLAN <i>N/A</i>	18. PROPOSED ZONING <i>CG + CS-HO</i>	19. PROPOSED LAND USE <i>N/A</i>	20. NO. UNITS <i>N/A</i>	21. DENSITY <i>N/A</i>
22. BUILDING SIZE <i>N/A</i>	23. PARKING SPACES <i>N/A</i>	24. % LANDSCAPE <i>N/A</i>	25. % LOT COVERAGE or FAR <i>N/A</i>	

PART IV - ATTACHMENTS

26. DESCRIPTION/JUSTIFICATION	27. LEGAL DESCRIPTION	28. TITLE REPORT
29. NOTIFICATION MAP & LABELS	30. ENVIRONMENTAL INFO FORM	31. PLOT PLANS
32. FLOOR PLANS AND ELEVATIONS	33. CERTIFICATION OF POSTING	34. OTHER (See attachment for required reports)

PART V - SIGNATURES

SIGNATURES FROM ALL OWNERS OF THE SUBJECT PROPERTY ARE NECESSARY BEFORE THE APPLICATION CAN BE ACCEPTED. IN THE CASE OF PARTNERSHIPS OR CORPORATIONS, THE GENERAL PARTNER OR CORPORATION OFFICER SO AUTHORIZED MAY SIGN. (ATTACH ADDITIONAL PAGES AS NECESSARY).

35. APPLICANT OR REPRESENTATIVE (Print):	36. DATE	37. OWNER (Print)	38. DATE
Sign: _____		Sign: _____	

• I DECLARE UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT. FURTHER, I UNDERSTANDING THAT SUBMITTING FALSE STATEMENTS OR INFORMATION IN THIS APPLICATION MAY CONSTITUTE FRAUD, PUNISHABLE IN CIVIL AND CRIMINAL PROCEEDINGS.
 • I HAVE READ AND AGREE TO ABIDE BY THE CITY OF OCEANSIDE DEVELOPMENT SERVICES DEPARTMENT AND ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT POLICY NO. 2011-01/POLICY AND PROCEDURE FOR DEVELOPMENT DEPOSIT ACCOUNT ADMINISTRATION.