Meeting Date: 10 /17/06

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☐ Info/Consent
X Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	X Public Hearing
☐ Other _____	☐ Other _____

Prepared By: Stephanie Diaz SLD Agenda Item No. L-2

Reviewed By: City Manager City Attorney Finance Other *(Specify)*

DATE: October 2, 2006

TO: City Council

FROM: Susan L. Martin, Planning and Environmental Services Manager SMart
Development Services Department

SUBJECT: **An Urgency Ordinance Extending the Interim Prohibition on Medical Marijuana Dispensaries in the City.**

RECOMMENDATION

That City Council, by at least a 4/5 vote, approve an urgency ordinance extending Ordinance No. 2706 prohibiting medical marijuana dispensaries in Oxnard pending review and study of the issue by staff.

DISCUSSION

Background: On November 15, 2005, the City Council adopted Interim Urgency Ordinance No. 2706 prohibiting medical marijuana dispensaries, which was effective for 45 days. The Planning Division began studying issues arising from the fact that the City Code does not address this use and there are conflicts between State and Federal laws governing medical marijuana.

On December 20, 2005, the City Council adopted Ordinance No. 2712 that extended the interim ordinance for 10 months and 15 days to November 14, 2006. This time extension was granted to allow additional time for Planning Staff to research and address the issues legal and zoning.

Government Code section 65858(d) states: "Ten days prior to the expiration of an interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance." Since the interim ordinance expires on November 14, 2006, this report addresses the state law requirement. An urgency ordinance is provided as Attachment 1 to this report.

Legal Issues: In 1996, California voters enacted Proposition 215 (the Compassionate Use Act of 1996) which allows a person to use marijuana for personal use with a physician's approval without violating State laws regarding the possession of marijuana. However, in June 2005, the United States Supreme Court held that the federal Controlled Substances Act, which prohibits the possession of marijuana for personal use, may be enforced despite the State Compassionate Use Act.

Although the Compassionate Use Act does not address medical marijuana dispensaries, some argue that such laws imply that local agencies may allow the dispensaries to be established, despite the possibility that such a business may violate the federal Controlled Substances Act. This means that an individual with a medical prescription for marijuana could be arrested in California by federal officials for violating the Controlled Substances Act. California is one of ten states where medical marijuana is legal.

The Compassionate Use Act included a requirement that the State establish a procedure for individuals to apply for and receive an identification card for the purchase and use of medical marijuana based on a physician's prescription. This process has yet to be established. Also, counties were given the authority to establish a registry and identification card program. Staff is aware that Santa Barbara County and San Francisco City/County have set up a process for issuing identification cards for medical marijuana although individuals requesting a card must reside in those counties. Although not authorized by the Compassionate Use Act, several cities have adopted an identification card program, including the City of Santa Cruz and the City of San Diego. The County of Ventura does not have a registry or identification card program at this time. Also, various California counties and cities have adopted ordinances to either prohibit or permit dispensaries. Recently, Riverside County Supervisors voted to ban dispensaries after an earlier approval, based on the District Attorney's advice that the use would be an easy target for robbery. These local agencies have not been challenged by the Federal government, as far as Staff is aware.

Zoning Issues: Despite the State and Federal law conflicts and the lack of a local identification card program, Planning Staff has researched potential ordinance issues during the interim urgency ordinance period. In April 2006, the City Council held a work session to consider an ordinance outline that would authorize medical marijuana dispensaries. Issues that were raised for inclusion in such an ordinance included permits that may be required, siting criteria (separation from residential uses, other dispensaries, schools and playgrounds), performance standards (hours of operation, dispensing regulations, no plant growth or harvesting on-site and limiting the provision of marijuana to that prescribed by a physician). The City Council reviewed the issues and determined that the timing may not be appropriate to adopt an ordinance as there are Federal and State issues to be resolved.

Until such time that the State and Federal laws regarding medical marijuana dispensaries are clarified and a State or local registry/identification card system is established, the consideration of an ordinance either prohibiting or regulating these establishments in Oxnard is untimely. However, Planning Staff will continue to address the Zoning Ordinance changes that may be needed, in case the outstanding issues are clarified before the expiration of this proposed interim urgency ordinance on November 14, 2007.

If Federal, State and local issues are resolved, the City Council may adopt an ordinance that permits medical marijuana dispensaries addressing the zoning issues outlined above. If not, when an application is made, staff would most likely consider whether the use is allowed in zones that allow pharmacies and medical offices (such as C-O, C-1, C-2 and CBD). If the City Council does not adopt an ordinance allowing this use, the existing zone standards such as setbacks, parking and building height will regulate the use. The City Council would also have the option of adopting an ordinance that prohibits the dispensaries within the City.

FINANCIAL IMPACT

The adoption of the Interim Urgency Ordinance that would be in effect until November 14, 2007 will have no direct financial impacts. Indirect costs will be associated with Planning Staff work on monitoring the Federal, State and local issues as well as preparing potential Zoning Ordinance text.

SD:sd

Attachment 1 - Urgency Ordinance of the City of Oxnard Extending the Interim Prohibition of Medical Marijuana Dispensaries

ORDINANCE OF THE CITY OF OXNARD

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY OF OXNARD EXTENDING THE INTERIM PROHIBITION OF MEDICAL MARIJUANA DISPENSARIES

WHEREAS, on November 15, 2005, the City Council adopted Ordinance No. 2706, imposing an urgency interim prohibition of medical marijuana dispensaries pending study by the Planning and Environmental Services Division of the Development Services Department of a zoning proposal to address the prohibition or location and regulation of such businesses; and

WHEREAS, Ordinance No. 2706 was originally enacted for a period of 45 days after adoption, as provided by Government Code section 65858; and

WHEREAS, on December 20, 2005, the City Council adopted Ordinance No. 2712, extending the effective period of Ordinance No. 2706 and the urgency interim prohibition of medical marijuana dispensaries pending study by the Planning and Environmental Services Division of the Development Services Department of a zoning proposal to address the prohibition or location and regulation of such businesses; and

WHEREAS, Ordinance No. 2706 is in effect for the additional period of 10 months and 15 days after adoption, as provided by Government Code section 65858, unless extended for an additional 12 months; and

WHEREAS, such extended period of 10 months and 15 days is insufficient to allow the Planning and Environmental Services Division to prepare a zoning ordinance and for the Planning Commission to consider such an ordinance and recommend approval or disapproval thereof to the City Council, as required by the Oxnard City Code.

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

Part 1. For the reasons stated in Ordinance No. 2706, the City Council finds that the public safety, health and welfare require that medical marijuana dispensaries be prohibited as such businesses may be in conflict with a contemplated zoning proposal to address the prohibition or location and regulation of medical marijuana dispensaries that the Planning and Environmental Services Division of the Development Services Department intends to study within a reasonable time. For the reasons stated in Ordinance No. 2706, the question of the establishment of medical marijuana dispensaries constitutes a current and immediate threat to the public health, safety or welfare, and the approval of any zone clearance or business license for medical marijuana dispensaries required in order to comply with the zoning ordinance would result in that threat to public health, safety or welfare.

Part 2. While Ordinance No. 2706 or any extension thereof is in effect, no zone clearance, business license or other entitlement for use required in order to comply with the zoning ordinance shall be issued for a medical marijuana dispensary.

Part 3. Ordinance No. 2706 is extended for an additional 12 months from its scheduled expiration date of November 14, 2006.

Part 4. This ordinance shall become effective immediately on adoption as an urgency measure.

Part 5. Within 15 days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation in the City. Ordinance No. _____ was finally adopted on October _____, 2006.

AYES:

NOES:

ABSENT:

_____
Dr. Thomas E. Holden. Mayor

ATTEST:

APPROVED AS TO FORM:

_____
Daniel Martinez, City Clerk

James T. Rupp, Jr. for
Gary L. Gillig, City Attorney

ATTACHMENT NO. 1
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