



Meeting Date: 04 /04 /06

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input checked="" type="checkbox"/> Other: Study Session	<input checked="" type="checkbox"/> Other: Study Session

Prepared By: Stephanie Diaz, Contract Planner <sup>SD</sup>

Agenda Item No. Q-1

Reviewed By: City Manager *[Signature]*

City Attorney *[Signature]*

Finance *[Signature]*

Other (Specify) \_\_\_\_\_

DATE: March 28, 2006

TO: City Council

FROM: Susan L. Martin, AICP, Planning and Environmental Services Manager  
Development Services Department *[Signature]*

SUBJECT: Issues Related to Medical Marijuana Dispensaries

**RECOMMENDATION**

That City Council consider the report and ordinance outline authorizing medical marijuana dispensaries and provide direction to the Planning and Environmental Services Manager regarding regulation of such dispensaries or preparation of an ordinance prohibiting such dispensaries.

**DISCUSSION**

Background: On November 15, 2005, the City Council adopted an interim urgency ordinance 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 7, 2005, the City Council extended the interim ordinance for 10 months and 15 days from December 30, 2005, to allow additional time for City staff to research and address the issues.

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, staff is aware of several cities that 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.

The police departments in several cities have been concerned that the federal Department of Justice (DOJ) may take actions against cities for adopting ordinances to allow medical marijuana dispensaries despite the Compassionate Use Act. Such negative consequences may include the DOJ recommending denial of City applications for federal grants. To date, staff is not aware of any such actions being taken.

Zoning Issues: The City Council may decide not to adopt an ordinance that permits medical marijuana dispensaries but rather to adopt an ordinance that prohibits such establishments. Should the City Council wish to adopt an ordinance to authorize dispensaries, additional criteria can be required, such as site location requirements and performance standards. An outline of possible issues for an ordinance permitting medical marijuana dispensaries is provided with this report (Attachment 1) for discussion purposes. Staff would incorporate comments provided and return to the City Council with a completed ordinance at a later date.

As an alternative, if the City Council decides not to adopt an ordinance either prohibiting such use or allowing such use, then the first applicant requesting such use would need to apply for a zone text amendment to locate such uses. Staff would most likely consider such uses in zones that allow pharmacies and medical offices (such as C-O, C-1, C-2 and CBD).

Other City/County Actions: Staff's research has shown that cities throughout the State have taken different approaches to this issue. In 2000, the City of Santa Cruz adopted an ordinance allowing medical marijuana dispensaries and provider associations with a special use permit, siting criteria and performance standards. The City and County of San Francisco, which had 40 unregulated medical marijuana dispensaries, adopted zoning ordinance standards to allow medical marijuana in certain districts and with certain siting restrictions and setting out operating procedures for the dispensaries. In 2001, the City of San Diego adopted an ordinance for medical cannabis verification cards, the permissible amounts of marijuana carried by those with a verification card and rules for growing medical marijuana for personal use.

According to a February 16, 2006 article in the *Daily Journal*, a legal newspaper, the City of San Marcos in San Diego County recently banned businesses from distributing medical marijuana. San Marcos has one dispensary that may remain. The article also states that San Diego County has defied the Compassionate Use Act and has filed a legal challenge to it. Statewide, the article indicates that 49 cities have banned new marijuana dispensaries from opening, 15 cities have banned them altogether and 24 cities have established regulations to allow the dispensaries.

Proposed Ordinance Issues: Should the City Council wish to consider allowing such land uses, Attachment 1 contains a draft outline for an ordinance including siting criteria, performance standards and findings for medical marijuana dispensaries in the City. These are provided for the City Council's consideration. There may be some items that the City Council finds unnecessary and there may be new criteria that the City Council would like to include. Specifically, staff would appreciate input from the City Council on two of the findings (items 4.D.3. and 4.D.4.).

Finding 4.D.3. requires that the use not result in an "undue concentration" in any one neighborhood. Undue concentration is defined as more than two dispensaries per neighborhood by the ordinance outline in Attachment A. Finding 4.D.4. requires that the dispensary use not be located in a "high crime area." A discussion of the facts that should be found to support these conclusions would assist staff in drafting an ordinance.

### **FINANCIAL IMPACT**

If an ordinance is adopted that provides a permit process for medical marijuana dispensaries, City costs will be covered by planning permit fees. Also, business license fees will be collected by the City. There may be additional zoning enforcement and police enforcement costs if dispensaries do not operate as regulated by the ordinance.

SD/sd

Attachment #1 – Outline for Medical Marijuana Dispensary Ordinance Dated 04/04/06

**Outline for Medical Marijuana Dispensary Ordinance**  
**04/04/06**

1. **Location in Zoning Code** – This new section should be placed in Article V “Specific Use Requirements.” It could replace Division 10 “Oil Drilling Districts” which currently is a “Reserved” section. This ordinance would not be applicable in the Coastal Zone unless the City Council so directs.
2. **Purpose and Intent.** The intent of this ordinance is to provide a process for the issuance of special use permits for medical marijuana dispensaries located in the City, in accordance with the Compassionate Use Act of 1996. This would allow qualified patients access to marijuana for the treatment of medical conditions as specified by the patient’s physician.

3. **Definitions:**

Definitions may be included for terms such as “Qualified Patient,” “Primary Caregiver” and “Medical Marijuana Dispensary” as long as they are consistent with definitions in the State Health and Safety Code. It may not be necessary to include definitions if the ordinance refers to the Health and Safety Code definitions.

4. **Special Use Permit Requirement for Medical Marijuana Dispensary.**

- A. **Special use permit required.** Medical marijuana dispensaries shall be allowed only in the CM, ML, M-1 and M-2 zone districts provided they meet the siting requirements and performance standards described below and are so authorized by approval of a special use permit. The application requirements, notice and hearing requirements are set out in Division 3 (Special Use Permits) of Chapter 16 of the City Code.
- B. **Siting Criteria.** A special use permit for a medical marijuana dispensary may be granted only for a location that meets the following siting criteria:
  1. No dispensary may be located within 1,000 feet of a residential use or a residential zone district.
  2. The proposed location shall not be located within 1,000 feet of any other medical marijuana dispensary, any public or private educational establishment serving persons under the age of 18 years, a children’s playground, an alcohol or drug abuse recovery or treatment facility or mental health/social rehabilitation services.

00046

3. The 1,000 foot distance shall be measured from the periphery of the property boundary of the dispensary to the property boundary of the specified uses.

**C. Performance Standards.** Medical marijuana dispensaries for which a special use permit is granted shall meet the following operating procedures and performance standards:

1. The dispensary shall comply with all applicable State laws for the dispensing of medical marijuana.
2. Medical marijuana shall only be dispensed to a qualified patient or primary caregiver as defined by the State.
3. No marijuana product shall be grown or harvested on the premises.
4. No marijuana product shall be smoked, ingested or otherwise consumed on the premises or within 1,000 feet of the premises, as measured from the periphery of the property boundary of the dispensary.
5. The hours of operation shall be limited to 7:00 a.m. to 7:00 p.m. The Planning Commission or City Council on appeal may set different hours for good cause shown.
6. Parking shall be provided as for medical offices.
7. The dispensary operators shall provide adequate security, including lighting, camera, and alarms, to insure the safety of patrons and to protect the premises.
8. The dispensary operators shall prohibit loitering on the premises.
9. The dispensary shall provide the qualified patient or primary caregiver, as defined by State law, with the amount of marijuana recommended by the physician for use over a one-month period.
10. A dispensary shall not be permitted as an accessory use to any other principal use nor may it be permitted as a home occupation within any district of the City.
11. The owner/operator of a medical marijuana dispensary shall obtain a City business license.

00047

- D. Findings.** In approving a special use permit, the Planning Commission or City Council on appeal shall make the following findings in addition to the findings set out in Division 3 of Chapter 16 of the City Code.
1. The proposed use complies with the siting criteria of the City Code.
  2. The proposed use is designed to operate in accordance with the performance standards of the City Code.
  3. The proposed use will not result in undue concentration in any one neighborhood. Undue concentration means the location of more than two medical marijuana dispensaries within the neighborhood boundaries.
  4. The proposed use is not located in a high crime area, where a disproportionate number of police service calls occur.
- E. Appeals.** Action by the Planning Commission on a special use permit for a dispensary shall be subject to the appeal procedures in Section 16-545 (special use permit).
- F. Revocation.** A special use permit heretofore or hereafter granted may be revoked as set out in Section 16-552.

00048