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Staff Report Requesting Direction from the City Council Regarding the Draft Medical Marijuana Dispensary Ordinance

**SUMMARY AND RECOMMENDATIONS**

Staff requests that the City Council provide direction regarding the DRAFT medical marijuana dispensary ordinance.

**BACKGROUND**

Since the expiration of the moratorium on the issuance of land use entitlements related to uses involving medical marijuana dispensaries expired on October 1, 2012 the City Council has reviewed, taken public comment, held several meetings and provided comments upon a draft ordinance that would allow the operation of and impose regulations upon two medical marijuana dispensaries in the City.

Staff requests direction on next steps staff should take related to the community’s review of the ordinance. Two public presentations, one before the Board of Zoning Adjustments, and one before the Planning Commission, should be scheduled. Those two presentations will include a review of the proposed ordinance, and staff recommended amendments to the Zoning Code to bring the Zoning Code in compliance with the provisions of the proposed ordinance.

**Analysis**

The City had a moratorium on the issuance of land use entitlements, building permits, and business licenses for new medical marijuana dispensary related operations in the City. The moratorium was passed, and subsequently extended pursuant to City Council findings that included, amongst others,

uncertainty regarding the legality of dispensaries as legitimate means of complying with State and Federal law under the Compassionate Use Act, and Medical Marijuana Program Act, and various jurisdictions' efforts to ban, regulate, and raise revenue from such operations.

On July 16, 2012, pursuant to an appellate court decision that prohibited local jurisdictions from banning medical cannabis dispensary operations (***County of Los Angeles v. Alternative Medicinal Cannabis Collective*** (July 2, 2012) 207 Cal.App.4th 601 (2d Distr., Div. 1), the City Council decided that it would allow the moratorium to expire. The City Council also directed the City Council Rules and Communications Committee to develop an ordinance and amendments to the Zoning Code to allow a limited number of dispensaries to operate in the City. That direction culminated in the draft proposed ordinance now before the City Council. Recommended Zoning Code amendments that conform to the proposed ordinance are also drafted, and would be presented, along with the proposed ordinance, to the City's Board of Zoning Adjustments for review and comment, and the Planning Commission for review, comment, and recommendation to the City Council.

In early May, 2013, the California Supreme Court held, in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., et al.* (S198638), that cities and counties may pass outright bans on the establishment and operation of medical marijuana dispensaries within their jurisdictions. This case settled the issues called into question by several appellate court decisions (including *Alternative Medicinal Cannabis Collective*) on whether, notwithstanding the Compassionate Use Act and the Medical Marijuana Program Act, local agencies could enact land use and zoning regulations that could include an outright ban on medical marijuana dispensary operations. The law is now clear that cities may ban dispensaries, or regulate where, when, and how they operate.

To recap, the ordinance itself is modeled after the City of Oakland's 2011 amendments to its medical cannabis dispensary ordinance; the proposed ordinance also borrows from the City and County of San Francisco Department of Public Health's regulations related to edible cannabis product handling, labeling, and distribution. The ordinance is in strict compliance with the California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use. Staff also believes that the ordinance complies with the common law related to the establishment and operation of medical marijuana dispensaries.

Finally, the City Attorney has advised the City Council in past hearings and proceedings that the possession and distribution of marijuana is illegal under the Federal Controlled Substances Act. In a new memorandum dated August 29, 2013, the Justice Department ("Department") makes clear that marijuana remains an illegal drug under the Controlled Substances Act and that federal prosecutors will continue to aggressively enforce this statute. To this end, the Department identifies eight (8) enforcement areas that federal prosecutors should prioritize. These are the same enforcement priorities that have traditionally driven the Department's efforts in this area.

Outside of these enforcement priorities, however, the federal government has traditionally relied on state and local authorities to address marijuana activity through enforcement of their own narcotics laws. This guidance continues that policy. Thus, for states that have enacted laws to authorize the production, distribution and possession of marijuana, whether for medical or recreational uses, the Department expects these states to establish strict regulatory schemes. Based on assurances that those states will impose an appropriately strict regulatory system, the Department has informed the states that it is deferring its right to challenge their legalization laws at this time. But if any of the stated harms do materialize—either despite a strict regulatory scheme or because of the lack of one—federal prosecutors will act aggressively to bring individual prosecutions focused on federal

enforcement priorities and the Department may challenge the regulatory schemes themselves in these states. To summarize, if the City passes regulations in strict compliance with the California Attorney General's Guidelines, and dispensaries operate in conformance with the City's ordinance, staff is of the opinion that the likelihood of a raid of City approved dispensaries by Federal law enforcement agencies for violation of the Controlled Substances Act is low.

The ordinance's main provisions are as follows:

- ❖ 2 valid permits are allowed;
- ❖ The City Manager may impose separate conditions of approval, including allowing later hours of operation;
- ❖ A public hearing on approval of a Dispensary permit must be held by the Board of Zoning Adjustments pursuant to the approval of a conditional use permit;
- ❖ Operating, security, recordkeeping, facilities, and signage regulations are set in the ordinance;
- ❖ Dispensaries may only be located in the City's industrial and commercial zoning districts, and cannot be within 1,000 feet of a school, library, youth center, park and recreation facility, and another dispensary, and cannot be within 500 feet of a residential zone;
- ❖ On-site cooking and distribution of edible cannabis products is allowed and regulated to prevent the transmission of foodborne illnesses; and
- ❖ Payment of a non-refundable permit application fee, an annual permit renewal fee, and annual business license fee will be required at the amounts set by the City Council.

### **Previous Actions**

October 4, 2010: The City Council passed An Interim Urgency Ordinance Prohibiting Consideration and Approval of Use Permits, Variances, Building Permits, Start of New Construction, or Other Entitlements for Any Establishment or Operation of Medical Marijuana Dispensaries, Marijuana Cultivation Facilities, or Other Land Uses that Could Be Proposed Should Prop 19 Be Approved by Voters for a Forty-Five Day Period

November 15, 2010: The City Council extended the Interim Urgency Ordinance to October 1, 2011.

May 16, 2011: The City Council heard and did not pass an ordinance that would prohibit the establishment of medical marijuana dispensaries in the City. The moratorium continued in effect.

June 18, 2012: The City Council directed staff to prepare an ordinance prohibiting the establishment and operation of medical marijuana dispensaries with a sunset date.

July 2, 2012: The City Council took no action on an ordinance prohibiting the establishment and operation of medical marijuana dispensaries with a sunset date.

July 16, 2012: The City Council directed the City Council Rules and Communications Committee to work with staff on an ordinance that would permit the establishment and operation of medical marijuana dispensaries within the City.

November 7, 2012: The City Council Rules and Communications Committee approved the proposed ordinance, and forwarded it to City Council for review and comment.

December 3, 2012: Action item (Prior to the Action item, the City Council accepted the 11/07/2012

Rules and Communications Committee highlights and its recommendation to consider the proposed medical marijuana ordinance.). There was a consensus amongst the City Councilmembers to hold a City Council work session in February 2013 to receive public input on the draft medical marijuana dispensary ordinance.

February 12, 2013: Special meeting: “Staff Presentations including Background Information and Next Steps for Development of Proposed Medical Marijuana Dispensaries Ordinance”

May 20, 2013: “City Attorney Report on City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. Regarding California Supreme Court’s Decision on Medical Marijuana Dispensaries”

## **REQUEST FOR DIRECTION**

Staff requests direction from the City Council on next steps related to the review and passage of the DRAFT ordinance. If the City Council were to forward the DRAFT ordinance as presented to the Board of Zoning Adjustments and the Planning Commission, the ordinance could be heard by the BZA on the first Thursday in October, and the Planning Commission would hear the ordinance on the third Thursday in October. The City Council could hold the first reading of the ordinance at the City Council’s first regular meeting in November.

## **ATTACHMENTS**

- DRAFT Medical Marijuana Dispensary Ordinance

**PREPARED BY:** Richard D. Pio Roda, City Attorney

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