CITY COUNCIL AGENDA STATEMENT

CITY OF CHULA VISTA

September 13, 2011 Item 14

ITEM TITLE: PUBLIC HEARING: CONSIDERATION OF IMPLEMENTING CITY COUNCIL PROHIBITION OF MEDICAL MARIJUANA DISPENSARIES THROUGH ORDINANCE ENACTING CHULA VISTA MUNICIPAL CODE CHAPTER 5.66 (MEDICAL MARIJUANA DISPENSARIES)

ORDINANCE OF THE CITY OF CHULA VISTA ENACTING MUNICIPAL CODE CHAPTER 5.66 (MEDICAL MARIJUANA DISPENSARIES)

SUBMITTED BY: CITY ATTORNEY'S OFFICE

REVIEWED BY: CITY ATTORNEY'S OFFICE

4/5THS VOTE: YES ☐ **NO** ☒

SUMMARY

On July 15, 2011, the City Council approved Resolution No. 2011-143, entitled First Resolution of the City Council of Chula Vista Directing City Staff To Implement The Public Safety Subcommittee Recommendation Regarding Medical Marijuana Dispensaries and Related Policies ("Resolution"). By adding Chapter 5.66 to the Chula Vista Municipal Code, this item implements the component of the Resolution that prohibits "medical marijuana dispensaries" (defined [in the Resolution] as "commercial retail operations and similar operations." Staff analysis and proposals for implementation of other components of the Resolution are ongoing. These will be presented to Council at a future date.

Staff's previous detailed presentation on this topic presented to City Council on July 12, 2011, is attached hereto for background information.

ENVIRONMENTAL REVIEW

This proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a "Project" as defined under Section 15378 of the state CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to the CEQA. Thus, no environmental review is necessary.

RECOMMENDATIONS

Staff recommends that the Council approve the ordinance enacting Chapter 5.66 (Medical Marijuana Dispensaries) in order to implement previous City Council direction.

BOARDS/COMMISSION RECOMMENDATION

This action is consistent with the June 15, 2011 Public Safety Subcommittee action and recommendation.

DECISION MAKER CONFLICT

This item is not site-specific therefore there are no conflicts based on the 500-foot proximity of councilmember property holdings.

DISCUSSION

In order to formally implement City Council's action to prohibit medical marijuana dispensaries, the City Attorney's Office has created a new Chapter within the Chula Vista Municipal Code. The Chapter falls within Title 5, which governs "Business Licenses, Taxes and Regulations." Staff feels that incorporation of this Chapter within this Title is appropriate, because Title 5 contains regulations governing many different types of businesses. This Chapter is contained in the ordinance submitted herewith. The Chapter is similar to ordinances of other California cities and counties that have opted for a similar approach to addressing this issue. The Chapter does not provide for criminal enforcement in order to assure compliance with state law. Those who violate the provisions of the Chapter could still face administrative sanctions and fines, civil penalties, civil lawsuits and nuisance abatement actions, among other remedies.

Enacting this Chapter conforms with Item 1.b. of Resolution No. 2011-143, which directed City Staff to: "Continue to allow conventional patient/caregiver medical marijuana distribution (defined as a health clinic, a health care facility, a residential care facility for persons with chronic, life-threatening illnesses, a licensed residential care facility for the elderly, and/or a residential hospice or a home health agency as authorized by Health & Safety Code)." To ensure the facilitation and protection of this traditional caregiver-patient relationship, a carefully crafted definition of "Medical Marijuana Dispensary" was included in this Chapter. This definition, while prohibiting "Medical Marijuana Dispensar[ies]" exempts those facilities traditionally associated with medical and residential care.

A prohibited Medical Marijuana dispensary is defined in CVMC Section 5.66.10 as "any fixed facility or location" where three or more individuals are involved in the sale, transmission, cultivation or distribution of medical marijuana. (See specific language attached.)

This item is the first step in implementing Resolution No. 2011-143. Additional items for future Council consideration include (1) a permit process and system for monitoring and registering medical marijuana delivery services, and (2) further study of medical marijuana collective and cooperative models that comply with the Attorney General's guidelines and address other City staff public safety, land use and legal concerns. Depending on the outcome of this work and analysis, amendments to this new Chapter 5.66 could be proposed and implemented.

Planning Department staff does not recommend altering the zoning ordinance at this time, because a medical marijuana dispensary is not a permitted use within the zoning ordinance, nor is it similar to any identified "unclassified use." Accordingly, such a use already is a "prohibited use" from a zoning standpoint.

FISCAL IMPACT

To date, significant staff time has been expended. As staff proposals for implementation of other components of Resolution No. 2011-143 are ongoing, additional staff expenses are anticipated, but, at this time, not quantifiable. There will also be unknown staff costs associated with enforcement of this ordinance.

ATTACHMENTS

Previous staff report to City Council dated July 12, 2011.

CITY COUNCIL AGENDA STATEMENT

CITY OF CHULA VISTA

July 12, 2011 Item 25

ITEM TITLE: PRESENTATION OF PUBLIC SAFETY SUBCOMMITTEE RECOMMENDATION REGARDING MEDICAL MARIJUANA DISPENSARIES AND RELATED POLICIES AND CITY COUNCIL DIRECTION TO STAFF REGARDING NEXT STEPS

SUBMITTED BY: CITY ATTORNEY SRG

CHIEF OF POLICE

ASSISTANT CITY MANAGER, DIRECTOR OF DEVELOPMENT SERVICES

REVIEWED BY: CITY MANAGER JS

4/5THS VOTE: YES ☐ **NO** ☒

SUMMARY

With voter approval of Proposition 215 in 1996, the possession, distribution and use of marijuana for medicinal purposes was decriminalized in California under state law. State legislation adopted in 2004, and Attorney General Guidelines promulgated in 2008 clarified—but only somewhat—the manner in which this proposition might be implemented at the local level. Within this challenging legal framework, particularly over the last 5 years, many different types of medical marijuana distribution businesses have opened and begun operations, particularly in larger urban areas. Cities and counties have reacted to the reality and prospect of these new businesses in a number of ways, ranging from outright prohibitions (an action taken in approximately 126 jurisdictions to date) to proposals for actual government participation in the medical marijuana trade (as in Oakland and Isleton, although neither city ultimately took such an action). In the middle of this spectrum, many jurisdictions have chosen to impose moratoria on medical marijuana operations for purposes of studying the issue further, allowing for the emergence of greater clarity on the available range of legal options, and/or allowing for the development of regulatory "best practices." Almost every type of local action or response in this area has met with strong objections and/or legal challenge in one form or another, presented by one side or the other.

The first official City of Chula Vista action regarding medical marijuana was taken on July 21, 2009 with the adoption of a 45-day moratorium on medical marijuana "dispensaries" and related operations. This moratorium was extended on September 1, 2009, and again on June 22, 2010. During this two year time period the City Attorney's office monitored legal developments and collected and analyzed other jurisdiction's attempts at regulation. The Police Department

impacts. The Development Services Department monitored and gathered information regarding state and local laws regarding zoning and neighborhood impacts. Staff has engaged and exchanged information with multiple other jurisdictions confronting these same issues. Information provided by medical marijuana advocacy groups has also been collected and considered.

During this time period the legal challenges surrounding medical marijuana did not subside, and regulatory "best practices" did not develop to the extent staff had hoped. With the expiration of the City's moratorium approaching, the City Attorney's office engaged the City's Public Safety Subcommittee in order to present an update on medical marijuana issues and options, and to take public input. The Committee promptly took up the issue by agendizing the item for consideration at two noticed public forums. The first occurred on May 18th, the second on June 15th. Both public forums were well attended with substantial input provided by both local residents and outside interests on all sides of the issue. After considering staff's presentations, public input, and a recommendation from the City Manager, the Committee adopted a recommendation that the City (1) prohibit storefront, commercial retail operations, (2) continue to allow true "patient/caregiver" distribution as defined by state code, (3) continue to allow delivery service, (4) develop appropriate regulations for (2) and (3), and (5) further study and consider medical marijuana "collectives" that comply with the Attorney General's guidelines. This item presents the Committee's recommendation and asks for City Council direction on next steps.

ENVIRONMENTAL REVIEW

This proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to the CEQA. Thus, no environmental review is necessary.

RECOMMENDATIONS

The Public Safety Subcommittee recommends that the City Council direct staff to take all necessary steps to implement the following with respect to the possession, distribution and use of medical marijuana within the City of Chula Vista:

1. Do not permit MMJ "dispensaries."

   (defined as storefront, commercial retail operations)

2. Do continue to allow conventional patient/caregiver MMJ distribution

   (defined as a health clinic, a health care facility, a residential care facility for persons with chronic, life-threatening illnesses, a licensed residential care facility for the elderly, and/or a residential hospice or a home health agency as authorized by Health & Safety Code Section 11362.7(d)(1),.)

3 Do continue to allow MMJ delivery service.

4. Develop appropriate regulations for Items 2 and 3.

5. Further consider MMJ "collectives" that operate in accordance with the 2008 Attorney General's Guidelines by conducting further public outreach and study to evaluate the extent of community need, impact on neighborhoods and whether or not there exists an acceptable model of operation with matching, legally defensible regulations.

This recommendation is substantially similar to the City Manager's recommendation, with the exception that the City Manager does not endorse recommendation No. 5.

DECISION MAKER CONFLICT

This item is not site-specific therefore there are no conflicts based on the 500-foot proximity of councilmember property holdings.

DISCUSSION

A. Legal Framework

The legal framework in California regarding the distribution of medical marijuana is complex and continues to evolve. Although Proposition 215 was passed back in 1996, since that time no definitive guidance has been provided, by either the courts or the state, regarding the parameters within which medical marijuana can be grown and distributed. This environment has been frustrating for regulators and operators alike. What follows is a summary of the governing laws and continuing legal issues in this area. The last section contains the City Attorney's legal conclusions and advice.

1. Proposition 215 and its Implementing Statutes and Guidelines

In 1996, California voters approved Proposition 215, also known as the "Compassionate Use Act or 1996." Cal. Health & Safety Code § 11362.5. Proposition 215 provides seriously ill Californians the ability to obtain and use marijuana for medical purposes when such use is recommended by a physician without risk of criminal prosecution. The recommendation can be oral or written. Proposition 215 further provides that both the patient and the patient's "primary caregiver" are exempt from prosecution for violating state laws against the possession and cultivation of marijuana. "Primary caregiver" is defined as the individual designated by the patient who has consistently assumed responsibility for the housing, health, or safety of that person. *Id.*

Effective January 1, 2004, the Legislature enacted the "Article 2.5 Medical Marijuana Program" [Medical Marijuana Program] also commonly referred to as "SB 420" (Senate Bill 420). Cal. Health & Safety Code §§ 11362.7-11362.83. The legislation expanded the state law exemptions for qualified patients and primary caregivers to include exemptions from arrest and prosecution for possession for sale; transportation, distribution, and importation; maintaining a place for unlawfully selling, distributing, or using; knowingly making available a place for

unlawful manufacturing, storage, and distribution; and using such a place. The legislation also allows marijuana to be collectively or cooperatively cultivated for medical purposes by qualified patients and primary caregivers. Cal. Health & Safety Code § 11362.775. Cultivating or distributing marijuana for profit is expressly disallowed. Cal. Health & Safety Code § 11362.765(a). Primary caregivers may recover reasonable compensation for services and for out-of-pocket expenses. Cal. Health & Safety Code § 11362.765(c).

State law does not exempt the smoking of medical marijuana in places where smoking is otherwise prohibited, nor does it exempt smoking on a school bus, in a motor vehicle that is being operated, or within 1,000 feet of a school, recreation center, or youth center, unless the medical use occurs within a residence. Cal. Health & Safety Code § 11362.79. State law does not require workplaces or jails to allow medical marijuana use. Cal. Health & Safety Code § 11367.785.

The Medical Marijuana Program also established a voluntary identification card system to he maintained by the State Department of Health Services. Cal. Health & Safety Code § 11362.71. The intent of the Medical Marijuana Program is, in part, to insure a uniform, statewide identification program for patients and primary caregivers. As part of the Medical Marijuana Program, each county health department, or the county's designee, provides applications, receives and processes completed applications, and issues identification cards. Cal. Health & Safety Code §§ 11362.71(b); 11362.72-11362.74. Participation is voluntary and possession of an identification card is not required to qualify for the protections of Proposition 215 and the Medical Marijuana Program. The County continues to issue identification cards.

On February 19, 2010, the California Legislature approved AB 2650. AB 2650, restricts the location of a cooperative, collective or dispensary from being located within 600 feet of a school. AB2650 has been the only alteration to the Health & Safety Code medical marijuana provisions since 2004. See Cal. Health & Safety Code § 11362.768.

2. **Case Law**

California case law in this area has been slow to develop. However, since the enactment of the City's moratorium and its subsequent expiration, there have been important rulings which have shed some light on the legal status of dispensaries vis-à-vis the regulatory land use power of municipalities. Because each city has employed a different approach to regulating and/or prohibiting medical marijuana establishments case law results differ depending on the specific ordinances and underlying facts.

City of Corona v. Naulls 166 Cal. App. 4th 418 (2008). The California Appellate Court upheld a trial court's injunction preventing the operation of a medical marijuana dispensary because it did not comply with the City's zoning ordinance.

City of Claremont v. Kruse, 177 Cal. App. 4th 1153 (2009). This case confirmed that the Compassionate Use Act and Medical Marijuana Program do not preempt a city's enactment or enforcement of land use, zoning or business license laws as they apply to medical marijuana dispensaries. Based on the Court of Appeal's thorough analysis of state preemption law, cities retain their police power to regulate and, if necessary, restrict the operation of dispensaries.

Qualified Patients Association v. City of Anaheim 187 Cal. App. 4th 861 (2011). Plaintiffs sued the City of Anaheim on the City's explicit ban on medical marijuana dispensaries. Trial court upheld ban but ruled that federal law pre-empted state law. This case was expected to be the Appellate Court's first ruling on a municipal ban but the Appellate Court reversed trial court's ruling and order a retrial. Case re-tried this Spring, judgment is pending.

Los Angeles County v. Hill 192 Cal. App. 4th 861 (2011). Upholds Los Angeles County's regulations as not being pre-empted by the Compassionate Use Act "[t]he statute [CUA] does not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose."

3. Pending State Legislation

There have been numerous efforts to further enhance and/or restrict medical marijuana regulations in the State Legislature since passage of the Compassionate Use Act. The current pending initiatives are:

Senate Bill (SB) 847 would prevent medical marijuana entities (dispensaries, collectives, cooperatives, etc.) from being located 600 feet from a residential zone or residential use. On June 29, 2011, SB 847 passed the State Assembly Committee on Local Government and was referred to the Committee on Appropriations. Passage appears likely.

Assembly Bill (AB) 1300 seeks to clarify that local governments can enforce their land use and municipal codes against dispensaries in a criminal manner. The Bill passed the Assembly and is now pending in front of the Senate.

4. Federal Policy On Medical Marijuana

Marijuana in any form, medical or otherwise, still remains an illegal substance under the federal Controlled Substances Act. This significantly complicates providing legal advice on this issue and presents obstacles to comprehensive regulation on a local level.

Initially, the Obama Administration indicated a willingness to ease federal drug enforcement efforts vis-à-vis patients and caregivers immunized from prosecution under state law in Deputy Attorney General David Ogden's October 29, 2009 Memorandum.

However, more recently, U.S. Attorneys have been issuing warning letters to state and local officials warning them that permitting marijuana distribution and growing facilities under state medical marijuana initiatives runs counter to federal law and could subject the entities and individuals to prosecution. Laura Duffy, U.S. Attorney for the Southern District of California, issued a similar warning via email on May 12, 2011.

Because of the resulting confusion between federal enforcement efforts and state medical marijuana initiatives, the U.S. Department of Justice further qualified its position by stating "The Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law. Persons

who are in the business of cultivating, selling or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law." June 29, 2011 "Memorandum for United States Attorneys" by James Cole, Deputy Attorney General.

While there have not been any cases where federal prosecutors have charged legislators with violating the Controlled Substances Act for implementing state medical marijuana initiatives the risk, however, does exist and should be considered before proceeding.

5. City Attorney's Comments/Advice

The City Attorney's Office has been studying the evolving legal, regulatory and business operations framework for medical marijuana distribution over the past 2 years. Although the legal landscape remains complicated, the City Attorney's office offers the following advice and conclusions:

1. **The City has no legal obligation to permit the commercial distribution of medical marijuana within City limits.**

The state laws regarding medical marijuana "decriminalize" the cultivation, distribution, possession and use of medical marijuana in limited circumstances. They do not, however, require local jurisdictions to "permit" commercial distribution operations. The City reserves the right, under its fundamental "police powers" authority, to prohibit such operations in order to preserve the "health, safety and welfare" of the community. Approximately 126 cities within the state have already taken action to prohibit medical marijuana dispensaries. These include the San Diego County cities of Santee, San Marcos, Escondido, and Imperial Beach. The right of a city to prohibit this activity is the consensus view of city attorneys within the region; however, we are still awaiting a definitive appellate court case to confirm this authority.

2. **Existing state law does not contemplate or approve of medical marijuana "dispensaries."**

The concept of a commercial storefront medical marijuana distribution business, commonly referred to as a "dispensary," is not created by state law; rather, it is a business model developed by individuals within the medical marijuana community. The vast majority of such businesses do not operate within the parameters of the 2008 Attorney General Guidelines regarding "cooperatives" and "collectives". A matrix that compares the key AG guidelines for cooperatives and collectives with typical "dispensary" operations is attached to this report as **Attachment B**. Current references to "dispensaries" in state law are limited to acknowledgements of their existence and do not constitute endorsements or confirmations of their legality under state law.

3. **Although federal law implications remain unsettled, the City Council could develop regulations to allow some form of "cooperative" or "collective" for the distribution of medical marijuana.**

Because of the nature of medical marijuana operations, and the practical and legal limits on what you can regulate, it will be difficult to draft, and effectively enforce regulations that distinguish between legal and illegal operations and that mitigate all likely negative impacts. Moreover, based on the experiences in other jurisdictions, regulation enforcement efforts would likely present a substantial drain on City Attorney, Code Enforcement and Police resources. California cities that have adopted regulatory provisions are now re-thinking their regulations as a result of the proliferation of medical marijuana dispensaries and the ineffectiveness or legal vulnerability of their regulations. The City of Los Angeles, for example, was forced to revise its regulations and is now attempting to force the closure of 439 dispensaries.

Notwithstanding the foregoing, if the City Council ultimately determines to proceed with medical marijuana dispensary regulations, or the exploration of suitable regulations for true "collectives" or "cooperatives," the City Attorney's Office will work diligently with other City departments to develop the best possible regulatory system.

B. Police Issues

The Police Department has been monitoring public safety issues related to operating dispensaries in other jurisdictions. The Police Department possesses serious concerns that public safety could be negatively affected should any form of a dispensary be permitted. The formative study in this area, the 44-page 2009 California Police Chiefs Association's White Paper on Marijuana Dispensaries, studied and analyzed medical marijuana dispensaries and concluded there were adverse public safety secondary effects relating to these businesses. The Police Department has contacted other agencies that have also reported similar issues surrounding their dispensaries.

The Police Department, however, is sensitive to and acknowledges medical marijuana patient and caregiver rights in its routine policing of the community. The Police Department has enacted a training bulletin, with the assistance of the District Attorney, that facilitates the policies and codes underlying the decriminalization of medical marijuana in California.

The Police Department also has concerns that permitting dispensaries could negatively impact service to the community due to low staffing levels. There are already 650 police-regulated businesses which require monitoring, permitting and background checks. Staffing levels are at an all-time low and stand to be significantly impacted should storefront dispensaries be permitted. Calls for service are anticipated to rise based on complaints from neighbors, potential secondary street sales and robberies. Also, since Chula Vista is a border city, there are unique policing concerns relating to cross-border narcotics trafficking which could be complicated by permitting dispensaries.

Put simply, the Police Department is not staffed to regulate and monitor dispensaries nor is it staffed to address the potential negative secondary effects that accompany these businesses.

C. Planning and Zoning

Development Services staff has compiled and analyzed medical marijuana ordinances from jurisdictions throughout California. These ordinances typically require that dispensaries be located in commercial/industrial zones and maintain a minimum distance from sensitive uses such as schools, parks, daycare facilities, and libraries. This distance is typically between 600 and 1,000 feet. Many ordinances also require that dispensaries not be located within a similar distance to residential uses and other dispensaries. State law requires that dispensaries not be located within 600 feet of a school.

Staff has analyzed the effect of the separation requirement from sensitive uses upon the availability of sites for dispensaries within Chula Vista. Because Chula Vista has residential uses located throughout the City, very few areas would be available for dispensaries that would meet a 600 to 1,000 foot separation requirement from residential uses. Areas that would be available are located within certain industrial areas, which the Police Department has determined to have a higher than average crime rate. If there were a separation requirement from sensitive uses other than residential, then commercial areas along Broadway and Third Avenue, as well as commercial areas in Eastern Chula Vista would be available for dispensaries. However, this issue could be made moot by pending state legislation (described above) that would prohibit dispensaries from being located 600 feet from residential zones or uses.

D. City Manager's Recommendation

In light of research that was presented by staff at the Public Safety Subcommittee hearings that suggests medical marijuana dispensaries will present a material drain on City resources, pose substantial risks for crime and disorder, and that reasonable alternatives exist for obtaining medical marijuana, the City Manager recommended (and still recommends) as follows:

1. Do not permit medical marijuana dispensaries;
2. Do continue to allow conventional patient/caregiver medical marijuana distribution;
3. Do continue to allow medical marijuana delivery service;
4. Staff will work to develop appropriate regulations for Items 2 and 3; and
5. If Council further considers medical marijuana dispensaries, further public outreach and study would be necessary to evaluate the extent of community need, impact on neighborhoods and whether or not there exists an acceptable model of operation with matching, legally defensible regulations.

E. Public Safety Subcommittee Hearings and Recommendation

The Public Safety Subcommittee held two public hearings on the issue of medical marijuana; the first was held on May 18th; the second on June 15th. Both were well attended. Each hearing began with extensive presentations from legal, police and planning staff. Staff presentations were followed by extensive public testimony and input from both residents and outside interests. Most speakers made statements in support of some form of City-approval process for medical marijuana distribution operations. Others spoke against. Ultimately, many sides and perspectives on the issue of medical marijuana were presented.

Those in favor spoke about the benefits of medical marijuana and the importance of convenient local access, especially for the seriously ill. Some objected to staff presentations as inaccurate or incomplete and suggested that the identified crime risks were either exaggerated or no worse than other types of more common business operations. Medical marijuana industry representatives (e.g., representatives from the organization Americans for Safe Access), talked about (and provided) materials and sample regulations that were supportive of storefront type distribution mechanisms. Some speakers also suggested that the availability of open and "legal" access would reduce the amount of illegal drug activity. Others talked about the potential for the City to tax this type of business and raise substantial revenue. The idea that "delivery service" presented a reasonable alternative was challenged as more costly to patients, and an unfair "not in my backyard" approach.

Those opposed to medical marijuana businesses expressed concerns about the negative impacts on public safety, neighborhoods and kids, with the suggestion that easier access to medical marijuana might lead to increased recreational use. Others pointed out that state law only decriminalized medical marijuana, it did not "legalize it" and that state law did not contemplate the kinds of storefront operations now common in many cities. The ability of the City to generate revenue was questioned, with the suggestion that the cost of regulations would exceed revenues.

The City Manager's recommendation (described above) was presented to the Committee as part of staff's presentation at the June 15th hearing. The Committee considered this recommendation, public testimony, and their own personal considerations in developing a formal committee recommendation for the City Council. In their deliberations both Committee members acknowledged and expressed sensitivity to the legitimate medical marijuana user population. Both also expressed concerns about the proliferation of medical marijuana "dispensaries" that appeared to market to recreational users. Both expressed support for continuing existing (if not "permitted") forms of access (i.e., traditional patient caregiver settings, and delivery services based outside the City), but with appropriate regulations. They also expressed an interest in exploring whether or not a storefront type operation that complied with the AG guidelines could be identified and regulated. One particular operation in the City of San Diego that both members had toured with a move "pharmacy-like" atmosphere was identified as the kind of place that might be acceptable subject to further review and analysis.

F. Next Steps

If City Council accepts the Public Safety Subcommitee recommendation to prohibit the operation of medical marijuana dispensaries (Recommendation No. 1), the City Attorney will prepare the appropriate ordinance(s) to implement same. Any required zoning ordinance would first be presented to the Planning Commission at a noticed public hearing. The Planning Commission's next scheduled meeting is on July 27th. Once acted upon by the Planning Commission, the formal ordinance, with any Planning Commission's recommendation thereon, would be presented to the City Council for final consideration. This could happen as early as August 9th.

Appropriate regulations for traditional "patient/caregiver" operations identified in the Health and Safety Code, and delivery services (Recommendations Nos. 2, 3 and 4) would be developed over the next 6 to 9 months and also presented for City Council consideration.

Further consideration of MMJ "collectives" (Recommendation No. 5) could occur in a number of ways. The Public Safety Subcommittee itself could continue to address the issue that operate in accordance with the 2008 Attorney General's Guidelines by conducting further public outreach and study to evaluate the extent of community need, impact on neighborhoods and whether or not there exists an acceptable model of operation with matching, legally defensible regulations. As an alternative, a separate ad hoc committee could be formed. If the committee were comprised of less than a quorum of the City Council, with no outside members, this committee could meet privately and publicly under applicable laws. Finally, staff could be directed to implement the process on its own. The procedures and focus of any of these study groups could be established by the City Council, or left to the assigned group itself. Staff estimates 6 to 9 months would be needed to complete this process.

CURRENT YEAR FISCAL IMPACT

The primary "fiscal impact" of the work done to date on this matter has been the consumption of a substantial amount of staff time, particularly in the City Attorney's office. Any direction to further study regulations for "collectives" would consume substantial additional staff resources in the City Attorney's office, Police Department and Development Services. Staff demands would be increased again by any conclusion that formal regulations should be developed, implemented and enforced. Any fee structure or tax imposed on medical marijuana operations may require a fee study performed by an outside consultant. The cost for this work is not known at this time.

ONGOING FISCAL IMPACT

Unknown

ATTACHMENTS

Attachment A – Timeline of Medical Marijuana Legal Enactments and City Actions to Date
Attachment B – Matrix Comparing Attorney General Guidelines and Common Operations of Medical Marijuana Dispensaries
Attachment C – Resolution Implementing Public Safety Subcommittee Recommendation

RESOLUTION NO. 2011-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA DIRECTING CITY STAFF TO IMPLEMENT THE PUBLIC SAFETY SUBCOMMITTEE RECOMMENDATION REGARDING MEDICAL MARIJUANA DISPENSARIES AND RELATED POLICIES

WHEREAS, the City of Chula Vista has been monitoring and studying medical marijuana related issues for the past two years; and

WHEREAS, the Public Safety Subcommittee took up the this issue and held hearings to receive City staff and public input on May 18th and June 15th, 2011; and

WHEREAS, after consideration of staff input, the City Manager's recommendation, input from the public, and their own deliberations, the Public Safety Subcommittee developed and presented to City Council a recommendation on how to proceed regarding medical marijuana dispensaries and related policies; and

WHEREAS, at the July 12th City Council meeting, the City Council considered such recommendation, and received and considered further staff and public input, including staff's request for further direction.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Chula Vista directs City Staff to:

1. Prepare and process for final City Council consideration an ordinance (or ordinances) to accomplish the following:

   a. prohibit medical marijuana "dispensaries" (defined as storefront, commercial retail operations) and similar operations;

   b. Continue to allow conventional patient/caregiver medical marijuana distribution (defined as a health clinic, a health care facility, a residential care facility for persons with chronic, life-threatening illnesses, a licensed residential care facility for the elderly, and/or a residential hospice or a home health agency as authorized by Health & Safety Code Section 11362.7(d)(1));

   c. Continue to allow medical marijuana delivery service;

2. Work to develop appropriate regulations for Items 1.b and c; and

3. In accordance with a process and timeline established by City Council, further consider MMJ "collectives" that operate in accordance with the 2008 Attorney General's Guidelines by conducting further public outreach and study to evaluate the extent of

community need, impact on neighborhoods and whether or not there exists an acceptable model of operation with matching, legally defensible regulations.

Presented by:

Chance C. Hawkins
Deputy City Attorney

Approved as to form by:

Glen Googins
City Attorney

ORDINANCE NO. 2011-_____

ORDINANCE OF THE CITY OF CHULA VISTA ENACTING MUNICIPAL CODE CHAPTER 5.66 (MEDICAL MARIJUANA DISPENSARIES)

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act ("CUA") (codified as Health and Safety ("H&S") Code Section 11362.5 et seq.); and

WHEREAS, the CUA creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, on January 1, 2004, the "Medical Marijuana Program" ("MMP"), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the State Legislature purporting to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMP; and

WHEREAS, the CUA expressly anticipates the enactment of additional local legislation, and it provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (H&S Code section 11362.5); and

WHEREAS, the City Council takes legislative notice of the fact that several California cities and counties, which have permitted the establishment of medical marijuana distribution facilities or "dispensaries," have experienced serious adverse impacts associated with and resulting from such uses; and

WHEREAS, according to these communities, widely-reported news stories, and medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by minors and other persons without medical need in the areas immediately surrounding such medical marijuana distribution facilities, and

WHEREAS, the City Council reasonably anticipates that the City of Chula Vista will experience similar adverse impacts and effects; and

WHEREAS, a California Police Chiefs' Association compilation of police reports, news stories, and statistical research regarding such secondary impacts is contained in a 2009 white

paper report located at: http://www.procon.org/sourcefiles/CAPCAWhitePaperonMarijuana Dispensaries.pdf; and

WHEREAS, the City Council further takes legislative notice that as of December 2010, according to at least one compilation, 103 cities and 14 counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries; and

WHEREAS, the City Council further takes legislative notice that at least 139 cities and 11 counties have adopted prohibitions against medical marijuana dispensaries; and

WHEREAS, the compilation is available at: http://www.safeaccess now.org/article.php?id=3165; and

WHEREAS, the City Council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the state's medical marijuana laws, entitled "GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE (August 2008)" (http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf); and

WHEREAS, the Attorney General has stated in the guidelines that "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law"; and

WHEREAS, the City Council further takes legislative notice that the experience of other cities has been that many medical marijuana distribution facilities or "dispensaries" do not operate as true cooperatives or collectives in compliance with the MMP and the Attorney General Guidelines; therefore, these businesses are engaged in cultivation, distribution and sale of marijuana in a manner that remains illegal under both California and federal law. As a result, of such illegal activity, the City would be obligated to commit substantial resources to regulating and overseeing the operation of medical marijuana distribution facilities to ensure that the facilities operate lawfully and are not fronts for illegal drug trafficking. Additionally, it is uncertain whether even with the dedication of significant resources to the problem, the City would be able to prevent illegal conduct associated with medical marijuana distribution facilities, such as illegal cultivation, transport of marijuana, and the distribution of marijuana between persons who are not qualified patients or caregivers under the CUA and MMP; and

WHEREAS, the City Council further takes legislative notice that concerns about nonmedical marijuana use arising in connection with the CUA and the MMP also have been recognized by state and federal courts. (See, e.g., Bearman v. California Medical Bd. (2009) 176 Cal. App. 4th 1588; People ex rel. Lungren v. Peron (1997) 59 Cal. App. 4th 1383, 13861387; Gonzales v. Raich (2005) 545 U.S. 1); and

WHEREAS, the City Council further takes legislative notice that the use, possession, distribution, and sale of marijuana remain illegal under the federal Controlled Substances Act ("CSA") (Bearman v. California Medical Bd. (2009) 176 Cal. App. 4th 1588); that the federal courts have recognized that despite California's CUA and MMP, marijuana is deemed to have no

accepted medical use (Gonzales v. Raich, 545 U.S. 1; United States v. Oakland Cannabis Buyers' Cooperative (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the CUA and MMP (Gonzales v. Raich, 545 U.S. 1); and

WHEREAS, the City Council has been concerned about the adverse effects associated with medical marijuana dispensaries, has discussed such effects, has adopted an interim urgency ordinance that established a moratorium on the legal establishment and operation of medical marijuana dispensaries on July 21, 2009, and has extended it twice pursuant to applicable law on September 1, 2009, and June 22, 2010, which ordinances are incorporated by reference and relied upon in approving this Ordinance; and

WHEREAS, the City of Public Safety Subcommittee held public hearings on medical marijuana with significant public input and commentary on May 18th and June 15th, 2011, and subsequently made a recommendation to the City Council on July 15, 2011; and

WHEREAS, the City Council by a majority vote adopted a resolution which directed staff to take appropriate action to expressly prohibit medical marijuana dispensaries on July 15, 2011; and

WHEREAS, an ordinance prohibiting medical marijuana dispensaries and prohibiting the issuance of any permits or entitlements for medical marijuana dispensaries is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Chula Vista; and

WHEREAS, the City Council is mindful of the needs of medical marijuana patients and has crafted this Ordinance in a manner that does not interfere with a patient's ability to produce his or her own medical marijuana or to obtain medical marijuana from a primary caregiver as expressly allowed under applicable State law; and

WHEREAS, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and

NOW, THEREFORE, the City Council of the City of Chula Vista does, hereby, ordain as follows:

SECTION I. The above-listed findings are true and correct.

SECTION II. Chapter 5.66 (Medical Marijuana Dispensaries) is added to the Chula Vista Municipal Code to read as follows:

Chapter 5.66

MEDICAL MARIJUANA DISPENSARIES

Sections:

5.66.010 Definitions.

"Medical marijuana dispensary" is any fixed facility or location where, under the purported authority of California Health and Safety Code Section 11362.5 et seq. or otherwise, marijuana is cultivated, made available, sold, transmitted, distributed, given or otherwise provided to, by, or among three or more persons for medical purposes.

"Medical marijuana dispensary" shall not include the following uses, so long as such uses comply with this code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.

2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.

3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.

4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.

5. A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

"Persons" shall include any individual or entity regardless of status as a qualified patient or primary caregiver.

"Primary Caregiver" shall be defined in the same manner as such term is defined in California Health and Safety Code Section 11362.5

"Qualified Patient" shall be defined as any individual who obtains and uses marijuana for medical purposes upon the recommendation of a physician.

5.66.020 Operation of medical marijuana dispensaries prohibited.
A. The operation of a medical marijuana dispensary, as defined in this chapter, is prohibited in the City of Chula Vista, and no person or association of persons, however formed, shall operate or locate a medical marijuana dispensary in the City. The City shall not issue, approve, or grant any permit, license or other entitlement for the establishment or operation of a medical marijuana dispensary in the City of Chula Vista.

B. This Chapter does not apply where preempted by state or federal law.

5.66.030 Violation – Penalty.
Any person found to be in violation of any provision of this chapter shall not be subject to the criminal enforcement remedies set forth in Chapter 1.20, Chapter 1.24 or any other criminal law violation and enforcement provision set forth in this Code, as a result of such violation.

5.66.040 Public nuisance.
Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be, and is hereby declared, a public nuisance, which may be abated by the city pursuant to the procedures set forth in this Code, and be subject to any associated civil remedies.

SECTION III. EFFECTIVE DATE.

This ordinance will take effect and be in full force on the thirtieth day from and after its adoption.

Presented by

FOR Chance Hawkins
Deputy City Attorney

Approved as to form by

Glen R. Googins
City Attorney