



# **CITY COUNCIL AGENDA REPORT**

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MEETING DATE: JUNE 21, 2005

ITEM NUMBER:

**SUBJECT:** DRAFT ORDINANCE AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE TO PROHIBIT THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF COSTA MESA

**DATE:** JUNE 6, 2005

**FROM:** DEVELOPMENT SERVICES/PLANNING DIVISION

**PRESENTATION BY:** KIMBERLY BRANDT, AICP, PRINCIPAL PLANNER

**FOR FURTHER INFORMATION CONTACT:** KIMBERLY BRANDT, (714) 754-5604

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## **RECOMMENDATIONS:**

The Planning Commission recommends:

1. Direct staff to prepare an ordinance to place a moratorium on the establishment of medical marijuana dispensaries until such time an ordinance is prepared and adopted that allows a medical marijuana dispensary to be established with approval of a conditional use permit; and
2. Direct staff to prepare an ordinance that allows a medical marijuana dispensary to be established with approval of a conditional use permit, subject to location and operational standards, and return to the Planning Commission for their review and recommendation on the draft ordinance.

## **BACKGROUND/ANALYSIS:**

In 1996, California voters approved Proposition 215 (the Compassionate Use Act), which ensures 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 (Health and Safety Code 11362.5{A}). This proposition also allows cultivation for personal medical purposes.

In respect to federal law, the United States Supreme Court opined that the federal Controlled Substances Act prohibits the manufacture and distribution of various drugs, including marijuana, and that there is not a medical necessity exception to these prohibitions (*United States v Oakland Cannabis Buyers' Cooperative and Jeffrey Jones*, May 2001).

Furthermore on June 6, 2005, the United States Supreme Court issued a ruling on *Raich v. Ashcroft*, a Ninth Circuit Court of Appeals decision. The Court ruled that the federal government has the authority to prohibit the cultivation and possession of marijuana for personal medical use, regardless of state laws that may allow it.

Recently, staff received inquiries regarding Costa Mesa regulations for medical marijuana dispensaries. Currently, the City's Zoning Code does not specifically address this land use. Absent any specific reference, staff would normally require a conditional use permit in a commercial zoning district.

In respect to other Orange County cities, Huntington Beach has recently adopted an ordinance that requires a conditional use permit for a dispensary, and Newport Beach just adopted a 45-day moratorium to allow Council time to determine the appropriate regulations. The City of Lake Forest has extended their moratorium to the end of this year.

While staff recommended an ordinance prohibiting this land use, on May 23, 2005, Planning Commission (on a 3-2 vote, Perkins and Garlich voting no) recommended Council adopt a moratorium on establishment of dispensaries and ultimately adopt an ordinance requiring dispensaries to obtain a conditional use permit. For additional information, please see Attachments 2 and 3, which contain the Planning Commission meeting minutes and staff report. Staff notes that the Commission's recommendations were made prior to the latest Supreme Court decision on the use of medical marijuana.

**ALTERNATIVES CONSIDERED:**

In addition to Commission's recommendations, Council may consider the following alternatives:

- 1. Give first reading to the attached ordinance, considered by Planning Commission and recommended by staff, prohibiting the establishment of medical marijuana dispensaries in the City of Costa Mesa.
- 2. Retain the existing Costa Mesa Zoning Code provisions that do not address this land use. If at a later date the City receives an application, staff would require a conditional use permit if the proposed dispensary is in a commercial zoning district.

**FISCAL REVIEW:**

Fiscal review is not required for this ordinance.

**LEGAL REVIEW:**

The draft ordinance has been approved as to form by the City Attorney's Office.

**ENVIRONMENTAL DETERMINATION**

These code amendments have been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and have been found to be exempt.

**CONCLUSION:**

The City's Zoning Code does not specifically address medical marijuana dispensaries. Therefore, Planning Commission recommends Council place a moratorium on such land uses in the City, until such time an ordinance can be adopted allowing dispensaries with a conditional use permit. Commission also recommends that operational and development standards be included in the ordinance. If this is Council's direction, staff will return at your July 5<sup>th</sup> Council meeting with an urgency ordinance to adopt a moratorium.

  
KIMBERLY BRANDT, AICP  
Principal Planner

  
DONALD D. LAMM, AICP  
Deputy City Mgr.-Dev. Svs. Director

DISTRIBUTION: City Manager  
City Attorney  
Police Chief  
Police Lieutenant Gogerty  
Public Services Director  
Staff (4)  
File (2)

ATTACHMENTS: 1 Draft Ordinance  
2 Planning Commission meeting minutes  
3 Planning Commission staff reports

File Name: 062105Title13MMD

Date: 060605

Time: 8 a.m.

**ATTACHMENT 1**  
**DRAFT ORDINANCE**

**ORDINANCE NO. 05-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE TO PROHIBIT THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF COSTA MESA.**

The City Council of the City of Costa Mesa, California, does hereby declare:

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5, et seq.), ("the Act") to allow the medical use of marijuana for certain persons; and

WHEREAS, the Act does not require or provide for the opening of businesses or cooperatives commonly known as Medical Marijuana Dispensaries; and

WHEREAS, notwithstanding the passage of the Act, the sale and distribution of marijuana is prohibited by the Controlled Substances Act, 21 U.S.C. section 841; and

WHEREAS, the City Council of the City of Costa Mesa concludes that the federal law prohibiting sale and distribution of marijuana would preclude the opening of Medical Marijuana Dispensaries sanctioned by the City of Costa Mesa;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Costa Mesa hereby finds and determines that it is the purpose and intent of this ordinance to prohibit medical marijuana dispensaries in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City.

**Section 2.** Title 13 of the Costa Mesa Municipal Code is hereby amended to read as follows:

a. Amend Section 13-6 to include the following:

**“Medical marijuana dispensary.** A facility or location where medical marijuana is cultivated or by any other means made available to and/or distributed by or to one or more of the following: a primary caregiver, a qualified patient, or a person with an identification card in strict accordance with State Health and Safety Code Sections 11362.5 et seq and 11362.7 et seq.”

b. Amend Table 13-30 to include an additional row as shown in Attachment A.

**Section 3.** Environmental Determination. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City’s environmental procedures, and has been found to be exempt.

**Section 4.** Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to affect the provisions of this Ordinance.

**Section 5.** Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

**Section 6:** This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk

a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2005

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk of the  
City of Costa Mesa

\_\_\_\_\_  
City Attorney

STATE OF CALIFORNIA)  
COUNTY OF ORANGE) ss  
CITY OF COSTA MESA)

I, Julie Folcik, Deputy City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 05-\_\_ was introduced and considered section by section at a regular meeting of said City Council held on the \_\_\_ day of \_\_\_\_\_, 2005, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the \_\_\_ day of \_\_\_\_\_, 2005, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Deputy City Clerk and ex-officio  
Clerk of the City Council of the  
City of Costa Mesa

# ATTACHMENT A

**TABLE 13-30  
CITY OF COSTA MESA LAND USE MATRIX**

LAND USES	ZONES																					
	R 1	R 2 M D	R 2 H D	R 3 P	R A	C L	C 1	C 2	C 1 S <sup>1</sup>	T C <sup>1</sup>	M G	M P	P D R L D	P D R M D	P D R H D	P D R N C M	P D C	P D	I & R S	I & R S	IP	
<b>INSTITUTIONAL AND RECREATIONAL USES</b>	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
"31a. Medical Marijuana dispensary																						

## **ATTACHMENT 2**

### **PLANNING COMMISSION MEETING MINUTES**



# **CITY OF COSTA MESA**

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

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DEVELOPMENT SERVICES DEPARTMENT

**FOR ATTACHMENTS NOT INCLUDED IN THIS  
REPORT, PLEASE CONTACT THE CITY CLERK'S  
OFFICE AT (714) 754-5121**