ATTACHMENT 1

REPORT TO CITY COUNCIL

BALLOT INITIATIVES FOR TWO SEPARATE MEDICAL MARIJUANA ORDINANCES
CITY OF COSTA MESA PROPOSED MEDICAL MARIJUANA ORDINANCE
CITY OF SANTA ANA MEDICAL MARIJUANA ORDINANCE

Prepared by City Departments Pursuant to Election Code § 9212 and at Request of City Council

Assistant CEO Richard L. Francis
Deputy City Attorney Chris F. Neumeyer

December 4, 2014

TABLE OF CONTENTS

CHAPTER 1 — **INTRODUCTION (PAGE 1)**

SECTION 1.1 — **INTRODUCTION 1.**
SUBSECTION 1.1.A — (ORDINANCE NO. 1) **1.**
SUBSECTION 1.1.B — (ORDINANCE NO. 2) **2.**

CHAPTER 2 — **CITY ATTORNEY REPORT (PAGE 4)**

SUBSECTION 2.2.A — INTRODUCTION **4.**
SUBSECTION 2.2.B — SUMMARY OF FOUR ORDINANCES **4.**
SUBSECTION 2.2.C — APPLICATION OF FEDERAL AND STATE LAW **6.**
SUBSECTION 2.2.C 1. — (FEDERAL LAW) **6.**
SUBSECTION 2.2 C-2 — (CALIFORNIA LAW) **7.**
SUBSECTION 2.2 C-3 — (FEDERAL LAW/MUNICIPAL REGULATION) **7.**
SUBSECTION 2.2 D — CONSTITUTIONAL ISSUES CONCERNING "PRIORITY REGISTRATION" **9.**
SUBSECTION 2.2 E — LOCAL SALES TAXES AND CALIFORNIA LAW **9.**
SUBSECTION 2.2 F — ELECTION DATE: PROPOSITION 218 & ELECTION CODE 9214 **10.**

CHAPTER 3 — **POLICE DEPARTMENT REPORT (PAGE 12)**

SUBSECTION 3.3.A — INTRODUCTION **12.**
SUBSECTION 3.3.B — BACKGROUND **12.**
SUBSECTION 3.3.C — (ORDINANCE NO.1) **13.**
SUBSECTION 3.3. D — (ORDINANCE NO. 2) **14.**
SUBSECTION 3.3. E — (ORDINANCE NO. 3) **14.**
SUBSECTION 3.3. F — (OTHER CITIES) **14.**
SUBSECTION 3.3. G — COLORADO & WASHINGTON **15.**
SUBSECTION 3.3. H — IMPACT ON THE POLICE DEPARTMENT **15.**
SUBSECTION 3.3. I — CONCLUSION **16.**

CHAPTER 4 — **FINANCE DEPARTMENT REPORT (PAGE 18)**

SUBSECTION 4.4.A — INTRODUCTION **18.**
SUBSECTION 4.4.B — POTENTIAL FISCAL IMPACT **18.**
SUBSECTION 4.4.C — BRIEF SUMMARIES OF POTENTIAL FISCAL IMPACTS – EACH DOCUMENT **19.**
SUBSECTION 4.4. C-1 — (ORDINANCE NO. 1) **19.**
SUBSECTION 4.4. C-2 — (ORDINANCE NO. 2) **20.**
SUBSECTION 4.4. C-3 — (ORDINANCE NO. 3 "CITY DRAFT") **21.**
SUBSECTION 4.4.D — CONCLUSION **22.**
(FINANCE DEPT. - ATTACHMENT #1)**23(PG.1-3)**
(FINANCE DEPT. - ATTACHMENT #2)**23(PG.4-7)**
(FINANCE DEPT. - ATTACHMENT #3)**23(PG.8-11**
(FINANCE DEPT. - ATTACHMENT #4)**23(PG.12-14)**

CHAPTER 5 **HUMAN RESOURCES/RISK MANAGEMENT REPORT (PAGE 24)**

SUBSECTION 5.5.A INTRODUCTION **24.**
SUBSECTION 5.5.B ANALYSIS/IMPACT ON HR/RISK MANAGEMENT DIVISION **24.**
SUBSECTION 5.5.C CONCLUSION **25.**

CHAPTER 6 **FIRE DEPARTMENT REPORT (PAGE 26)**

SUBSECTION 6.6 A. INTRODUCTION **26.**
SUBSECTION 6.6.B IMPACT ON THE FIRE DEPARTMENT **26.**
SUBSECTION 6.6.C PROLIFERATION OF ILLEGAL OR NON-APPROVED MARIJUANA SITES/LOCATIONS **27.**
SUBSECTION 6.6.D CONCLUSION **27.**
(FIRE DEPT. - ATTACHMENT #1) **27(PG.1-4)**
(FIRE DEPT. - ATTACHMENT #2) **27(PG.5)**
(FIRE DEPT. - ATTACHMENT #3) **27(PG.6-7)**

CHAPTER 7 **DEVELOPMENT SERVICES DEPARTMENT (PAGE 28)**

SUBSECTION 7.7.A INTRODUCTION **28.**
SUBSECTION 7.7.B IMPACT ON THE DEVELOPMENT SERVICES DEPARTMENT **28.**
SUBSECTION 7.7.C CONCLUSION **29.**

CHAPTER 8 **INFORMATION TECHNOLOGY DEPARTMENT REPORT (PAGE 30)**

SUBSECTION 8.8 A INTRODUCTION **30.**
SUBSECTION 8.8.B IMPACT ON THE I.T. DEPARTMENT **30.**
SUBSECTION 8.8.C CONCLUSION **30.**

CHAPTER 9 **PUBLIC SERVICES DEPARTMENT REPORT (PAGE 31)**

SUBSECTION 9.9.A INTRODUCTION **31.**
SUBSECTION 9.9.B IMPACT ON THE PUBLIC SERVICES DEPARTMENT **31.**
SUBSECTION 9.9.C. CONCLUSION **31.**

CHAPTER 1

INTRODUCTION

BY RICK FRANCIS, ASSISTANT CEO

Two separate and competing initiative proposals seeking a special election and adoption of new ordinances have been filed with the Costa Mesa City Clerk's Office. They both seek to modify the Costa Mesa Municipal Code (CMMC) and allow medical marijuana businesses to "legally" operate within the city limits. Both initiatives have been certified as having been signed by fifteen percent of City of Costa Mesa registered voters. Council Member Gary Monahan also presented an initiative proposal ("City Draft") which failed to pass due to lack of support at the August 5, 2014 City Council meeting.

By City Council action on November 18, 2014, each department has been asked to submit an impact report of the two citizen-backed initiatives prior to the December 9, 2014 City Council meeting.

Staff was also asked to review the "City Draft" submitted on August 5, 2014 and include that review in the impact reports. In addition, staff was asked to prepare an analysis of the ordinance adopted by the City of Santa Ana on November 4, 2014 that allows medical marijuana businesses to exist in that city under certain guidelines. The Finance Department, Police Department, Development Services Department, Human Resources Division and the City Attorney's Office will provide the analyses for the "City Draft". The Finance Department and the City Attorney will provide the analyses for the Santa Ana Ordinance. The City Attorney was also asked to respond to concerns related to potential staff liability for issuing permits for medical marijuana businesses for use that is in conflict with federal law, as well as other significant legal issues. Below are key provisions of each citizen-sponsored initiative proposing a new City ordinance.

A. Ordinance No. 1 - "Allow Operation of Up to Eight Medical Marijuana (Cannabis) Businesses in the City of Costa Mesa"

The first proposal was submitted by proponents Robert Taft, Jr. and Kevin Gardner (with the counsel of attorney Randall T. Longwith), and they named their ordinance the "Medical Cannabis Control Act."

The key features of this proposal are as follows:

1. The city shall issue no more than eight business licenses. The City Council has the discretion to increase, but not decrease the number of business licenses.
2. Priority registration for the limited number of licenses is provided to entities which performed certain "preliminary steps" on or before May 30, 2014.
3. Only a business license shall be required to operate a collective/cooperative. The City shall issue licenses if application meets minimum requirements in new law; valid for two years regardless of whether or not to operate business; automatic renewal upon application if meets same minimum requirements.

4. Failure of City to act on application for license within 45 days results in automatic issuance.
5. Under this proposal, businesses may engage in all aspects of marijuana production, packaging and sales, provided that these activities are not in conflict with state and federal law.
6. Medical marijuana businesses are exempt from the need to obtain special use permits, conditional use permits, or any other permits. They will not require any special site plans, variances or any other permits outside this Initiative.
7. Application fees for cost recovery are capped at $500.
8. Medical marijuana businesses can cultivate a reasonable amount of marijuana consistent with patient needs (no specific quantity is mentioned).
9. They must not operate within 600 feet of a public school; they may not operate within 1000 feet of another medical marijuana business.
10. The proposal calls for a 6% business tax, and a 1% sales tax on the sale of all other tangible personal property at retail.
11. Medical marijuana businesses may only operate in certain commercial and industrial areas, but not in residential areas.
12. The provisions of the CMMC created by this proposal cannot be repealed or changed except by another majority vote of the electorate.
13. Regulation as to where the businesses can and cannot operate, as well as hours they can operate.
14. Other regulations include insurance requirement, employee background checks, security provisions, child proof containers and odor restrictions.

B. <u>Ordinance No. 2 – "Allow Operation of Up to Four Licensed Medical Marijuana Businesses in the City of Costa Mesa"</u>

The second initiative proposal was submitted by proponents Taylor Webster and Michael Levesque (with the counsel of attorney David Welch), and they named their ordinance "An Initiative to Provide Revenue to Costa Mesa Citizens."

The key features of this proposal are as follows:

1. Up to four medical cooperative permits are to be issued. The city can increase, but not decrease the number of permits issued.
2. Medical marijuana businesses will require a city business license as well as a city-issued medical cooperative permit that is to be renewed annually; operators will require separate individual operator permits.

3. Priority registration for the limited number of permits is provided to entities which performed certain "preliminary steps" prior to May 22, 2014.

4. Police Chief shall issue permits if applications meets minimum requirements in new law; valid for one year; automatic renewal upon application if meet same minimum requirements.

5. Failure of Police Chief to act on business permits within 30 days, and operator permits within 15 days, results in automatic issuance.

6. Procedure for revocation of permits with gradually increasing penalties after administrative hearings, beginning with warning, six month suspension, then revocation of permit.

7. Medical marijuana businesses can cultivate, distribute or transfer medical marijuana.

8. Authorizes City Council to pass a fee resolution for cost recovery through license application fees.

9. No operations abutting a residential area *(although there is an exception in Section 9-495 (i) that states this subsection shall not prohibit a cooperative from locating across a street from any land zoned residential if the residential zone and the cooperative are separated by a public roadway that is at least 80 feet wide*).

10. No operations within 1000 feet of a school or another medical marijuana business; no operations within 600 feet of public park, library or licensed child-care facility.

11. This proposal calls for a 6% tax on gross receipts of the business.

12. This proposal exempts medical cooperative from City's 1% sales tax.

13. The City Council may amend Initiative provisions to further its purpose. However, any repeal of an Initiative provision must be approved by a majority of voters in a city-wide election.

14. Regulation as to where the businesses can and cannot operate, as well as hours they can operate.

CHAPTER 2

CITY ATTORNEY REPORT

BY CHRIS F. NEUMEYER, DEPUTY CITY ATTORNEY

A. Introduction

Pursuant to request by the City Council, the City Attorney's Office has prepared the following report on legal issues concerning four medical marijuana ordinances.

The four ordinances consist of the following: the two citizen sponsored initiative measures which were certified to the City Council on November 18, 2014 as qualifying for an election (being Ordinance No. 1 from proponents Robert Taft Jr. and Kevin Gardner, and Ordinance No. 2 from proponents Taylor Webster and Michael Levesque); the previously considered City drafted ordinance which was reviewed by the City Council on August 8, 2014 (Ordinance No. 3); and the Santa Ana ordinance drafted by the City of Santa Ana which was recently approved by Santa Ana's voters at the November 4, 2014 general election and which will now become local law in Santa Ana (Ordinance No 4).

Below, please find a brief summary of the four ordinances through a comparison matrix, and then a discussion of federal law, constitutional issues regarding "priority registration," local sales tax issues and election dates.

B. Summary of Four Ordinances

REGULATION	Ordinance No. 1 *Taft & Gardner (Atty Longwith)*	Ordinance No. 2 *Webster & Levesque (Atty Welch)*	Ordinance No. 3 *Proposed City's Ordinance*	Ordinance No. 4 *New Santa Ana Ordinance*
Alarm system	Yes	No	Yes	Yes
Security guard	Yes	No	Yes	Yes
Security cameras	No	No	Yes	Yes
Priority to old stores	Yes	Yes	No	No
Number of stores	Eight (minimum)	Four (minimum)	No limit	Twenty
City Council may amend (not repeal)	No	Yes	Yes	Yes (and may repeal)
Inspections Authorized	No	No	Yes	Yes
Tax	Yes	Yes	No	Yes

Limit sales to medical marijuana and related items	No	No	Yes	No
Business indemnify City if legal problems	Yes	No	Yes	No
Childproof containers	Yes	No	Yes	No
Pesticide testing	No	No	Yes	No
Active ingredients testing	No	No	Yes	No
On-site prescriptions	Yes	Yes	No	No
Business license	Yes	Yes	Yes	Yes
Business permit	No	Yes	Yes	Yes
Operator permit	No	Yes	No	No
Cultivation permit	No	No	Yes	No
Lawful zones	Commercial / industrial	Commercial / industrial	Commercial / industrial	Industrial
Location restrictions	Yes	Yes	Yes	Yes
Non-concentration of stores	Yes	Yes	Yes ****mistakenly said "No" in 11/18 report****	Yes
Hours	9am to 10pm	8am to 10pm	7am to 10pm	10 to 8 Mon-Sat 11 to 7 Sun
Quality control	No	No	Yes	No
Cultivation standards	No	No	Yes	No
Background checks	Yes	Yes	Yes	Yes
Patient confidentiality	Yes	Yes	Yes	No
Business records	No	No	Yes	Yes
Transaction records	No	No	Yes	Yes

Delivery records	No	No	Yes	No
Employee records	No	No	Yes	Yes
Employee training	No	No	Yes	No
General insurance	Yes	No	Yes	No
Delivery insurance	Yes	No	Yes	No
No Minors	Yes	Yes	Yes	Yes
Labeling	Yes	No	Yes	No
Outdoor lighting	No	Yes	Yes	No
Signage restrictions	Yes	No	Yes	Yes
Odor restrictions	Yes	No	Yes	Yes
Edible regulations	Yes	No	Yes	Yes

C. Application of Federal and State Law

All four of the medical marijuana ordinances under review are similarly subject to both federal and state law. Under federal law the use of marijuana (both medical and recreational) remains illegal. However, at present the U.S. Department of Justice has advised federal prosecutors that enforcement of federal marijuana law is a low priority in states where marijuana is allowed for medical or recreational use. California law has decriminalized the medical cultivation and medical use of marijuana, while the general use of marijuana remains illegal.

1. Federal Law

Pursuant to the Controlled Substances Act of 1970 ("CSA"), federal law generally prohibits the manufacture, distribution or possession of marijuana. 21 U.S.C. §§ 801 et seq. "The CSA designates marijuana as contraband for any purpose; in fact, by characterizing marijuana as a Schedule I drug, Congress expressly found that the drug has no acceptable medical uses." Gonzales v. Raich, 545 U.S. 1, 27 (U.S. 2005).

In 2013, the United States Department of Justice, through the Office of the Deputy Attorney General, issued a memorandum to all U.S. Attorneys entitled "Guidance Regarding Marijuana Enforcement." These guidelines provide that in states which have relaxed their marijuana laws through the implementation of "strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale and possession of marijuana," federal prosecutors are advised not to consider enforcement of the CSA to be a priority. Rather, the regulation and/or criminal prosecution of marijuana (whether medical or recreational) is for now to be left to the discretion of those states which have either decriminalized or legalized marijuana.

However, the CSA remains the law of the land, this prioritization of federal resources remains subject to change, and the manufacture, distribution or possession of medical marijuana in California remains illegal under federal law. California's medical marijuana laws "have no effect on the federal enforceability of the CSA in California. The CSA's prohibitions on the possession, distribution, or manufacture of marijuana remain fully enforceable in [California]." City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc., 56 Cal. 4th 729, 740 (2013).

2. California Law

In 1996 California voters passed Proposition 215, known as the Compassionate Use Act ("CUA"). The CUA decriminalized the cultivation of and use of marijuana by seriously ill Californians who received a recommendation from a physician for such medical use. However, the CUA did not legalize marijuana. Under California Health & Safety Code §§ 11357 et seq., the possession, sale, cultivation or transportation of marijuana remains illegal. Instead, the CUA provides an affirmative defense to criminal prosecution under state law for individuals who cultivate or use marijuana for medical purposes.

In 2004, Senate Bill 420, known as the Medical Marijuana Program Act ("MMP"), became state law. The MMP added some regulatory details to the CUA, including the establishment of voluntary identification cards for qualifying medical marijuana users, and recognition of a qualified right to collective and cooperative cultivation of medical marijuana.

In 2008, the California Attorney General's Office recommended in light of the removal of "the use and cultivation of physician recommended marijuana from the scope of the state's drug laws" by the CUA and MMP "that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws."

In 2013, the California Supreme Court in City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc., 56 Cal. 4th 729, 752 (2013) affirmed the authority of a local government to prohibit the operation of medical marijuana dispensaries within its jurisdiction through land use laws.

3. Federal Law Might be Violated by the Issuance of Medical Marijuana Dispensary Licenses and Permits and/or Municipal Regulation of Medical Marijuana Dispensaries

At present there is an unsettled issue of law as to whether a local government's issuance of licenses and/or permits to medical marijuana dispensaries along with regulation of the shops constitutes a violation of federal law. The issue is whether the local government and/or the government employee issuing such a license or permit, and/or regulating the distribution of medical marijuana, are affirmatively "aiding and abetting" a violation of federal law.

The decision in Conant v. Walters, 309 F.3d 629, 635 (9th Cir. 2002) is illustrative. In Conant the Ninth Circuit Court of Appeals held that simply recommending (but not prescribing) the use of medical marijuana was not prohibited by federal law. The court held that the "conviction of aiding and abetting requires proof that the defendant 'associated himself with the venture, that he participated in it as something that he wished to bring about, that he [sought] by his actions to make it succeed'." Conant,

309 F.3d at 635. These elements are not present when a doctor recommends (as opposed to prescribes) medical marijuana.

Likewise, other courts have found no violation of federal law in this context when a police officer has to return seized medical marijuana to a qualified patient, or when a county issues a medical marijuana identification card as required by the MMP. *See* City of Garden Grove v. Superior Court, 157 Cal. App. 4th 355 (2007); County of San Diego v. San Diego NORML, 165 Cal. App. 4th 798 (2008). (Significantly, these are state - as opposed to federal - court decisions)

However, in the depublished decision of Pack v. Superior Court, 199 Cal. App. 4th 1070 (2011), a court held that a medical marijuana ordinance in the City of Long Beach which "goes beyond simply decriminalization" by enacting "a comprehensive regulatory scheme by which medical marijuana collectives within the City are governed" was preempted by federal law. Under that ordinance, Long Beach "charges application fees ... holds a lottery, and issues a limited number of permits. Permitted collectives, which must then pay an annual fee, are highly regulated, and subject to numerous restrictions on their operation [including restrictions on] the location of medical marijuana collectives..." Pack, 199 Cal. App. 4th at 1076-1082.

The Pack court further stated in a footnote that "[t]here may also be an issue of whether the ordinance requires certain City officials to violate federal law by aiding and abetting (or facilitating (21 U.S.C. § 843(b))) a violation of the federal CSA. For example, the ordinance requires the City's director of financial management to approve and issue a permit if certain facts are demonstrated." Pack, 199 Cal. App. 4th 1070, 1091 fn. 27. Although the Pack decision has been depublished, the reasoning behind that court's decision could be applied in a similar challenge to any of the numerous local ordinances throughout California which permit and/or license medical marijuana dispensaries, including any such prospective Costa Mesa ordinance.

Likely any municipal law that affirmatively authorizes (i.e., "aids and abets") the possession, distribution and manufacture of marijuana is in conflict with the federal Controlled Substances Act. California Government Code section 37100 ["Ordinances"] authorizes cities to "pass ordinances ***not*** in conflict with the Constitution and laws of the State or the United States." (Emphasis added). When cities do not comply with federal law, the consequences can be dire - local governmental agencies and their officers, and employees, can be subject to liability for violations of federal law. *See* 42 U.S.C. § 1983 et seq.

Nevertheless, the CSA has neither expressly preempted state law, nor does it indicate that Congress intended to occupy the entire field of regulation. The question remains as to whether California's medical marijuana laws definitively create a positive conflict with the CSA and are therefore preempted by the CSA.

A City ordinance which authorizes medical marijuana businesses potentially places City employees in the untenable position of having to choose between a state law, authorizing certain conduct, and federal law, prohibiting the same conduct.

"[A]n employer's authority over its employee does not include the right to demand that the employee commit a criminal act..." Tameny v. Atlantic Richfield Co., 27 Cal. 3d 167, 178 (Cal. 1980). California Labor Code section 2856 also provides in full that "An employee shall substantially comply with all the

directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee."

Federal law may prohibit the issuance of municipal medical marijuana permits and licenses, as well as the local authorization and regulation of medical marijuana businesses. If so, the City cannot require its employees to issue permits and licenses, or otherwise comply with the proposed ordinances, without running afoul of federal law.

D. Constitutional Issues Concerning "Priority Registration"

The Fourteenth Amendment to the U.S. Constitution provides for the equal protection of the laws. Similarly situated parties must be treated the same under the law.

Both Ordinance No. 1 and Ordinance No. 2 establish priority registration, for operational licenses, to certain specified medical marijuana businesses that meet certain criteria. Each of these ordinances provide for a maximum number of businesses (with authority provided to the City Council to increase, but not decrease, the number of dispensaries in the City). Ordinance No. 1 allows for eight businesses and Ordinance No. 2 allows for four businesses. Thus, reasonably the only businesses which would be permitted under either of these ordinances would be the ones which qualify for "priority registration."

The priority registration clauses in Ordinance No. 1 and Ordinance No. 2 may be subject to being stricken from those ordinances on the basis of denial of equal protection.

Because the preferential clauses in the two ordinances impact neither fundamental rights nor suspect classes, the "priority registration" provisions "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." FCC v. Beach Communications, 508 U.S. 307, 313 (U.S. 1993) (overruled on other grounds). The discrimination need only be "rationally related to a reasonably conceivable legitimate public purpose" to be upheld vis-à-vis the right of equal protection. Warden v. State Bar, 21 Cal. 4th 628, 650 (Cal. 1999).

However, this relatively light burden is arguably not met by the two ordinances. Both of the proposed ordinances provide preferential treatment to entities which completed specified actions within the City before June, 2014 related to prospectively opening a medical marijuana business in the City. At that time, the operation of medical marijuana businesses in the City was prohibited in all zones of the City. To prefer businesses - which took initial steps to establish (then) unlawful businesses - likely has no legitimate public purpose.

The priority registration clauses arguably reward entities which took preliminary steps to open up medical marijuana businesses when those businesses were unlawful. Elevating the rights of illegal businesses above legal ones violates public policy. Prioritizing illegal activity, over and above legal activity, undermines local government's police power, depriving local government of the ability to determine whether allowing dispensaries would or would not benefit the public health, safety and welfare.

E. Local Sales Taxes and California Law

Ordinance No. 1 proposes a sales tax of one percent "on the sale of all other tangible personal property at retail." Presently the City already has a one percent local sales tax.

According to the California Attorney General, the Bradley-Burns Uniform Local Sales and Use Tax Law "prevents cities from imposing additional sales and use taxes in excess of the 1 percent rate permitted by the Bradley-Burns Law... [and] general law cities do not have the authority to impose separately administered local sales and use taxes which do not conform to the Bradley-Burns Uniform Local Sales and Use Tax Law." 53 Ops. Cal. Atty. Gen. 292, 296-297(Cal. AG 1970).

State law appears to preempt a City from raising its local sales tax above one percent. However, if a municipal government ignores the Bradley-Burns law and increases its local sales tax above one percent, the State Board of Equalization ("BOE") will terminate its contract to collect such a local sales tax with a city. Cal Revenue & Taxation Code § 7203.5 ["Termination of state administration"].

The consequence to the City of raising a local sales tax above one percent was addressed on November 4, 2014 by a BOE representative, who advised in writing that raising the local sales tax above Bradley-Burns limits means "cities have the risk of jeopardizing the 1% sales tax that they currently receive."

F. Election Date: Proposition 218 and Election Code § 9214

Three of the four ordinances under review contain new taxes:

1. **Ordinance No. 1**: proposes a sales tax of one percent "on the sale of all other tangible personal property at retail."

2. **Ordinance No. 1 and Ordinance No. 2**: both propose a six percent business tax on medical marijuana businesses.

3. **Ordinance No. 3**: does not propose any new taxes.

4. **Ordinance No. 4**: proposes a maximum ten percent tax on "gross receipts" of medical marijuana businesses, to be set initially at five percent.

The California Constitution in Art XIII C § 2(b), as amended by Proposition 218 in 1996, provides in full that "No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body."

Therefore, according to the California Constitution the three ordinances which impose taxes can only be sent to the City's voters at "a regularly scheduled general election for members of the governing body of the local government." The next such election which meets those conditions is November 8, 2016.

However, two of the ordinances (being the citizen sponsored measures which prompted this report, i.e., Ordinances Nos. 1 & 2) have simultaneously qualified under Election Code § 9214 for a special election, which would need to be held 88 to 103 days from the date of the City Council meeting when such election is ordered.

As to what election date the two citizen-sponsored medical marijuana ballot measures should be sent to the voters, there is a conflict between the California Constitution, and the California Election Codes which have been passed by the California legislature. The "California Constitution is a limitation or restriction on the powers of the Legislature..." California State Personnel Bd. v. California State Employees Assn., Local 1000, SEIU, AFL-CIO, 36 Cal. 4th 758, 769 (Cal. 2005).

CHAPTER 3

POLICE DEPARTMENT REPORT

BY MATHEW SELINSKI, OFFICER/FIELD TRAINING OFFICER

A. Introduction

This preliminary report briefly summarizes the potential impacts on the Police Department related services and resources that may be associated with the addition of medical marijuana businesses in Costa Mesa, including but not limited to impacts on crime rates, enforcement challenges, complaints from the community, the role of known criminal offenders in this enterprise, minimal regulatory restrictions, and potential legal issues concerning the collection of taxes.

The proposals are very similar in nature in many respects, but differ significantly in others. The purpose of this memorandum is to update and explore the possible impacts on the community from a law enforcement perspective should one of the ballot measures be approved by Costa Mesa voters.

B. Background

Proposition 215, commonly referred to as the Compassionate Use Act (CUA), was passed by California voters in 1996. The act allowed a defense to state charges of possession of marijuana or cultivation of marijuana by qualified patients and primary caregivers. The act did not address distribution to these persons. Further, there have been no legislative or initiative amendments to the CUA, or case law decisions affecting the legality of medical marijuana distribution.

In August 2008, then California Attorney General Jerry Brown issued "Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use." Among other provisions cited by Attorney General Brown was the idea that nothing allows individuals, collectives, or cooperatives to profit from the sale or distribution of marijuana.

Attorney General Brown further stated nothing in the CUA, nor Senate Bill 420 (commonly known as the "Medical Marijuana Program"), expressly allows for the storefront sales of marijuana. In other words, any exchange of marijuana for any form of compensation is still illegal under state and federal laws.

The only possible legal manner in which to distribute marijuana is under a "cooperative" similar to communal living of the Hippie era in the 1960's. This involves every member contributing something to the arrangement relatively equally. One may plant the seeds, another may water, and yet another may harvest. Anything beyond this is considered illegal.

In 2012, a group attempted to qualify a ballot proposal in Costa Mesa to allow medical marijuana dispensaries to operate under the CMMC. At that time, dispensaries had already operated illegally in Costa Mesa and other cities, which experienced an increase in crime. In Los Angeles for example, Part I crime increased 17% in the areas immediately surrounding dispensaries. Increases in Part II crime and nuisance complaints were also noted.

In Costa Mesa from 2009 to 2011, the Special Enforcement Detail (SED) received numerous complaints from residents and business owners regarding the presence of dispensaries. Business owners were concerned for the safety of their valuable inventory, which forced Fed Ex and UPS drivers to park away from their delivery destinations out of fear of persons associated with dispensaries stealing their deliveries. Another business owner lost a tenant and had difficulty leasing a suite at his property because of the heavy odor of marijuana and dispensary clientele.

Several dispensary employees were discovered to be convicted felons with criminal histories which included armed robbery, criminal threats while armed with a loaded firearm, and illegal marijuana trafficking. The supply source was determined to not be any form of cooperative. Rather, the supply source was determined to be highly organized marijuana cultivation operations in Northern California and Canada.

The Los Angeles Police Department (LAPD) and the Orange County Sheriff's Department (OCSD) discovered many dispensaries were diverting their supply of marijuana for more profitable, illicit markets outside California. This was also discovered in Costa Mesa when a local dispensary owner was arrested and convicted for illegal marijuana trafficking in Pennsylvania with marijuana from his dispensary.

Each submitted initiative proposal is quite lengthy. The following is a brief synopsis of each initiative from a law enforcement perspective.

C. Ordinance No. 1 - "Allow Operation of Up to Eight Medical Marijuana (Cannabis) Businesses in the City of Costa Mesa"

The initiative begins with a statement that the operation of a medical marijuana business is not a detriment to the health, safety, welfare, or moral standards of the city and the city shall not require a special permit to operate one. The city shall issue no more than eight business licenses. The City Council has the discretion to increase, but not decrease the number of business licenses.

Under this proposal, businesses are allowed to possess and cultivate a reasonable quantity of marijuana, but no definition of a reasonable amount is given.

Persons with felony convictions can work at medical marijuana businesses if their conviction(s) were somehow dismissed or set aside. The proposal calls for a 6% tax on gross receipts.

Finally, the provisions of the CMMC created by this proposal cannot be repealed or changed except by another majority vote of the electorate.

There is also some regulation as to where the businesses can and cannot operate, hours they can operate, etc.

D. Ordinance No. 2 – "Allow Operation of Up to Four Licensed Medical Marijuana Businesses in the City of Costa Mesa"

This proposal allows up to four medical cooperative licenses to be issued.

The city can increase, but not decrease the number of licenses issued.

Administration of licensing for the collective and collective operators is by the Chief of Police and sets strict guidelines and timeframes for license review. This includes an annual renewal for all collectives and collective operators. The licensing and renewal function is dependent upon dedicated personnel to handle this ongoing task.

A licensee may be subject to suspension or revocation by the Chief of Police if they have engaged in any unlawful act of marijuana while on the premises of a medical collective.

The provisions of the initiative can only be repealed by petition and a majority vote of the electorate.

There is also some regulation as to where the businesses can and cannot operate, hours they can operate, etc.

E. Ordinance No. 3 – "City Draft"

In early 2014, Council Member Monahan worked with the City Attorney's Office to draft his own proposal to allow medical marijuana businesses to operate in Costa Mesa. The proposal was presented at the August 5, 2014 city council meeting and it failed to garner support for passage. Monahan stated during the October 21, 2014 city council meeting that he intended to revise his previous proposal and bring it back to council for consideration at a later date. At the time of this report, the status of the revised proposal is unknown.

F. Other Cities

Currently, in Orange County only the community of Laguna Woods expressly allows dispensaries to operate. The overwhelming majority of Orange County cities and the County of Orange itself, prohibit the operation of dispensaries either directly through municipal codes or through zoning regulations. Three cities (Los Alamitos, La Palma, and Westminster) have nothing in their municipal codes or zoning regulations allowing or disallowing dispensaries to operate.

The Santa Ana City Council recently approved, via a 4-3 vote, to put its own city sponsored initiative proposal on the November 2014 ballot. This was to compete with a separate ballot measure already submitted and qualified for the ballot. The city sponsored proposal has a 500 foot separation regulation similar to the Costa Mesa proposals and allows dispensaries in only two industrial zones within the city. The city sponsored measure calls for a 5% tax that can be raised to 10%. The city sponsored measure also allows the city to make future changes without voter approval. The city sponsored measure (Measure BB) passed with the most votes. Measure BB employs a lottery system for the ability to run a collective under the new law. Interested parties must submit an application to be placed on the qualified

list. A lottery will be held on February 5th, 2015 in a public location to select locations from the qualified registration list.

The City of San Bernardino recently formed a city committee to study the possibility of regulating medical marijuana dispensaries within its jurisdiction. San Bernardino believes they may be able to charge up to $60,000 a year in fees alone, along with collecting tax revenue over and above the standard sales tax.

The City of Anaheim has recently begun to shut down the known dispensaries operating there in violation of Anaheim Municipal Codes (AMC) by shutting off their city utility services. Several dispensaries responded by operating off industrial generators in further violation of the AMC. This has led Anaheim Code Enforcement Officers to issue citations and impound generators. Nine of the known twenty dispensaries have been completely shut down thus far.

G. Colorado & Washington

Voters in Colorado and Washington passed laws allowing the recreational use and retail sale of marijuana and marijuana products in their states. The State of Colorado developed 144 pages of regulations for retail marijuana cultivation operations and retail marijuana stores. The regulations cover everything from licensing of the facilities, business records, labeling/packaging, and product safety. Additionally, it addresses inspections by fire department officials, local health department officers, and code enforcement officers. The regulations also established sanitary conditions for each facility, training requirements for owners and employees, an extensive disciplinary process covering suspension and revocation of licenses, and an appeal process.

Since the passage of their law, Colorado has seen a surge in their homeless population and many believe it is due to the legalization of marijuana. One homeless shelter spotlighted in a news report has seen an increase of 50-75 persons per night seeking their services. The shelter operator believes it is due directly to marijuana legalization. The same report detailed a 19-year-old homeless man who relocated from Arizona to Colorado in order to legally use marijuana. The man is now utilizing public and private homeless services in Colorado.

The State of Washington implemented tight regulation in response to the citizen approved initiative of 2012. The initiative placed the burden of developing the tight regulations into the hands of the Washington State Liquor Control Board. The first retail stores as a result of this initiative were to begin in July 2014. The rules developed are listed as "fluid" on the Washington State Legislature website and were updated as recently as April 30, 2014.

H. Impact on the Police Department

The available evidence in Southern California is quite clear that dispensaries have had a negative impact on the communities where they operate. The relative low amount of regulation contained in the citizen sponsored proposals would almost guarantee these negative impacts would occur in Costa Mesa as well.

The four to eight business licenses called for in the citizen backed proposals for such facilities equates to approximately one per two square miles. When the scant regulatory guidelines are factored in, it would appear some areas will end up with more per square mile than other areas of the city. The ability of the

city council to reduce that number is prohibited by the proposal even if the city determines the number is too high or some areas are more adversely affected than others.

The concept of a reasonable quantity of marijuana is too vague to define and accurately track. As already witnessed in Costa Mesa, the temptation of the profits contained in the illicit market would likely cause some to store marijuana over and above what would be a reasonable amount. This, along with the storage of large sums of cash at the dispensaries, would make them prime targets for burglaries and robberies. Prior convicted felons can work in the dispensaries if their convictions have been somehow set aside by a court. The temptation for illicit profits could prove too much to ignore.

The tax revenue could be in jeopardy at this point due to a lawsuit filed in Colorado, where recreational sales and use of marijuana is legal. The lawsuit states marijuana sales are still illegal under federal law and requiring those involved to pay taxes to local governments incriminates them in federal drug trafficking. If successful, the lawsuit would seem to preclude Costa Mesa from collecting the taxes contained in the citizen sponsored proposal. At the very least, it would provide guidance for a similar lawsuit in California should a Colorado legal holding not have precedence in California.

The US House of Representatives recently passed legislation allowing banks to conduct financial transactions with state legal marijuana dispensaries and stores. The US Senate has yet to take up the issue. This would appear to eliminate the need to store large sums of cash in the dispensaries, which has been the custom to date. The elimination of the need to pay local taxes could reverse this development and once again cause dispensaries to store large sums of cash making them prime targets of robberies and burglaries.

The second proposal states that employees can only be suspended or removed from employment if they engage in illegal marijuana sales on the premises. Involvement in a 1,000 pound marijuana deal at Costa Mesa High School (CMHS) is not grounds for removal. Again, given the tremendous incentive to divert marijuana from the business for more profitable markets would not be grounds for removal. The business owner convicted in Pennsylvania for marijuana trafficking with marijuana from his Costa Mesa medical marijuana would be free to run his business in Costa Mesa under this proposal.

I. Conclusion

The collective experience in Southern California with medical marijuana dispensaries thus far has been mixed at best. Los Angeles is the best example of city sponsored regulation to deal with the proliferation in their jurisdiction. The dispensaries there are still associated with negative consequences for the surrounding communities including robberies and murder. Since the "black market" for marijuana still exists, no amount of regulation appears sufficient at this point to eliminate or seriously reduce these issues.

The increase in Colorado's homeless population directly attributed to marijuana legalization should be a red flag for Costa Mesa due to its current homeless issues and established homeless services. As the City of Anaheim moves to shut down their known dispensaries, marijuana using clientele and negative impacts may transfer to Costa Mesa. The possibility of an increase in the homeless population appears to be a reasonable inference to make against the backdrop of the news report in Colorado.

The City of San Bernardino appears to have the best approach to this issue. By forming a committee to study it, they should be able to devise an approach that should suit their community. Costa Mesa is a unique community that is different from San Bernardino, Los Angeles, Colorado, and Washington. Since regulation is currently left to each municipality in California, Costa Mesa should consider following a similar model. A committee could be formed bringing together all interested parties, including but not limited to residents, business owners and medical marijuana supporters.

The collective experience already seen in Costa Mesa, Orange County, and Los Angeles should be used as a basis from which to develop an approach to address the major concerns of each group. Guidance could also be found in the legal recreational marijuana use states of Colorado and Washington.

Until California passes legislation regulating medical marijuana distribution statewide, Costa Mesa should consider forming a committee of interested parties to take a step-by-step approach to this complex, fluid, and ever changing issue.

CHAPTER 4

FINANCE DEPARTMENT REPORT

BY STEPHEN DUNIVENT, INTERIM FINANCE DIRECTOR

A. Introduction

This preliminary report briefly summarizes the potential impacts on citywide operations, costs, impacts to related services and resources that may be associated with the addition of medical marijuana businesses in Costa Mesa, including but not limited to election expenses, and costs for staff time and ongoing revenue audits.

The purpose of this memorandum is to update and explore the possible impacts to the city's elections expenses, staff costs and costs for ongoing revenue audits should one of the measures be approved by Costa Mesa voters.

A more detailed analysis of the provisions of each initiative is contained in Attachments 1 - 4.

B. Potential Fiscal Impact

1. Direct Costs and Staff Time

Direct costs associated with the adoption of any of the proposed ordinance will revolve around the need to:

i. Place the measures on the ballot

ii. Fulfill functional administrative and ministerial duties to implement programs, set fees by resolution, approve new taxes by election, and issue licenses and permits, etc.

iii. Coordinate enforcement efforts and maintain an adequate program to mitigate secondary effects in connection with approved medical marijuana businesses ("businesses")

iv. Administer, audit, and collect taxes

At this time, it is difficult to predict operational costs to implement and maintain programs to address all elements in the proposed ordinances. Significant staff time will be required, especially during the first year, and additional resources may be needed to comply with requirements set forth. Some other direct costs are:

i. Costs to place measures on the ballot are estimated to range from $234,000 to $280,000 for stand-alone special elections and from $15,000 to $60,000 for general elections, depending on the number of measures placed on the ballot. The City bears the cost of all measures placed on the ballot, including those brought forward by citizens and those approved by City Council.

ii. Since medical marijuana businesses are by their nature primarily cash businesses, tax revenues should be audited at least bi-annually by an external auditing firm to ensure that the City is receiving appropriate funds. Costs of these audits could be in the range from $5,000 to $15,000 per audit.

2. Revenues

Each of the ordinances being analyzed will result in additional tax, license, and permit revenues. Per Proposition 218, new taxes must be approved in elections in which Council Members are also on the ballot. Any new license and permit fees would require resolutions approved by City Council.

In order to be able to estimate additional tax revenues, it is necessary to calculate a reasonable citywide gross medical marijuana sales figure. Since the City has no reliable source for providing this figure directly, staff has utilized information from two sources (1) information obtained from City of Santa Ana staff based on recent estimates; (2) an analysis from the City's sales tax consultant.

On November 4, 2014, a ballot measure presented by the City of Santa Ana was approved by the voters. Analysis has been performed by staff to attempt to estimate potential gross receipts per business. This analysis estimates annual gross receipts per business ranging from $1 million to $2.8 million with an average of $1.9 million.

The City's sales tax consultant, HdL Companies ("HdL"), performed an analysis based on their statewide client database, estimating annual gross sales per medical marijuana business ranging from $10,000 to $2 million with an average of $100,000. HdL noted that the State Board of Equalization does not categorize medical marijuana businesses separately and that these businesses typically end up in several different categories. HdL has endeavored to add a category into their database for known medical marijuana businesses, which is obviously not a complete sample as many of these establishments operate outside of regulations and registration with the State Board of Equalization.

As is noted above, estimates vary widely as there is little reliable information available. Over time as historical revenue data accumulates, better estimates will be able to be made.

C. <u>Brief summaries of the potential fiscal impacts of each document are provided below.</u>

1. Ordinance No. 1

This measure allows a maximum of eight medical marijuana businesses unless more are approved by City Council. Direct costs in addition to those noted above are primarily related to expansion of the business license process and includes completion of a lengthy list of requirements. Under the current municipal code, business licenses renew annually, while this measure sets a two-year renewal period. If a business license is not approved within 45 days, it will be considered to be automatically approved.

Staff estimates the following costs relating to the issuance of all licenses and permits for a medical marijuana business:

i. Business license issuance costs from $1,000 to $2,000

ii. Permitting software update costs a minimum of $1,700

iii. Standard permit fees from $1,500 depending on a variety of factors

Since eight medical marijuana businesses will be allowed, annual audit costs per year could be from $20,000 to $60,000 if each business is audited every other year. In addition, there are many operational requirements that will need to be monitored and verified on an ongoing basis. More information in regard to detailed requirements of this measure can be found in Finance Department Attachment 1.

This measure allows for a 6% tax on marijuana businesses and a 1% sales tax for non-marijuana related sales. The 1% sales tax is problematic since it conflicts with State sales tax law. It has been reported that the City could potentially be at risk to lose all sales taxes due to this conflict with State law.

Regardless, assuming all sales being subject to the 6% rate, rough estimates could range from $6,000 to $114,000 per medical marijuana business, using HdL and Santa Ana estimated average gross sales, respectively. With eight medical marijuana businesses, annual tax revenues could be from $48,000 to $912,000. License and permit revenues are not expected to be significant as this measure exempts medical marijuana businesses from any special use permits, conditional use permits, special site plans, variances, etc.

In addition, any changes to the current business license ordinance to allow for the stated maximum of $500 would require separate voter approval in an election in which City Council Members are on the ballot. Finance staff believes that the $500 fee would be significantly below actual costs incurred.

2. Ordinance No. 2

This measure allows a maximum of four medical marijuana businesses unless more are approved by City Council. Direct costs in addition to those noted above are primarily related to a new medical cooperative license and operator permits for each medical marijuana business manager. Both the license and the permit require completion of lengthy lists of requirements. If a license is not approved within 30 days, it is considered to be automatically approved.

Staff estimates the following costs relating to the issuance of all licenses and permits for a medical marijuana business:

i. Medical cooperative license issuance costs from $2,000 to $5,000

ii. Operator permit issuance costs from $300 to $1,000

iii. Permitting software update costs a minimum of $3,400

iv. Standard permit fees from $1,500 depending on a variety of factors

Since four medical marijuana businesses will be allowed, annual audit costs per year could be from $10,000 to $30,000 if each business is audited every other year. In addition, there is a list of operational requirements that will need to be monitored and verified on an ongoing basis. More information in regard to detailed requirements of this measure can be found in Finance Department Attachment 2.

This measure allows for a 6% gross receipts tax and exemption from the 1% sales tax. The 1% exemption from sales tax is problematic since it conflicts with State sales tax law. As noted in the analysis of the first ballot measure, it has been reported that the City could potentially be at risk to lose all sales taxes due to this conflict with State law.

Regardless, assuming all sales being subject to the 6% rate, rough estimates could range from $6,000 to $114,000 per medical marijuana business, using HdL and the Santa Ana survey average gross sales, respectively. With four medical marijuana businesses, annual sales tax revenues could be from $24,000 to $456,000. License and permit revenues are not expected to be significant and any fees for new medical cooperative license and operator permits would require resolutions approved by the City Council.

3. Ordinance No. 3 – "City Draft"

This proposed ordinance does not set a maximum number of medical marijuana businesses, although indirect limitations will exist related to eligible locations within the City. Information Technology and Development Services staff have estimated that under the initially imposed constraints in the City Draft, there could be approximately 83 business locations.

Direct costs in addition to those noted above are primarily related to the optional establishment of a new City Office of Cultivation Standards and Quality Control ("City Office") and medical marijuana business and medical marijuana cultivation permits. The City Office would be authorized by this proposed ordinance but not required and the new permits require applicants to complete lengthy lists of requirements. If a license is not approved within 60 days, it will be presented for City Council review at the next regularly scheduled meeting.

Staff estimates the following costs relating to the issuance of all licenses and permits for a medical marijuana business:

i. Medical marijuana business permit issuance costs from $2,000 to $5,000

ii. Medical marijuana cultivation permit issuance costs from $1,000 to $5,000

iii. Permitting software update costs a minimum of $13,000 (one-time cost regardless of the number of businesses)

iv. Standard permit fees from $1,500 depending on a variety of factors

Since there is not a specific limitation on the number of medical marijuana businesses allowed, audit costs per year cannot be estimated at this time. As noted above, individual business audits could cost

from $5,000 to $15,000. In addition, there is a list of operational requirements that will need to be monitored and verified on an ongoing basis. More information in regard to detailed requirements of this measure can be found in Finance Department Attachment 3.

This measure creates no new taxes in addition to the existing 1% sales tax allocated to the City. Consistent with information above, rough sales tax estimates could range from $1,000 to $19,000 per business, using HdL and the Santa Ana survey average gross sales, respectively. With no formal limitation on medical marijuana businesses, annual sales tax revenues cannot be estimated at this time.

License and permit revenues could be sizable but not significant depending on the number of businesses receiving permits and new permit fees set by resolution by the City Council to recover costs.

4. Ordinance No. 4 - City of Santa Ana Ordinance

This ordinance was approved by the voters on November 4, 2014 and it allows a maximum of twenty collectives/cooperatives permits, although Santa Ana staff believes the actual number could be less due to limitations related to eligible locations within the City. Santa Ana staff is currently assuming a minimum of 12 successfully permitted collectives/cooperatives.

Direct costs in addition to those noted above are primarily related to a new cooperative/collective regulatory safety permit for each site and expansion of the business license tax program. These permits require completion of sizable lists of requirements and approval of each cooperative/collective regulatory safety permit is required within 60 days.

In addition, there is a list of operational requirements that will need to be monitored and verified on an ongoing basis. More information in regard to detailed requirements of this measure can be found in Finance Department Attachment 4. Santa Ana plans to budget $175,000 for a forensic auditor to monitor/audit tax receipts.

This ordinance allows for a maximum 10% gross receipts business license tax assessment (initially imposed at a 5% rate and adjustable thereafter by simple ordinance as needed) with a minimum of $2,000 per year basic tax amount in addition to the 1% allocation of sales taxes collected by the State. Assuming the business license tax assessment of 5% and the sales tax allocation of 1%, Santa Ana estimates that additional annual tax revenues could be approximately $116,000 per collective/cooperative. Assuming twelve collectives/cooperatives, annual tax revenues could be as much as $1.39 million. Permit revenues are expected to be approximately $14,000 per business for combined estimated General Fund revenues of over $1.5 million.

D. Conclusion

Regardless of the outcome of the two ballot measures allowing medical marijuana businesses, which were recently certified by the Orange County Registrar of Voters, there are many issues that will need to be addressed by the City. Some of the more notable issues are as follows:

1. Significant citywide staff time will be required and costs will be incurred for implementation, ongoing operations, and enforcement efforts resulting in potentially high one-time and startup costs

2. Legal issues and conflicts with Federal law and State Board of Equalization requirements exist in each of the ballot measures

3. Insufficient historical revenue and cost information exist to reasonably estimate revenue generation and costs to be incurred and thus, it is too early to know with so much uncertainty and too little experience to be able to determine net fiscal impact

As requested, Finance Department staff has provided very preliminary information to the City Council to attempt to address potential citywide financial/staff impacts and issues relating to the two certified ballot measures, the City Draft measure, and the City of Santa Ana's approved ordinance. At this time, much uncertainty exists in regard to allowing and regulating medical marijuana businesses as this is an evolving industry.

FINANCE DEPT Attachment #1: Taft/Gardner Ballot Measure Analysis
FINANCE DEPT Attachment #2: Webster/Levesque Ballot Measure Analysis
FINANCE DEPT Attachment #3: Proposed Ordinance in City Draft Analysis
FINANCE DEPT Attachment #4: City of Santa Ana Ordinance Analysis

TAFT/GARDNER BALLOT MEASURE ANALYSIS

OPERATIONAL IMPACT, INCONSISTENCIES, AND LEGAL ISSUES

General:

Maximum of eight medical cannabis businesses allowed

City Council can increase but not decrease the maximum medical cannabis businesses allowed

Amendment/repeal only through citywide election

Amendment of municipal code

Allows cultivation of marijuana on premises

Planning/Building Safety (required services prior to opening of business):

Exempt from special use permits, conditional use permits, any other permits as a condition to obtaining a business license

Exempt from special site plans, variances or any other permit or certificate as a condition to obtaining a business license

Determination that proposed business/location meets requirements:

- Exempt entities: residences cultivating marijuana, clinics, health care facilities, residential care facilities, hospice, and home health agencies
- 600 foot radius from public schools
- 1,000 foot radius from other licensed medical cannabis businesses
- Permitted in use districts or zones AP, CL, C2, C1-S, MG, MP, PDC, PDI, C1, and TC
- Outdoor signs in accordance with City restrictions with no pictorial representations of cannabis
- Legal notice posted inside
- Air treatment filtration or ventilation system to control odors
- Alarm system

Operational Requirements (ongoing monitoring and verification):

Live Scan criminal background checks prior to employment for all employees/volunteers

Annual Live Scan criminal background checks by December 31st for all employees/volunteers

Managers must be registered members of the dispensary

Employees/volunteers must have no felonies in the last seven years

Employees/volunteers must not be on probation or parole for drug sales/distribution

Reasonable compensation of employees comparable to IRS qualified non-profit organizations

No minors allowed to be employees or to be on the premises during business hours

Commercial general liability insurance including coverage for medical cannabis

Maintains insurance for all who deliver marijuana within the City and has location in City with a business license

Business hours allowed from 9am to 10pm seven days a week

Seller's permit valid and current

Licensed and uniformed security guard patrols during business hours

Alarm system must be functioning and in use

Warning labels and packaging requirements

Legal notice posted inside

Packaging/warning label requirements

Signs in accordance with City rules and no pictures related to cannabis allowed

No cannabis can be visible from the exterior of the business

No alcohol and use of cannabis in business, parking area, or within 50 feet

Cultivation concealed from public view with no exterior evidence or odors/other impacts

Cultivating, manufacturing, and processing cannabis from California only and has not left the state

Cultivation by and provided to verified members in a closed circuit of production and consumption

Inventory reasonable to meet needs of members only

No manufacturing of concentrated cannabis

Edible cannabis products must comply with State and local laws

Air treatment filtration or ventilation system to control odors must be functioning and in use

Taxes:

6% sales tax on marijuana related items

1% sales tax on non-marijuana related items

Business licenses (initial setup, processing, monitoring, tracking, verification, user fee creation, permit issuance):

If not approved/denied in 45 days, permit is automatically approved

License is valid for two years and renewals are due 30 days before expiration and not prior to sixty days

License transfers require that new owners must meet all requirements

License fee can't exceed $500

Managers must be registered members of the dispensary

First eight medical cannabis businesses approved get licenses

Priority registration status (first eight applicants):

- Begins thirty days after ordinance effective date plus ten days
- Requirements:
  - Has never operated a medical cannabis business within the City
  - Has not been convicted of operating a medical cannabis business within the City
  - Has never been civilly adjudicated for operating a medical cannabis business without a business license
  - Has applied, has been issued a business license, or received a denial letter
  - Has filed proper documents with the State for as a non-profit incorporation
  - Has or has applied for a seller's permit
  - Has or has applied for a license to sell nursery stock from the Department of Food & Agriculture
  - Has applied for a Live Scan background check
  - Has a physician's recommendation
  - Has or has applied for a medical marijuana identification card
  - Has or has applied for general liability insurance with coverage for medical cannabis or medical marijuana
  - Has notarized, signed, and dated authorization for fingerprinting, photographing, and release of information for a background check
  - Has notarized, signed, and dated statement to hold the City harmless

Non-priority registration status has same requirements as for priority registration (for all applicants after the first eight)

Ballot Measure Inconsistencies:

Summary states that activities should not be in conflict with State and Federal law

Section 2 states that activities should not be in conflict with State and local law

Section 9-487(A) (4) states maximums of eight and nine medical cannabis businesses

Section 9-487(A) (5) states a maximum of nine medical cannabis businesses

Section 9-487.1 (25) states that sales and use taxes are imposed

Section 9-487.1 (25i) states that a 6% business tax is imposed

Ballot Measure Legal Issues:

6% sales tax on marijuana related items conflicts with State Board of Equalization ("SBOE") regulations

1% sales tax on non-marijuana related items is not in conflict with SBOE regulations

Current business license ordinance does not accommodate requirements of this ballot measure

WEBSTER/LEVESQUE BALLOT MEASURE ANALYSIS

OPERATIONAL IMPACT, INCONSISTENCIES, AND LEGAL ISSUES

General:

Maximum of four medical marijuana businesses allowed

City Council can increase but not decrease the maximum medical marijuana businesses allowed

Amendment with City Council approval/repeal only by citywide election

Amendment of municipal code

Allows cultivation of marijuana on the premises

Planning/Building Safety (required services prior to opening of business):

Determination that proposed business/location meets requirements:

- Exempt entities: health care facilities, residential care facilities, hospice, and home health agencies
- 1,000 foot radius from any schools
- 600 foot radius from public parks
- 600 foot radius from public libraries
- 600 foot radius from child care facilities
- 1,000 foot radius from other licensed medical marijuana businesses
- Not allowed in, abutting, or across the street from residential areas
- Permitted in use districts or zones AP, CL, C2, C1-S, MG, MP, PDC, PDI, C1, and TC
- Parking lot lighting required

Operational Requirements (ongoing monitoring and verification):

At least one person with an operator permit must be on the premises during business hours

Managers must have valid Operator Permits

Must provide information to the City on changes in managers within 30 days

Seller's permit must be valid and current

Business hours allowed from 8am to 10pm seven days a week

No cannabis can be visible from the exterior of the business

No alcohol use or purchases in business and parking area

No one under age 18 allowed on the premises

Any violations are misdemeanors with maximum fines of $1,000 and six months in jail

Taxes:

6% gross receipts tax

Medical cooperatives exempt from the 1% sales tax

Medical Cooperative License: (initial setup, processing, monitoring, tracking, verification, user fee creation, permit issuance)

Limited to four licenses unless City Council approves a higher limit

License is valid until revoked

Allows a non-refundable fee approved by resolution by the City Council to cover costs

If not approved/denied in 30 days, permit is automatically approved

Application form provided by the Chief of Police requires:

- Entity must be incorporated in California and be either a non-profit mutual benefit corporation or a statutory agricultural or consumer cooperative
- Name, date of incorporation, and evidence that corporation is in good standing
- Name and capacity of all officers and directors
- Registered corporate agent and address for service process
- Type of cooperative, proposed site address, property owner/lessor information
- Names of managers who will require Individual Operator Permits and successful Live Scan background checks
- Must provide information to the City on changes in managers within 30 days
- Certificate or drawing to be provided within 30 days of proposed property lines, showing if within limits of other cooperatives, schools, public parks, and residential areas
- If Police Chief determines that the application is not completed correctly, a 10 day extension will be granted by the Finance Director
- Application must be stamped upon receipt and investigation should be concluded within 30 days by either granting or denying the license

Priority review status:

- 30 days after ordinance effective date through 45 days applications submitted
- Requirements:
    - Must be an active non-profit mutual benefit corporation or statutory agricultural or consumer cooperative incorporated in California prior to 5/22/14
    - Has listed proper documents with State for location in the City
    - Has applied for or been issued a business license prior to 5/22/14
    - Has a lease/rental agreement prior to 5/22/14
    - Has seller's permit prior to 5/22/14
- Reasons for denial:
    - Building/equipment/location do not comply with requirements
    - False statements

- Revocation of a dispensary license within the last 2 years
- Director/officer convicted of felony within 10 years prior to filing application
- No responsible adult on premises to as manager during business hours
- License fees not paid

Business licenses:

Suspended or revoked for unlawful distribution, and not following initiative provisions/City disciplinary actions

Annual Individual Operator Permits: (initial setup, processing, monitoring, tracking, verification, user fee creation, permit issuance)

Required for each manager

No false statements

Must be at least 18 years old or if at least 21 years old

Live Scan background check

No felonies within the last 10 years

If not approved/denied within 30 days, automatic approval of permit

Suspended or revoked for unlawful distribution, and not following initiative provisions/City disciplinary actions.

Chief of Police provides form, stamps as received, grants, denies, and renews permits

Applicant must fill out all required information

Non-refundable fee for permit

If Police Chief determines that the application is not completed correctly, a 10 day extension will be granted for City Manager to act on the application

Chief of Police must grant or deny within 15 days, if not, the Finance Department will issue the permit

Permit is valid for 1 year and renewal is due 30 days before expiration

Suspension/Revocation of Cooperative Licenses and Operator Permits:

Chief of Police provides written notice and hearing information at least 10 days before the hearing

Chief of Police decision can be appealed within 7 days to City Council pursuant to the Municipal Code

If appeal is lost, applicant can request a judicial review

Chief of Police can issue warnings, suspensions, or revocations for:

- False statements
- Failure to make reasonable effort to prevent illegal distribution/prohibited conduct/failure to abide by previous disciplinary actions

- Subject to closure as a public nuisance if violate initiative provisions

Ballot Measure Inconsistencies:

Summary states that medical marijuana businesses are subject to a 6% sales tax

The first part of the measure states that medical marijuana businesses are subject to a 6% gross receipts tax

Section 9-490 (f) states applicant for Operator Permit must be at least 18 years old

Section 9-491 (a) (f) states applicant for Operator Permit can be denied if under 21 years old

Ballot Measure Legal Issues:

Medical cooperative exemption from the 1% sales tax is in conflict with State sales tax law

Priority review status requirements state that items need to be accomplished by 5/22/14

PROPOSED ORDINANCE IN CITY DRAFT ANALYSIS

OPERATIONAL IMPACT, INCONSISTENCIES, AND LEGAL ISSUES

General:

No maximum number of marijuana businesses stated

Amendment by an ordinance approved by the City Council

Amendment of municipal code

Cultivation allowed or not allowed on premises?

Planning/Building Safety (required services prior to opening of business):

Exempt entities: clinics, health care facilities, residential care facilities, hospice, and home health agencies

Determination that proposed business/location meets requirements:

- 1,000 feet from public and private schools
- 1,000 feet from public libraries
- 1,000 feet from youth centers
- 200 feet from residential zone unless issued a minor conditional use permit
- Permitted in use districts or zones C1, C2, C1-S, MG, MP, PDC, PDI, C1, and TC
- 1,000 feet from other medical marijuana businesses
- Odor control (air treatment system/no off-site smell)
- Air treatment filtration or ventilation system to control odors
- Alarm system
- Outdoor signs in accordance with State and City restrictions

Operational Requirements (ongoing monitoring and verification):

Allow reasonable inspections by City

Maintenance of required insurance

Seller's permit must be valid and current

Security guard

No use of marijuana or smoking allowed on-site or within 20 feet

No loitering allowed outside business

Any unlawful sales outside business should be reported to City within 24 hours

No allowance of breach of peace, disturbance of public order, or disorderly conduct

Security cameras used continuously with at least 30 days of recorded documentation maintained

Centrally monitored fire and burglar alarm system

Secure entrances with entry controlled by employees

Records to be maintained on site for 3 years:

- Owner and/or lessee information
- Employee information
- Results Live Scans for all employees
- Member information for those who participate in cultivation
- State identification cards and information for all members receiving medical marijuana
- Dates medical marijuana provided to members
- Delivery information
- Documentation of finances
- Insurance policy
- Inventory documentation
- Valid permits displayed
- Employee records (certain felony restrictions/results of annual Live Scans/valid identification cards for employees, owners, and managers)

Volume limited to member needs

Only sell medical marijuana and related products

No recommendations by on-site physicians

Required signs must be posted/shall not obstruct entrance or security system/business identification sign to be single window or wall sign

No alcohol license from State is allowed

Business shall not operate as a lounge or café with consumption on site

Quality control to disclose percentage level of certain compounds

Labeling requirements (warning labels/date of manufacture/weight/no packaging attractive to minors)

Edibles must comply with State law/no products requiring refrigeration or heat/must be prepared by a member

Employees must receive appropriate training

Medical marijuana supply can only be from members

Business hours allowed from 7am to 10pm seven days a week

No minors allowed on-site unless they are qualified patients, primary caregivers, or with parents/legal guardians

Odor control required (air treatment system/no off-site smell)

Site management (business to monitor nuisance activities/written rules to members)

Non-profit (monetary reimbursements only to cover overhead and operating costs)

- Reasonable proof to be provided to City annually

Delivery of medical marijuana to members only (employees delivering must have identification card)

City is authorized but not required to create City Office of Cultivation Standards and Quality Control to perform the following:

- Conduct regular inspections of cultivation practices and procedures
- Test medical marijuana at cultivation sites
- Establish model guidelines
- To determine adherence to guidelines and make results available to the public
- Establish quality control testing standards
- Test standards and make results available to the public
- Establish labeling standards
- Sample testing for pesticides and contaminants by business or independent laboratory with destruction required if positive results

Taxes and Fees:

1% sales tax

Application fees set by resolution

Cost recovery of all fees and costs incurred for implementation set by resolution

Medical Marijuana Dispensary and Medical Marijuana Cultivation Permits (initial setup, processing, monitoring, tracking, verification, user fee creation, permit issuance):

Issued by Chief Executive Officer or designee

Applications:

- Address
- Site and floor plan
- Security plan (cameras/fire and burglar alarm system/locked entrances/interior and exterior lighting/secured windows)
- Names and addresses of managers, owner, and lessor
- Authorization to City to seek verification on application
- Proof of non-profit status
- Statement that information provided is true and correct
- Further information deemed necessary by City CEO
- No false statements

- Appropriate location that meets all requirements
- Applicant must be primary caregiver, qualified patient or legal representative
- No history of unlawful, fraudulent, unfair, or deceptive business acts or practices by applicant or any manager
- Decision in 60 days – if not, application will go to City Council at the next regularly scheduled meeting
- Notice of incomplete application within 30 days
- Granted if meet all requirements of Chapter

State Board of Equalization Seller's Permit required

Written agreement with the City in regard to the following:

- Allow reasonable inspections by City
- Indemnification of City from all liability
- Maintenance of required insurance
- Defend City if legal action and reimburse any court costs
- Provide updated application annually

Conditions to maintain valid permits:

- Strict adherence to requirements
- Allow reasonable inspections by City
- Maintain current and valid contact information with City
- Transferable if transferee meets requirements

Suspension/Revocation of Permits:

- Failure to follow requirements
- Operations ceased for 180 days
- Change in ownership without issuance of new permits
- Failure to maintain security camera recordings
- Fails to allow inspections
- Subject to closure as a public nuisance if violate ordinance provisions

Appeals pursuant to Municipal Code

<u>Violations and Penalties:</u>

- Any person who violates requirements of this ordinance
- Misdemeanor

City of Santa Ana Measure BB – November 4, 2014 Election

General:

20 selected from lottery of qualified applicants

Prohibits on-site growing or cultivating, restrictions for cuttings

Amended municipal code

Within 30 days of adoption, registration forms to be prepared by City

Co-op/Collectives to apply within 60 days, with non-refundable processing fee

Planning/Building Safety

Exterior signage limited to one wall sign, non-illuminated, not to exceed ten square feet

Sufficient odor absorbing ventilation and exhaust system

Patron notification – loitering, forgery, impairment

Web-based closed-circuit tv for security, maintain for 90 days

Fire and burglar alarm

Property owner's consent

Permitted in M-1, M-2 Industrial zones

Not within 500 feet of another collective or cooperative

Not within 1,000 feet of any school, park, residential

Operational Requirements

Unarmed security guard at all times to monitor site and immediate vicinity

Prohibits on-site doctor recommendations

Prohibits on-site alcohol or tobacco sales

Prohibits on-site food/alcohol/tobacco/marijuana consumption

Hours of operation-Monday to Saturday 10 a.m.-8 p.m. Sunday 11 a.m.-7 p.m.

Dispense to qualified patients, only prescribed amount

Max $200 kept on-site overnight, at least one daily bank drop

No patients under 21 unless accompanied by caregiver, etc

Provide name and number of on-site staff person to PD

Criminal background check, employees free of felony or misdemeanor with past four years

Food distribution – adhere to state laws and city ordinances

Prohibits concentrated cannabis

Records at the location

- Names, addresses of landlord, members, caregivers
- Receipts
- Proof of compliance with Attorney General guidelines
- Maintain for five years
- Annual audits, no later than February 15, completed by CPA
- May be inspected by PD and other departments, unlawful to refuse, obstruct
- Non-compliance must cease operation

Taxes – Business License Tax

Revenue purpose only

Annual business license

Not considered religious or charitable

If claiming exemption, must prove status

Tax rates

- Business tax up to ten percent of gross receipts. Initial five percent, ten percent max
- City Council may lower rate
- Minimum $2,000 per location
- City Council may repeal or amend ordinance as long as tax isn't increased
- Tax collector may implement rules, regulations, and guidelines on the collection and the methodology

Exemptions

- No fixed place of business, but comes to City as requested by patient, no more than five days within the year
- If transaction is for collective/co-op activities, business tax is payable

Monthly remittance

$2,000 minimum basic rate due before April 1

If new licensee, prorated quarterly

Late payment subject to penalty and interest

Payment of tax does not authorize unlawful business

State or Federal law changes do not require changes to tax collection

Cooperative/Collective Regulatory Safety Permit.

Regulatory Safety Permit from PD, to be displayed at all times visible to public, valid for a year unless revoked. Regulatory Safety Permit to contain:

- Address
- Site plan
- Photos
- Lease or rental contract, written landlord consent
- Staff information, photo ID
- Articles and Bylaws if corporation, Articles of Association if unincorporated association
- Name of agent for Service of Process
- BOE Seller's Permit
- Copy of Medical Marijuana Collective Operating Standards

Chief of Police to review within 60 days, other City and County departments to make recommendations to Chief. Chief of Police or designee to grant if:

- Fee's paid
- Conforms to provisions
- No material misrepresentation by applicant
- Full cooperation by applicant
- No permit denied or revoke within the last 5 years within the U.S.
- Collective to comply with all laws
- Compliant with Federal agencies and guidelines

Written application to renew 60 days before expiration to Chief of Police

CHAPTER 5

HUMAN RESOURCES / RISK MANAGEMENT DEPARTMENT REPORT

BY TAMARA S. LETOURNEAU, ASSISTANT CEO; AND
LANCE M. NAKAMOTO, HUMAN RESOURCES MANAGER

A. Introduction

This preliminary report briefly summarizes the potential impacts on the Human Resources/Risk Management Division related services and resources that may be associated with the addition of medical marijuana businesses in Costa Mesa, including but not limited to impacts to staffing and job classifications, capital expenses for vehicles, staff training, and records management.

B. Analysis/Impact on Human Resources/Risk Management Division

Based upon the two citizen sponsored initiatives, there would be a maximum of either eight (8) or four (4) dispensaries within the City. One option is to have the regulation of medical businesses incorporated into the Development Services Department.

There are three major functions of the "City Draft": 1. Licensing, 2. Enforcement, and 3. Ongoing Oversight. The August 5, 2014 and November 18, 2014 City Council Reports mention a City Office of Cultivation Standards and Quality Control with the November 18th report indicating this Office could be optional and "...created to conduct regular inspection of cultivation practices and procedures, as well as to test medical marijuana." In the event the City created such an "office," the City's initial focus would appear to be concentrated on these major functions.

In order to ensure that the City addresses quality control and adherence to policies and procedures, one option is to utilize existing Code Enforcement Officers (as other cities have done) and/or add to the current staffing to address this issue.

If the "City Draft" proposal moves forward, there would be a component for "testing" marijuana. The City's Crime Scene Specialist classification already performs basic "presumptive tests" for drugs in collecting, processing and preserving evidence. One option is for the incumbent Crime Scene Specialists to perform the testing component with appropriate training.

In addition to the Code Enforcement Officer and Crime Scene Specialist classifications, the City outsources its former Tax Auditing Specialist classification. As such, the vendor may be required to monitor sales for business taxation purposes under the terms of both citizen-backed initiatives. The city-backed proposal did not call for an additional tax.

The approximate total compensation cost for a Code Enforcement Officer is $100,000 and approximately $115,000 for a Crime Scene Specialist. If new positions are approved there may be additional capital outlay for vehicles, equipment, etc.

Additionally, there would be costs borne for training and continuing education for these employee(s); possible certification and recertification programs; license/records management; and acting as the City's liaison with regard to other County and State agencies interfacing with medical marijuana collectives/cooperatives.

If any of the proposed ordinances are approved, they may impact the wages, terms and conditions of employment for employees represented by Costa Mesa City Employee's Association (CMCEA).

There is also a concern, from a risk management viewpoint, that City employees performing these responsibilities are at potential risk for administering and regulating businesses, which may be in violation of federal law.

C. Conclusion

Depending on which, if any, of the initiatives is approved by voters, there will be impacts relative to staffing, training, records management and monitoring of sales. Should the city-backed proposal be selected, the same impacts will exist in addition to determining appropriate job classifications for the "City Office of Cultivation Standards and Quality Control". There is also potential for a capital outlay for vehicles, equipment and additional training. At this time, we do not know how the CMCEA will react to these issues and the potential conflict with federal law.

CHAPTER 6

FIRE DEPARTMENT REPORT

BY DAN STEFANO, FIRE CHIEF

A. Introduction

This preliminary report briefly summarizes the potential impacts on Fire Department related services and resources that may be associated with the addition of medical marijuana businesses in Costa Mesa, including but not limited to fire and life safety and community risk reduction.

B. Impact on the Fire Department

From a fire prevention and community risk reduction perspective, the introduction of marijuana businesses with on-site cultivation will increase the risk of electrical hazards including fire due to the additional interior illumination (e.g., electric) and heating needs that will be required. This includes potential electrical systems/conditions and heating element hazards as covered in the California Fire Code and Building Codes (*e.g., CFC Chapter 6 – Building Services and Systems; Section 605 – Electrical Equipment, Wiring, and Hazards, etc.*).

To this end, the need for enhanced and specialized collaborative inspections with the building, fire, and police departments will require additional resources for initial and regular site inspections, in addition to increased code enforcement resources to address code compliance (see Fire Department Attachment #1 for a draft copy for an indoor cultivation site).

In addition, the utilization of pesticides, insecticides, herbicides, and chemicals required for indoor cultivation will increase the likelihood of a hazardous material type exposure and exacerbate the nature and extent of any indoor fire or incident (e.g., reactivity), as well as nuisance complaints from nearby businesses and residents.

From an operational and emergency response perspective, timely and direct access for emergency responders will be impacted. Specifically, response times will impacted by high risk premise entry, due to security and blocked or modified entry and egress areas, which does not exclude the potential of hazardous defense devices (e.g., booby trap devices) after hours.

This risk is expanded considerably without quantity limits clearly specified for on-site cultivation sites (see Fire Department Attachment #2). The Fire Department also identifies risk without specific information required relative to on-site cultivation (e.g., the inclusion of a site safety plan, in-line with the security plan measures; electrical safety requirements, emergency access, emergency preplan, etc.).

C. Proliferation of Illegal or Non-Approved Marijuana Cultivation Sites/Locations

The potential of illegal or non-approved marijuana cultivation sites/locations has been documented throughout California, in particular in Northern California and is a very real concern as was evidenced by a recent incident in Costa Mesa, where an illegal operation was discovered after a Fire Department response to an electrical fire (see Fire Department Attachment #3).

D. Conclusion

There will be an impact to fire department resources and services with the implementation of medical marijuana businesses in the City of Costa Mesa, in particular as it relates to on-site cultivation.

FIRE DEPT Attachment #1:	Draft Fire & Building Department Indoor Cultivation Inspection Report
FIRE DEPT Attachment #2:	Limits on marijuana quantities – Kelly decision
FIRE DEPT Attachment #3:	Illegal indoor cultivation site in Costa Mesa; Daily Pilot article

INDOOR CULTIVATION INSPECTION REPORT

ADDRESS: INCIDENT#:
CITY/COUNTY BUILDING OFFICIAL NAME: _____ — — — —

ELECTRICAL SYSTEMS/CONDITIONS

- D METER BYPASSED *{CFC 605.6)*
- D EXPOSED WIRING INCLUDING SPLICES *(CFC 605.6}*
- D ELECTRICAL ALTERATIONS *(CFC 605.6}*
- D ELECTRICAL DEVICES EXPOSED TO WATER *{605.1}*
- D TEMPORARY WIRING USED IN PLACE OF PERMANENT *(CFC 605.9}*
- D TEMPORARY WIRING NOT ATIACHED TO STRUCTURE *(CFC 605.9.1}*
- D EXTENSION CORDS USED IN PLACE OF PERMANENT WIRING *{CFC 605.5}*
- D COVER PLATES MISSING *{CFC 605.6}*
- D MULTI-PLUG ADAPTERS SUBJECT TO ENVIRONMENTAL OR PHYSICAL DAMAGE *(CFC 605.4.3}*

STRUCTURAL CONDITIONS

- D SEPARATION BETWEEN GARAGE/LIVING SPACES PENETRATED *{CFC 703.1}*
- D SELF-CLOSING DOOR AT GARAGE/LIVING SPACES *(CFC 703.2.3}*
- D SHEET ROCK OPENED TO ATIIC/CRAWLSPACE *(CFC 703.1}*
- D WINDOWS BLOCKED OR INACCESSIBLE *(CFC 1026.4}*
- D COMBUSTIBLE FLOOR/WALL COVERING *(CFC 803.1}*
- D SMOKE ALARMS DISABLED/MISSING *(CFC 907.2.10.1.2)*
- D INDICATIONS OF NON-PERMITIED ALTERATIONS (ROOMS ADDED, ETc.) *(CFC 102.3}*

GENERAL SAFETY

- D PRESSURE VESSELS (PROPANE, C02, ETc.) WITHOUT VALVE PROTECTION *{CFC 3003.6)*
- D PRESSURE VESSELS (PROPANE, C02, ETC.) UNSECURED *{CFC 3003.5.3}*
- D STORAGE OF COMBUSTIBLE MATERIALS *(CFC 304.1}*
- D PITFALLS, BOOBY TRAPS, ETC. *{CFC 507.3}*
- D STORAGE IN ATIIC SPACES PROHIBITED IN RI/R2 *(CFC 315.2.4)*
- D FUMIGATION DEVICES REQUIRE NOTIFICATION/PERMIT *{CFC 1703.3}*

Firehouse© Coding:

INCIDENT TYPE: 551 (ASSIST POLICE OR OTHER GOV'T AGENCY)
ACTIONS TAKEN: 002 (MARIJUANA GROW DISCOVERED)

605.6 Unapproved conditions. Open junction boxes and open-wiring splices shall be prohibited. Approved covers shall be provided for all switch and electrical outlet boxes.

605.1 Abatement of electrical hazards. Identified electrical hazards shall be abated. Identified hazardous electrical conditions in permanent wiring shall be brought to the attention of the code official responsible for enforcement of the *California Electrical Code.* Electrical wiring, devices, appliances and other equipment that is modified or damaged and constitutes an electrical shock or fire hazard shall not be used.

605.9 Temporary wiring. Temporary wiring for electrical power and lighting installations is allowed for a period not to exceed 90 days. Temporary wiring methods shall meet the applicable provisions of the *California Electrical Code.*

> Exception: Temporary wiring for electrical power and lighting installations is allowed during periods of construction, remodeling, repair or demolition of buildings, structures, equipment or similar activities.

605.9.1 Attachment to structures. Temporary wiring attached to a structure shall be attached in an approved manner.

605.5 Extension cords. Extension cords and flexible cords shall not be a substitute for permanent wiring. Extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings or floors, or under doors or floor coverings, nor shall such cords be subject to environmental damage or physical impact. Extension cords shall be used only with portable appliances.

605.4.3 Installation. Relocatable power tap cords shall not extend through walls, ceilings, floors, under doors or floor coverings, or be subject to environmental or physical damage.

703.1 Maintenance. The required fire-resistance rating of fire-resistance-rated construction (including walls, fire stops, shaft enclosures, partitions, smoke barriers, floors, fire-resistive coatings and sprayed fire-resistant materials applied to structural members and fire-resistant joint systems) shall be maintained. Such elements shall be properly repaired, restored or replaced when damaged, altered, breached or penetrated. Openings made therein for the passage of pipes, electrical conduit, wires, ducts, air transfer openings and holes made for any reason shall be protected with approved methods capable of resisting the passage of smoke and fire. Openings through fire-resistance-rated assemblies shall be protected by self- or automatic-closing doors of approved construction meeting the fire protection requirements for the assembly.

703.2.3 Door operation. Swinging fire doors shall close from the full-open position and latch automatically. The door closer shall exert enough force to close and latch the door from any partially open position.

803.1 General. The provisions of this section shall limit the allowable flame spread and smoke development of interior wall and ceiling finishes and interior wall and ceiling trim in existing buildings based on location and occupancy classification. Interior wall and ceiling finishes shall be classified in accordance with Section 803 of the *California Building Code.* Such materials shall be grouped in accordance with ASTM E 84, as indicated in Section 803.1.1, or in accordance with NFPA 286, as indicated in Section 803.1.2.

907.2.10.1.2 Groups R-2, R-2, *R-3.1,* R-4 and 1-1. Single- or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, *R-3.1,* R-4 and 1-1regardless of occupant load at all of the following locations: 1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

1026.4 Operational constraints. Emergency escape and rescue openings *and any exit doors* shall be *maintained free of any obstructions other than those allowed by this section and shall be* operational from the inside of the room.

102.3 Change of use or occupancy. No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this code and the *California Building Code.* Subject to the approval of the fire code official, the use or occupancy of an existing structure shall be allowed to be changed and the structure is allowed to be occupied for purposes in other groups without conforming to all the requirements of this code and the *California Building Code* for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.

3003.6 Valve protection. Compressed gas container, cylinder and tank valves shall be protected from physical damage by means of protective caps, collars or similar devices in accordance with Sections 3003.6.1 and 3003.6.2.

Securing compressed gas containers, cylinders and tanks. Compressed gas containers, cylinders and tanks shall be secured to prevent falling caused by contact, vibration or seismic activity. Securing of compressed gas containers, cylinders and tanks shall be by one of the following methods:

1. Securing containers, cylinders and tanks to a fixed object with one or more restraints.
2. Securing containers, cylinders and tanks on a cart or other mobile device designed for the movement of compressed gas containers, cylinders or tanks.
3. Nesting of compressed gas containers, cylinders and tanks at container filling or servicing facilities or in seller's warehouses not accessible to the public. Nesting shall be allowed provided the nested containers, cylinders or tanks, if dislodged, do not obstruct the required means of egress.

4. Securing of compressed gas containers, cylinders and tanks to or within a rack, framework, cabinet or similar assembly designed for such use. Exception: Compressed gas containers, cylinders and tanks in the process of examination, filling, transport or servicing.

304.1 Waste accumulation prohibited. Combustible waste material creating a fire hazard shall not be allowed to accumulate in buildings or structures or upon premises.
304.1.1 Waste material. Accumulations of wastepaper, wood, hay, straw, weeds, litter or combustible or flammable waste or rubbish of any type shall not be permitted to remain on a roof or in any court, yard, vacant lot, alley, parking lot, open space, or beneath a grandstand, bleacher, pier, wharf, manufactured home, recreational vehicle or other similar structure.

315.2.4 Attic, under-floor and concealed spaces. Attic, under-floor and concealed spaces used for storage of combustible materials shall be protected on the storage side as required for !-hour fire-resistance-rated construction. Openings shall be protected by assemblies that are self-closing and are of noncombustible construction or solid wood core not less than 1.75 inches (44.5 mm) in thickness. Storage shall not be placed on exposed joists.

Exceptions:
1. Areas protected by approved automatic sprinkler systems.
2. Group R-3 and Group U occupancies.

507.3 Pitfalls. The intentional design or alteration of buildings to disable, injure, maim or kill intruders is prohibited. No person shall install and use firearms, sharp or pointed objects, razor wire, explosives, flammable or combustible liquid containers, or dispensers containing highly toxic, toxic, irritant or other hazardous materials in a manner which may passively or actively disable, injure, maim or kill a fire fighter who forcibly enters a building for the purpose of controlling or extinguishing a fire, rescuing trapped occupants or rendering other emergency assistance.

1703.3 Notification. The fire code official and fire chief shall be notified in writing at least 24 hours before the structure is to be closed in connection with the utilization of any toxic or fiammable fumigant. Notification shall give the location of the enclosed space to be fumigated or fogged, the occupancy, the fumigants or insecticides to be utilized, the person or persons responsible for the operation, and the date and time at which the operation will begin. Notice of any fumigation or thermal insecticidal fogging shall be served with sufficient advance notice to the occupants of the enclosed space involved to enable the occupants to evacuate the premises.

Court Strikes Down SB420 Limits

Los Angeles, May 22, 2008: The Second District of California Court of Appeals ruled that the state limits on medical marijuana possession and cultivation established under state law SB 420 are unconstitutional.

In the case People v. Patrick Kelly, the court overturned defendant's conviction for possessing 12 ounces of dried marijuana plants on the grounds that the prosecutor had improperly argued that the defendant was guilty because he possessed more than the 8-ounce limit established in Health & Safety Code Sec. 11362.77 and did not have a doctor's recommendation authorizing more. (Text of Kelly decision).

The Court validated the long-standing view of California NORML and other Prop 215 advocates that the SB 420 limits are unconstitutional. Cal NORML attorneys have successfully argued the point in several lower court cases, but this is the first time it has been addressed by an appellate court.

In a 3-0 decision, the court ruled: "The prosecutor's argument was improper. It was improper because the CUA [Compassionate Use Act] can only be amended with voters' approval. Voters, however, did not approve the eight-ounce limit and other caps in section 11362.77 [of SB420]; hence, section 11362.77 unconstitutionally amends the CUA." The decision is certified for partial publication, pending possible appeal to the Supreme Court.

The full implications of the Kelly decision remain unclear. In particular, it is not clear whether it rules out the use of SB 420 numbers as guidelines to protect patients with state ID cards from arrest. The court's reasoning would seem to apply only when the SB 420 numbers are used to limit patients' rights, not when they are used to protect them. However, the court's sweeping pronouncement that this section of SB 420 is "unconstitutional" might be interpreted otherwise by police who would prefer to ignore it. Further litigation therefore seems likely.

Ironically, the court noted that the constitutional problems in SB 420 could have been avoided by enactment of Sen. Vasconcellos' proposed "SB 420 Clean-Up" bill SB 1494 in 2004. That bill made it clear that qualified patients could legally possess whatever amount of marijuana was consistent with their needs. However, SB 1494 was vetoed by Gov. Schwarzenegger on the grounds it removed "reasonable and established quantity guidelines."

One incidental casualty of the Kelly decision was Mendocino's Measure B anti-pot initiative, aimed at rolling back the county's limits for medical marijuana cultivation from 25 to 6 plants. Measure B specifically cites the clause in SB 420 that was struck down in the Kelly decision, H&SC 11362.77. Measure B therefore appears to rest on invalid law, making it vulnerable to legal and political challenge.

The Attorney General's office announced that it would appeal the Kelly ruling.

Text of the Kelly decision

Fire Dept. - Attachment 3

Sign In or Sign Up Like 4.3k Subscribe Special Sections Jobs Cars Legals Real Estate Rentals More Classifieds

DAILY PILOT Thursday, Nov. 6, 2014 6:23 a.m. PST

HOME NEWS SPORTS COMMUNITY ELECTIONS LIFE & ARTS PHOTOS OPINION CALENDAR ADVERTISE MARKETPLACE

Business & Real Estate Education Politics Public Safety Obituaries For The Record Site Index

IN THE NEWS: IRVINE WATER RESERVES | GREAT PARK COMPLAINT | 2ND MARIJUANA INITIATIVE | 3 POLICE RECRUITS Search

Today's Travel Deals by TRAVELZOO 11/6/14

America $49* & up -- Nationwide Fares on Award-Winning Airline, O/W

Hotwire $9.95 & up -- Rental Cars across the United States

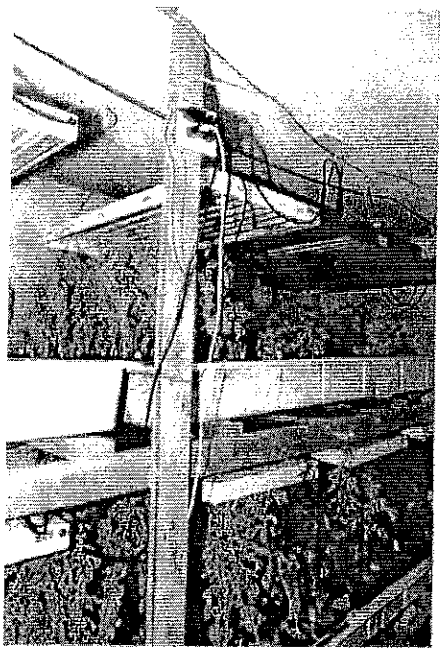
OCEANIA CRUISES $1999 -- Upscale Caribbean 10-Night Cruise incl. R/T Air*

*Some taxes, fees additional

Home > News

250 marijuana plants found in Costa Mesa building

Email Share 312 Tweet 1 Like 311 g+1 0



Costa Mesa police said they found more than 250 marijuana plants in a building across from Whittier Elementary School on Tuesday. (Courtesy Costa Mesa Police Department / November 5, 2014)

RELATED

By Jeremiah Dobruck
November 5, 2014 | 6:43 p.m.

Police said they found hundreds of marijuana plants Tuesday afternoon when a fire led them to an illegal indoor pot farm across from Whittier Elementary School in Costa Mesa.

Stay Connected
Follow us on Facebook »
@TheDailyPilot
@TheDailyPilot

advertisement

IMAGINE HOW *amazing* YOUR HOME WILL LOOK WITH

Elizabeth Shutters 800.748.8377

Commenting Policy »

Facebook comments are not regularly monitored by Daily Pilot staff. If you believe a comment violates any of the below rules, please email Editor John Canalis at john.canalis@latimes.com and Web Editor Ann Haley at ann.haley@latimes.com. Staff will review and remove offending comments during working hours, 8 a.m. to 6 p.m. Monday through Friday.

The Daily Pilot reserves the right to remove, block or refuse any comment for any reason. When posting to DailyPilot.com, you agree to not provide comments that:

* are posted using false or fake names.

* contain vulgar, profane, abusive, racist or hateful language or expressions, epithets or slurs, text, photographs or illustrations in poor taste, inflammatory attacks of a personal, racial or religious nature.

* are defamatory, threatening, disparaging, grossly inflammatory, false, misleading, fraudulent, inaccurate, unfair, contains gross exaggeration or unsubstantiated claims, violate the privacy rights of any third party, are unreasonably harmful or offensive to any individual or community.

Marijuana plants found

TOPICS

- Crime
- Drug Trafficking

MAPS

- Costa Mesa, CA, United States

Around 4:40 p.m., firefighters arrived at a complex of commercial buildings at 1835 Whittier Ave., where an electrical box was ablaze, police said.

Firefighters doused the flames before they spread to a building. But as they investigated the cause of the fire, they discovered that the electrical panel had been altered so a unit inside the building could steal power, authorities said.

Fire crews saw rows of marijuana plants inside that unit, police said.

The Fire Department called Costa Mesa police detectives, who waited at the scene until they had a warrant to search the building, police Lt. Bryan Glass said.

"Various rooms were found to contain marijuana plants in various stages of development, equipment and supplies to maintain the grow operation, as well as finished and partially finished marijuana prepared for distribution and sales," Costa Mesa police said in a news release.

Detectives seized more than 250 plants, several bags of marijuana and about 40 pounds of the drug ready to be sold for an estimated value of more than $20,000, Lt. Paul Dondero said.

Police declined to release more details because they are still investigating the operation.

No arrests have been made, Glass said.

Follow Jeremiah Dobruck

jeremiah.dobruck2@latimes.com

Email Share 312 Tweet 1 Like 311 +1 0

« Previous Story

More Costa Mesa, Newport Beach and Irvine news | Latest breaking news from Newport Beach, Costa Mesa and Irvine, California | Daily Pilot

Next Story »

Around Town

'Gift bag bandit' sought in Costa Mesa bank robbery

The Daily Pilot is now using Facebook comments on stories. To post a comment, log into Facebook and then add your comment. To report spam or abuse, click the "X" in the upper right corner of the comment box.

ou need to accept third-part cookies in our browser in order to comment using this social plugin.

Add a comment.

Comment

ndrew S it Top Commenter Costa Mesa California

interesting link on the Santa Ana MM issue http //www.ocregister.com/articles/cit -640 1 - medical-mar uana.html

Repl Like 16 hours ago

* discriminate on the grounds of race, religion, national origin, gender, age, marital status, sexual orientation or disability, or refer to such matters in any manner prohibited by law.

* "flame" any individual or entity (e.g., sends repeated messages related to another user and/or make derogatory or offensive comments about another individual), or repeat prior posting of the same message under multiple threads or subjects.

* violate or encourage the violation of any municipal, state, federal or international law, rule, regulation or ordinance.

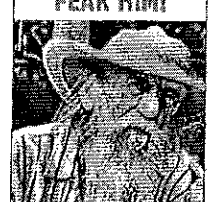
* advertise, promote or offer to trade any goods or services, except in areas specifically designated for such purpose.

*contain copyrighted or other proprietary material of any kind without the express permission of the owner of that material.

* violate any right of dailypilot.com or any third party.

* upload or transmit viruses or other harmful, disruptive or destructive files, material or code.

GROCERY STORES FEAR HIM!



MAN CREATES BRAIN-DEAD SIMPLE SYSTEM THAT CUTS YOUR GROCERY BILL BY 90%!

WATCH FREE VIDEO NOW

www.CrisisEducation.com

27-7

CHAPTER 7

DEVELOPMENT SERVICES DEPARTMENT REPORT

BY WILLA BOUWENS-KILLEEN, PRINCIPAL PLANNER-ZONING ADMINISTRATOR

A. Introduction

This preliminary report briefly summarizes the potential impacts on Development Services Department related services and resources that may be associated with the addition of medical marijuana businesses in Costa Mesa, including but not limited to zoning restrictions, permit requirements and adherence to Costa Mesa Municipal Codes.

B. Impact on the Development Services Department

In reviewing both citizen-sponsored medical marijuana ballot measures, it appears the Development Services Department would be involved as follows:

1. *Compliance with "safety radius restrictions"*: Proposal number 1 might require the Planning Division to verify that the proposed business complies with the "safety radius restrictions" as part of the review of the business license. (This will depend on how the business license is submitted.)

2. *Violation of operational requirements*: Under proposal number 1, only a Business License is required. Consequently, if the business does not comply with State and Local law, Code Enforcement would be required to enforce those Code violations -- via Notice of Violations, citations, and/or criminal prosecution. (Under proposal number 2, since the Police Department would review and issue dispensary and operator permits, one would assume that they would be responsible for ensuring compliance with State and Local requirements.)

3. *Signage*: Under proposal number 1, Planning would need to confirm that proposed signage does not contain pictorial representations of the marijuana plant and/or of marijuana usage.

Many aspects of Medical Marijuana Collectives being permitted to operate in Costa Mesa would be the same as any business proposing to establish in the City:

1. *Business license*: The Planning Division would be required to review the business license for compliance with zoning and parking requirements.

2. *Parking deviations*: A medical marijuana business proposed for an industrial zone may be initially rejected due to a lack of parking, necessitating the processing of a minor Conditional Use Permit (CUP) to deviate from parking standards before approval of the license can be given (assuming the minor CUP can be justified and approved).

3. *Building permits*: A building permit would be required for any changes proposed to the building. This is especially critical for businesses that will cultivate the marijuana because those type of uses draw a greater than normal amount of power and have interior irrigation systems.

4. *Enforcement*: If compliance cannot be gained, a public nuisance action, as delineated in Title 20 (proposal number 1) or Title 13 (proposal number 2) would probably fall to this department to spearhead and/or process.

5. *Illegal businesses*: Perhaps the greatest impact could be that, without an outright prohibition, other Medical Marijuana businesses may believe they can establish in the City. Enforcement (lack of a business license/removal of a business that cannot be established) can be lengthy.

C. Conclusion

Consequently, in our opinion, with a few exceptions, allowance of medical marijuana businesses appears to be much the same as any new business that proposes to establish in the City.

CHAPTER 8

INFORMATION TECHNOLOGY DEPARTMENT REPORT

BY STEVE ELY, INFORMATION TECHNOLOGY DIRECTOR

A. Introduction

This preliminary report briefly summarizes the potential impacts on the Information Technology Department (I.T.) related services and resources that may be associated with the addition of medical marijuana businesses in Costa Mesa, including but not limited to impacts to the City's permitting system, and changes to the geographical information systems spatial layer maps.

B. Impact on the I.T. Department

We have reviewed the proposed measures to establish regulations for medical marijuana businesses. The impacts to the I.T. Department associated with the proposed measures are minimal and are similar for all measures. At a minimum, permitting software requirements will need to be changed/added to accommodate the proposed measure. As needed, I.T. will make changes to the City's geographical information systems maps as Medical Marijuana Businesses relocate or change locations.

C. Conclusion

The Information Technology Department will work with the permitting vendor to establish the needed changes in the application for any approved medical marijuana businesses measure. Otherwise, it appears that impacts to our department will be minimal.

CHAPTER 9

PUBLIC SERVICES DEPARTMENT REPORT

BY ERNESTO MUNOZ, PUBLIC SERVICES DIRECTOR

A. Introduction

This preliminary report briefly summarizes potential impacts on the Public Services Department related services and resources that may be associated with the addition of medical marijuana dispensaries in Costa Mesa, including but not limited to impacts to public infrastructure.

B. Impact on the Public Services Department

We have reviewed the proposed measures to establish regulations for medical marijuana dispensaries and cultivation. The impacts to public infrastructure associated with the proposed measures are minimal and are similar for all measures. As established by the applicable codes, the City will retain its ability to adopt and enforce local ordinances to regulate facilities housing these businesses, including permitting requirements for new or modified existing sites.

C. Conclusion

Permitting requirements and conditioning of new and remodeled sites will follow existing local codes. No impacts are anticipated to the public right-of-way other than those typical of any new or remodeled development.