# CITY COUNCIL AGENDA REPORT

**MEETING DATE:** August 5, 2014

ATTACHMENT 2

**SUBJECT:** MEASURE TO ESTABLISH REGULATION OF MEDICAL MARIJUANA DISPENSARIES AND REGULATION OF MEDICAL MARIJUANA CULTIVATION ("MEASURE")

**DATE:** July 30, 2014

**FROM:** Tom Duarte, City Attorney

**PRESENTATION BY:** Council Member Gary Monahan

**FOR FURTHER INFORMATION CONTACT:** Brenda Green, City Clerk, 714-754-5221

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## RECOMMENDATION:

The recommendation is for the City Council to:

Consider adopting the following resolutions submitting to the voters at the November 4, 2014 general municipal election a Measure to Establish Regulation of Medical Marijuana Dispensaries and Regulation of Medical Marijuana Cultivation ("Measure"):

A. Resolution No. 14 - 52, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA ORDERING THE SUBMISSION TO THE VOTERS OF THE CITY OF COSTA MESA, CALIFORNIA A MEASURE RELATING TO A PROPOSED ORDINANCE TO ESTABLISH REGULATION OF MEDICAL MARIJUANA DISPENSARIES AND REGULATION OF MEDICAL MARIJUANA CULTIVATION, AS CALLED BY RESOLUTION NO. 14-26; and

B. Resolution No. 14 - 53, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA SETTING PRIORITIES FOR FILING WRITTEN ARGUMENTS REGARDING A CITY MEASURE RELATING TO A PROPOSED ORDINANCE TO ESTABLISH REGULATION OF MEDICAL MARIJUANA DISPENSARIES AND REGULATION OF MEDICAL MARIJUANA CULTIVATION; AND, DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS FOR THE SAME CITY MEASURE; and

C. Resolution No. 14 - 54, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS FOR CITY MEASURES SUBMITTED AT MUNICIPAL ELECTIONS.

## BACKGROUND

In 1996 the California voters approved Proposition 215 (known as the Compassionate Use Act (the "CUA") and codified as Health and Safety Code Section 11362.5, et seq.) to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for medical purposes.

In 2003 the California legislature enacted Senate Bill 420 (known as the Medical Marijuana Program Act (the "MMPA") and codified as Health and Safety Code Section 11362.7 et seq.), as later amended, to clarify the scope of the Compassionate Use Act relating to the possession and cultivation of marijuana for medical purpose, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions.

Recently, California court decisions have affirmed the authority of local governments to prohibit both dispensaries and cultivation pursuant to local control. Likewise, local governments can regulate dispensaries and cultivation.

Scores of cities throughout California have both banned medical marijuana operations in their cities as well as authorized and taxed medical marijuana operations in their cities. The heaviest concentration of cities which have authorized medical marijuana operation remains in Northern California. Notable exceptions are the City of Los Angeles, and as of March 2014 the City of San Diego.

As of May, 2014 City Hall has been served notice of intent to circulate two citizen sponsored initiatives to authorize, regulate and tax medical marijuana. At the present it is unknown whether the petitions will qualify for the November ballot. The City of Santa Ana has two medical marijuana initiatives on the November ballot, one a voter sponsored initiative, and the other a city council sponsored initiative.

SB 1262 is pending in Sacramento. This legislation is co-sponsored by the League of California Cities and the California Police Chiefs Association. This legislation requires the Department of Consumer Affairs to license dispensaries, cultivation sites, and processing facilities. Such licenses are subject to local restrictions, meaning that if the City adopts a local ordinance to authorize and regulate medical marijuana, SB 1262 would work with such a local law. Further security regulations are provided by SB 1262, as well as provisions related to the transportation, testing and distribution of marijuana. State licensing of medical marijuana dispensaries would be dependent on local permitting approval and other regulations. Local authority to ban dispensaries remains intact.

And, a statewide ballot initiative to legalize recreational use may also be on the California 2016 ballot. This proposed initiative is the California Control, Regulate and Tax Marijuana Initiative, which was approved for signature circulation for the 2014 ballot. Although it failed to qualify for 2014, it appears that the proponents are focused on 2016. The initiative proposes to legalize limited amounts of marijuana for personal use; have the state regulate and license commercial marijuana cultivation, transportation, sales and testing; impose a 25% tax on nonmedical marijuana retail sales; and maintain authority of local governments to ban/limit the number of marijuana businesses.

The City of Costa Mesa presently prohibits medical marijuana dispensaries as well as the cultivation of medical marijuana.

The proposed Measure, if adopted by the voters, would add Chapter VI ["Medical Marijuana Dispensaries and Cultivation"] to Title 9 of the Costa Mesa Municipal Code to establish regulation of both medical marijuana dispensaries as well as regulation of medical marijuana cultivation.

## PROPOSED MEDICAL MARIJUANA LAW

The proposed ordinance provides for a comprehensive regulatory scheme for both medical marijuana dispensaries as well as the cultivation of medical marijuana for a dispensary. These operations would be prohibited without the issuance of a City permit.

Although voter approval is being sought for THE Measure, the proposed ordinance is drafted to be expressly subject to amendment by the Council to further the purposes of the ordinance as allowed by Cal Const, Art. II § 10(c).

The proposed ordinance has regulations governing security, maintenance of written records, background checks, odor, edibles, delivery and labeling. Notable among these are continuous 24 hours a day security camera monitoring and a mandatory security guard. No physician recommendations can be made on site. A new City Office of Cultivation Standards and Quality Control is authorized (though not required) to be established, whose purpose will be to inspect cultivation sites as well as test medical marijuana. The City is authorized to make unannounced inspections of medical marijuana businesses to insure compliance with the law.

## FISCAL IMPACT OF PLACING MEASURE ON BALLOT

If the proposed Measure is placed on the November 2014 ballot, the additional cost is estimated at $12,880.00.

ATTACHMENTS