ATTACHMENT 1

CITY COUNCIL AGENDA REPORT

MEETING DATE: April 5, 2016 **ITEM NUMBER:** **NB-2**

SUBJECT: CONSIDERATION OF A CITY INITIATIVE PETITION REGARDING MEDICAL MARIJUANA DISPENSARIES

DATE: MARCH 24, 2016

FROM: CITY CLERK'S OFFICE; CITY ATTORNEY'S OFFICE

PRESENTATION BY: BRENDA GREEN, CITY CLERK;
TARQUIN PREZIOSI, DEPUTY CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: BRENDA GREEN, CITY CLERK, 714-754-5688

RECOMMENDATION:

Staff recommends that the City Council provide direction to City staff concerning preparation of an initiative to be placed on the November 2016 ballot regulating medical marijuana dispensaries within the City.

BACKGROUND:

Marijuana dispensaries and the cultivation are currently prohibited throughout the City. Two initiatives regulating medical marijuana will be on the November 8, 2016 ballot. The City Council retains the power to place a proposition for the adoption of an ordinance directly on the ballot pursuant to Elections Code section 9222 ["Proposition for repeal, amendment, or enactment of ordinance; Time of election"]. This section provides that the City Council may submit to the voters without a petition a proposition for the enactment of any ordinance, to be voted upon at any succeeding regular or special city election; and, that the election shall be held not less than 88 days after the date of the order of election.

The City Council by resolution may thus place a competing medical marijuana ballot measure before the voters at the same election when the two citizen initiative measures are to be considered by the voters.

Election Code section 9221 ["Conflicting provisions in two or more ordinances"] provides in full that "[i]f the provisions of two or more ordinances adopted at the same election conflict, the ordinance receiving the highest number of affirmative votes shall control." Both of the citizen initiative petitions also provide that if two or more competing medical marijuana measures are approved by the voters, then only the measure with the greatest number of affirmative votes shall become the new law.

Thus, if the City places its own medical marijuana measure on the ballot with the two citizen backed measures, the one receiving the most votes (if more than one passes)

shall become the local law (the City should also place a similar "only one measure wins" section in any City backed measure).

Qualifying Initiatives

An initiative titled "Allow Operation of Up to Eight Medical Marijuana (Cannabis) Businesses in the City of Costa Mesa" (Ordinance No. 1) was designed to require background checks for medical marijuana workers and limit the number of dispensaries in the city to eight. An initiative titled "Allow Operation of Up to Four Medical Marijuana Businesses in the City of Costa Mesa" (Ordinance No. 2) was designed to allow four medical marijuana collectives to operate in the city. Both ordinances each propose a six percent tax on medical marijuana businesses. These initiatives and their tax components are discussed in greater detail in the attached November 18, 2014 Agenda Report.

Previously Introduced Measure

On August 5, 2014, Councilmember Monahan introduced resolution 14-52, a "Measure to Establish Regulation of Medical Marijuana Dispensaries and Regulation of Medical Marijuana Cultivation" (Ordinance No. 3). This measure would have placed Ordinance No. 3 on the ballot for the November 4, 2014 general election. However, resolution 14-52 did not receive a second. Ordinance No. 3 was also discussed at the December 16, 2014 Council Meeting. Various amendments to the Ordinance were suggested, but did not receive a majority vote. Ordinance No. 3 as written provides for a comprehensive regulatory scheme for both medical marijuana dispensaries as well as the cultivation of medical marijuana for a dispensary. This ordinance would limit dispensaries to Commercial zones, Industrial zones, Planned Development Commercial zones and Planned Development Industrial zones. The ordinance is drafted to be expressly subject to amendment by the Council. Significant differences between the proposed City's Ordinance and the two citizen backed ordinances include the following requirements in the proposed City's Ordinance not contained in the other two:

1. Security. Requires 24/7 security camera recordings which are accessible to law enforcement and the City.

2. Record keeping. Requires maintenance of a substantially greater amount of records detailing the operation (business, transaction, delivery, employee, etc.)

3. Priority to Old Businesses. Does not provide priority registration to old businesses.

4. Inspections. City CEO authorized to conduct reasonable inspections.

5. Taxes. Does not propose new taxes.

6. On-Site Recommendations. Does not allow on-site recommendations.

7. Employee Training. Required.

8. Limit Sales to Medical Marijuana Related Items. Yes.

9. Non-Concentration of Stores. No.

Please refer to the chart which compares Ordinance No. 3 with the two citizen-backed ordinances. Ordinance No. 3 is also discussed in greater detail in the attached August 5, 2014 Agenda Report, and in the attached December 4, 2014 Elections Code section 9212 report.

STATE LAW GOVERNING MARIJUANA CULTIVATION

The laws governing medical marijuana cultivation, sale, and use in California have evolved rapidly, and are presently in flux at the state level. The State of California has created a new statewide framework to regulate medical marijuana cultivation, sale, and use (see AB 243 (Wood), AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood), and SB 643 (McGuire)). All three of these bills have been passed by the Legislature and were signed by Governor Brown on October 9, 2015. Under this new statewide framework, cities retain the ability to regulate dispensaries, as well as the ability to impose taxes.

A marijuana initiative to amend the State Constitution ("The Control, Regulate and Tax Cannabis Act of 2016") was submitted to the state Attorney General on October 5th and would likewise impact local regulation. Although many marijuana legalization initiatives were proposed and circulated, this initiative is considered the clear leader and the most likely to reach the ballot in November 2016. While there is no way of predicting whether any of these initiatives (or another that has not yet surfaced) might pass, it is certain the City will need to continue to monitor and revise regulations governing marijuana. For example, if the Control, Regulate and Tax Cannabis Act of 2016 passes, the City would likely be preempted from taxing medical marijuana, and could only impose a ban on dispensaries via a vote of the electorate.

Options

The following are three optional actions that the City Council may consider:

OPTION NO. 1

The City could place Ordinance No. 3 on the ballot as written, or direct staff to revise the ordinance in some manner, such as those suggested at the December 16, 2014 Council Meeting.

OPTION NO. 2

The City Council can direct staff to prepare a new ordinance to be placed on the ballot that incorporates elements from other cities that are not found in Ordinance No. 3. For example, a "minimalist" or "skeleton" medical marijuana ordinance which would provide for a basic outline for authorizing and regulating dispensaries, yet leaving significant details subject to future City Council action. Such outline could include, for example, the imposition of a tax on gross receipts, limiting the number of dispensaries, restricting the location to certain geographical areas and/or further restricting the permitted zones to industrial only.

The ability to place such a "minimalist" measure on the ballot is only subject to the precise enabling language of the ordinance placed before the voters.

OPTION NO. 3

The City could place a measure on the ballot which amounts to a "no" vote on medical marijuana dispensaries. This measure would take the form of reaffirming the current prohibition on medical marijuana dispensaries from locating in any zones within the City.

RECOMMENDATIONS FOR OPTIONAL ADDITIONAL ACTIONS:

The recommendation for the proposed City Medical Marijuana Ordinance, previously considered by the City Council (Option No. 1):

1. Order the City Medical Marijuana Ordinance be sent to the voters at the same election at which the two initiative petitions are sent to the voters, with accompanying resolutions calling for written arguments, rebuttals and the drafting by the City Attorney's Office of an impartial analysis;

2. Provide direction to the City Attorney's Office for revisions to the proposed City Medical Marijuana Ordinance to be brought back to the City Council for consideration for it to be sent to the voters at the same election at which the two initiative petitions are sent to the voters;

3. Take no action on the proposed City Medical Marijuana Ordinance.

The recommendation for the City Council in regards to drafting a new City Medical Marijuana Ordinance is to take one of the following actions (Option No. 2):

1. Provide direction to the City Attorney's Office to draft a new City Medical Marijuana Ordinance to be brought back to the City Council for consideration for it to be sent to the voters at the same election at which the two initiative petitions are sent to the voters

2. Take no action regarding preparation of a new City Medical Marijuana Ordinance.

The recommendation for the City Council in regards to drafting a measure that would take the form of reaffirming the current prohibition on medical marijuana dispensaries is to take one of the following actions (Option No. 3):

1. Provide direction to staff to draft a measure which amounts to a "no" vote on medical marijuana dispensaries to be brought back to the City Council for consideration for it to be sent to the voters at the same election at which the two initiative petitions are sent to the voters.

2. Take no action regarding in regards to drafting a measure reaffirming the current prohibition on medical marijuana dispensaries.

FISCAL REVIEW:

The fiscal impact of placing the two medical marijuana initiatives on the ballot is multifold. There are the costs of consolidation with a general election, as well as the cost of implementing the proposed ordinances. Furthermore, there is the potential revenue generated by the taxes in each ordinance.

1. Estimated general election costs to the City of Costa Mesa are as follows:

    a. Consolidated General Election for One Ballot Measure: $10,000.

    b. Consolidated General Election for Up to Four Ballot Measures: $40,000 - $60,000.

2. At present the estimated costs of implementing either of the ordinances is indeterminate.

LEGAL REVIEW:

The City Attorney's office has reviewed this report for legal content and approves it as to form.

TARQUIN PREZIOSI
Deputy City Attorney

BRENDA GREEN
City Clerk

RICK FRANCIS
Assistant CEO

ATTACHMENTS:
1. Ballot Titles & Summary
2. August 5, 2014 Agenda Report
3. November 18, 2014 Agenda Report
4. Proposed Ordinance 14-12
5. December 4, 2014 EC 9212 Report
6. Matrix Comparison Chart for Four Ordinances
7. Supplemental Memo