



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: MAY 23, 2005

III.1.
ITEM NUMBER:

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

DATE: MAY 12, 2005

FOR FURTHER INFORMATION CONTACT: KIMBERLY BRANDT, AICP, PRINCIPAL PLANNER
(714) 754-5604

DESCRIPTION

Review of draft ordinance amending the Zoning Code to prohibit the establishment of medical marijuana dispensaries in the City of Costa Mesa.

RECOMMENDATION

Recommend to City Council that the draft ordinance be given first reading.



KIMBERLY BRANDT, AICP
Principal Planner



R. MICHAEL ROBINSON, AICP
Assistant Development Svs. Director

BACKGROUND

In 1996, California voters approved Proposition 215 (the Compassionate Use Act), which ensures that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician (Health and Safety Code 11362.5{A}). (Attachment 2) This proposition also allows cultivation for personal medical purposes.

Senate Bill 420 was adopted in 2003, and it further amended the Health and Safety Code (11362.7) to include provisions for the issuance of identification cards to both qualified patients and primary caregivers. (Attachment 2).

In respect to federal law, in May 2001, the United States Supreme Court rendered an opinion regarding this issue. They opined that the federal Controlled Substances Act prohibits the manufacture and distribution of various drugs, including marijuana, and that there is not a medical necessity exception to these prohibitions (*United States v Oakland Cannabis Buyers' Cooperative and Jeffrey Jones*- Attachment 3). Therefore, federal law prohibits the manufacturing (cultivation), dispensing or distribution of marijuana for medical purposes.

Recently, staff has received inquiries regarding Costa Mesa regulations for medical marijuana dispensaries. Currently, the City's Zoning Code is "silent" in respect to this land use. Therefore, staff felt it was important to amend the Zoning Code to address medical marijuana dispensaries prior to receiving an application for such a use.

Other California cities have taken measures regarding medical marijuana dispensaries. As can be noted in a recent survey to which 17 cities responded, seven cities presently have a moratorium in place, two cities prohibit medical marijuana dispensaries, and the balance have adopted some type of land use regulation. See Attachment 4. As can be noted in the following discussion, staff is recommending that medical marijuana dispensaries be a prohibited land use in Costa Mesa.

ANALYSIS

The draft ordinance defines a "medical marijuana dispensary" (dispensary), as shown below, and prohibits the establishment of such a land use in the City, regardless of the zone. This recommendation is based on staff's conclusion that even though Proposition 215 allows for the medical use of marijuana for certain persons, the proposition does not require or provide for the opening of businesses or cooperatives, i.e., medical marijuana dispensaries. Furthermore, federal law prohibits the sale and/or distribution of marijuana.

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

Please note that the ordinance does not address the private possession or use of marijuana for medical purposes, since this type of activity is not a land use or zoning issue.

LEGAL REVIEW

The City Attorney’s Office has reviewed the draft ordinance and approved it as to content and form.

ALTERNATIVES

Planning Commission may recommend to Council modifications to the draft ordinance or recommend that Council not adopt the draft ordinance.

ENVIRONMENTAL DETERMINATION

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

- Attachments:
1. Draft Ordinance
 2. California Health and Safety Code excerpts
 3. US Supreme Court decision
 4. Survey of Other Cities

- Distribution:
- Deputy City Manager - Dev. Svs. Director
 - Deputy City Attorney
 - Police Chief
 - Police Lieutenant Gogerty
 - Public Services Director
 - City Engineer
 - Fire Protection Analyst
 - Staff (4)
 - File (2)

ATTACHMENT 1

DRAFT ORDINANCE

ORDINANCE NO. 05-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PASSED AND ADOPTED this ____ day of _____, 2005

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk of the
City of Costa Mesa

City Attorney

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

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

AYES:

NOES:

ABSENT:

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

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

ATTACHMENT A

TABLE 13-30 CITY OF COSTA MESA LAND USE MATRIX	
LAND USES	ZONES
R 1	P D R H D ₁
R 2 M D	P D R M D ₁
R 2 H D	P D R L D ₁
R 3	P D R N C M ₁
R A P	P D C
C L 1	P D I
C C 1	P D C
C C 2	P D I
C 1 S ₁	P D I
C T C ₁	P D I
M G	P D I
M P	P D I
S	P D I
INSTITUTIONAL AND RECREATIONAL USES	
"31a. Medical Marijuana dispensary	P D I

ATTACHMENT 2

CALIFORNIA HEALTH AND SAFETY CODE EXCERPTS



CITY OF COSTA MESA

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

DEVELOPMENT SERVICES DEPARTMENT

**FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT,
PLEASE CONTACT THE PLANNING DIV. AT (714)754-5245.**