



## AGENDA REPORT

**Meeting Date:** July 22, 2010  
**Item Number:** E-6  
**To:** Honorable Mayor & City Council  
**From:** Susan Healy Keene, AICP, Director of Community Development  
**Subject:** AN INTERIM ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING THE ESTABLISHMENT OF MARIJUANA DISPENSARIES, STORES, CO-OPS, OR MARIJUANA CULTIVATION OPERATIONS IN ANY ZONING DISTRICT OR OVERLAY ZONING DISTRICT WITHIN THE CITY, AND DECLARING THE URGENCY THEREOF

**Attachments:** 1. Interim Urgency Ordinance

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### **RECOMMENDATION**

The City Council will consider adoption of an interim ordinance to explicitly prohibit the establishment of marijuana dispensaries in any zoning district within the City. Staff recommends that Council approve the urgency ordinance and direct staff to return with a permanent ordinance within 45 days.

### **DISCUSSION**

#### **Background**

In 1996, California voters approved Proposition 215, an initiative called the Compassionate Use Act (CUA) that allows people to use marijuana under certain circumstances for medical reasons. In 2004, the State legislature passed the Medical Marijuana Program Act (MMP). The MMP created, among other things, rules and regulations pertaining to the operation of cooperatives and collectives. Subsequent to these actions, many California cities have enacted local laws to either ban or regulate medical marijuana dispensaries. Medical marijuana dispensaries are not expressly mentioned in either the CUA or the MMP, but the MMP does explicitly state that it does not pre-empt a city's local land-use authority.

On June 7, 2010, the City of Los Angeles enacted an ordinance that shut down several hundred medical marijuana dispensaries. On July 6, 2010, the Los Angeles County Board of Supervisors moved to ban medical dispensaries in unincorporated areas of the county. Previous to this action, the county allowed the dispensaries with strict prohibitions on their locations. These actions raise concern that existing dispensary owners may search for new locations. Although, there are dispensaries that operate legally in certain jurisdictions, there are many, though permitted, that do not meet regulations, and there are those dispensaries that simply are illegal. Concerns related to dispensaries focus on potential crime and safety issues, particularly with locations near sensitive uses such as schools, churches, parks, and daycare centers.

Since the City of Los Angeles enacted the ordinance, there have been three criminal incidents involving robberies at medical marijuana clinics. On June 24, 2010, one dispensary worker was killed and another wounded at a robbery attempt in Echo Park. The same day in Hollywood another dispensary worker was killed in an attempted dispensary robbery. On June 26, 2010, a dispensary worker was critically wounded in Northridge in a robbery where \$11,000 was taken,

A State ballot initiative, Tax and Regulate Cannabis 2010, will be before voters this November. If approved, California could be the first state to approve marijuana use beyond medical purposes. It is unclear at this time what impact this initiative may have on local sales of marijuana.

In Beverly Hills, medical marijuana dispensaries are not a permitted use in the city. This has been the consistent information provided any interested party. There are no known dispensaries located in Beverly Hills and staff has not noted any recent interest in establishing dispensaries in the city. However, there are several dispensaries located nearby in Los Angeles, as well as in West Hollywood. Nevertheless, absent an explicit prohibition in the Municipal Code, dispensaries may attempt to locate in the City.

#### Interim Urgency Ordinance

Pursuant to City Council direction at its July 8, 2010 Study Session, an urgency ordinance has been prepared for consideration by the Council which would explicitly prohibit medical marijuana dispensaries as a permitted land use. Urgency ordinances protect the community by immediately addressing uses that may be in conflict with general plan or zoning policies. An urgency ordinance requires a 4/5 vote to be adopted and is effective immediately, initially for only 45 days. An urgency ordinance could be extended to the balance of one year and extended once again an additional year if necessary.

#### Analysis

While at this time no party has expressed interest in establishing a medical marijuana dispensary in Beverly Hills, staff believes explicitly prohibiting the use seems appropriate at this time given the changing circumstances in surrounding communities. In addition, with the possibility of a change to State law in November, the proposed ordinance will provide the city an opportunity to engage in the policy discussion prior to any interest or pressure from operators wishing to locate in Beverly Hills.

Medical marijuana dispensaries are not consistent with the city's vision statements. In particular, dispensaries do not support the following vision statements:

- Beverly Hills is committed to being the safest city in America
- Beverly Hills is known internationally for its alluring and distinctive hotels, retail stores, restaurants, and entertainment and headquarter businesses

The establishment of medical marijuana dispensaries has the potential to change the character of the Beverly Hills community. Marijuana dispensaries do not currently exist in the City. General Plan policy ES 1.4 provides that the City shall encourage existing industries in the City, such as luxury retail, tourism, hoteling, finance, and entertainment and media businesses to remain and expand in the City in order to maintain a strong sustainable economic base. Marijuana dispensaries are not an existing industry of the City and the establishment of dispensaries in the City would be inconsistent with this policy and likely discourage these uses. Further, General Plan Land Use Goal 15 states that the City seeks to promote vital and successful businesses that contribute to the City's identity and culture and provide high paying jobs. General Plan policy LU 15.2 sets forth the City's policy to retain and build upon the key businesses that contribute to the City's identity. Such businesses include entertainment-related Class-A offices, high end retail and fashion, restaurant, hotel, and technology. Marijuana dispensaries are not a part of this list nor do they contribute to the City's identity.

#### **ENVIRONMENTAL ASSESSMENT**

The urgency ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. Staff has determined that it can be seen with certainty that there is no possibility that the adoption and implementation of the proposed zoning regulations may have a significant effect on the environment. The proposed ordinance does not authorize construction and, in fact, imposes greater restrictions on certain development in order to protect the public health, safety and general welfare. The proposed regulations are therefore exempt from the environmental review requirements of CEQA pursuant to Section 15061(b) (3) of Title 14 of the California Code of Regulations.

#### **FISCAL IMPACT**

The only fiscal impact at this time is staff hours to prepare the required ordinances.

#### **PUBLIC NOTICE AND COMMENTS**

This item was noticed in accordance with State law as part of the agenda.

Susan Healy Keene, AICP  
Director of Community Development

  
Approved By

# **Attachment 1**

## Interim Urgency Ordinance

ORDINANCE NO. 10-O-\_\_\_\_\_

AN INTERIM ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING THE ESTABLISHMENT OF MARIJUANA DISPENSARIES, STORES, CO-OPS, OR MARIJUANA CULTIVATION OPERATIONS IN ANY ZONING DISTRICT OR OVERLAY ZONING DISTRICT WITHIN THE CITY, AND DECLARING THE URGENCY THEREOF

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1.     Legislative Findings.

The City Council of the City of Beverly Hills is concerned that marijuana dispensaries may seek to open in the City of Beverly Hills. Although the current zoning ordinance indirectly prohibits marijuana dispensaries, stores, co-ops, and marijuana cultivation operations (hereafter “dispensaries”) because such operations are not permitted uses and are not similar to the uses permitted in the City, the City Council seeks to make explicit that marijuana dispensaries are not allowed in any zone or overlay zone in the City.

In 1996, California voters adopted Proposition 215, the Compassionate Use Act (“Prop 215”), decriminalizing the use of marijuana for medical purposes. Prop 215 was later augmented by the state legislature and codified at section 11362.5 *et seq.* of the California Health & Safety Code. The distribution of marijuana pursuant to this legislation is done through marijuana dispensaries. The City Council is concerned that with the City of Los Angeles’ recent enforcement of its regulations regarding dispensaries, and the recent direction from the County

of Los Angeles Board of Supervisors to prohibit dispensaries in unincorporated areas, that marijuana dispensaries may seek to locate in surrounding communities, including Beverly Hills. Without an explicit prohibition set forth in the Municipal Code, such dispensaries are more likely to unlawfully locate within the City. Additionally, medical marijuana dispensaries have been the target of several robberies in recent weeks involving shootings and two shooting fatalities, making it more likely that dispensaries may seek to relocate to the relatively safe community of Beverly Hills.

It would be detrimental to the public welfare if such businesses were established unlawfully in the City prior to the adoption of a regular ordinance to make it explicit that marijuana dispensaries are not allowed in any zoning district or overlay zone in the City. The establishment of such businesses would change the character the City's commercial districts and would be inconsistent with various General Plan policies, including ES 1.4 and LU 15.2 due to the fact that such dispensaries do not retain or build upon the key businesses that contribute to the City's identity.

Section 2.     Authority.

Pursuant to Government Code Section 65858, the City Council may adopt as an urgency measure, an interim ordinance that prohibits any uses that may be in conflict with a contemplated zoning proposal that the City Council is considering, studying or intends to study within a reasonable period of time.

Section 3. Urgency Findings.

The City Council finds and determines that the immediate preservation of the public health, safety, or welfare requires that this Interim Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 65858 and take effect immediately upon adoption. As described in Section 1 of this interim ordinance, the establishment of medical marijuana dispensaries has the potential to change the character of the Beverly Hills community. Marijuana dispensaries do not currently exist in the City. General Plan policy ES 1.4 provides that the City shall encourage existing industries in the City, such as luxury retail, tourism, hoteling, finance, entertainment and media businesses to remain and expand in the City in order to maintain a strong sustainable economic base. Marijuana dispensaries are not an existing industry of the City and the establishment of dispensaries in the City would be inconsistent with this policy and likely discourage these uses. Further, General Plan Land Use Goal 15 states that the City seeks to promote vital and successful businesses that contribute to the City's identity and culture and provide high paying jobs. General Plan policy LU 15.2 sets forth the City's policy to retain and build upon the key businesses that contribute to the City's identity. Such businesses include entertainment-related Class-A offices, high end retail and fashion, restaurant, hotel, and technology. Marijuana dispensaries are not a part of this list nor do they contribute to the City's identity. The location of marijuana dispensaries in the City would be contrary to General Plan Land Use Goal 15 and General Plan policies ES 1.4 and LU 15.2.

This threat to the public welfare based on the potential for incompatible land uses, caused by the location or relocation of marijuana dispensaries into Beverly Hills, is more likely to occur with the recent enforcement of dispensary regulations by the City of Los Angeles. The

City of Los Angeles recently ordered that a large number of existing dispensaries in the City of Los Angeles be closed. Beverly Hills' proximity to Los Angeles makes it foreseeable that some of the dispensaries closed by the City of Los Angeles might seek to locate in the City of Beverly Hills. Additionally, the Los Angeles County Board of Supervisors has recently directed staff to draft an ordinance banning marijuana dispensaries from operating within the unincorporated County. Absent the passage of this interim ordinance, there is an increased likelihood that marijuana dispensaries might attempt to open business within the City even though dispensaries are not a permitted use. The opening of dispensaries poses a current and immediate threat to the public health, safety, or general welfare as described above. If this Ordinance does not become effective immediately, but instead becomes effective thirty (30) days after a second reading, there is a real risk that a dispensary operator may seek to open a dispensary within the City limits in light of the recent actions by the City of Los Angeles and the County of Los Angeles. It is necessary that this Ordinance take effect immediately to prevent such harm. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety or welfare and its urgency is hereby declared.

Section 4. Prohibition of Marijuana Dispensaries, Stores, Co-ops, or Cultivation Operations.

A. Section 10-3-100 ("Words Defined") of Article I ("Definitions") of Chapter 3 ("Zoning") of Title 10 ("Planning and Zoning") is hereby amended to add the following new definition:

"Marijuana dispensary, store, co-op, or cultivation operation: A business, including any location, structure, facility, residence, or similar enclosure for the same, used, in

full or in part, as a place at or in which marijuana is sold, traded, exchanged, bartered for in any way, made available, located, stored, placed, planted, cultivated, or processed, including without limitation any location, structure, facility, residence or similar enclosure if used in connection with the delivery of marijuana.”

B. Article 27 (“Other Use and Building Restrictions”) of Chapter 3 (“Zoning”) of Title 10 (“Planning and Zoning”) is hereby amended to add the following new section:

“Section 10-3-2761: Marijuana Dispensary, Store, Co-Op or Cultivation Operation Prohibition:

No person shall establish or conduct any marijuana dispensary, store, co-op or cultivation operation, as defined in Section 10-3-100, in any zone or overlay zone.”

Section 5. CEQA Findings.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction and, in fact, imposes greater restrictions on certain development in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 6.      Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 7.      This Ordinance, being an Interim Ordinance adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare, containing a declaration of the facts constituting the urgency, and passed by a minimum four-fifths (4/5) vote of the City Council, shall take effect immediately upon its adoption and shall continue in effect for a period of not longer than forty-five (45) days; provided, however, that after notice pursuant to Section 65090 of the California Government Code and public hearing, the City Council may extend the effectiveness of this Interim Ordinance as provided in Government Code Section 65858.

Section 8.      Publication.

The City Clerk shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

ADOPTED:

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JIMMY DELSHAD  
Mayor of the City of Beverly Hills,  
California

ATTEST:

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(SEAL)

BYRON POPE  
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

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JEFFREY KOLIN  
City Manager



SUSAN HEALY KEENE, AICP  
Director of Community Development