



## AGENDA REPORT

**Meeting Date:** February 15, 2011  
**Item Number:** D-2  
**To:** Honorable Mayor & City Council  
**From:** Susan Healy Keene, AICP, Director of Community Development  
**Subject:** AN ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING THE ESTABLISHMENT OF MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATIONS IN ANY ZONING DISTRICT OR OVERLAY ZONING DISTRICT WITHIN THE CITY

**Attachments:**

1. Commission Recommendation
2. Ordinance

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### **RECOMMENDATION**

Conduct a public hearing, and consider an ordinance prohibiting marijuana dispensaries, stores, co-ops, or cultivation operations in any zoning district or overlay zoning district within the City.

With the City Council's direction, the proposed ordinance will be scheduled for a second reading and adoption. The ordinance would then take effect 30 days following the date of adoption.

### **INTRODUCTION**

The City Council adopted an interim ordinance prohibiting marijuana dispensaries on July 22, 2010. The interim ordinance was extended on August 31, 2010 and is set to expire on April 22, 2011. With direction from the City Council, a second reading of the ordinance could be scheduled on March 1, 2011. If the ordinance was adopted on March 1, it would be effective April 2, 2011 which is prior to the date when the interim ordinance is set to expire.

The attached draft permanent ordinance (Attachment 2) proposes two changes to the City's code. The first change defines marijuana dispensary, store, co-op, and cultivation operations. The second change prohibits such facilities in the City. Under the proposed

ordinance, individual patients would be allowed to cultivate and use marijuana, but only on their own property and only for their own purposes. All other activities would be prohibited.

## **DISCUSSION**

### **Background**

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 City of Los Angeles' recent and ongoing 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, could lead to marijuana dispensaries seeking to locate in surrounding communities, including Beverly Hills. Although the City of Beverly Hills Municipal Code currently does not list dispensaries, stores, co-ops, or marijuana cultivation operations as permitted uses, an express prohibition of dispensaries would eliminate any question regarding whether the use could be permitted. Further, medical marijuana dispensaries have been the target of robberies involving shootings and thus could be detrimental to the public welfare if such businesses were established in the City.

In November, 2010 California voters were asked to consider Proposition 19, a marijuana legalization initiative that would have permitted use of marijuana for recreational purposes. By a final vote of 53.5% opposed, to 46% in favor, California voters rejected Proposition 19.

### **Planning Commission Recommendation**

A recommendation (Attachment 1) to adopt the draft permanent ordinance was unanimously approved by the Planning Commission on January 27, 2011.

On January 27, the Planning Commission held a duly noticed public hearing to consider the matter. Public comment received on the proposed ordinance had included a letter from a community member interested in opening a medical marijuana dispensary. In that letter, the community member's representative had proposed that a limited number of dispensaries be allowed and that specific criteria be established to assure that any would be dispensary would not have a negative impact on local businesses and the neighborhoods. That community member was in attendance at the public hearing and both she and her husband spoke on the same point outlined in the letter.

The Planning Commission considered the letter and public comment provided during the comment period and hearing before rendering their decision.

### **Environmental Assessment**

The draft 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. It can be seen with certainty that there is no possibility that the adoption and implementation of the proposed Ordinance may have a significant effect on the environment. The Ordinance makes express a prohibition on Marijuana Dispensaries, Stores, Co-Ops, or Cultivation Operations ("Dispensaries") that already exists because such Dispensaries are not listed

as a permitted use in any zone, and thus are currently considered prohibited. Therefore, this Ordinance does not change the current de facto prohibition on establishment of Dispensaries, but merely codifies an express prohibition. 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.

**Public Noticing**

Notice that the City Council was to hold a public hearing to consider this ordinance was run in the Beverly Hills Courier on February 4, 2011, which meets the State's 10 day advance noticing requirement. In addition to the notice run in the Courier, a notice was also run on February 10, 2011 in the Beverly Hills Weekly, and was posted in City Hall and the Public Library on February 11, 2011.

**FISCAL IMPACT**

No fiscal impact is anticipated from adoption of this ordinance.

Susan Healy Keene, AICP, Director  
of Community Development

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Approved By



# **Attachment 1**

RESOLUTION NO. 1602

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE AMENDING SECTION 10-3-100 REGARDING DEFINITION OF MARIJUANA DISPENSARIES, AND AMENDING SECTION 10-3-2700 REGARDING THE PROHIBITION OF MARIJUANA DISPENSARIES, STORES, CO-OPS, AND CULTIVATION OPERATIONS IN ANY ZONING DISTRICT OR OVERLAY ZONING DISTRICT WITHIN THE CITY

The Planning Commission of the City of Beverly Hills hereby resolves as follows:

Section 1. Concern has been expressed by the City Council and Planning Commission 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 seeks to make explicit that 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 Planning Commission 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. Dispensaries have been the target of several robberies in recent months involving shootings and two shooting fatalities. Therefore, it would be detrimental to the public welfare if such businesses were established in the City. The prohibition of such uses would be consistent with the City's General Plan policy PS 1.6 which encourages the use of Crime Prevention through Environmental Design (CPTED). In addition, 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. As described in Section 1 of this Ordinance, the establishment of Dispensaries has the potential to change the character of the Beverly Hills community.

General Plan policy PS 1.6 provides that the City shall encourage the use of Crime Prevention through Environmental Design as a means of increasing public safety and decreasing the opportunity for crime and terrorist attacks. Dispensaries have been the target of violent crime, and a prohibition against establishing Dispensaries in the City would be consistent with this policy.

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. 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 continuance and further establishment of these existing 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. Dispensaries are not a part of this list nor do they contribute to the City's identity. The location of 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 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. The opening of Dispensaries poses a threat to the public health, safety, and general welfare as described above. Therefore, this Ordinance is necessary for the preservation of the public peace, health, safety and welfare.

Section 3. The Planning Commission hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of the proposed Ordinance may have a significant effect on the environment. The Ordinance makes express a prohibition on Dispensaries that already exists because such Dispensaries are not listed as a permitted use in any zone, and thus are currently considered prohibited. Therefore, this

Ordinance does not change the current de facto prohibition on establishment of Dispensaries, but merely codifies an express prohibition. 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 4. On January 14, 2011, notice of the public hearing was published in *The Beverly Hills Courier*.

Section 5. On January 27, 2011, the Planning Commission held a duly noticed public hearing to consider a draft Ordinance entitled as follows, hereinafter referred to as "Ordinance":

"AN 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"

Evidence, both written and oral, was presented at the hearing.

Section 6. The Ordinance, as proposed, is set forth in Exhibit 1, and would amend Section 10-3-100 of Chapter 3 of title 10 of the Beverly Hills Municipal Code regarding definition of terms in the zoning code to replace the interim a definition of "MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATION" with a new definition and would amend Section 10-3-2761 to expressly prohibit Dispensaries in all zones and overlay zones in the City as a permanent regulation.

Section 7. Based on the evidence presented in the record on this matter including the staff report and oral and written testimony, the Planning Commission hereby finds that Dispensaries are incompatible with the City's existing land uses and have the potential to attract violent crime, which has the potential to pose a threat to the public health, safety and general welfare as described in Section 1 and Section 2. Further, the Planning Commission hereby finds that in prohibiting the establishment of Dispensaries the Ordinance, as proposed, would serve the public interest, health, comfort, convenience, and general welfare.

Section 8. Based on the evidence presented in the record on this matter including the staff report and oral and written testimony, the Planning Commission hereby finds that prohibiting Dispensaries is consistent with policies in the General Plan as described in Section 1 and Section 2 above; therefore, the Ordinance, as proposed, is consistent with the General Plan.

Section 9. The Planning Commission hereby recommends that the City Council adopt an Ordinance with provisions substantially in the form as set forth in Exhibit 1 attached hereto.

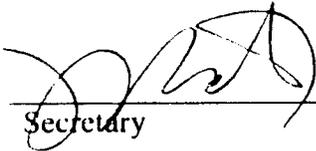
Section 10. The Secretary shall certify to the adoption of this Resolution and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: **January 27, 2011**

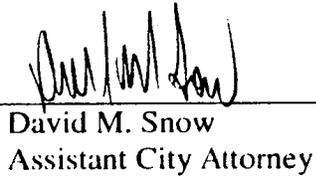


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Lili Bosse  
Chair of the Planning Commission of the  
City of Beverly Hills, California

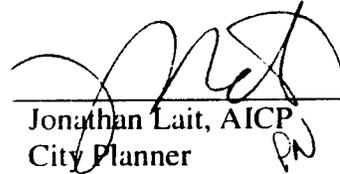
ATTEST:

  
\_\_\_\_\_  
Secretary

Approved as to form:

  
\_\_\_\_\_  
David M. Snow  
Assistant City Attorney

Approved as to content:

  
\_\_\_\_\_  
Jonathan Lait, AICP  
City Planner

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES       )     SS.  
CITY OF BEVERLY HILLS         )

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1602 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on January 27, 2011, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES:           Commissioners Rosenstein, Cole, Corman, Vice Chair Yukelson and  
                    Chair Bosse.

NOES:           None.

ABSTAIN:       None.

ABSENT:         None.

  
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JONATHAN LAIT, AICP  
Secretary of the Planning Commission /  
City Planner  
City of Beverly Hills, California

# **Attachment 2**

ORDINANCE NO. 11-O-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING THE ESTABLISHMENT OF MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATIONS IN ANY ZONING DISTRICT OR OVERLAY ZONING DISTRICT WITHIN THE CITY

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

Section 1. In 1996, California voters adopted Proposition 215, the Compassionate Care Act (“Prop 215”), decriminalizing the use of marijuana for medical purposes. Prop 215 was later augmented by the state legislature and codified as section 11362.5 *et seq.* of the California Health and Safety Code. The establishment of marijuana dispensaries in neighboring jurisdictions however has been somewhat problematic. Legitimately operated businesses have been the scene of crimes, including robberies and homicides. Other issues have been associated with marijuana dispensaries that were not operated in a legitimate manner, including allowing access to marijuana to persons who would not qualify under State law.

Section 2. The City Council hereby amends Article 100 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code by deleting the current definition of “MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATION” and replacing it with the following definition:

“MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATION:

A business or other person or entity, 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; except that cultivation or storage by a patient or that patient's caregiver, at the residence of the patient and incidental to a residential use by such patient, and for the sole use of the patient who resides there, shall not be considered a dispensary.”

Section 3. The City Council hereby re-adopts Section 10-3-2761 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code, which was initially adopted as an interim ordinance, as a permanent ordinance, to read as follows:

**“10-3-2761: MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATION PROHIBITED:** No person shall establish or conduct any "marijuana dispensary, store, co-op or cultivation operation", as defined in section 10-3-100 of this chapter, in any zone or overlay zone.”

Section 4. 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 the proposed Ordinance may have a significant effect on the environment. The Ordinance makes express a prohibition on Marijuana Dispensaries, Stores, Co-Ops, Or Cultivation Operations (“Dispensaries”) that already exists because such Dispensaries are not listed as a permitted use in any zone, and thus are currently considered prohibited. Therefore, this Ordinance does not change the current de facto

prohibition on establishment of Dispensaries, but merely codifies an express prohibition. 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 5.      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 6.      Publication.

The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, 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.

Section 7. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

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