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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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# Development Services Department Memorandum and Its Implications for the Medical Marijuana Task Force

## OVERVIEW

On October 8, 2009, Kelly Broughton, the Development Services Department (DSD) Director, released a memorandum to the Medical Marijuana Task Force to provide information regarding the zoning issues associated with medical marijuana collectives and collaboratives. This memorandum was subsequent to a July 27, 2009 DSD memorandum to the Public Safety & Neighborhood Services Committee. Both memoranda outline the role of DSD in the review and approval process in the issuance of Zoning Use Certificates as a part of the Business Tax Certificate application process. Most significantly, they communicate DSD's determination that collectives and collaboratives do not fit into any existing land use category or subcategory, and therefore cannot be issued Zoning Use Certificates under the City's current Land Development Code (LDC). With this determination, the Treasurer's Office cannot issue Business Tax Certificates to permit the existence of these operations within the City. The July 27, 2009 memorandum stipulated recourse for property owners in disagreement with the Department's determination as the following:

*... they may file an application with DSD and request that the Planning Commission make a determination in accordance with LDC§131.0110(b) of the appropriate Use Category. If that results in a determination that the use does not fit into an existing Use Category then the City Council or Planning Commission may initiate a Commencement of a Zoning or Rezoning Action per LDC § 131.0110(c) and § 123.0103 to modify the LDC to create a new Use Category or separately regulated use to regulate medical marijuana dispensaries. This action would then be included in the department's code update work program and brought back to Planning Commission and City Council at a later date.*

The October 8, 2009 memorandum from DSD relayed that a property owner has opted to file an application requesting that the Planning Commission make a determination of the appropriate use category. The Planning Commission is expected to hear the item in November of this year.

The IBA recently met with the Development Services Director to discuss the future Planning Commission meeting, the Commission's possible actions during the hearing, and the implications to the Medical Marijuana Task Force. The purpose of this IBA report is to outline how the Medical Marijuana Task Force's activities can align with the pending Planning Commission hearing and the related administrative procedures that will follow.

## FISCAL/POLICY DISCUSSION

During the November Planning Commission meeting, the Planning Commission can opt for the following actions:

1. Affirm the DSD determination that medical marijuana collectives and collaboratives do not fit within any existing LDC use categories or subcategories
2. Affirm the DSD determination and initiate a zoning or rezoning action to amend the LDC with the creation of a new use category or a separately regulated use
3. Affirm the DSD determination and initiate a zoning or rezoning action to amend the LDC with the creation of a new use category or a separately regulated use, with recommendations regarding the stipulations associated with the new zoning
4. Defer to the City Council for action. A City Council action could result in a resolution to initiate a zoning or rezoning action
5. Offer a dissenting interpretation regarding the fit of medical marijuana collectives and collaboratives within an existing use category or subcategory. Such a determination would be binding

Of note, per LDC § 123.0103, in lieu of Council action, a property owner can initiate a zoning or rezoning action via application as specified in LDC § 112.0102 and § 123.0104.

Depending on the action taken by the Planning Commission at the future meeting, specific administrative procedures as outlined in the LDC will follow. For example, if the Commission affirms the DSD determination and initiates a zoning or rezoning action, DSD staff would have to draft an ordinance to amend the LDC. The draft ordinance would have to go through the usual process associated with any modification to the LDC. Such a process can take over a year, with more controversial items, typically taking even longer.

Regardless of the specific action taken by the Planning Commission in November, it is important that the Medical Marijuana Task Force's role throughout the administrative process is that of an advisory body that has a representative present at future Committee, Commission and City Council meetings where the Task Force can provide advice and/or recommendations.

**Specifically, the IBA recommends that a Task Force representative be present at the November Planning Commission meeting to offer testimony regarding the findings of the Task Force to serve as guidance for the Commission's actions.** This guidance could be along the lines of recommendations regarding addressing possible Separately Regulated Use stipulations concerning location, on-site consumption, hours of operation, building exterior, security, and etc.

Given the intricacies involved in addressing land use and zoning issues, the DSD Director has expressed that he is available to respond to questions that the Task Force may have related to land use and zoning procedures. He requests that these questions are presented as a written list.

## CONCLUSION

Per Resolution R-2010-216, The Medical Marijuana Task Force has been tasked to report back to the City Council by the end of 2009 with recommendations regarding land use and zoning issues for medical marijuana cooperatives and collectives. The future Planning Commission meeting will provide an opportunity for the Task Force to speak to some of its recommendations before the end of year City Council Meeting. Throughout the future administrative procedures involved in addressing issues related to medical marijuana collectives and collaboratives, the Task Force can be integral in providing advice and guidance.

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