



THE CITY OF  
**SAN DIEGO**  
AMERICA'S FINEST CITY

OFFICE OF  
THE CITY COUNCIL

## REPORT TO THE PLANNING COMMISSION

**DATE ISSUED:** January 14, 2011 **REPORT NO. PC-11-011**

**ATTENTION:** Planning Commission, Agenda of January 20, 2010

**SUBJECT:** ORDINANCE REGULATING MEDICAL MARIJUANA DISPENSARIES; AMENDMENTS TO THE LAND DEVELOPMENT CODE AND THE CITY'S LOCAL COASTAL PROGRAM PERTAINING TO MEDICAL MARIJUANA DISPENSARIES. (PROCESS 5)

### SUMMARY

**Issue:** Should the Planning Commission recommend to the City Council approval of amendments to the Land Development Code and the City's Local Coastal Program pertaining to medical marijuana dispensaries?

**Staff Recommendation:** Recommend that the City Council approve the proposed amendments.

**City Council:** On September 13, 2010, the City Council voted 6-1 to initiate amendments to the Land Development Code and the City's Local Coastal Program pertaining to medical marijuana dispensaries consistent with the recommendations from the Land Use and Housing Committee. A motion to include colleges and universities in the 1,000 foot distance separation from medical marijuana dispensaries failed by a 3-4 vote.

**Code Monitoring Team (CMT):** On October 13, 2010 the Code Monitoring Team made the following recommendations:

- The distance requirement for medical marijuana dispensaries should be the same distances used for off-site sales of alcohol.
- Medical marijuana dispensaries should be permitted in all commercial zones regardless of whether or not residential uses are present since the ordinance does not treat residential uses as a sensitive use with distance requirements.
- Medical marijuana dispensaries should be permitted in industrial zones that allow retail uses such as pharmacies.

- Medical marijuana dispensaries be a conditional use permit approved via Process Three (Hearing Officer) with appeal to the Planning Commission.

These recommendations have not been included in the ordinance, but are listed as alternatives should the Planning Commission wish to incorporate them into its recommendation to the City Council.

**Community Planners Committee:** On October 26, 2010, the Community Planners Committee voted to support the Land Use and Housing recommendations, but with the following amendments:

- Amend Land Use and Housing Recommendations to add a 1,000-foot buffer between medical marijuana dispensaries and colleges or universities.
- Any minor under 18 years old, who has a medical marijuana prescription, would have to have their parent or legal guardian purchase the medical marijuana.
- Permit the community planning groups to request a waiver to the regulations to allow for more locations for dispensaries in their communities, with approval of the community planning group.
- Allow Collectives and Cooperatives to continue to operate for up to one year after passage of the ordinance, while going through the process to obtain a permit.
- Community Planners Committee requests the ordinance be sent back to CPC for review if there are substantial changes resulting in modifications to the permitted locations or zones.

These recommendations have not been included in the ordinance, but are listed as alternatives should the Planning Commission wish to incorporate them into its recommendation to the City Council.

**Additional Public Outreach:** The Medical Marijuana Task Force made presentations to numerous community organizations and Community Planning Groups, including the Community Planners Committee.

**Environmental Review:** The project is exempt from CEQA, Section 15061(b)(3) which states that CEQA only applies to projects which have the potential for causing a significant effect on the environment.

## **OVERVIEW**

The Ordinance Regulating Medical Marijuana Dispensaries (Ordinance) would define the term “medical marijuana dispensary” and establish a process by which medical marijuana dispensaries can be permitted in the City of San Diego.

The Ordinance would limit medical marijuana dispensaries to the Industrial Light zone (IL-1-3), the Industrial Small Lot zone (IS-1-1), and in the Community Commercial zones which allow Watchkeepers Quarters as the only permitted residential use (CC-2-1, CC-2-2, and CC-2-3).

It would make all applications for a medical marijuana dispensary subject to a Process 4 Conditional Use Permit (CUP), and would require that the dispensary be located at least 1,000

feet from schools, playgrounds, libraries, child care facilities, youth facilities, churches, parks, and other dispensaries.

The Ordinance would also impose requirements and restrictions regarding signage, security, lighting and hours of operation.

## **BACKGROUND**

On October 6, 2009, the San Diego City Council voted to establish a Medical Marijuana Task Force (Task Force) to advise the City Council on: (1) guidelines for medical marijuana patients and primary caregivers; (2) guidelines for the structure and operation of medical marijuana cooperatives and/or collectives; and (3) guidelines for police department enforcement regarding medical marijuana. The resolution establishing the Task Force further provided that the Task Force was to report back to the City Council by the end of 2009 with recommendations regarding land use and zoning issues. The Council appointed eleven members, with a broad range of perspectives and backgrounds, to serve on the Task Force.

The Task Force met five times over the course of five weeks to discuss recommendations for the land use and zoning of medical marijuana collectives and cooperatives within the City of San Diego. The meetings were conducted pursuant to the Brown Act and open to the public.

The Task Force voted on recommendations for a number of specific land use and zoning-related issues, outlined in their Report to the City Council (attached).

On March 24, 2010, the Task Force presented their report to the Land Use and Housing Committee, which passed the following motion on a 3-1 vote (Lightner, Faulconer, Gloria – Yea, Young – Nay):

Direct the City Attorney to develop an ordinance for the regulation of medical marijuana dispensaries using the recommendations of the Medical Marijuana Task Force, but with the following changes:

- All applications will be subject to a Process 4 Conditional Use Permit
- Proof of Non-Profit status required for the CUP
- Eliminate Commercial Neighborhood and Commercial Visitor zones from the list of allowable zones. Any commercial zones must be without residential uses.
- Provide analysis of the IL3 and IS zones, as detailed in Councilmember Faulconer's memo.
- Additional consideration must be given to the zones with Planned District Ordinances.
- Distance Requirement of 1000 feet from the uses described in the Task Force Report, including distance between dispensaries.
- Additional distance requirement of 1000 feet for parks and places of worship.
- Existing dispensaries must come into compliance with the new ordinance.
- Clear definitions provided for terms describing distance requirements.
- Full cost recovery to mitigate any costs borne by the City

Subsequently, Land Use and Housing Committee Chairman Todd Gloria issued a memo clarifying that the intent of Committee was to allow medical marijuana dispensaries only in Industrial Light Zone 3 and Industrial Small Lot Zones (IL-3-1 and IS-1-1), and in Community Commercial zones which allow Watchkeepers Quarters as the only permitted residential use (CC-1, CC-2, and CC-3).

Other elements of the Ordinance, as recommended by the Medical Marijuana Task Force, include the following:

- Requirement that signage for dispensaries must note the name of the business, and limited to two colors.
- Hours of operation limited to 7AM to 9PM, seven days a week.
- Dispensaries are required to have an operable security system and a licensed security guard present during business hours.
- Dispensaries required to have adequate lighting.

## **DISCUSSION**

The proposed ordinance reflects the motion passed by the Land Use and Housing Committee and initiated by the City Council concerning the land use issues pertaining to medical marijuana dispensaries. A separate ordinance concerning the public safety aspects of medical marijuana facilities is being prepared for consideration by the City Council, and is expected to be heard concurrently with the land use ordinance. A strikeout underline of the draft ordinance is provided in Attachment 1.

In accordance with the motion passed by the Land Use and Housing Committee, the ordinance would permit medical marijuana dispensaries in only the Industrial Light zone (IL-1-3), the Industrial Small Lot zone (IS-1-1), and in the Community Commercial zones which allow Watchkeepers Quarters as the only permitted residential use (CC-2-1, CC-2-2, and CC-2-3). Attachment 2 illustrates the locations of these zones throughout the city. It should be noted that the map does not address the locations based on the zoning in the PDO's. The PDOs will be subject to the same restrictions based on their individual zoning.

In addition to zone limitations, the siting of a medical marijuana dispensary would be further restricted under the ordinance by a required distance separation of 1,000 feet from schools, parks, churches, child care facilities, playgrounds, libraries owned and operated by the City of San Diego, youth-serving facilities, and other medical marijuana dispensaries. Attachment 3 illustrates a 1,000 foot radius around the known locations of these uses. It should be noted that this map contains only the distance-separated uses that could be identified with the SanGIS mapping technology, and should not be considered a comprehensive analysis of where these uses are located. If the ordinance is approved and an application to site a medical marijuana dispensary is submitted, the Development Services Department will conduct a case-by-case survey to determine if a given location meets all of the distance separation requirements.

The Office of the City Attorney has issued a report concerning the legal issues associated with this matter that is available at <http://docs.sandiego.gov/cityattorneyreports/RC-2010-20.pdf>. Additionally, the Medical Marijuana Task Force Report to the City Council is available at <http://www.sandiego.gov/medicalmarijuana/pdf/rpttocouncil091112.pdf>.

## CONCLUSION

Testimony at the City Council as well as the advisory groups has reflected a broad spectrum of opinion as to the level of restriction that is appropriate to site medical marijuana facilities. The proposed ordinance reflects the motion passed by the Land Use and Housing Committee and initiated by the City Council.

## ALTERNATIVES

Numerous alternatives have been suggested throughout the public process. The Planning Commission may choose to recommend that the City Council adopt land use regulations for medical marijuana facilities that reflect the suggestions of the Medical Marijuana Task Force, the Code Monitoring Team, the Community Planners Committee, or other recommendation as determined by the Planning Commission.

The *Medical Marijuana Task Force* report includes the following recommendations that are distinct from the Ordinance.

- Allow collectives or cooperatives in all commercial and industrial zones
- 1,000 foot distance requirement from schools, playgrounds, libraries, child care facilities and youth facilities (the ordinance also includes parks and churches)
- Do not allow dispensaries within a 500-foot radius of another dispensary (the ordinance increased this)
- Dispensaries with fewer than 100 members obtain a use permit through Process 2.
- Dispensaries with 100 or more members obtain a use permit through Process 3.

The *Code Monitoring Team* made the following recommendations:


- The distance requirement for medical marijuana dispensaries should be 300 feet, which is the same distance used for off-site sales of alcohol.
- Medical marijuana dispensaries should be permitted in all commercial zones regardless of whether or not residential uses are present since the ordinance does not treat residential uses as a sensitive use with distance requirements.
- Medical marijuana dispensaries should be permitted in industrial zones that allow retail uses such as pharmacies.
- Medical marijuana dispensaries should be a Conditional Use Permit approved via Process Three (Hearing Officer) with appeal to the Planning Commission.

The *Community Planners Committee* made the following recommendations:

- Include a 1,000-foot buffer between medical marijuana dispensaries and colleges or universities.
- Any minor under 18 years old, who has a medical marijuana prescription, would have to have their parent or legal guardian purchase the medical marijuana.
- Permit the community planning groups to request a waiver to the regulations to allow for more locations for dispensaries in their communities, with approval of the community planning group.

- Allow Collectives and Cooperatives to continue to operate for up to one year after passage of the ordinance, while going through the process to obtain a permit.
- Community Planners Committee requests the ordinance be sent back to CPC for review if there are substantial changes resulting in modifications to the permitted locations or zones.

Respectfully submitted,



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Stephen Hill  
2009-2010 Land Use and Housing Committee Consultant

Attachments:

1. Ordinance
2. Zone Location Map
3. 1000-Foot Radius Map