



## CITY OF PACIFIC GROVE

### AGENDA REPORT

**TO:** Mayor and City Council Members

**FROM:** David C. Laredo, City Attorney

**DATE:** September 1, 2010

**SUBJECT:** Consider Introducing and Holding a First Reading of an Ordinance Prohibiting Marijuana Dispensaries

**CEQA:** This does not constitute a “project” under the California Environmental Quality Act (CEQA).

#### **RECOMMENDATION**

Consider introducing and holding a first reading on an ordinance to prohibit operation of marijuana dispensaries within the City. This action is in accord with direction provided by the city council.

The Council may approve or reject the first reading of the ordinance. Council may direct that publication of the ordinance will be satisfied by publication of a summary, approved by the City Attorney. If the ordinance is approved, a second reading shall be set at the next Council meeting.

#### **BACKGROUND**

On January 20, 2010 the Council adopted a 45-day urgency ordinance imposing a moratorium on the establishment and operation of medical marijuana dispensaries within the city.

On March 3, 2010 the Council extended the moratorium until January 9, 2011, and directed staff to return to the City Council with an analysis of alternative means to regulate or prohibit operation of marijuana dispensaries within the City.

On July 23, 2010, after a presentation by the City Attorney as to the alternate to regulate marijuana dispensaries within the City, the Council directed staff to prepare an ordinance to permanently prohibit operation of marijuana dispensaries and related activities within the city.

#### **DISCUSSION**

Under the state constitution, a charter city such as Pacific Grove has the power to make and enforce ordinances and regulations with respect to municipal affairs and the general

welfare of its citizenry. Charter cities, via zoning codes and general plans, to promote development in an orderly manner and protect the public health, safety, peace, comfort and general welfare.

Based on these municipal powers as a charter city, the proposed ordinance adds a chapter to the Municipal Code to prohibit operation of marijuana dispensaries and related activities within the City of Pacific Grove. The draft ordinance prohibits growing, selling or distribution of marijuana. It would also prohibit any person from locating, operating, owning, suffering, allowing to be operated, aiding, abetting or assisting in the operation of a marijuana dispensary within the City.

The proposed ordinance excludes from its definitions of “Medical Marijuana Dispensary” and “Marijuana Dispensary” certain health care related facilities such as residential care facilities, including those for persons with chronic life-threatening illnesses and those for the elderly, and certain hospice facilities. The measure includes exclusions to avoid conflict with the 1996 Compassionate Use Act (California Health and Safety Code Section 11362.5), and the 2003 Medical Marijuana Program Act (California Health and Safety Code Section 11362.7).

The proposed ordinance was drafted to comply with recent judicial guidance in this arena, including the August 2010 Court of Appeal decision, *Qualified Patients Association v. City of Anaheim*.

**FISCAL IMPACT**

No direct impact. Failure to prohibit dispensaries will incur City costs related to regulation, enforcement, and secondary effects of dispensaries, such as litter and security.

**ATTACHMENTS**

Proposed Ordinance No. 10-\_\_\_\_\_

RESPECTFULLY SUBMITTED,

\_\_\_\_\_  
David C. Laredo  
CITY ATTORNEY

REVIEWED BY,

*THOMAS FRUTCHY*

\_\_\_\_\_  
Thomas Frutchey  
CITY MANAGER

**ORDINANCE NO. 10-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE  
ADDING CHAPTER 11.100 TO THE PACIFIC GROVE MUNICIPAL  
CODE TO BAN MARIJUANA DISPENSARIES IN THE CITY**

**WHEREAS**, the Compassionate Use Act, codified at California Health and Safety Code Section 11362.5, was approved by California voters in 1996 and legalized the use of marijuana for specific medical purposes; and

**WHEREAS**, in 2003 the State of California adopted SB 420, the Medical Marijuana Program Act, codified at California Health and Safety Code Section 11362.7, which clarifies the scope of the Compassionate Use Act and allows local jurisdictions to adopt and enforce rules consistent with SB 420; and

**WHEREAS**, California case law has established that neither the Compassionate Use Act or the Medical Marijuana Program Act preempt local zoning or moratoria; and

**WHEREAS**, the California Constitution grants charter cities the power to make and enforce all ordinances and regulations with respect to municipal affairs; and

**WHEREAS**, the City of Pacific Grove, as a charter city, by and through its Council has and may exercise all powers necessary to ensure the general welfare of its inhabitants; and

**WHEREAS**, the General Plan encourages commercial uses that maintain the economic integrity and character of the City; and

**WHEREAS**, the City cannot ensure that the City's General Plan goals, objectives and policies will be implemented properly without specific regulations prohibiting establishment or operation of marijuana dispensaries; and

**WHEREAS**, it is the responsibility of the Pacific Grove City Council to consider the establishment of marijuana dispensaries relative to the policies, standards, and intent of the Pacific Grove General Plan and the Pacific Grove Municipal Code and to consider the potential impacts of such establishments to the general welfare of the City; and

**WHEREAS**, there exists a current and immediate threat to public health, safety and welfare in the absence of the City adopting an ordinance prohibiting establishment, operation or use of marijuana dispensaries or medical marijuana dispensaries, which are found to conflict with the existing General Plan, its implementing regulations and its development standards; and

**WHEREAS**, it is the purpose and intent of this Ordinance prohibiting all marijuana dispensaries, including but not limited to medical marijuana dispensaries, to

promote health, safety, morals, and general welfare of the residents and businesses within the City; and

**WHEREAS**, the failure to prohibit marijuana dispensaries or medical marijuana dispensaries will expose the City to costs related to regulation, enforcement, and secondary effects of dispensaries, such as litter and security; and

**WHEREAS**, the CEQA analysis required to allow marijuana dispensaries within the City is cost prohibitive given alternate demands upon limited municipal revenue sources;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:**

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. There is no feasible alternative other than adoption of the proposed addition to the Pacific Grove Municipal Code that will satisfactorily mitigate or avoid the previously identified impacts to public health, safety, and welfare.

SECTION 3. The following Chapter shall be added to the Pacific Grove Municipal Code:

***Chapter 11.100        Marijuana Dispensaries***

***11.100.010    Definitions***

***The following words and phrases shall, for the purposes of this chapter, have the meanings respectively ascribed to them by this section, as follows:***

***“Marijuana Dispensary” means any facility, clinic, cooperative, club, business, group or location, whether fixed or mobile where marijuana is made available to, distributed, sold or distributed to any person.***

***“Medical Marijuana Dispensary” means any facility, clinic, cooperative, club, business, group or location, whether fixed or mobile where medical marijuana is made available to, distributed, sold, or distributed to a Qualified Patient, a Person with an Identification Card, and/or a Primary Caregiver as those terms are defined in this chapter.***

***“Person” means any person, firm, corporation, association, club, society, or other organization. The term Person shall include any owner, manager, proprietor, employee, volunteer or salesperson.***

***“Person with an Identification Card” shall have the meaning given that term by Health and Safety Code section 11362.7.***

***“Primary Caregiver” shall have the meaning given that term by Health and Safety Code section 11362.7.***

***“Operation” means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a Marijuana Dispensary or Medical Marijuana Dispensary.***

***“Qualified Patient” shall have the meaning given that term by Health and Safety Code section 11362.7.***

***“Sales” or “Selling” shall be given a plain and ordinary meaning, shall include each and every derivation of those terms, and shall also include and refer to related actions such as “buying” and “purchasing.”***

***11.100.020 Medical Marijuana Dispensaries Prohibited***

***Medical Marijuana Dispensaries are prohibited in the City of Pacific Grove. No person shall locate, operate, own, suffer, allow to be operated or aide, abet or assist in the operation of any fixed or mobile Medical Marijuana Dispensary within the City in any zone.***

***11.100.030 Marijuana Dispensaries Prohibited***

***Marijuana Dispensaries are prohibited in the City of Pacific Grove. No person shall locate, operate, own, suffer, allow to be operated or aide, abet or assist in the operation of any fixed or mobile Marijuana Dispensary within the City in any zone.***

***11.100.040 Marijuana Sales Prohibited***

- (a) No Person shall grow, sell or distribute marijuana within the City in any zone, or engage in any Operation for this purpose.***
- (b) No Person shall or make, sell or distribute any marijuana-infused product such as tinctures, baked goods or other consumable products, or participate in any Operation for this purpose.***
- (c) This section shall not apply to Excluded Facilities defined in this chapter.***
- (d) This section shall not limit cultivation in strict compliance with the Compassionate Use Act, codified at California Health and Safety Code Section 11362.5.***

***11.100.050 Excluded Facilities***

***The terms Medical Marijuana Dispensary and Marijuana Dispensary shall not include the following uses, as long as the location of such use is otherwise in accord with this Code and other applicable law:***

- (a) A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.***
- (b) A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.***

- (c) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.*
- (d) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.*
- (e) A hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.*

**11.100.060 Public Nuisance Declared**

*Operation of any Medical Marijuana Dispensary or Marijuana Dispensary within the City in violation of the provisions of this chapter is hereby declared a public nuisance and shall be abated by action of the City attorney pursuant to all available remedies.*

**11.100.070 Violations**

*Violations of any provision of this chapter may further be enforced pursuant to Chapter 1.16 and or Chapter 1.19 of the PGMC.*

SECTION 4. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. This ordinance shall become effective on the thirtieth (30<sup>th</sup>) day following passage and adoption hereof.

**PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS \_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:**

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
CARMELITA GARCIA, Mayor

ATTEST:

---

LAWRENCE L. BANGERT, City Clerk

APPROVED AS TO FORM:

---

DAVID C. LAREDO, City Attorney