

CITY OF WILDOMAR – PLANNING COMMISSION
PUBLIC HEARING #5.1
Meeting Date: July21, 2010

TO: Chairman Devine, Members of the Planning Commission
FROM: David Hogan, Planning Director
SUBJECT: Regulation of Medical Marijuana Dispensaries

RECOMMENDATION:

Review and consider the draft ordinance amending the Wildomar Municipal Code to allow and regulate medical marijuana dispensaries and do one of the following:

- A. Adopt a resolution recommending that the City Council adopt an ordinance amending the zoning ordinance to allow the establishment and operation of medical marijuana dispensaries (Attachments A and C).
- B. Adopt a resolution recommending that the City Council not adopt an ordinance amending the zoning ordinance to allow the establishment and operation of medical marijuana dispensaries (Attachment B).

BACKGROUND:

Section 17.12.050 of the Zoning Ordinance (part of the Wildomar Municipal Code) prohibits the establishment and operation of medical marijuana dispensaries within the City. This prohibition was originally adopted by the County of Riverside prior to the City's incorporation, and has remained in effect in the City since incorporation by virtue of the City's adoption of the County Code as the City Code. Since that time the City has been receiving several inquiries from members of the public who wish to establish medical marijuana dispensaries.

On April 28, 2010, the City Council received information on medical marijuana dispensaries. The staff report included information on the legal, law enforcement, and planning issues relating medical marijuana dispensaries. Based upon this presentation and the subsequent discussion, the City Council directed staff to bring a draft ordinance back for consideration that is based upon the current ordinance for the City of Laguna Woods. The purpose of this staff report is to present the draft ordinance to the Planning Commission for consideration. A copy of the April 28th City Council staff report is contained in Attachment D. The excerpted sections from the California Health and Safety Code relating to medical marijuana are contained in Attachment F.

At the direction of the City Council, the City Attorney's office prepared a draft ordinance to allow medical marijuana dispensaries based upon the ordinance from the City of Laguna Woods. The draft ordinance prepared by the City Attorney is contained in

Attachment C. A table comparing the existing Laguna Woods ordinance with this proposed ordinance is contained in Attachment E.

This draft ordinance is being provided to the Planning Commission for a recommendation because the proposed ordinance addresses the issue of medical marijuana dispensaries from a zoning and land use perspective and involves the addition of a new chapter to the City of Wildomar's zoning ordinance. To assist the Commission in their deliberations, staff suggests that the Planning Commission consider the issue sequentially based upon the questions outlined below.

1. Does the Commission feel that Medical Marijuana Dispensaries should be allowed in the City? (If the Commission consensus is "no", then no additional discussion is required.)
2. If the feels that Marijuana Medical Dispensaries should be allowed in the City, then the following questions should be addressed.
 - A. What zoning districts should these businesses be allowed in?
 - B. What should the development standards, locational criteria (separation distances, etc), and permitting requirements be?
 - C. Once a permit is approved, what should the operational requirements be?

DISCUSSION:

The draft ordinance would amend the City's zoning ordinance to allow medical marijuana dispensaries within the City of Wildomar. The draft ordinance would establish a regulatory permit requirement for medical marijuana dispensaries and provides detailed provisions governing the application and approval process. The text of the draft ordinance is contained in Attachment C. A summary of the draft ordinance is provided below.

Sec. 17.292.010 – Legislative Intent	Documents the rationale and purpose for the ordinance.
Sec. 17.292.020 - Definitions	Defines the terms used in the ordinance.
Sec. 17.292.030 – Medical Marijuana Dispensary Permit Required	Requires a permit pursuant this Chapter to operate a medical marijuana dispensary.
Sec. 17.292.040 – Other Permit Issuance	Prohibits the issuance of any permits or approvals for a medical marijuana dispensary with the prior approval of a Medical Marijuana Dispensary Permit.
Sec. 17.292.050 – No Nonconforming Uses	Prohibits any existing medical marijuana dispensary from being considered a legal non-conforming use.

Sec. 17.292.060 – Not an Accessory Use	Prohibits a medical marijuana dispensary from being considered an accessory use to another use or business.
Sec. 17.292.070 – Locational Standards	Establishes the basic criteria for locating medical marijuana dispensaries (e.g. zoning districts and separation distances).
Sec. 17.292.080 – Application Process	Establishes the basic application requirements for a Medical Marijuana Dispensary Regulatory Permit.
Sec. 17.292.090 – Regulatory Permit review and approval	Establishes the permit approval process and requirements for a Medical Marijuana Dispensary Regulatory Permit.
Sec. 17.292.100 – Operational Requirements	Establishes the operational requirements and conditions for a medical marijuana dispensary.
Sec.17.292.110 – Appeal of Decisions	Establishes a decision appeal process to the City Council.
Sec.17.292.120 – Indemnification and Disclaimer Provisions	Establishes indemnification requirements and procedures associated with the approval of a medical marijuana dispensary.
Sec. 17.292.130 - Enforcement	Establishes the operational requirements and conditions for a medical marijuana dispensary.

The purpose of this staff report is to present the draft ordinance and identify a number of policy areas for the Commission’s consideration. The list of policy questions is intended to provide a starting point for the Commission’s deliberations, it is not intended to limit the Commission’s discussion on the draft ordinance. The initial policy questions include the following topics.

- Dispensary Locations – Zoning Districts
- Dispensary Locations – Separation Distances
- Approval Authority
- Day and Time of Operation
- Number of Dispensaries
- Duration of Security Recording Retention

Dispensary Locations – Zoning Districts

The draft ordinance prepared by the City's Attorney's Office would amend the City's zoning ordinance to allow medical marijuana dispensaries to locate within the C-1/C-P (general commercial), C-P-S (scenic highway commercial), and C-O (commercial office) zones. From a land use and planning perspective, the dispensaries are essentially commercial land uses with many items common to commercial/retail businesses; dispensaries attract customers who travel to the business to purchase a product sold there and then leave. The potentially problematic social aspects of these types of businesses (e.g. loitering, public drug use) are addressed through the locational and operational criteria, and by having the business in a location with clear visibility to the public.

An alternate approach for the Commission to consider would be a strategy would be to allow these uses in a more industrial location. This approach would be more secluded than placing the use in a commercial zone. Possible industrial-based zoning districts would include the M-SC (manufacturing-service commercial) and I-P (industrial park) zones. However, if the Planning Commission would like to see more flexibility in the location of medical marijuana dispensaries, these uses could be allowed in both the commercial and industrial zones. Staff would like the Planning Commission to provide a recommendation on which zones these types of uses should be allowed.

Dispensary Locations – Separation Distances

The draft ordinance contains separation distances from a variety of potentially sensitive uses that are youth oriented. The ordinance places restrictions on the location of dispensaries within these zones, including requirements that dispensaries be at least 1,000 feet away from youth-oriented establishments such as schools, parks, youth oriented sports and recreational facilities, and daycare centers. The 1,000 foot distance also applies to areas where these types of uses are planned or zoned to be located. These 1,000-foot separation distances are consistent with State law requirements for medical marijuana dispensaries. The Laguna Woods also includes a 1,000 foot separation distance from adult businesses. These provisions are found in Section 17.292.070.D. Staff would like the Commission to provide a recommendation on the suggested separation distances contained in the proposed ordinance.

Approval Authority

The draft ordinance establishes the City Manager, or their designee, to administratively approve the Medical Marijuana Dispensary Regulatory Permits without a public hearing if all of the criteria contained in Section 17.292.070 - Location Standards, and Section 17.292.080 - Application Process, and Section 17.292.090 - Regulatory Permit Review and Approval. If the Planning Commission believes a public hearing should be provided, staff requests that the Commission make a recommendation to the City Council on an alternative approval authorities. The options for alternate approval authorities include the following:

- Noticed public hearing before the Planning Director;
- Noticed public hearing before the Planning Commission; or

- o Notice public hearings before the Planning Commission (for a recommendation) and City Council (for a decision).

Day and Time of Operation

The draft ordinance proposes to limit the hours of operation for medical marijuana dispensaries to 9:00 am to 5:00 pm, Monday through Friday. If the Planning Commission feels that these hours are either too lenient or too restrictive, staff would like the Commission to provide a specific recommendation to the City Council.

Number of Dispensaries

The draft ordinance does not limit how many Medical Marijuana Dispensary Regulatory Permits may be approved within the City. If the Commission believes the number of dispensaries should be limited, staff recommends that the Commission also provide an alternate recommendation in this area. If the Commission feels that limitations in the number of dispensaries is appropriate, staff requests that the Commission also provide direction on the selection criteria in the event there are more applications to open a medical marijuana dispensary than there are issuable permits.

Duration of Security Recording Retention

The Police Department has indicated that the retaining security camera recordings for only 120 hours (5 days) is not a long enough to guarantee the availability of the recordings in the event of an investigation. Consequently, the police requested that this time period be modified to a more appropriate period of between 14 and 30 days to ensure that the recordings are available in the event of an investigation. As a result, staff has modified the provisions of Sections 17.292.080.D.1 and 17.292.130.D.5 to require the retention of the security camera recordings for a continuous period of 14 days (236 hours). Staff would like the Commission to provide a recommendation on the duration that security camera recording are to be retained.

Conclusion

Staff recommends that the Planning Commission review the draft ordinance and the associated policy issues and make a recommendation to the City Council on the proposed draft ordinance amending the City's zoning code by using the resolution in Attachment A to recommend approval, or the resolution in Attachment B to recommend denial of the proposed zoning code amendment. Following the Commission's final deliberations and recommendation on the proposed ordinance, the proposed ordinance will be presented to the City Council for their consideration and final action.

ENVIRONMENTAL REVIEW

A review of the potential environmental impacts was conducted for the proposed zoning ordinance amendment to establish special regulations limiting how a specific commercial retail land use can be operated within the City. This evaluation indicated no potential for impacts on the environment because this ordinance would simply permit a new use in existing retail commercial (or other zoning classification if it applies) zones and would not change or add such zones, it appears that there are no direct or indirect environmental impacts that would result. As a result, the Planning Director recommends that the Planning Commission recommend to the City Council that the Council make a determination that the proposed zoning ordinance amendment has no

potential to impact to the environment, and that the proposed ordinance is exempt from CEQA review pursuant to Section 15061(b)(3) which states that if an activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

ATTACHMENTS:

- A. Draft Resolution Recommending Approval
- B. Draft Resolution Recommending Denial
- C. Draft Ordinance
- D. April 28, 2010 City Council Staff Report
- E. Laguna Woods Ordinance Comparison Table
- F. Excerpts from the State Health and Safety Code

ATTACHMENT A

RESOLUTION NO. PC10-_____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WILDOMAR RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE ENTITLED “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR ADDING CHAPTER 17.292 TO THE WILDOMAR MUNICIPAL CODE TO ALLOW THE CREATION OF MEDICAL MARIJUANA DISPENSARIES AND ESTABLISHING ASSOCIATED REGULATIONS AND AMENDING PORTIONS OF CHAPTER 17.12 OF THE WILDOMAR MUNICIPAL CODE

WHEREAS, in 1996 voters in California approved “The Compassionate Use Act of 1996” (CUA) with Proposition 15; and

WHEREAS, in 2003, the State enacted Senate Bill 420 “The Medical Marijuana Program” to implement the provisions of the CUA; and

WHEREAS, the City of Wildomar incorporated on July 1, 2008; and

WHEREAS, the regulation of land uses through zoning provisions is a function of local government intended to protect the public health, safety, and welfare; and

WHEREAS, to protect the public health, safety and welfare, it is the desire of the City Council to modify the Wildomar Municipal Code to be consistent with SB 420, regarding the location and operation of medical marijuana dispensaries; and

WHEREAS, on July 10, 2010 the City gave public notice by the methods prescribed the Municipal Code announcing the holding of a public hearing at which the proposed zoning code amendment would be considered; and

WHEREAS, on July 21, 2010 the Planning Commission, during a regularly scheduled meeting, considered these possible amendments to the Zoning Ordinance.

NOW THEREFORE, the Planning Commission of the City of Wildomar does Resolve, Determine, Find and Order as follows:

SECTION 1. ENVIRONMENTAL FINDINGS. The Planning Commission, hereby recommends that the City Council find and determine that the project consists of a zoning ordinance amendment related to the operation of a commercial business as a permitted land use in non-residential zoning districts and has no potential to impact the environment. Consequently, the proposed ordinance is exempt from CEQA review pursuant to Section 15061(b)(3) which states that if an activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 2. FINDINGS. The proposed amendments to the zoning ordinance are consistent with and do not conflict with the provisions of the General Plan.

SECTION 3. PLANNING COMMISSION ACTION. The Planning Commission hereby makes the following recommendations:

A. Notice of Exemption. The Planning Commission hereby recommends that the City Council make a determination that the project is exempt from environmental review in accordance with the provisions of CEQA Guidelines Section 15061(b)(3).

B. Adopt an Ordinance. That the City Council adopt an ordinance entitled "An Ordinance of the City Council of the City of Wildomar adding Chapter 17.292 to the Wildomar Municipal Code to allow the Creation of Medical Marijuana Dispensaries and establishing associated regulations and amending portions of Chapter 17.12 of the Wildomar Municipal Code" as attached hereto and incorporated herein by this reference as Exhibit A.

PASSED, APPROVED AND ADOPTED this 21st day of July 2010.

Robert Devine
Chairman

APPROVED AS TO FORM:

ATTEST:

Thomas Jex
Assistant City Attorney

David Hogan
Planning Commission Secretary

ATTACHMENT B

RESOLUTION NO. PC10-_____

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF WILDOMAR RECOMMENDING THAT THE
CITY COUNCIL NOT ADOPT AN ORDINANCE ALLOWING
THE ESTABLISHMENT AND OPERATION OF MEDICAL
MARIJUANA DISPENSARIES**

WHEREAS, In 1996 voters in California approved “The Compassionate Use Act of 1996” (CUA) with Proposition 15; and

WHEREAS, in 2003, the State enacted Senate Bill 420 “The Medical Marijuana Program” to implement the provisions of the CUA; and

WHEREAS, the City of Wildomar incorporated on July 1, 2008; and

WHEREAS, the regulation of land uses through zoning provisions is a function of local government intended to protect the public health, safety, and welfare; and

WHEREAS, to protect the public health, safety and welfare, it is the desire of the City Council to modify the Wildomar Municipal Code to be consistent with SB 420, regarding the location and operation of medical marijuana dispensaries; and

WHEREAS, on July 10, 2010 the City gave public notice by the methods prescribed the Municipal Code announcing the holding of a public hearing at which the proposed zoning code amendment would be considered; and

WHEREAS, on July 21, 2010 the Planning Commission, during a regularly scheduled meeting, considered these possible amendments to the Zoning Ordinance.

NOW THEREFORE, the Planning Commission of the City of Wildomar does Resolve, Determine, Find and Order as follows:

SECTION 1. ENVIRONMENTAL FINDINGS. Section 15270(a) states that CEQA does not apply to projects which a public agency rejects or disapproves, that no specific environmental analysis is required.

SECTION 2. PLANNING COMMISSION ACTION. Following a careful evaluation of the issues and having considered all the information and public testimony, the Planning Commission hereby recommends that the City Council not adopt an ordinance allowing the establishment and operation of medical marijuana dispensaries.

PASSED, APPROVED AND ADOPTED this 21st day of July 2010.

Robert Devine
Chairman

APPROVED AS TO FORM:

ATTEST:

Thomas Jex
Assistant City Attorney

David Hogan
Planning Commission Secretary

ATTACHMENT C

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR ADDING CHAPTER 17.292 TO THE WILDOMAR MUNICIPAL CODE TO ALLOW THE CREATION OF MEDICAL MARIJUANA DISPENSARIES AND ESTABLISHING ASSOCIATED REGULATIONS AND AMENDING PORTIONS OF CHAPTER 17.12 OF THE WILDOMAR MUNICIPAL CODE

The City Council of the City of Wildomar, California, does hereby ordain as follows:

SECTION 1. The City Council finds that this amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the Guidelines, in that the amendment does not have the potential for causing a significant effect on the environment.

SECTION 2. The City Council finds that:

A. In November 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 (“CUA”), which has been codified as California Health and Safety Code Section 11362.5, et seq.; and

B. The intent of the CUA was to enable persons who might benefit from the use of marijuana for specified medical purposes to obtain and use it under limited, specified circumstances; and

C. In 2003, the California Legislature enacted Senate Bill 420 (“SB 420”) (codified as Health and Safety Code Sections 11362.7-11362.83), which supplemented and clarified the scope of the application of the Compassionate Use Act, promoted uniform and consistent application of the CUA within the State, and enhanced access of patients and caregivers to medical marijuana; and

D. Section 11362.83 of the California Health and Safety Code provides that localities are free to adopt laws that are consistent with State law, and as such, it is up to each jurisdiction to decide if they will allow medical marijuana dispensaries, in what zones, and under what regulations; and

E. Recognizing that there is a potential conflict between Federal and State law, it is the City Council’s intention that this ordinance shall be deemed to comply with California law as established by the CUA and SB 420, which provide for the use of medical marijuana by qualified patients and the dispensation of medical marijuana to qualified patients by medical marijuana dispensaries, regarding the location and operation of medical marijuana dispensaries; and

F. To protect the public health, safety and welfare, it is the desire of the City Council to modify the Wildomar Municipal Code to be consistent with SB 420, regarding the location and operation of medical marijuana dispensaries; and

G. It is the City Council's intention that nothing in this ordinance shall be construed to:

1. Allow persons to engage in conduct that endangers others or causes a public nuisance;
2. Allow the use of marijuana for nonmedical purposes; or
3. Allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise not permitted under state law.

SECTION 3. Based on the findings outlined in Section 2 above, the City Council hereby adopts Chapter 17.292 of the Wildomar Municipal Code to read as follows:

“Chapter 17.292 Medical Marijuana Dispensaries

17.292.010 Legislative purpose.

It is the intent of the City of Wildomar to allow the establishment of Medical Marijuana Dispensaries within the boundaries of the City of Wildomar to serve the bona fide medical needs of the residents of the City as provided by state law. Further, it is the intent of the City Council to regulate the offsite and other public impacts of such facilities to protect the public health, safety, and welfare of the residents, children, and businesses from harmful secondary effects that could result from a dispensary.

17.292.020 Definitions.

All definitions set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq., as may be amended from time to time, including, but not limited to, the terms “attending physician”, “persons with an identification card”, and “serious medical conditions” shall apply under this chapter in addition to the definitions set forth as follows:

A. “Applicant” means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a Medical Marijuana Dispensary.

B. “City” means the City of Wildomar.

C. “City Manager” means the City Manager of the City of Wildomar or his/her designee.

D. “Identification Card” shall have the same definition as contained in California Health and Safety Code section 11362.7, as may be amended from time to time.

E. “Medical Marijuana” is defined in strict accordance with California Health and Safety Code sections 11362.5 and 11362.7, et seq. “Medical Cannabis” shall have the same definition as Medical Marijuana.

F. “Medical Marijuana Dispensary” or “Dispensary” means any facility or location where the primary purpose is to dispense Medical Marijuana as a medication that has been recommended by a physician and where Medical Marijuana is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or qualified patient, in strict accordance with California Health and Safety Code sections 11362.5 and 11362.7, et seq. Only a group of primary caregivers and/or qualified patients who collectively or cooperatively associate to cultivate and dispense Medical Marijuana shall be deemed a Medical Marijuana Dispensary. “Medical Marijuana Dispensary” also includes establishments from which marijuana is delivered to patients who cannot obtain it from a dispensary due to physical or mental disability, for medical purposes in compliance with Health and Safety Code sections 11362.5 and 11362.7, et seq.

A “Medical Marijuana Dispensary” shall not include dispensing by primary caregivers to qualified patients in the following locations and uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of the Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a residential hospice; or a home health agency licensed pursuant to Chapter 8 of Division 2 of Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5 and 11362.7, et seq.

G. “Medical Marijuana Dispensary Regulatory Permit” means a permit to operate a Medical Marijuana Dispensary issued under this ordinance.

H. “Person” means any individual, partnership, co-partnership, firm association, joint stock company, corporation, limited liability company, or combination of the above, in whatever form or character.

I. “Police Chief” means the Police Chief designated by the City Council of the City of Wildomar, or the authorized representatives thereof.

J. “Primary Caregiver” shall have the same definition as California Health and Safety Code sections 11362.5 and 11362.7, as may be amended from time to time.

K. “Qualified Patient” shall have the same definition as contained in California Health and Safety Code sections 11362.5 and 11362.7, as may be amended from time to time.

L. “School” means an institution of learning for juveniles under the age of 18, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special

institution of education. This definition does not include collegiate level institutions including colleges, graduate schools, universities, and non-profit research institutions.

M. "Youth Oriented" means and establishment that advertises in a manner that identifies an establishment as catering to or providing services intended for minors; or an establishment where the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

17.292.030 Medical marijuana dispensary permit required.

A. No person shall operate a Medical Marijuana Dispensary without obtaining a Medical Marijuana Dispensary Regulatory Permit pursuant to the provisions of Chapter 17.292. Every person who proposes to maintain, operate or conduct a medical marijuana dispensary in the City of Wildomar shall file an application with the City Manager upon a form provided by the City and shall pay a filing fee as established by resolution adopted by the City Council as amended from time to time.

B. Prior to initiating operations and as a continuing requisite to conducting operations, any person or entity wishing to operate a Medical Marijuana Dispensary shall obtain a Medical Marijuana Dispensary Permit from the City Manager or his/her designee, under the terms and conditions set forth herein.

17.292.040 Other permit issuance.

No land use entitlement, permit (including building permit), approval, site plan, certificate of occupancy, zoning clearance, or other land use entitlement or authorization for a Medical Marijuana Dispensary shall be granted or permitted except in conformance with this chapter.

17.292.050 No nonconforming uses.

No use which purports to have distributed medical marijuana prior to the enactment of this chapter shall be deemed to have been a legally established use under the provisions of the Zoning Code and such use shall not be entitled to claim legal nonconforming status.

17.292.060 Not an accessory use.

A Medical Marijuana Dispensary is not and shall not be approved as an accessory use to any other use permitted by this Zoning Code.

17.292.070 Location standards.

The following location standards shall apply to all Medical Marijuana Dispensaries:

A. Medical Marijuana Dispensaries may be permitted, upon application and approval of a Medical Marijuana Dispensary Regulatory Permit in accordance with the criteria set forth in this chapter, only within the General Commercial (C-1/C-P), Scenic Highway Commercial (C-P-S), and Commercial Office (C-O) Zones.

B. A Medical Marijuana Dispensary shall not be established or located within 1,000 feet of another medical marijuana dispensary, any school, daycare, nursery, playground, or property zoned, planned, or otherwise designated for such use.

C. A Medical Marijuana Dispensary shall not be established or located within 1,000 feet of a youth-oriented establishment, or an establishment that provides youth-oriented services characterized by either or both of the following:

1. The establishment advertises in a manner that identifies the establishment as catering to or providing services intended for minors; or

2. The individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

D. A Medical Marijuana Dispensary shall not be established or located within 1,000 feet of those uses described in Chapter 5.44 - Sex-Oriented Businesses of the municipal code.

E. All distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building, or structure in which the medical marijuana dispensary is, or will be located, to the nearest property line of the use to be separated.

F. A Medical Marijuana Dispensary shall be parked at a rate of one space for every 250 square feet of gross floor area for the entire business.

17.292.080 Application process.

An application for a regulatory permit for a Medical Marijuana Dispensary shall include, but shall not be limited to, the following information:

A. A description of the size of the group of primary caregivers and/or qualified patients who comprise the proposed Medical Marijuana Dispensary and documentation demonstrating that the Medical Marijuana Dispensary is a non-profit operation;

B. The address of the location from which the dispensary for which application is made will be operated;

C. A site plan and floor plan of the premises denoting:

1. Waiting Area

2. Dispensing Area

3. Location of Storage Area

a. Separate air handling/HVAC system for the lease space. Neither the ventilation system for the lease space/premise

nor the air handling/HVAC controls are to be shared with another lease space.

4. Exterior Lighting
5. Restrooms
6. Signage Plan (both interior and exterior)

D. A security plan including the following measures:

1. Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least two hundred thirty-six (236) concurrent hours of digitally recorded documentation in a format approved by the Police Chief. The cameras shall be in use twenty four (24) hours per day, seven (7) days per week. The areas to be covered by the security cameras include, but are not limited to, the dispensing areas, storage areas, all doors and windows, and any others as determined by the Police Chief.
2. The lease/business space shall be alarmed with an alarm system that is operated and monitored by a recognized security company.
3. Entrance to the dispensing area and any storage areas shall be locked at all times, and under the control of dispensary staff.
4. The business entrance(s) and all window areas shall be illuminated during evening hours. The applicant shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding, etc., and secure the necessary approvals and permits as needed.

E. The name and address of the person who is managing or responsible for the Medical Marijuana Dispensary's activities;

F. The name and address of the owner and lessor of the real property upon which the business is to be conducted. In the event the applicant is not the legal owner of the property; the application must be accompanied with a notarized acknowledgement from the owner of the property that a medical marijuana dispensary will be operated on his/her property;

G. Identification of the source of all medical marijuana dispensed by the Medical Marijuana Dispensary.

H. A statement verifying the truth and accuracy of all information requested signed under penalty of perjury.

I. Any such additional and further information as is deemed necessary by the City Manager to administer this chapter.

17.292.090 Regulatory permit review and approval.

A. The Police Chief shall conduct a background check of any applicant for a regulatory permit and report his/her determination on the acceptability of the applicant's background to the City Manager.

B. Upon completing the review process, the regulatory permit shall be granted or conditionally granted, unless the City Manager, in consultation with the Police Chief finds that the applicant:

1. Has made one or more false or misleading statements, or omissions on the application or during the application process; or
2. Is not a Primary Caregiver or Qualified Patient; or
3. Has not satisfied all of the requirements of this Chapter; or
4. The applicant of the Medical Marijuana Dispensary has been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution or similar activities related to controlled substances. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

C. Based on the information set forth therein, and in consultation with the Police Chief, the City Manager may impose reasonable terms and conditions to implement the requirements of this Chapter.

D. A medical marijuana dispensary regulatory permit shall be valid for one year. Sixty (60) days prior to the expiration of a medical marijuana regulatory permit, the operator of the Medical Marijuana Dispensary may apply for renewal of the permit for a subsequent year. Each renewal application shall certify the accuracy of the information in the prior application and document any changes or additions to that information as of the date of the application for renewal.

E. A Medical Marijuana regulatory permit is not transferable. Prior to a change in operator, the applicant shall secure a new medical marijuana regulatory permit from the City. Failure to do so may be grounds for revocation.

17.292.100 Operational requirements.

No person shall engage in, conduct, or permitted to be engaged in or conducting a Medical Marijuana Dispensary unless each of the following requirements are continually met:

A. The dispensary shall comply fully with all of the applicable restrictions and mandates set forth in state law.

B. The dispensary shall only be open between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

C. Physician's referrals shall be verified by the dispensary prior to dispensing initially and at least every six (6) months.

D. Dispensary staff shall maintain patient records on site, including, but not limited to, a copy of the physician's referral and, if using a primary caregiver, a notarized written authorization from the patient to be represented by the said primary caregiver.

E. The dispensary must maintain a lobby/waiting area at the entrance of the business, which is physically separated from the dispensing area. Only staff shall be allowed in the dispensing area. The public areas of the business shall be open and viewable at all times by owner/staff.

F. Medical Marijuana shall be kept in a secured manner during business and non-business hours.

G. At all times, the air handling/HVAC system for the lease space shall be isolated to the lease space and in no way linked or extended to another lease space. The controls for said system shall be self contained for the lease space as well.

H. If consumable Medical Marijuana products (including, but not limited to, lollipops, brownies, cookies, ice cream, etc.) are present on site or offered for sale/distribution, then the applicant needs to secure Riverside County Department of Environmental Health approval for handling food products and the associated letter grade must be displayed, if applicable.

I. No dispensary shall conduct or engage in the commercial sale of any product, good or service. The term "commercial sale" does not include the provision of medical marijuana on terms and consistent with this Code and applicable law.

J. Any Medical Marijuana Dispensary must pay any applicable sales tax pursuant to federal, state, and local law.

K. The entrance and lobby/waiting area shall be posted at all times indicating that smoking, ingesting, or consuming marijuana on the premises or in the associated parking lot is prohibited.

L. Signage for the dispensary shall be limited to name of business only, and no advertising of the goods and/or services shall be permitted.

M. Alcoholic beverages shall not be sold, stored, distributed, or consumed on the premises.

N. Windows and/or entrances shall not be obstructed and must maintain a clear view into the premises during business hours.

O. No person under the age of 18 years shall be allowed on the premises at any time.

P. Physician service shall not be provided on the premises. "Physician services" does not include social services, including counseling, help with housing and meals, hospice and other care referrals which may be provided on site. However, no social service activities may be provided in the dispensing area.

Q. All applicable permits, including the medical marijuana regulatory permit, shall be conspicuously posted at the location of the dispensary in full public view.

17.292.110 Appeal of decisions.

Any decision regarding the approval, conditional approval, denial of a new or renewed, or revocation of a Medical Marijuana regulatory permit may be appealed to the City Council. Said appeal shall be made by a notice of appeal from the person appealing within thirty (30) days from the date of the decision. The appeal shall be accompanied by a fee, which shall be established by resolution of the City Council amended from time to time, and a written, verified declaration setting forth the basis for the claim that the permit was improperly approved, denied, conditioned or revoked. Filing of an appeal shall suspend the issuance of a Medical Marijuana regulatory permit until action is taken on the appeal.

17.292.120 Indemnification and disclaimer provisions.

A. To the fullest extent permitted by law, the City of Wildomar shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to medical marijuana, or for the activities of any medical marijuana dispensary. Upon receiving possession of a regulatory permit for a Medical Marijuana Dispensary, the Operator of the dispensary shall sign an agreement: (1) indemnifying the City of Wildomar; (2) carry insurance in the amounts and of the types that are acceptable to the City Manager; and (3) naming the City as an additionally insured.

B. As a condition of approval of a regulatory permit for a Medical Marijuana Dispensary Permit, the operator, by utilizing the benefits of the approval, shall thereby agree to defend at its sole expense, any action against the City, its agents, officers, and employees because of the issues of such approval. In addition, the applicant/owner shall reimburse the City et al. for any court costs and attorney fees that the City et al. may be required to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

C. Approval and inspection processes conducted pursuant to this chapter shall preserve to the maximum extent possible all legal protections and privileges, consistent with reasonably verifying the qualifications and status of qualified patients and primary caregivers. Disclosure of any patient information to assert facts in support

of a qualified status shall not be deemed a waiver of confidentiality of that information under any provision of law.

17.292.130 Enforcement.

A. Recordings made by the security cameras shall be made available to the City Manager and/or Police Chief upon verbal request; no search warrant or subpoena is needed to view the recorded materials.

B. The Police Chief, City Manager, City Building Official and their authorized representatives shall have the right to enter the dispensary from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this chapter and all laws of the City and State of California.

C. Operation of the dispensary in non-compliance with any conditions of approval or standards of this chapter, or continuing a use after a medical marijuana regulatory permit has expired, shall constitute a violation of the Municipal Code and shall be handled in accordance with Chapter 1.03 of this Code.

D. The City Manager may revoke a medical marijuana regulatory permit if any of the following, singularly or in combination, occur:

1. The business has three violations outlined in this chapter that occur within a 180-day period; or
2. Operations cease for more than ninety (90) calendar days, including during change of ownership proceedings; or
3. A use is continued after a Medical Marijuana Regulatory Permit has expired; or
4. Ownership is changed without securing a Medical Marijuana Regulatory Permit; or
5. Operator fails to maintain at least two hundred thirty-six (236) continuous hours of security recordings; or
6. Operator fails to allow inspection of the security recordings, the activity logs, or of the premise by authorized City officials."

SECTION 4. Section 17.12.040 of the Wildomar Municipal Code is hereby amended to strike the language prohibiting the establishment of medical marijuana dispensaries, and shall read as follows:

"17.12.040 Uses allowed in zone classifications.

The terminology used in Section 17.12.010 of this chapter is general only and is not intended to be descriptive of all uses allowed in the zone classifications. The zone classifications are specifically set forth in subsequent articles of the ordinance codified

in this chapter to which reference should be made to determine all the uses permitted therein. When a use is not specifically listed as permitted or conditionally permitted in a zone classification, the use is prohibited unless, in circumstances where this section empowers him or her to do so, the planning director makes a determination that the use is substantially the same in character and intensity as those uses permitted or conditionally permitted in the zone classification.”

SECTION 5. Section 17.12.050 of the Wildomar City Code is hereby repealed in its entirety.

SECTION 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs sentences, clauses, or phrases are declared unconstitutional, invalid, or ineffective.

SECTION 7. Effective Date. This ordinance shall take effect thirty (30) days after its passage by the City Council.

SECTION 8. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

ADOPTED AND ENACTED this ___ day of _____, 2010.

Bridgette Moore
Mayor

APPROVED AS TO FORM:

ATTEST:

Julie Hayward Biggs
City Attorney

Debbie A. Lee, CMC
City Clerk

ATTACHMENT D

CITY OF WILDOMAR – COUNCIL
Agenda Item #3.2
GENERAL BUSINESS
Meeting Date: April 28, 2010

TO: Mayor and City Council
FROM: Frank Oviedo, City Manager
SUBJECT: Medical Marijuana Dispensary Educational Report

STAFF REPORT

RECOMMENDATION:

That the City Council accepts the Medical Marijuana Dispensary Educational Report as a Receive and File, and, if appropriate, provide further direction to staff.

BACKGROUND:

The issue of medical marijuana came to the City Staff's attention as a result of three applicants seeking business registrations to conduct business in the community by opening dispensaries. Prior to this, the City has not had to address this issue.

In January, 2010, the City received an application for a business registration from a medical marijuana delivery service who was interested in opening in the City of Wildomar. The home based business seeking a City business registration is currently registered as a nonprofit association in the State of California as Westcoast Weeds. At the time Staff did not approve the registration since it was not authorized by ordinance to do business within the City boundaries.

Then in February, 2010, a representative from the Wildomar Patients Compassionate Group (WPCG) visited City Hall and informed Staff they intended to open a medical marijuana collective in Wildomar. Similarly they were told that it was not an authorized use under the City's zoning code. Several weeks later the City was made aware that the facility had in fact opened without registering as a business in the City of Wildomar and in violation of the City's zoning ordinance. On March 9, 2010, the City issued a cease and desist letter stopping the business operation. Since that time the WPCG has closed its doors and has not reopened.

At the March 10, 2010, City Council meeting a number of individuals came to speak under public comment specifically about the need to have a location to acquire medical marijuana. Several Council Members commented that they did not know enough about the issue and felt more information would be helpful. As a result, Council directed Staff to come back with a report providing information so the City Council could make an informed decision regarding the issue.

Since that time a third application for a business registration from Alt Meds has been submitted to the City. This business would focus primarily on cultivating marijuana in a sterilized environment.

Interestingly, all three applications have very different business models. In the first case, the applicant is a delivery service. In the second case, the applicant is a brick and mortar medical marijuana dispensary operated from a fixed site run by a collective. And in the third case, the business focus of the application is primarily cultivation.

The following report provides an overview of the issue from the standpoint of city administration of the law as it pertains to zoning and land use. It is not the function of a local municipality to determine whether medical marijuana has medicinal value or not. Under California Law, medical marijuana use was made legal forcing local governments to deal with the issue at a local government level. While the discussion is important and may be something each Council Member is interested in knowing about as they consider this issue, it is not something the City has an interest in from a land use and zoning regulation standpoint.

This report covers three basic areas and will be augmented with invited speakers to provide testimony on this topic. The first section of the report will provide an overview of the law as it pertains to medical marijuana in the State of California. The second section briefly describes, in very broad terms, how the Riverside County Sheriff is handling medical marijuana in the County. The final section covers the land use and zoning questions that the City Council may want to consider in addressing the zoning and business registration requests from the above listed businesses.

LEGAL

State Law Allows People to Obtain and Use Medical Marijuana Under Specified Circumstances.

In 1996, California voters approved Proposition 215, also known as the "Compassionate Use Act of 1996," codified as Health & Safety Code section 11362.5 *et seq.*¹ The stated purpose of the Proposition is "to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use . . . has been recommended by a physician."² Under Proposition 215, the basic elements for the "legal" possession of marijuana are: (1) a physician's oral or written recommendation or approval, and (2) possession or cultivation for personal medical purposes.³

In 2003, the State Legislature approved Senate Bill 420 which enacted additional statutory guidance for those involved with medical marijuana use.⁴ Senate Bill 420 created a voluntary medical marijuana ID card program, set the quantity of marijuana that a qualified patient or primary caregiver can possess, and created additional

¹ Proposition 215 passed by over a million votes, 55.6% in favor to 44.4% opposed, although the vote split showed more counties voted against Proposition 215 than voted in favor of medical marijuana.

² (Cal. Health & Safety Code § 11362.5(b)(1)(A).)

³ (Cal. Health & Safety Code § 11362.5(d).)

⁴ (Cal. Health & Safety Code §§ 11362.7-11362.83.)

immunities from state marijuana laws, among other things.⁵ Together, the statutes enacted by Proposition 215 and Senate Bill 420 comprise the legal framework for medical marijuana in California.

Qualified Patients and Primary Caregivers May Cultivate and Possess Medical Marijuana

Proposition 215 provides that not only the patient, but also the patient's primary caregiver, may possess or cultivate marijuana for the patient's personal medical use.⁶ Section 11362.5(e) defines a "primary care giver" as "the individual designated by the [qualified patient] who has consistently assumed responsibility for the housing, health, or safety of that patient or person." However, Senate Bill 420 placed limits on how much marijuana a patient or primary caregiver can possess at any given time. Thus, under state law, persons residing in the City who are qualified patients or primary caregivers may cultivate and possess marijuana up to legal quantities (8 ounces of dried marijuana, plus 6 mature marijuana plants or 12 immature marijuana plants per qualified patient, unless a doctor authorizes more) for medical use.⁷ The California Supreme Court recently ruled on the validity of the provisions limiting the amount of marijuana a patient may possess. The Supreme Court held that these provisions are invalid to the extent that they burden a defense authorized by the Compassionate Use Act, but otherwise are valid. This means that even if a patient or primary caregiver is in possession of more marijuana than is allowed under Senate Bill 420, he or she can assert as a valid defense that he or she possessed or cultivated an amount of marijuana reasonably related to meet his or her current medical needs.⁸

Primary Caregiver May Serve Unlimited Number of Qualified Patients

Section 11362.7(d)(2) expressly provides that there is no limit on the number of qualified patients one single primary caregiver can serve, as long as the patients reside in the same county as the primary caregiver. When read together, Sections 11362.7(d)(2) and 11362.77(a) provide virtually no limit to the amount of medical marijuana or medical marijuana plants a primary caregiver can possess.

Medical Marijuana Dispensaries

One year after the passage of Proposition 215, the First District Court of Appeal considered the legality of medical marijuana dispensaries in *People v. Peron*.⁹ The Court held that Proposition 215 does not allow individuals who are not qualified patients or primary caregivers to cultivate and possess marijuana for the purpose of selling or distributing the marijuana to qualified patients.¹⁰ The Court found that the medical marijuana dispensary at issue in that case was a commercial enterprise and not a primary care giver because a primary care giver must be a person "which has

⁵ (Cal. Health & Safety Code §§ 11362.7-11362.83.)

⁶ (Cal. Health & Safety Code § 11362.5.)

⁷ (Cal. Health & Safety Code §11362.77.)

⁸ *People v. Kelley* (2010) 47 Cal.4th 1008.

⁹ (*People v. Peron*, 59 Cal.App.4th 1383, 1400 (1997).)

¹⁰ (59 Cal. App. 4th 1383, 1390.)

consistently assumed responsibility for the housing, health, or safety of” the patient.¹¹ The *Peron* court held that a patient cannot simply designate before a marijuana purchase a seller (such as a club manager or employee) as his or her primary caregiver.¹² Thus, medical marijuana dispensaries that are owned and operated by individuals who are not qualified patients or primary care givers are illegal.

After the *Peron* case, the Legislature adopted Health and Safety Code section 11362.775 to clarify that medical marijuana may be cultivated collectively by qualified patients and primary caregivers, and distributed among the collective’s members. Under this section, qualified patients who are unwilling or unable to cultivate marijuana on their own can still have access to marijuana by joining together with other qualified patients and their primary caregivers to form a collective. This section does not give collectives of qualified patients and primary caregivers the right to operate a medical marijuana dispensary. However, proponents of medical marijuana argue that the right to operate a medical marijuana dispensary is implicit in the right to collectively cultivate medical marijuana. Litigation involving this issue is currently pending. In the absence of any case law finding an implicit right to operate medical marijuana dispensaries in Section 11362.775, the City may prohibit medical marijuana dispensaries since such a prohibition would not conflict with state law.

Conflicts Between State and Federal Law

Of course, as is well-known by now, there is a major conflict between State and Federal laws relating to the legality of medical marijuana. Under the federal Controlled Substances Act (“CSA”), 21 U.S.C. § 801 *et seq.*, marijuana is classified as a “Schedule I” drug, one that “has a high potential for abuse” and which “has no currently accepted medical use.”¹³ Despite the passage of Proposition 215 and Senate Bill 420 in California, from a federal perspective any marijuana possession, use, transportation, or distribution is illegal and carries criminal penalties and risk of imprisonment.¹⁴ There is no “medical necessity” exception to these prohibitions.¹⁵ Furthermore, the U.S. Supreme Court, in *Gonzales v. Raich*, 545 U.S. 1 (2004), affirmed that the CSA, and its lack of a medical necessity exception, is constitutional as applied to the states.

Nevertheless, the California Attorney General’s Office responded to the ruling in *Gonzales v. Raich* by issuing bulletins and press releases stating that the decision did not overrule Prop 215 and SB 420, and that medical marijuana will be legal in California until a federal court specifically rules that State Law is preempted by Federal Law.¹⁶ Since California medical marijuana law has not yet been expressly invalidated by the Federal and State Courts, agencies are likely to continue enforcing it. Furthermore, though the Bush Administration took a tough stance on medical marijuana and the Drug Enforcement Agency was very active in raiding medical marijuana dispensaries and

¹¹ (59 Cal. App. 4th at 1396 (emphasis added).)

¹² (59 Cal. App. 4th at 1397.)

¹³ (21 U.S.C. § 812(b)(1).)

¹⁴ (21 U.S.C. § 841(a) & (b); see also *Gonzales v. Raich*, 125 S. Ct. 2195, 2211 (2004).)

¹⁵ (*United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483 (2001).)

¹⁶ (See Robert Anderson, Bulletin to All California Law Enforcement Agencies (June 9, 2005; June 22, 2005); see also Office of the Attorney General Press Release, June 6, 2005.)

cooperatives, the Obama Administration has publicly stated that it will not go after medical marijuana facilities that are operating within State Law.

Local Regulation of Medical Marijuana Dispensaries

Section 17.12.040 of the Wildomar Municipal Code prohibits the establishment of medical marijuana dispensaries within the City. Section 17.12.050 defines a medical marijuana dispensary as:

“[A]ny facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed to, or distributed by, one or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card A “medical marijuana dispensary” shall not include the following uses, provided that such uses comply with this chapter and all other applicable laws, . . . , a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, 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, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.”

This definition of medical marijuana dispensary does not make any exception for collectives of qualified patients and primary caregivers. Therefore, under the Wildomar Municipal Code, medical marijuana collectives are considered to be dispensaries and are prohibited. This definition is similar to the definition of “medical marijuana dispensary” adopted by the City of Anaheim. Anaheim’s definition is different in that it defines a medical marijuana dispensary as a facility that provides medical marijuana to three or more qualified patients, primary caregivers, or persons with an identification card. Anaheim prohibits medical marijuana dispensaries citywide, and this prohibition is currently being considered by the Fourth District Court of Appeal. The critical issue to be determined in this case is whether the prohibition on collectives violates the Compassionate Use Act. The outcome of this litigation could impact the validity of the City’s prohibition on medical marijuana dispensaries.

If the court holds Anaheim’s prohibition on collectives is illegal, the City will have to amend its ordinance to allow such uses consistent with the decision. But regardless of the decision in the Anaheim case, the California courts have already determined that medical marijuana dispensaries owned and operated by individuals who are not primary caregivers or qualified patients are illegal, and the City may continue to prohibit this use.

It should be noted that a recent decision by the Court of Appeal for the Second District held that the City of Claremont could abate a medical marijuana dispensary located within the City as a public nuisance because the dispensary opened without first

obtaining a business license and use permit.¹⁷ In that case, the City denied the business license and permit application of the Defendant and then, while the Defendant's appeal of the decision to the City Council was still pending, adopted a temporary moratorium on medical marijuana dispensaries, rendering the Defendant's appeal moot. The Defendant proceeded to open up his medical marijuana dispensary without a permit or business license from the City, and the City commenced a code enforcement action against the Defendant. The City obtained a permanent injunction preventing the Defendant from operating a medical marijuana dispensary anywhere within the City, and the Court of Appeal upheld that injunction.

Therefore, if a medical marijuana dispensary opens up within the City of Wildomar without first obtaining a business license, the City can commence a code enforcement action against the dispensary and obtain an injunction prohibiting the operation of the dispensary as a public nuisance.

Legal Conclusion

Though Federal Law clearly prohibits medical marijuana dispensaries, it is uncertain at this point whether a State Court would uphold an outright ban on all dispensaries, in light of the State Law protecting the right of qualified patients and primary caregivers to collectively cultivate and distribute medical marijuana. At this time, the City may continue to enforce its existing prohibition on medical marijuana dispensaries. However, once a decision in the Anaheim litigation is reached, the City may be forced to amend its ordinance consistent with that decision. In addition, the City can commence code enforcement actions against any medical marijuana dispensary that opens without first receiving the appropriate zoning approval or a business license from the City.

LAW ENFORCEMENT

As discussed in the legal section of this report, the marijuana laws at the State and Federal levels are in conflict. Hence, local governments, and more specifically local law enforcement agencies, have had to adapt to this environment. In the case of Riverside County, the Sheriff's Department who serves as the City of Wildomar's Police Force, is no exception.

The Riverside County Sheriff's Office has provided a general outline how law enforcement officers in the field should handle legitimate medical marijuana users under California Law.

Generally, if an individual has all the proper paperwork, and a verified medical marijuana identification card through the State Department of Health Services, possessing marijuana is not a crime and the individual will not be arrested.

In contrast, the Federal Government, through the Drug Enforcement Agency (DEA), clearly holds the position that marijuana is an illegal drug. While the Obama Administration has publicly stated they are not going to go after medical marijuana facilities that are operating consistently with State Law even if it is still illegal at the

¹⁷ *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153.

Federal level. In fact, the DEA website still lists the following as its official position on this matter:

“The campaign to legitimize what is called "medical" marijuana is based on two propositions: that science views marijuana as medicine, and that DEA targets sick and dying people using the drug. Neither proposition is true. Smoked marijuana has not withstood the rigors of science – it is not medicine and it is not safe. DEA targets criminals engaged in cultivation and trafficking, not the sick and dying. No state has legalized the trafficking of marijuana, including the twelve states that have decriminalized certain marijuana use.”

It's safe to say until both State and Federal Law is uniform there will continue to be a debate on the legality of medical marijuana. Further confusion over this matter will be thrust on to local governments if the newly qualified proposition in November is passed by voters legalizing the recreational use of marijuana for California residents over 21 years of age. Until such time, local governments throughout the State are attempting to cope under the existing interpretation of the law.

LAND USE AND PLANNING

The key policy question the Council may need to answer is whether or not medical marijuana dispensaries should be an allowable use under the zoning code. In other words, should this use be carved out in the zoning code to address this type of business activity or use within the City of Wildomar. The subsequent policy question, if the Council decides to allow this use, is related to the approach to permitting under the zoning ordinance. The approach to regulating land use type ranges from maintaining its prohibited status to allowing medical marijuana dispensaries. The range of options is described below:

- As a Prohibited Use. A prohibited use is not allowed or permitted either in an individual zone or (as is the case for medical marijuana dispensaries) anywhere within the City. This is the current zoning approach to medical marijuana dispensaries.
- As a Permitted Use. Permitted uses are considered to be typical of the uses permitted in a zone and are considered to be non-problematic or innocuous in all locations within the zoning district. Typical examples of permitted commercial land uses include a grocery store, a medical-related office, or other general retail establishment.
- As a Conditionally Permitted Use. Conditionally permitted uses are land uses that have some potential to be problematic in certain locations even though they generally fit into the overall character of the zoning district. In these circumstances, the conditional use permit allows the City to make a determination of appropriateness of the use in a specific location and to apply operational or site design requirements. Typical examples of conditionally permitted commercial land uses include liquor stores, convenience markets, and automotive paint shops.

- As a Special Use. The most stringent approach of local land use regulation are uses that require a special use permit (which can be considered as a highly structured form of conditional use permit) based upon specialized regulatory and performance criteria. The rationale for regulating a business or use in this manner is the concern that the business activity has a substantial potential for adverse effects on the surrounding community, and/or the exposure of children to inappropriate activities. The regulation of these types of uses is based upon specific prescriptions and performance standards. Typical examples of this type of commercial land use typically include adult businesses and night clubs.

Attached to this report are three regulatory examples of ordinances for the dispensing of medical marijuana. Those cities are Los Angeles, Oakland, and Palm Springs. While each City is different there are common provisions found in the various ordinances that are provided in Attachments A, B, and C, respectively.

For the above mentioned cities choosing to allow Medical Marijuana Dispensaries certain provisions have been incorporated in their final ordinances. Generally, the provisions that have been included cover the following areas:

- Registration
- Insurance
- Inspection
- Security
- Accurate Record Keeping
- On Site Use Prohibition
- Strict Building Code Operations
- Storage

As with any zoning use, the Council would have to consider a number of factors if medical marijuana were to be considered. The Council might think about using the factors from the list below:

1. Does this business activity or use have the potential to be intrusive or be a “bad neighbor” to other land uses or areas within the City?
2. Are there any sensitive land uses or sensitive groups within the local population that need special separations/protection from the business activity or use?
3. Does this business activity or use have a potential to create undesirable adverse impacts or to exacerbate existing or potential social problems in the City?
4. Is the business activity appropriate in any zoning district?
5. Is the business activity appropriate in any non-residential district?

6. Should the business activity be limited to number of zoning districts or locations?

7. Is this a taxable business that will pay for its use of City services?

CONCLUSION

In conclusion, the City Council must return to the fundamental question of whether or not medical marijuana dispensaries should be an allowable use under the zoning code. If the answer is no, or there is uncertainty about changing the existing policy, the Council may chose to do nothing at all.

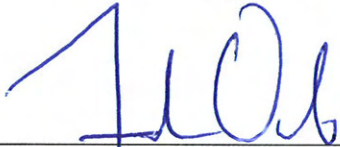
FISCAL IMPACT:

Aside from the consultant and staff costs to provide this report, there is no fiscal impact resulting from Council hearing this item for educational purposes.

ATTACHMENTS:

- A. City of Los Angeles Ordinance
- B. City of Oakland Ordinance
- C. City of Palm Springs Ordinance

Submitted and approved by:



Frank Oviedo
City Manager

ATTACHMENT E

ORDINANCE COMPARISON TABLE

Laguna Woods Section	Draft Ordinance Section	Changes/Remarks
13.26.025 (a)	17.292.010	None
13.26.025 (b)	17.292.020	Added the following definitions: + “Medical Marijuana Dispensary Regulatory Permit” + “Person” + “Youth Oriented” Deleted the following unused definitions: - “Cultivation of Medical Marijuana” - “Drug Paraphernalia” - “Permitee” - “Written Recommendation”
13.26.025 (c)	17.292.040	None
13.26.025 (d)	17.292.070.A	Added references to Wildomar commercial zones, specifically, the C-1/C-P, C-P-S, and C-O zones
13.26.025 (e)	17.292.050	None
13.26.025 (f)	17.292.070.B through .E	None
13.26.025 (f)(4)	17.292.060	None
13.26.025 (g)	17.292.030.B	None
13.26.025 (h)	17.292.030.A	None
13.26.025 (i)	17.292.080	Modified the provisions of Subsection D.1 to require the retention of the security recordings for a period of 14 days (instead of the 5 days in the Laguna Woods ordinance)
13.26.025 (j)	17.292.090	Added additional text as subsection B.4 defining the criteria for evaluating the background check.
13.26.025 (k)	17.292.100	None
13.26.025 (l)	17.292.110	None
13.26.025 (m)	17.292.120	None
13.26.025 (n)	17.292.130	Modified the provisions of Subsection D.5 to incorporate the requirement for the retention of the security recordings for a period of 14 days

ATTACHMENT F

HEALTH AND SAFETY CODE – SECTION 11362.5 (Proposition 215)

“§11362.5. Use of marijuana for medical purposes.

(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b)(l) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary care-givers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law: no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary care-giver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." *(Added by 1996 initiative Measure Prop 215 §1, eff.: 11/6/96.)*

HEALTH AND SAFETY CODE - SECTIONS 11362.7-11362.83

“§11362.7. For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make

medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.

(3) Arthritis.

(4) Cachexia.

(5) Cancer.

(6) Chronic pain.

(7) Glaucoma.

(8) Migraine.

(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

(10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

§11362.71. (a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

(1) Provide applications upon request to individuals seeking to join the identification card program.

(2) Receive and process completed applications in accordance with Section 11362.72.

(3) Maintain records of identification card programs.

(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).

(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of

medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

§11362.715. (a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of his or her residency within the county.

(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.

(4) The name and the duties of the primary caregiver.

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

(1) A conservator with authority to make medical decisions.

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.

(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

§11362.72. (a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

§11362.735. (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

§11362.74. (a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

§11362.745. (a) An identification card shall be valid for a period of one year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.

(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

§11362.755. (a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

§11362.76. (a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county's designee the following:

(A) Updated written documentation of the person's serious medical condition.

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.

(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.

(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

11362.765. (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless

otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

§11362.77. (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to,

patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

§11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

§11362.78. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

§11362.785. (a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

§11362.79. Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.

(c) On a schoolbus.

(d) While in a motor vehicle that is being operated.

(e) While operating a boat.

§11362.795. (a) (1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.

(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.

(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

11362.8. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or

recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

§11362.81. (a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars (\$1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars (\$1,000), or both.

(b) Subdivision (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

§11362.82. If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

§11362.83. Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.”