

Staff Report

July 15, 2005

TO: City Council
FROM: Steven Pierce, Assistant Police Chief
SUBJECT: Medical Marijuana Dispensaries

Recommendation

1. Extend moratorium for up to one year or until overriding local legislation is enacted.
2. Hold a public hearing.
3. Enact a city ordinance banning medical marijuana dispensaries in the City of Davis.

Fiscal Impact

None

City Council Goal

Public Safety

Background and Analysis

On Monday, June 6, 2005 the United States Supreme Court, in the case of Gonzalez v. Raich, ruled that California's law allowing marijuana to be used for medical purposes violates the U.S. Constitution's Commerce Clause. The Commerce Clause gives the federal government the authority to "regulate commerce...among the...states" and that includes items which are locally produced and not distributed through interstate commerce.

The Supreme Court overruled the Ninth Circuit U.S. Court of Appeal, which had held that the commerce clause did NOT apply in cases involving "...intrastate, noncommercial cultivation and possession of cannabis for personal medical purposes...." The Supreme Court disagreed, stating that "...Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense or possess any controlled substance except as authorized by the (federal) Controlled Substances Act (CSA)."

The Court stated that federal regulation is appropriate due to the "...enforcement difficulties that attend distinguishing between marijuana cultivation locally and marijuana grown elsewhere, and concerns about diversion into illicit channels...." The Court said that "...failure to regulate (marijuana) would leave a gaping hole in the CSA."

As a result, the federal government's prohibition on the possession and/or use of the drug is still law. Marijuana is still subject to seizure, and the holder subject to prosecution, by federal agencies. Additionally, the Supreme Court recently ruled that the use of the marijuana for medical purposes does not provide a defense to prosecution under the CSA.

The case **does not** hold that Proposition 215 is unconstitutional, nor does it prohibit California from continuing to honor the procedures and protections set forth in Prop. 215. What the case does say is that following California law will not protect a person from prosecution under federal laws.

A big problem for law enforcement is that this legal conflict puts it between the proverbial "rock and a hard place." The conflict between California law, which basically decriminalizes possession of marijuana for medical use, and the federal law which still makes it a felony to possess it, even for medical use, creates a quandary for the California law enforcement officer. Which law governs?

In correspondence last year from the Director of the federal Drug Enforcement Agency, to the California Attorney General, he stated explicitly that DEA is obligated to enforce existing, lawful, federal laws, even if they conflict with state laws on the same subject.

An example of a potential conflict can be seen with the proliferation of medical marijuana distribution centers throughout the state. Cities and counties are enacting (or not) zoning ordinances addressing the issue. In some jurisdictions the centers are permitted, but regulated as to location, operating hours, etc. In others, they are prohibited. Even though Prop. 215 doesn't explicitly authorize such centers, local law enforcement has taken no action to close them.

However, the Raich decision raises the question of whether FEDERAL law enforcement will be raiding those centers, as they have cannabis clubs in the past (e.g. the Oakland and Santa Cruz Cannabis Clubs)? It would appear that they have that authority.

State and local peace officers are not obligated to enforce federal law (although they may do so) and, therefore, this decision places no additional burden on them. It does, however, put Davis PD in a difficult position since there is a direct conflict between California law and the federal law. If Davis officers enforce the state law, they violate federal law; conversely, if they enforce the federal law, they go contrary to our own state law.

Although federal agents have the authority to arrest an individual for possession or use of marijuana for personal, medical reasons, that is highly unlikely. Statistics show that federal agents rarely, if ever, make such arrests. It is local law enforcement which is normally involved.

In California, therefore, local law enforcement can still rely on Prop 215 which, in essence, makes possession for medical purposes lawful if it is based on a doctor's recommendation. In

fact, the California Attorney General has stated that the Raich decision doesn't change police priorities, nor the law of California, and basically that it will have no negative impact. That is probably true but only time (and the actions of the federal government) will tell.

It is more important than ever for the City of Davis to develop and adopt a zoning regulation regarding medical marijuana distribution centers opening in our community. Raich can support our decision to prohibit such centers, if we chose, since allowing them would require “permitting” a venture which, the U.S. Supreme Court has just ruled, violates federal law.

What, in fact, is needed to resolve this conflict is congressional action. It is the decision for Congress to make, as to whether it wants to amend the CSA. To conform these two inconsistent laws requires that the marijuana be deleted from the CSA's list of prohibited drugs, or California rescinds Proposition 215. Neither action appears likely to occur - nonetheless, that is what is necessary. The Supreme Court's decision is the final word on the subject, absent legislative action either by Congress or by California.

Given the current state of federal law, we are recommending a ban on medical marijuana dispensaries. Allowing medical marijuana dispensaries, even regulating them as is permitted under current California law, might lead individuals to believe that they are safe from prosecution. In reality the DEA could raid their facility, prosecute owners and customers, and seize the assets of the defendants.

On July 13, 2005, this matter was presented to the City of Davis Planning Commission. In a unanimous vote, they approved the zoning change banning medical marijuana dispensaries.

ATTACHMENT 1

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 40.01.010 (DEFINITIONS) AND ADDING SECTION 40.26.275 (MEDICAL MARIJUANA DISPENSARIES) OF CHAPTER 40 OF THE CITY OF DAVIS MUNICIPAL CODE TO ADDRESS CURRENT CONCERNS ABOUT LAND USE AND ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF DAVIS.

THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. DEFINITIONS

Section 40.01.010 (Definitions) of Chapter 40 of the Code of the City of Davis, as amended, is hereby amended to add the definition for medical marijuana dispensary as follows:

Medical Marijuana Dispensary. As used herein the term "Medical Marijuana Dispensary" or "Dispensary" means any facility or location where medical marijuana is made available to and/or distributed by or to two or more persons in the following categories: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: 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 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, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq. and the City of Davis Municipal Code, including but not limited to the City's Zoning Code.

SECTION 2. PROHIBITION OF MEDICAL MARIJUANA DISPENSARIES

Section 40.26.275 (Medical Marijuana Dispensaries) is hereby added to Chapter 40 of the Code of the City of Davis as follows:

Medical marijuana dispensaries are prohibited in all zoning districts, including without limitation to all planned development districts.

SECTION 3. FINDINGS

The City Council hereby finds as follows:

1. Find that the proposed zoning amendment will comply with federal laws regarding marijuana and its use; and adoption of this ordinance is consistent with several city's General Plan policies and goals, including "Goal POLFIRE .2.1 Provide for an emotionally and physically safe environment where the people of Davis are able to live without fear of violence or other forms of abuse." This goal assures that a safe environment is accorded to the people of Davis where they will not be afraid, such as the fear from involvement in the medical marijuana dispensary business with the potential law enforcement action and legal sanctions due to federal laws.
2. Find that the proposed zoning amendment will be consistent with the Zoning Ordinance, as the purpose of the Zoning Ordinance is to provide a "precise and detailed plan for the use of land in the city based on the master plan for the city and is enacted in order to promote the public health, safety, morals, comfort and general welfare throughout the city." Given that this amendment is being proposed so as to avoid potential hardship to prospective entrepreneurs resulting from the conflict between state and federal laws on medical marijuana dispensaries, this amendment is appropriate and consistent with the purpose of the zoning ordinance cited herein.
3. Find that public necessity, convenience and general welfare require adoption of the proposed amendment, given that the amendment promotes public health, safety, morals, comfort and general welfare throughout the city.
4. Find that proposed amendment is categorically exempt from CEQA Guidelines Section 15321(b) as law enforcement activities by peace officers acting under any law that provides a criminal sanction. No environmental impact report (EIR) is needed.

SECTION 4. EFFECTIVE DATE

This ordinance shall become effective on and after the thirtieth (30th) day following its adoption.

INTRODUCED ON _____, 2005, and PASSED AND ADOPTED on _____, 2005 by the following vote:

AYES:
 NOES:
 ABSENT:

ATTEST:

 RUTH UY ASMUNDSON
 Mayor

 BETTE RACKI
 City Clerk

ATTACHMENT 2

Staff Report

August 27, 2004

TO: City Council

FROM: Steven Pierce, Captain

SUBJECT: Report on Medical Marijuana Dispensaries Moratorium

Recommendation

1. Informational – request Council direct staff how to proceed.
2. Approve attached Ordinance extending the moratorium for an additional 10 months and 15 days, the legal maximum (to 12:00 am, July 31, 2005).

Fiscal Impact

This report is provided for informational purposes and therefore does not result in any immediate fiscal impact. However, the issues presented in this report may lead to future Council action with potentially minor/major fiscal impact.

Background and Analysis

The voters of the State of California approved Proposition 215, codified as Health and Safety Code section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" (the "Compassionate Use Act"). The purpose of this Act was to allow patients suffering from a number of serious illnesses an opportunity to find relief through the use of doctor recommended marijuana.

Additionally, in January 2004 the State enacted SB 420 to clarify the scope of the Compassionate Use Act and allows cities to adopt and enforce rules and regulations consistent with SB 420.

This includes controlling sites where medical marijuana is dispensed to primary caregivers and patients. Other provisions of SB 420 include:

- Recognizes the right of patients and caregivers to associate collectively or cooperatively to cultivate medical marijuana.
- Requires the State Department of Health, working with county health departments, to set up a voluntary statewide identification program to protect qualified patients and their primary caregiver from arrest and prosecution of certain marijuana related crimes.
- Disallows marijuana smoking in no smoking zones, within 1000 feet of a school or youth center except in private residences, on school buses, in a motor vehicle that is being operated, or while operating a boat..

- Protects patients and caregivers from arrest for transportation and other miscellaneous charges not covered in 215.
- Allows probationers, parolees, and prisoners to apply for permission to use medical marijuana; however, such permission may be refused at the discretion of the authorities.
- Makes it a crime to fraudulently provide misinformation to obtain a card, to steal or misuse the card of another, to counterfeit a card, or to breach the confidentiality of patient records in the card program.

On August 2, 2004, City Council approved a moratorium on medical marijuana dispensaries in the City of Davis. The moratorium allowed staff and Council an opportunity to research and review the options and impacts of allowing a dispensary somewhere within the city limits. This report represents that research.

There are three possible approaches to this issue: 1) do nothing, 2) ban them outright, or 3) allow dispensaries, but develop a variety of regulations controlling them.

Option #1 - Do nothing

The existing City zoning regulations do not provide for the location and/or regulation of medical marijuana dispensaries and such uses might be permissible in any zone that allows retail uses, drug stores, or medical uses. Since there are no current regulations specifically dealing with medical marijuana dispensaries, if medical marijuana dispensaries were allowed to be established without appropriate regulation, such uses might be established in areas that would conflict with the requirements of the General Plan, be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare; and if such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding medical marijuana dispensaries.

Option #2 - Banning

There is still an ongoing legal controversy between those states which permit medical use of marijuana and the federal government, as a result of the federal law which still prohibits the use and/or possession of marijuana for any purpose. It is the position of, for example, the Rocklin City Attorney that a city can prohibit the operation of such an enterprise for a variety of reasons, not the least of which is that it violates federal laws. Medical marijuana dispensaries violate federal law. For that reason, the City of Rocklin has moved to ban the facilities in the community. If you wish to deny a permit to such enterprises, it is would be easier to defend if ordinances are already in place and justification is articulated.

Option #3 - Regulation

The City of Davis could move to regulate dispensaries. For example, the City could, by establishing clear zoning requirements and a new ordinance, regulate location, hours of operation, on site activities (e.g., no alcohol sales), age of people allowed on site, and the

registering of employees and background checks on those employees. Additionally, regulating the enterprise gives the City a process by which a facility's permit can be discontinued or modified if it becomes a public nuisance. It also gives the operator a process to appeal the denial or cancellation of a permit.

Other Jurisdictions' Experiences

Police departments who have had dispensaries in their jurisdiction for some time were polled. The following are the comments received from those agencies:

City of Arcata

- There are two dispensaries in town that share a building.
- The two dispensaries have an ongoing disagreement with each other that has resulted in numerous calls for police services to settle disputes.
- The facilities do not have the correct electrical support and continuously blow out the electricity in the area. They have not complied with upgrading their electrical systems or responded to fire department concerns regarding proper exits and signage.
- There have been numerous instances where people have purchased marijuana at the dispensary and then resold it at a nearby park.
- A doctor has come to the dispensaries and, for a fee, will provide a medicinal marijuana recommendation for just about any complaint the patient makes.

City of Roseville:

- They currently have one dispensary in town. This dispensary was established prior to their current regulations and was grandfathered in.
- Street level dealers are trying to sell to those going to the dispensary at a lower price.
- People are smoking marijuana in public around the facility.
- People are coming to the community from out of town and out of state to obtain marijuana (Nevada State and San Joaquin County, etc).
- Marijuana DUI by people who have obtained marijuana from dispensary.
- There has been at least one burglary attempt into the dispensary building.

City of Oakland

- They had more than 15 in Oakland, now limited to four by ordinance but control is not very strong. The fines are too small to control a lucrative business.
- Large criminal element drawn to the dispensary location.
- Marijuana dealers who have a doctor's recommendation are purchasing from the dispensary and then conducting illegal street sales to those who do not have the recommendation.
- Street criminals in search of the drugs are robbing medical marijuana use patients of their marijuana as they leave the dispensary.
- Thefts and robberies around the location are occurring to support the illegal and legal (by State law) drug commerce.

- The Police Chief mentioned that a shoe repair business next door to a dispensary has been severely impacted because of the concentration of criminals associated with the dispensary. The shoe repair business owner is considering shutting down his business.
- Most of the crime goes unreported because the users do not want to bring negative publicity to the dispensary.
- The dispensaries have an underground culture associated with them.
- At least one of the dispensaries had a doctor on the premises giving recommendations on site for a fee.
- One location was a combination coffee shop and dispensary and marijuana was sold in baked goods and for smoking.
- Dispensary management has told police that they cannot keep the criminal element out.

City of Hayward:

- Hayward has three dispensaries, two legal under local ordinance and one illegal.
- They have had robberies outside the dispensaries.
- They have noticed more and more people hanging around the park next to one of the dispensaries and learned that they were users in between purchases.
- They have problems with user recommendation cards – not uniform, anyone can get them.
- One illegal dispensary sold coffee, marijuana and hashish – DA would prosecute the hashish sales and possession violations after arrests were made.
- They have received complaints that other illegal drugs are being sold inside the dispensaries.
- The dispensaries are purchasing marijuana from growers that they will not disclose.
- The Police Chief believes the dispensaries do not report problems or illicit drug dealers around their establishments because they do not want the police around.
- Hayward Police arrested a parolee attempting to sell three pounds of marijuana to one of the dispensaries.
- Hayward has recently passed an ordinance that will make marijuana dispensaries illegal under zoning law in 2006.

Lake County:

- Lake County has one marijuana dispensary in Upper Lake.
- The biggest problem is the doctor close by the dispensary who is known across the state for being liberal in his recommendations to use marijuana for a fee of \$175.
- Many “patients” come from hours away and even out of state, Oregon specifically, to get a marijuana recommendation from the doctor.
- Upper Lake has been impacted by the type of people coming from the marijuana doctor and dispensary. Citizens report to the Sheriff that the people coming to Upper Lake for marijuana look like drug users (“dopers”).
- One quilt shop owner has told the Sheriff that she does not feel safe anymore because of the type of people drawn to the marijuana doctor and the dispensary, which are located close together in a very small town.

- They also have a notorious marijuana grower who beat prosecution for cultivation by make a medical claim. Law enforcement has taken a hands-off approach even though he is blatantly violating the law.
- The marijuana grower has recently claimed to be a church to avoid paying taxes.

City of Fairfax:

- Fairfax has one marijuana dispensary.
- Fairfax has had some problems with patients selling to non-patients.
- They have had problems with purchasers from dispensary congregating at a baseball field to smoke their marijuana.
- Fairfax police arrested one person who purchased marijuana at the dispensary and then took it to a nearby park where he tried to give it to a minor for sex.
- Very small town and low crime rate.

Berkeley

- Has four facilities operating in the City currently (last 3-4 years).
- There have been several take over robberies of the dispensaries.
- There have been arrests where legitimate purchasers have resold marijuana on the street to well individuals.
- Obvious young people entering and purchasing marijuana from the dispensary.
- Recommended that if we did not currently have the dispensaries, we should not allow them.
- Police department has been given explicit instructions by their City Council not to take any kind of enforcement action against the dispensaries or people going in or out of the facility.
- Facilities will accept any Health Department cards, even those obviously forged or faked.

Below is a list of other California cities that do not have dispensaries and what they have or have not done on the issue.

MEDICAL MARIJUANA			
City	Approach	Action	Follow-up/Details
Chico	Have a marijuana dispensary that is trying to establish itself	Town researched and found no legal precedent for such operation and plans to shut down establishment	
Chowchilla	Have not been approached		
Clovis	Have not been approached		Will probably adopt an ordinance banning facilities similar to Rocklin's
Dixon	Have not had any formal application, but did have telephone inquiries	As a result of the phone calls, Town adopted an emergency ordinance similar to Roseville	
El Cerrito	Two groups (who were kicked out by Oakland) requested info about process of opening clinics	Town had no formal guidelines in book, so they passed a 45-day emergency ordinance	Chief plans to push a total ban with Council; does realize he has to be open for required study to take place
Gridley	A Grow & Distribution Center approached city	After approach, PD department contacted cities about possible ordinances	City decided to use Placerville's ordinance as a model
Jackson	Was approached about clinics	Has an ordinance regulating clubs	
Los Gatos	Telephone inquiries	Surveying cities to discuss issue with Council	
Palo Alto	Received 2 calls	Actually had an emergency ordinance adopted a few years ago	Plan to prevent establishments through zoning ordinances
Paso Robles	Have not been approached		Plan to implement an ordinance to prevent establishment of clinics
Oroville	Have not been approached		No immediate plans to do anything on the issue. Will wait until inquiries are made.

Placerville	Received 4 inquiries and one formal application for a clinic	Application was denied due to zoning and security issues.	Town's ordinance has been in place since June 22, 2004
Redding	Have not had any inquiries		City is considering taking some preventative actions
Rocklin	Was approached about clinics	Enacted urgency ordinance July of 2004 banning clubs	
Sacramento	Several inquiries, but no effort to actually open one		City Attorney is reviewing the law to advise the City
San Luis Obispo	Have not been approached	Considering taking some action, but no idea what that will be	
West Sacramento	Had one application in last month	Denied application based on federal law violation, no ordinance enacted	
Woodland	Was approached by parties during the same time as other cities	In response, city enacted an emergency ordinance setting zoning and CUP regulations for any possible club	

In summary, the experiences of other cities that already have dispensaries are bad. Dispensaries have experienced robberies themselves; legitimate patients have been robbed of their marijuana as they leave the facility; people purchasing marijuana at the dispensaries have been caught reselling the marijuana nearby; street level dealers have begun selling marijuana and other drugs nearby in an effort to undersell the dispensary; some dispensaries have doctors present in their facility who will recommend marijuana as a course of treatment for just about any patient complaint; and many dispensaries do not take serious steps to ensure they are selling only to legitimate patients or their caregivers. When asked, many of the police departments that already have facilities in their cities said that if Davis did not already have a dispensary, we should take steps to prohibit one from opening in the city.

Yolo District Attorney's Opinion

The District Attorney for Yolo County feels dispensaries violate federal law. He is unwilling to enter into any discussion about regulating dispensaries. As they are illegal, discussions about regulation give the impression that the DA's office endorses violating federal law.

Yolo County Health Department

SB420 requires the State of California Department of Health to work with the counties to develop a statewide voluntary identification system for patients and their caregivers. According to the Yolo County Health Department, the State has not made contact with the counties to resolve this issue. Yolo County is waiting for the State. They have no plans on creating their own identification system as some counties have already done.

Patients' Rights Groups

Two patients' rights advocacy groups were contacted in developing this staff report: Americans for Safe Access and Compassionate Friends. Both groups applaud the City's consideration of this issue. They feel that marijuana provides a unique relief that other medications cannot. They are supportive of providing reasonable regulations on the business and the owners/employees.

Representatives stated that patients who receive recommendations from physicians to use marijuana to relieve pain and suffering fall into two categories. There are those who will be unable or unwilling to purchase marijuana because there is no dispensary near them to purchase it legally. And, there are those who will take other measures to get marijuana despite the lack of a readily available dispensary.

Those who will seek out marijuana without a legal dispensary nearby have several choices. First, the patient or their caregivers will drive long distances to a legal dispensary. This can be problematic since the patient may be suffering in a way that may prohibit driving long distances. Second, they may attempt to purchase marijuana from level dealers. With this decision comes the danger inherent with any street purchase, specifically, physical danger from the dealer or his/her cohorts and not knowing the quality of the product purchased. Finally, the patient/caregiver may attempt to grow the marijuana themselves. Again, the patient may not be well enough to grow their own. Also, there are inherent fire dangers with some of the grow lights. Furthermore, many renters run into disputes with their landlords when they grow medicinal marijuana in a rented house/apartment. For these reasons patients' rights advocates feel it is important to have a safe, credible and legal dispensary nearby for patients and their caregivers.

When asked if a patients' rights group would be willing to open and operate a dispensary, both groups said they knew their group would not be willing to and they doubted any legitimate advocacy agencies would. As long as the federal government is willing to prosecute dispensary owners, patients' rights groups would not run a dispensary. They feel that if they are in prison they would be unable to do their primary function, advocate for the sick.

Moratorium Extension

On August 2, 2004, City Council approved a moratorium on medical marijuana dispensaries in the City of Davis. The moratorium allowed staff and Council an opportunity to research and review the options and impacts of allowing a dispensary somewhere within the city limits.

Staff has outlined various options for Council's consideration. The current moratorium is due to expire on September 17, 2004. That timeline does not leave Council sufficient time to take any action on this item. Therefore, staff is recommending an extension of the moratorium for the maximum ten-months 15-day extension as permitted under Section 65858(a) of State Planning and Zoning Law. Any extension would require a 4/5 vote of the City Council. (to 12:00 am, October 30, 2004). See the attachment for Ordinance language.

ORDINANCE NO. _____

EXTENTION TO AN URGENCY INTERIM ZONING ORDINANCE ESTABLISHING A MORATORIUM AND REQUIRING A CONDITIONAL USE PERMIT ON ANY AND ALL MEDICAL MARIJUANA DISPENSARIES FROM JULY 31, 2005, THROUGH AND INCLUDING JULY 31, 2006, UNLESS MODIFIED BY FURTHER ACTION OF THE CITY COUNCIL, TO TAKE EFFECT IMMEDIATELY

WHEREAS, the voters of the State of California approved Proposition 215, codified as Health and Safety Code section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" (the "Compassionate Use Act"); and

WHEREAS, the State enacted SB 420 to clarify the scope of the Compassionate Use Act and to allow cities to adopt and enforce rules and regulations consistent with SB 420; and

WHEREAS, in adopting this moratorium and provision for conditional use permits, it is the council's intention that nothing in this Ordinance be construed to allow persons to engage in conduct that endangers others or causes a public nuisance, permits or allows persons to use marijuana for non-medical purposes or allows any activity related to the cultivation, distribution or consumption of marijuana that is otherwise illegal; and

WHEREAS, the existing City zoning regulations do not provide for the location and regulation of medical marijuana dispensaries and such uses might be permissible in any zone that allows retail uses, drug stores, or medical uses; and

WHEREAS, the City Council has directed City staff to prepare, and the Planning Commission to consider and make a recommendation on, a proposal to regulate through limiting the allowable zones and requiring conditional use permits and/or prohibiting medical marijuana dispensaries; and

WHEREAS, the City has recently received inquiry regarding City regulations and requirements for the establishment of medical marijuana dispensaries; and

WHEREAS, if medical marijuana dispensaries were allowed to be established without appropriate regulation, such uses might be established in areas that would conflict with the requirements of the General Plan, be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare; and if such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding medical marijuana dispensaries; and

WHEREAS, the City Council has previously adopted a moratorium and Conditional Use Process for the opening of a medical marijuana dispensary; and

WHEREAS, the extension of the moratorium is intended to give staff and City Council an opportunity to research and select the best course of action for its citizens and the community at large and then implement that option without undue time pressures; and

WHEREAS, this urgency ordinance is adopted pursuant to the requirements of Government Code section 65858;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES ORDAIN AS FOLLOWS:

Section 1. Finding, Declaration of Urgency.

The City Council of the City of Davis hereby finds and declares that there is a need to enact an urgency interim ordinance establishing a moratorium on all new medical marijuana dispensaries, subject to the findings and conditions obtained in this Ordinance. The city has recently received inquiry regarding the establishment of medical marijuana dispensaries in the City. If medical marijuana dispensaries are allowed to proceed without appropriate review of location and operational criteria and standards, the dispensaries could have potential adverse secondary effects on neighborhoods and the City that present a clear and immediate danger to the public health, safety and welfare. The City finds that if establishment or development of medical marijuana dispensaries were allowed to proceed while the City is studying zoning proposals and regulations for this use, it would defeat the purpose of studying and considering zoning proposals to regulate and/or prohibit this use. Failure to enact this moratorium during the stated period may result in significant irreversible change to neighborhood and community character. Based on the foregoing, the City Council does hereby declare this urgency ordinance is necessary to protect the public health, safety, and welfare while considering revisions to the zoning regulations related to medical marijuana dispensaries.

Section 2. Moratorium.

(a) Except as provided in this Section 2 and Section 3 of this Ordinance, the City Council hereby declares a moratorium on any and all medical marijuana dispensaries and any and all modifications to existing uses to add a medical marijuana dispensary unless the applicant applies for and the City grants a conditional use permit for such medical marijuana dispensary.

(b) During this moratorium and any extension of the moratorium, any and all medical marijuana dispensaries and any and all modifications to existing uses to add a medical marijuana dispensary shall require application for and issuance of a conditional use permit authorizing such medical marijuana dispensary. Except as provided herein, the application for, notice and hearing on, and considerations and requirements for issuance of a conditional use permit shall be those set forth in the City's Zoning Code, Article 40.30 of the City's Municipal Code. In addition to any other determinations required for the issuance of a conditional use permit under the City's Zoning Code, Article 40.30, prior to approving or conditionally approving an application for a conditional use permit under this section, the Planning Commission and/or the City Council, as the case may be, shall find that:

(1) The proposed use is proposed to be located in a zone that permits retail and medical clinics; and

(2) There is a reasonable probability that the proposed location and conditions of approval will be consistent with the zoning proposal for medical marijuana dispensaries currently being studied and processed;

(3) There is little or no probability of substantial detriment to or interference with the future adopted zoning if the proposed use is ultimately inconsistent with the adopted new zoning; and

(4) Conditions have been imposed on the operation of the dispensary that will mitigate any significant adverse impacts on the area in which the dispensary will be located and any significant adverse impacts on the City.

(c) During this moratorium and any extension of the moratorium, no building permit or zoning permit shall be issued for a medical marijuana dispensary unless the medical marijuana dispensary has been approved through the issuance of a conditional use permit as set forth above.

Section 3. Hardship Exception.

Any person may apply for an exception from the provisions of this Ordinance on the grounds of economic hardship. Such application shall state the nature of the hardship and the reasons why an exception to this Ordinance is warranted. The application shall explain the relationship of the proposed medical marijuana dispensary to the character of its surroundings; and the impact the proposed dispensary may have on surrounding properties and how any impacts will be mitigated. The application shall state why applying for and obtaining a conditional use permit as set forth above and/or why the delay in pursuing the use until the City completes its evaluation of the current zoning, and the zoning proposal and makes those amendments, revisions or modifications to the Zoning Ordinance as the Council deems appropriate would constitute a taking in contravention of the law. The application shall also explain whether there are alternatives to the proposed use which have been investigated and the applicant's opinion of such alternatives. Such explanation shall, if appropriate, be accompanied by technical information to support the explanation. The application for a hardship exemption shall be heard by the City Council pursuant to the procedures established in Chapter 40 for the hearing of appeals under the terms set forth in Section 40.35, including but not limited to the public notice and hearing requirements set forth in Section 40.35.

Section 4. Definitions.

As used herein the term "Medical Marijuana Dispensary" or "Dispensary" means any facility or location where medical marijuana is made available to and/or distributed by or to two or more persons in the following categories: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: 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 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, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq. and the City of Davis Municipal Code, including but not limited to the City's Zoning Code.

Section 5. Effective Date.

This Interim Ordinance shall become effective and shall remain in force and effect from and including July 31, 2005 through and including July 31, 2006 unless modified by further action of the City Council, to take effect immediately.

PASSED AND ADOPTED THIS 26TH DAY OF JULY 2005, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSENT:

Ruth Asmundson, Mayor

ATTEST:

Bette Racki, City Clerk