

## Staff Report

July 28, 2004

**TO:** City Council

**FROM:** Steven Pierce, Captain

**SUBJECT:** Moratorium on Medical Marijuana Dispensaries

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### **Recommendation**

1. Direct Staff to prepare zoning code amendments related to medical marijuana dispensaries and any other appropriate regulatory proposals.
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2. Approve Urgency Ordinance establishing a Medical Marijuana Dispensary Moratorium. Approval of this urgency measure requires a four-fifths vote of the Council.

### **Fiscal Impact**

None

### **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"). Additionally, 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. This includes controlling sites where medical marijuana is dispensed to primary caregivers and patients.

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

Since there are many unanswered questions regarding this use, we recommend a moratorium. This will give staff and Council an opportunity to consider all aspects of this subject prior to imposing any regulations, if any are desired. The moratorium does allow the City to receive application for the opening of a medical marijuana dispensary, but such applications must be approved by the City with a conditional use permit.

Unless extended by Council action, the moratorium will expire at 12:01 am on September 17, 2004.

**ORDINANCE NO. \_\_\_\_\_**

**AN URGENCY INTERIM ZONING ORDINANCE ESTABLISHING A MORATORIUM AND REQUIRING A CONDITIONAL USE PERMIT ON ANY AND ALL MEDICAL MARIJUANA DISPENSARIES FROM AUGUST 2, 2004 THROUGH AND INCLUDING SEPTEMBER 16, 2004 UNLESS EXTENDED 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, 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 August 2, 2004, through and including September 16, 2004, unless extended prior to expiration date.

PASSED AND ADOPTED THIS 2ND DAY OF AUGUST 2004, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSENT:

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Ruth Asmundson, Mayor

ATTEST:

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Bette Racki, City Clerk