



**CONCURRENT MEETING
CITY COUNCIL/SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT
AGENCY (CRA)/RANCHO CORDOVA FINANCING CORPORATION (RCFC)**

**City Hall
2729 Prospect Park Drive, Rancho Cordova**

Tuesday, May 14, 2013

**5:30 PM – Special Meeting
American River Community Room North**

AGENDA

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Council Members McGarvey, Sander, Skoglund, Terry and Mayor Budge.

2. PUBLIC COMMENT

At a special meeting, citizens wishing to address the Council for any matter on the agenda may do so at the time the matter is discussed. Note, under the provisions of the California Government Code, the City Council is prohibited from discussing or taking action on any item not on the agenda.

3. SPECIAL MEETING ITEMS

- 3.1 **Subject:** Urgency Ordinance Establishing a Temporary Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries to Provide Staff Time to Analyze Possible Regulations or Ban Consistent with the May 6, 2013 California Supreme Court Decision Regarding Medical Marijuana Dispensaries.
- 3.2 **Subject:** Urgency Ordinances Amending Title 4, Title 9, and Title 23 of the Rancho Cordova Municipal Code Prohibiting the Establishment of Medical Marijuana Dispensaries in the City.
- 3.3 **Subject:** Update on AgendaToGo Annotation Features.

4. ADJOURNMENT

ADDITIONAL INFORMATION

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's Office at (916) 851-8720 at least 48 hours prior to the meeting.

CERTIFICATION OF POSTING OF AGENDA

I, Mindy Cuppy, CMC, City Clerk for the City of Rancho Cordova, declare that the foregoing agenda for the Tuesday, May 14, 2013 Special Meeting of the Rancho Cordova City Council/Successor Agency to the CRA/RCFC was posted and available for review on Friday, May 10, 2013 at City Hall of the City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova, California, 95670. The agenda is also available on the city website at www.cityofranhocordova.org.

Signed Friday, May 10, 2013 at Rancho Cordova, California.


Mindy Cuppy, CMC, City Clerk

MEMORANDUM



DATE: May 14, 2013

TO: Honorable Mayor and Council Members

FROM: Adam U. Lindgren, City Attorney
Rosanne Richeal, Police Chief

SUBJECT: AN URGENCY ORDINANCE OF THE CITY OF RANCHO CORDOVA ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES TO PROVIDE STAFF TIME TO ANALYZE POSSIBLE REGULATIONS OR BAN CONSISTENT WITH THE MAY 6, 2013 CALIFORNIA SUPREME COURT DECISION REGARDING MEDICAL MARIJUANA DISPENSARIES

RECOMMENDATION

Waive the reading and adopt Urgency Ordinance No. 15-2013, establishing a temporary moratorium on the establishment and operation of medical marijuana dispensaries to provide staff time to analyze possible regulations or ban consistent with the May 6, 2013 California Supreme Court decision regarding medical marijuana dispensaries.

RESULT OF RECOMMENDED ACTION

Adoption of this Urgency Ordinance will establish a 45-day temporary moratorium on the establishment and operation of medical marijuana dispensaries. This moratorium is needed in order to (1) analyze and address the community concerns regarding the establishment and operation of medical marijuana dispensaries; (2) study the potential impacts the medical marijuana dispensaries may have on the public health, safety and welfare; and, (3) study possible alternatives to marijuana dispensaries ranging from highly regulated use in a limited number of zoning districts, to a full and continuing permanent ban consistent with the recent California Supreme Court decision.

Attorneys for dispensaries are active and litigious. This action, in combination with the next two proposed urgency measures, is intended to maintain the City's strong, and deliberately redundant legal position, prohibiting dispensaries.

BACKGROUND

On November 5, 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act of 1996" ("CUA" or "Act"). The intent of Proposition 215 was to enable seriously ill Californians access to medical marijuana under limited, specified circumstances. The California Legislature adopted Senate Bill 420, effective January 1, 2004, adding Article 2.5, "Medical Marijuana Program," to Division 10 of the

California Health and Safety Code section 11362.7, et seq. ("Medical Marijuana Program Act" or "MMPA"). The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from State marijuana laws.

While the MMPA intended to clarify the scope of the Act, neither the Federal nor the State government has implemented a specific plan "to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana," leaving numerous questions unanswered as to how the CUA and the MMPA should be implemented, particularly in regard to the distribution of medical marijuana through facilities commonly referred to as medical marijuana collectives, cooperatives and dispensaries (hereafter, collectively "dispensaries").

In order to analyze the impacts related to medical marijuana dispensaries, in 2004, the City Council adopted a moratorium on the establishment and operation of medical marijuana dispensaries. The purpose of the moratorium was to give the City time to study the possible adoption of new zoning regulations applicable to medical marijuana dispensaries. On January 3, 2006, prior to the expiration of the moratorium, the City adopted Ordinance 29-2005 prohibiting uses that are "illegal under local, state, or federal law." The Ordinance codified section 23.304.020(C) into the Rancho Cordova Municipal Code to read as follows: "Illegal Uses. No use that is illegal under local, state, or federal law shall be allowed in any zoning district within the city." Because medical marijuana dispensaries are not legal under federal law, this section prohibits the establishment of such a use within the City.

After the establishment of the 2004 moratorium, there were significant changes in the enforcement of Federal laws related to medical marijuana, and also a series of significant developments in case law interpreting the CUA, MMPA, and cities' authority to regulate medical marijuana dispensaries. The City found that new regulations, and case law since 2006, contributed to more aggressive behavior and probing of legal issues by the medical marijuana dispensaries. Due to these significant changes, the City adopted another moratorium in 2011. Pursuant to Government Code section 65858(f), a city is authorized to adopt another interim ordinance on the same use "provided that the new interim ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior interim ordinance."

On May 6, 2013, the California Supreme Court issued the long-awaited decision in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al., (S198638) upholding the ban by the City of Riverside on medical marijuana collectives, cooperatives and dispensaries. The Court held that Riverside's ban on medical marijuana dispensaries was not preempted by California law, as set forth in the CUA or the MMPA, and thus, the ban was valid. This decision finally provides the City guidance regarding its options related to medical marijuana dispensaries. The City can now complete its analysis and consider possible regulations on these establishments consistent with the recent California Supreme Court decision.

ANALYSIS

The recent California Supreme Court decision provides the needed guidance that many jurisdictions, including Rancho Cordova, were waiting for regarding how medical marijuana dispensaries can be regulated. This is a changed circumstance. As in 2011, the laws regarding the regulations of medical marijuana have changed and/or been clarified resulting in the need for the establishment of another moratorium pursuant to Government Code section 65858(f).

In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of Rancho Cordova staff to study the possible adoption of amendments to the City's Municipal Code and Zoning Code regarding medical marijuana dispensaries. Staff needs time to study whether to expressly prohibit, or to limit such businesses to certain zoning districts. Staff also needs to study the differences among medical marijuana collectives, cooperatives and dispensaries.

Staff anticipates that the new court decision will result in more aggressive behavior and probing of legal issues by medical marijuana dispensaries towards jurisdictions that have not yet established clear regulations or bans on such facilities. The California Supreme Court clarifying the law regarding the regulation of medical marijuana dispensaries, and the anticipated actions by these establishments against jurisdictions without bans or regulations, are significant changes that provide the legal basis for the City to adopt this new and different interim ordinance to protect the public safety, health, and welfare as authorized under Government Code section 65858(f).

Although the City's Zoning Code section 23.304.020(C) currently states that "no use that is illegal under local, state, or federal law shall be allowed in any zoning district within the city," adopting a clear ban or regulations will discourage litigation by dispensaries by providing additional defense to the arguments that medical marijuana dispensaries may raise.

Adoption of the attached Urgency Ordinance will adopt a 45-day moratorium on the establishment and operation of medical marijuana dispensaries. The moratorium will allow City staff to (1) analyze and address the community concerns regarding the establishment and operation of medical marijuana dispensaries; (2) study the potential impacts the medical marijuana dispensaries may have on the public health, safety and welfare; and, (3) study possible alternatives to marijuana dispensaries ranging from highly regulated use in a limited number of zoning districts, to a full and continuing permanent ban.

This report constitutes the written report required by Government Code section 65858(d) for the 2011 moratorium expiring on May 20, 2013.

This Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council, and shall be in effect for 45 days therefrom unless extended by the City in accordance with California Government Code section 65858.

ATTACHMENT

Draft Urgency Ordinance 15-2013.

2080848.3

CITY OF RANCHO CORDOVA

ORDINANCE NO. 15-2013

AN URGENCY ORDINANCE OF THE CITY OF RANCHO CORDOVA ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES TO PROVIDE STAFF TIME TO ANALYZE POSSIBLE REGULATIONS OR BAN CONSISTENT WITH THE MAY 6, 2013 CALIFORNIA SUPREME COURT DECISION REGARDING MEDICAL MARIJUANA DISPENSARIES

THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

Section 1. Findings.

- A. On November 5, 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act of 1996" ("CUA" or "Act"), codified as California Health and Safety Code section 11362.5 *et seq.*; and
- B. The intent of Proposition 215 was to enable seriously ill Californians access to medical marijuana under limited, specified circumstances; and
- C. The California Legislature adopted Senate Bill 420, effective January 1, 2004, adding Article 2.5, "Medical Marijuana Program," to Division 10 of the California Health and Safety Code section 11362.7, *et seq.* ("Medical Marijuana Program Act" or "MMPA"). The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from State marijuana laws; and
- D. Health and Safety Code section 11362.83 authorizes cities to adopt and enforce rules and regulations consistent with the MMPA; and
- E. While the MMPA intended to clarify the scope of the Act, neither the Federal nor the State government has implemented a specific plan "to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana," leaving numerous questions unanswered as to how the CUA and the MMPA should be implemented, particularly in regard to the distribution of medical marijuana through facilities commonly referred to as medical marijuana collectives, cooperatives and dispensaries (hereafter, collectively "dispensaries"); and
- F. The Federal Controlled Substances Act ("Controlled Substances Act" or "CSA"), 21 U.S.C. § 801 *et seq.*, provides that the manufacture, cultivation, distribution and dispensing of marijuana is illegal for any purpose, and further provides for criminal penalties for marijuana use. The United States Supreme Court held in Gonzales v. Raich, 545 U.S. 1 (2005), that the provisions of the Federal Controlled Substances Act apply to the personal medical use of marijuana in California; and
- G. In order to analyze the impacts related to medical marijuana dispensaries, on August 2, 2004, the City Council adopted Urgency Ordinance 44-2004 imposing a 45-day moratorium on the establishment and operation of medical marijuana dispensaries. The purpose of the moratorium was to give the City time to study the possible adoption of new zoning regulations applicable to medical marijuana dispensaries. The 2004 temporary moratorium

was extended twice by Ordinances 48-2004 and 14-2005 for a total period of two (2) years as allowed under California Government Code section 65858; and

- H. On January 3, 2006, prior to the expiration of the moratorium, the City adopted Ordinance 29-2005 prohibiting uses that are “illegal under local, state, or federal law.” The Ordinance codified Section 23.304.020(C) into the Rancho Cordova Municipal Code to read as follows: “Illegal Uses. No use that is illegal under local, state, or federal law shall be allowed in any zoning district within the city.” Because medical marijuana dispensaries are not legal under federal law, this section prohibits the establishment of such a use within the City. However, the ordinance did not specifically list medical marijuana dispensaries as a prohibited use, which has caused many dispensaries to argue against the ordinance; and
- I. Since adoption of Urgency Ordinances 44-2004, 48-2004 and 14-2005, and Ordinance No. 29-2005, there were significant changes in the enforcement of Federal laws related to medical marijuana, and also significant developments in case law interpreting the CUA, MMPA, and a city’s authority to regulate medical marijuana dispensaries; and
- J. On August 25, 2008, then California Attorney General Edmund G. Brown issued “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use” (“the Attorney General Guidelines”), which set forth guidelines intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients; and
- K. Despite the fact that the manufacture, cultivation, distribution and dispensing of marijuana remains illegal under federal law, in a memorandum dated October 19, 2009, the U.S. Department of Justice indicated the Department’s intent to not use Federal resources on marijuana prosecution if an individual’s actions are “in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana;” and
- L. The Federal policy shift away from enforcement of the Controlled Substances Act led to an increase in medical marijuana dispensaries throughout the State, and led to the increased interest in the establishment and operation of medical marijuana dispensaries in the City; and
- M. On May 24, 2011, the City Council adopted Urgency Ordinance 7-2011 imposing another 45-day moratorium on the establishment and operation of medical marijuana dispensaries. The additional moratorium was imposed due to the significant changes in the enforcement of Federal laws and interpretation of current State laws. Under Government Code section 65858(f), a city may adopt another interim ordinance on the same uses "provided that the new interim ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior interim ordinance"; and
- N. The City Council, in adopting Urgency Ordinance 7-2011, took legislative notice of the following cases that it found to be relevant to its actions:
 - 1. People v. Mentch, 45 Cal.4th 274 (2008), California Supreme Court holding that “primary caregiver” status for purposes of the MMPA requires a specified showing of consistently providing care, independent of any assistance in taking medical marijuana, at or before the time of assuming the responsibility of assisting with the qualified patient with medical marijuana.

2. Claremont v. Kruse, 177 Cal.App.4th 1153 (2009), California Court of Appeal holding that neither the CUA nor the MMPA expressly or impliedly preempt local exercise of land use and zoning police powers, therefore, cities retain their police power to regulate, and if necessary, restrict the operation of medical marijuana dispensaries.
 3. People v. Hochanadel, 176 Cal.App.4th 997 (2009), California Court of Appeal concluding that the operators of a storefront dispensary which sold marijuana to individuals did not operate within the CUA and the MMPA, and did not constitute a primary caregiver such that it was entitled to protections of the CUA and MMPA.
 4. City of Lake Forest v. Moen et al. (Case No. 30-2009-0029887-CU-MC-CJC), trial court granted Lake Forest's preliminary injunction and found that a city's power to enact land use or zoning laws, and a city's enforcement of existing local laws, is not preempted by the CUA or MMPA.
- O. The 2011 temporary moratorium was extended twice by Ordinances 9-2011 and 10-2012 for a total period of two (2) years as allowed under California Government Code section 65858. The moratorium will expire on May 20, 2013; and
 - P. Since adoption of the 2011 temporary moratorium, the City has been waiting for the courts to provide more guidance on how the City can regulate medical marijuana dispensaries in order to mitigate or eliminate the negative impacts these establishments result in; and
 - Q. On May 6, 2013, the California Supreme Court issued the long-awaited decision in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al., (S198638) upholding the ban by the City of Riverside on medical marijuana collectives, cooperatives and dispensaries. The Court held that Riverside's ban on medical marijuana dispensaries was not preempted by California law, as set forth in the CUA or the MMPA, and thus, the ban was valid; and
 - R. The recent California Supreme Court decision finally provides the City guidance regarding its options related to medical marijuana dispensaries. The City can now complete its analysis and consider possible regulations on these establishments consistent with the recent California Supreme Court decision; and
 - S. The recent California Supreme Court decision provides the needed guidance that many jurisdictions, including Rancho Cordova, were waiting for regarding how medical marijuana dispensaries can be regulated. This has resulted in a changed circumstance. As in 2011, the laws regarding the regulations of Medical Marijuana have changed and/or been clarified resulting in the need for the establishment of another moratorium pursuant to Government Code section 65858(f); and
 - T. A new temporary moratorium on medical marijuana dispensaries is needed in order to protect the public safety, health, and welfare from the negative impacts that will result from medical marijuana dispensaries attempting to establish in to City during the time period necessary to update City regulations consistent with the recent California Supreme Court decision; and
 - U. The impacts indicated in the previous moratoria are still the same, requiring the City to complete its analysis of possible regulations or the implementation of a ban on this use; and

- V. In April of 2009, the California Police Chief's Association issued a "White Paper" which identifies that, throughout California, many violent crimes have been committed that can be traced back to the proliferation of marijuana dispensaries, including armed robberies and murders. Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of victims, are commonly encountered just outside marijuana collectives, cooperatives and dispensaries; and
- W. Other California cities that have permitted the establishment of medical marijuana dispensaries have experienced an increase in crime, such as burglary, robbery and sale of illegal drugs in the areas immediately surrounding such medical marijuana dispensaries, collectives and cooperatives; and
- X. Staff anticipates that the new court decision will result in more aggressive behavior and probing of legal issues by the medical marijuana dispensaries towards jurisdiction that have not yet established regulations or bans on medical marijuana dispensaries. In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of Rancho Cordova staff to finalize its study and possibly adopt amendments to the City's Municipal Code and Zoning Code regarding medical marijuana dispensaries. Staff needs time to recommend possible Code changes and for the ordinance proposing such changes to go through the adoption process; and
- Y. Based on the adverse secondary impacts experienced by other cities and counties, and the lack of any regulatory program in the City regarding the establishment and operation of medical marijuana dispensaries, it is reasonable to conclude that negative effects on the public, health, safety and welfare may occur in the City as a result of the proliferation of medical marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities; and
- Z. California Government Code section 65858, subdivision (a) provides: that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that the first extension of such measure shall be of no effect ten (10) months and fifteen (15) days from the date of adoption, and the urgency ordinance may be extended a maximum of two times and have a maximum total duration of two (2) years; and
- AA. California Government Code section 65858, subdivision (c) provides: that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to the public health, safety or welfare; and
- BB. The City Council desires to (1) analyze and address the community concerns regarding the establishment and operation of medical marijuana dispensaries; (2) study the potential impacts the medical marijuana dispensaries may have on the public health, safety and welfare; and, (3) study possible alternatives to marijuana dispensaries ranging from highly regulated use in a limited number of zoning districts, to a full and continuing permanent ban.

Section 2. Moratorium Imposed.

A. Scope

In accordance with the authority granted the City of Rancho Cordova under Article XI, Section 7 of the California Constitution and California Government Code section 65858, from and after the effective date of this Urgency Ordinance, no permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a medical marijuana dispensary in the City of Rancho Cordova. Additionally, medical marijuana dispensaries are hereby expressly prohibited in all areas and zoning districts of the City.

B. Definitions

1. For purposes of this Urgency Ordinance, “medical marijuana dispensary” or “dispensary” means (1) any facility, building, structure, delivery service, vehicle or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver in strict accordance with California Health and Safety Code section 11362.5 *et seq.*; or (2) any facility, building, structure, delivery service, vehicle or location, whether fixed or mobile, where qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate in order to collectively or cooperatively, distribute, sell, dispense, transmit, process, deliver, exchange or give away marijuana for medicinal purposes pursuant in California Health and Safety Code section 11362.5 *et seq.* and such group is organized as a Medical Marijuana Cooperative or Collective as set forth in the Attorney General Guidelines. The terms “primary caregiver,” “qualified patient,” and “person with an identification card” shall be as defined in California Health and Safety Code section 11362.5 *et seq.*

2. For purposes of this Urgency Ordinance, a “medical marijuana dispensary” shall not include the following uses, as long as the location of such uses are otherwise regulated by applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the California 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 California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, California Health and Safety Code section 11362.5 *et seq.*

C. Statutory Findings and Purpose

This Urgency Ordinance is declared to be an interim ordinance as defined under California Government Code section 65858. This Urgency Ordinance is deemed necessary based on the findings of the City Council of the City of Rancho Cordova as set forth in Section 1 of this Urgency Ordinance.

D. New Event

Under Government Code section 65858(f), a city may adopt another interim ordinance on the same uses "provided that the new interim ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence,

or set of circumstances that led to the adoption of the prior interim ordinance."

Since adoption of the temporary moratorium that began in 2011, through the adoption of Urgency Ordinances 07-2011, 09-2011 and 10-2012, as set forth in this Urgency Ordinance, jurisdictions finally received needed direction from the California Supreme Court regarding jurisdictions' options for regulating medical marijuana dispensaries. On May 6, 2013, the California Supreme Court issued the long awaited decision in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al., (S198638) upholding the ban by the City of Riverside on medical marijuana collectives, cooperatives and dispensaries. The Court held that the Riverside's ban on medical marijuana dispensaries was not preempted by California law, as set forth in the CUA or the MMPA, and thus, the ban was valid.

Staff anticipates that the new court decision will result in more aggressive behavior and probing of legal issues by the medical marijuana dispensaries towards jurisdictions that have not yet established clear regulations or bans on such facilities. The California Supreme Court clarifying the law regarding the regulation of medical marijuana dispensaries, and the anticipated actions by these establishments against jurisdictions without bans or regulations are significant changes that provide the legal basis for the City to adopt this new and different interim ordinance to protect the public safety, health, and welfare as authorized under Government Code section 65858(f).

Section 3. Public Nuisance.

The establishment, maintenance or operation of a medical marijuana dispensary, as defined herein, within the city limits of the City of Rancho Cordova, is declared to be a public nuisance. Violations of this Urgency Ordinance may be enforced by any applicable laws or ordinances, including, but not limited to, injunctions, or administrative or criminal penalties under the Rancho Cordova Municipal Code.

Section 4. CEQA.

Pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this Ordinance is exempt from CEQA based on the following:

(1) This Urgency Ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This Urgency Ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power, and in accordance with Government Code section 65858, to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.

(3) This Urgency Ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

Section 5. Severability.

If any provision of this Urgency Ordinance or the application thereof to any person or

circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Urgency Ordinance are severable. The City Council of the City of Rancho Cordova hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 6. Effective Date and Duration.

This Urgency Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council, and shall be in effect for 45 days therefrom unless extended by the City in accordance with California Government Code section 65858.

Section 7. Penalties.

Any person who violates any section of this Urgency Ordinance shall be guilty of a misdemeanor and subject to a fine of up to One Thousand Dollars (\$1,000) and/or imprisonment in the county jail for up to a period of six months.

ADOPTED, this ____ day of _____ 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

Linda Budge, Mayor

ATTEST:

Mindy Cuppy, CMC, City Clerk

2080786.2

MEMORANDUM



DATE: May 14, 2013

TO: Honorable Mayor and Council Members

FROM: Adam U. Lindgren, City Attorney
Rosanne Richeal, Police Chief

SUBJECT: URGENCY ORDINANCES OF THE CITY OF RANCHO CORDOVA AMENDING TITLE 4, TITLE 9 AND TITLE 23 OF THE MUNICIPAL CODE PROHIBITING THE ESTABLISHMENT OF MEDIAL MARIJUANA DISPENSARIES IN THE CITY

RECOMMENDATIONS

1. Waive the reading and adopt Urgency Ordinance No. 16-2013, adding Chapter 9.102, "Medical Marijuana Dispensaries," to the Municipal Code Title 9, "Public Peace, Morals and Safety," and amending Title 4, "Business Regulations," Chapter 4.06 "General Business Licenses," prohibiting the establishment of medical marijuana dispensaries in the City.
2. Waive the reading and adopt Urgency Ordinance No. 17-2013, adding Chapter 23.025, "Medical Marijuana Dispensaries," to Title 23 "Zoning Code," and amending Title 23, Chapter 23.304, "Land Use Classifications," prohibiting the establishment of medical marijuana dispensaries in the City.

RESULT OF RECOMMENDED ACTION

Adoption of these Urgency Ordinances is consistent with the City's desire to protect the safety and welfare of the City's residents by prohibiting medical marijuana dispensaries in the City, as permitted by the California Supreme Court in its recent decision in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al., (S198638).

This agenda item is divided into two separate ordinances in order to further protect the City from possible arguments and litigation by dispensary attorneys.

BACKGROUND

On November 5, 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act of 1996" ("CUA" or "Act"). The intent of Proposition 215 was to enable seriously ill Californians access to medical marijuana under limited, specified circumstances. The California Legislature adopted Senate Bill 420, effective January 1, 2004, adding Article 2.5, "Medical Marijuana Program," to Division 10 of the California Health and Safety Code section 11362.7, et seq. ("Medical Marijuana Program Act" or "MMPA"). The MMPA created a state-approved voluntary medical marijuana

identification card program and provided for certain additional immunities from State marijuana laws.

While the MMPA intended to clarify the scope of the Act, neither the Federal nor the State government has implemented a specific plan “to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana,” leaving numerous questions unanswered as to how the CUA and the MMPA should be implemented, particularly in regard to the distribution of medical marijuana through facilities commonly referred to as medical marijuana collectives, cooperatives and dispensaries (hereafter, collectively “dispensaries”).

On May 6, 2013, the California Supreme Court issued the long-awaited decision in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al., (S198638) upholding the ban by the City of Riverside on medical marijuana collectives, cooperatives and dispensaries. The Court held that Riverside’s ban on medical marijuana dispensaries was not preempted by California law, as set forth in the CUA or the MMPA, and thus, the ban was valid. This decision finally provides the City guidance regarding its options related to medical marijuana dispensaries. The City can now complete its analysis and consider possible regulations on these establishments consistent with the recent California Supreme Court decision.

ANALYSIS

Adoption of the attached Urgency Ordinances will prohibit the establishment of medical marijuana dispensaries in the City. These Urgency Ordinances are necessary for the immediate preservation of the public peace, health and safety and shall take effect immediately pursuant to Government Code section 36937(b). The City’s current moratorium on medical marijuana dispensaries is expiring on May 20, 2013. The Council will consider establishing another moratorium due to changed circumstances, however, adopting these Urgency Ordinance will assist the City in defending itself against possible challenges to the new moratorium. If these Urgency Ordinances are not adopted, and the new moratorium and existing Code is successfully challenged, the City’s residents would be subjected to the negative impacts identified in the recitals of the Urgency Ordinances.

The public health, safety and general welfare of the City and its residents necessitates and requires the adoption of these Urgency Ordinance, prohibiting the establishment and operation of medical marijuana cooperatives and collectives in order to: (a) protect and safeguard against the detrimental secondary negative effects and adverse impacts of facilities dispensing medical marijuana, as more specifically described in these findings; (b) preserve and safeguard the minors, children and students in the community from the deleterious impacts of medical marijuana facilities; and (c) preserve the City’s law enforcement services, in that monitoring and addressing the negative secondary effects and adverse impacts will likely burden the City’s law enforcement resources.

The attached Urgency Ordinances are consistent with the City’s police powers authorized in Article XI, Section 7 of the California Constitution, the California Supreme Court decision in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al., (2013) (S198638), as well as under the Rancho Cordova Municipal Code, which give the City the power to regulate permissible land uses throughout the City and to enact regulations for the preservation of public health, safety and welfare of

its residents and community. Additionally, Government Code section 38771 authorizes the City, through its City Council, to declare actions and activities that constitute a public nuisance.

Both Urgency Ordinance require four-fifths (4/5) vote of the City Council.

ATTACHMENTS

1. Draft Urgency Ordinance 16-2013.
2. Draft Urgency Ordinance 17-2013.

2081034.2

ATTACHMENT 1

CITY OF RANCHO CORDOVA

URGENCY ORDINANCE NO. 16-2013

AN URGENCY ORDINANCE OF THE CITY COUNCIL ADDING CHAPTER 9.102, "MEDICAL MARIJUANA DISPENSARIES" TO MUNICIPAL CODE TITLE 9, "PUBLIC PEACE, MORALS AND SAFETY," AND AMENDING TITLE 4, "BUSINESS REGULATIONS," CHAPTER 4.06 "GENERAL BUSINESS LICENSES," PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY

WHEREAS, on November 5, 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act of 1996" ("the CUA" or "Act"), codified as California Health and Safety Code section 11362.5 *et seq.*. The intent of Proposition 215 was to enable seriously ill Californians access to medical marijuana under limited, specified circumstances; and

WHEREAS, despite voter approval of the Compassionate Use Act, various problems and uncertainties in the Act impeded law enforcement's ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medicinal purposes; and

WHEREAS, the Compassionate Use Act is limited in scope, in that it only provides a defense from State criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers; and

WHEREAS, in 2003, the California Legislature adopted Senate Bill 420, effective January 1, 2004, adding Article 2.5, "Medical Marijuana Program" to Division 10 of the California Health and Safety Code section 11362.7 *et seq.* ("Medical Marijuana Program Act" or "MMPA"), which authorizes cities to adopt and enforce rules and regulations consistent with the MMPA (Health & Safety Code § 11362.83.); and

WHEREAS, on January 3, 2006, the City adopted Ordinance 29-2005 prohibiting uses that are "illegal under local, state, or federal law." The Ordinance codified Section 23.304.020(C) into the Rancho Cordova Municipal Code to read as follows: "Illegal Uses. No use that is illegal under local, state, or federal law shall be allowed in any zoning district within the city." Because medical marijuana dispensaries are not legal under Federal law, this section prohibits the establishment of such a use within the City. However, the Ordinance did not specifically list medical marijuana dispensaries as a prohibited use, which has caused many dispensaries to argue against the ordinance; and

WHEREAS, on May 24, 2011, the City Council adopted Urgency Ordinance 7-2011 imposing another 45-day moratorium on the establishment and operation of medical marijuana dispensaries. The additional moratorium was imposed due to the significant changes in the enforcement of Federal laws and interpretation of current State laws. Under Government Code section 65858(f), a city may adopt another interim ordinance on the same uses "provided that the new interim ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior interim ordinance"; and

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WHEREAS, the 2011 temporary moratorium was extended twice by Ordinances 9-2011 and 10-2012 for a total period of two (2) years as allowed under California Government Code section 65858. The moratorium will expire on May 20, 2013; and

WHEREAS, on May 6, 2013, the California Supreme Court issued the long-awaited decision in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al., (S198638) upholding the ban by the City of Riverside on medical marijuana collectives, cooperatives and dispensaries. The Court held that Riverside's ban on medical marijuana dispensaries was not preempted by California law, as set forth in the CUA or the MMPA, and thus, the ban was valid; and

WHEREAS, the recent California Supreme Court decision finally provides the City guidance regarding its options related to medical marijuana dispensaries. The City can now complete its analysis and consider possible regulations on these establishments consistent with the recent California Supreme Court decision; and

WHEREAS, staff anticipates that the new court decision will result in more aggressive behavior and probing of legal issues by the medical marijuana dispensaries towards jurisdictions that have not yet established regulations or bans on such facilities. This Urgency Ordinance will make clear that medical marijuana dispensaries are prohibited in the City; and

WHEREAS, in adopting this Urgency Ordinance, the City Council takes legislative notice of the following cases that it finds to be relevant to its actions:

1. City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al., (2013) (S198638) [California Supreme Court upholds the ban by the City of Riverside on medical marijuana collectives, cooperatives and dispensaries. The Court held that Riverside's ban on medical marijuana dispensaries was not preempted by California law, as set forth in the CUA or the MMPA, and thus, the ban was valid. The Court concluded that because neither the CUA nor the MMPA expressly or impliedly preempt the authority of local governments, local governments may, under traditional land use and police powers, allow, restrict, limit or entirely exclude medical marijuana dispensaries];
2. Claremont v. Kruse (2009) 177 Cal.App.4th 1153 [California Court of Appeal holding that neither the Act nor the Program expressly or impliedly preempt local exercise of land use and zoning police powers];
3. People v. Urziceanu (2005) 132 Cal.App.4th 747 [California Court of Appeal noting that courts consistently have rejected attempts to broaden the scope of the Act and the Program and recognizing that the Act did not create a constitutional right to obtain marijuana];

WHEREAS, Marijuana remains an illegal substance under the Federal Controlled Substances Act, 21 U.S.C. § 801, et seq., and is classified as a "Schedule I Drug" which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for its use under medical supervision. Furthermore, the Federal Controlled Substances Act makes it unlawful for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense marijuana. The Controlled Substances Act contains no statutory exemption for the possession of marijuana for medical purposes; and

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WHEREAS, the City Council, in adopting this Urgency Ordinance, takes further legislative notice of the existence and content of the following reports concerning the negative secondary effects and adverse impacts of facilities dispensing medical marijuana: September 2009, "California Police Chief's Association Position Paper on Decriminalizing Marijuana"; April 22, 2009, "White Paper on Marijuana Dispensaries" issued by California Police Chiefs Association's Task Force on Marijuana Dispensaries; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association, April through June 2010; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association, January through March 2010; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association, July through September 2009; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association, April to June 2009; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association, January to March 2009; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association, September to December 2007; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association; and

WHEREAS, the City Council finds that these reports are relevant to the problems addressed by the City in enacting this Urgency Ordinance to preserve and safeguard public health, safety and welfare by protecting against the negative secondary effects and adverse impacts of facilities dispensing medical marijuana, and more specifically finds that these reports provide convincing evidence that:

1. There is substantial evidence that other California cities that have permitted the establishment and operation of facilities for the purpose of dispensing medical marijuana have experienced negative secondary effects and adverse impacts, including an increase in crimes of marijuana and narcotics distribution and use; an increase in other criminal activities in the vicinity of these facilities, such as robbery of patients as they go in or leave the dispensaries, increase instances of DUIs and street dealings of illegal drugs; burglary of facilities dispensing medical marijuana; increase in violent crimes, such as armed robberies and murders; loss of trade for other commercial businesses located near these facilities; organized crime involvement in the ownership and operation of marijuana dispensaries; money laundering and firearm violations; physicians making recommendations for questionable or potentially questionable cases of qualified use of medical marijuana; unjustified and fictitious physician recommendations; street dealers in the vicinity of dispensaries offering marijuana at a lower price to arriving patrons; smoking of marijuana in the public; and increased noise and pedestrian traffic.
2. In light of the negative secondary effects and adverse impacts described above, the City Council finds that operation of facilities dispensing medical marijuana will burden and strain the City's law enforcement resources, in that law enforcement assistance would often be required to address and respond to various identified criminal activities.
3. California communities have also experienced that the operation of facilities dispensing medical marijuana negatively impact minors. For example, medical marijuana dispensaries advertise to high school students by leaving fliers on cars in the students' parking lot and offering discounts on marijuana products; medical marijuana shops target healthy minors through street contacts, suggesting that

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students obtain medical marijuana cards; high school students are reportedly obtaining physician recommendations to use marijuana for such conditions as sleeplessness and stress; and minors are obtaining medical marijuana cards or physical recommendation for recreational and non-medicinal purposes. The City Council recognizes the possible harmful effects on minors exposed to the negative secondary effects and adverse impacts of facilities dispensing medical marijuana and recognizes the need to adopt this Ordinance, which will minimize and/or eliminate such exposure within the City of Rancho Cordova.

4. California communities have reported that the vast majority of facilities dispensing medical marijuana, purportedly as “cooperatives” or “collectives,” are operating in violation and contrary to the CUA and the MMPA, in that these marijuana dispensing facilities are large money making enterprises and are generally operating for profit and are engaging in the “sale” of marijuana, instead of distributing or making marijuana available to qualified patients.
5. In addition to the illegal operations of these money-making entities that sell marijuana, California communities have reported concerns over the quality of marijuana, in that certain chemicals including pesticides and insecticides, have been discovered in the marijuana. In 2010, testing of certain “medical marijuana” distributed through a dispensary in Los Angeles County revealed high levels of Bifenthrin, a known form of pesticide or insecticide. Most marijuana dispensaries do not test the marijuana for dangerous and poisonous substances, nor are warning labels generally attached. The unmonitored, untested and unlabeled distribution of marijuana poses serious health and safety concerns.
6. These reports and experiences from other California cities and counties establish, by convincing evidence, that facilities dispensing and distributing medical marijuana negatively impact the health, safety and welfare of the community because of the secondary negative effects and adverse impacts described in Subparagraphs (1) - (5), above.
7. Relying on the above, the City Council also finds that facilities dispensing and distributing medical marijuana may lead to the detrimental secondary effects and adverse impacts, as specifically described in Subparagraphs (1)-(6) above. The City bases this conclusion on the experiences of California communities which the City has a reasonable basis to believe reflect the experiences of its own community.

WHEREAS, persons in the City of Rancho Cordova that may be in need of medical marijuana have access to facilities dispensing marijuana in neighboring cities within a short car ride away, including, but not limited to, the City of Sacramento and City of Stockton; and

WHEREAS, pursuant to the City’s police powers authorized in Article XI, Section 7 of the California Constitution, the California Supreme Court decision in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al., (2013) (S198638), as well as under the Rancho Cordova Municipal Code, the City has the power to regulate permissible land uses throughout the City and to enact regulations for the preservation of public health, safety and welfare of its residents and community. And, pursuant to Government Code section 38771, the City has the power through its City Council to declare actions and activities that constitute a public nuisance; and

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WHEREAS, the City Council finds that the public health, safety and general welfare of the City and its residents necessitates and requires the adoption of this Urgency Ordinance, prohibiting the establishment and operation of medical marijuana dispensaries, cooperatives and collectives in order to: (a) protect and safeguard against the detrimental secondary negative effects and adverse impacts of facilities dispensing medical marijuana, as more specifically described in these findings; (b) preserve and safeguard the minors, children and students in the community from the deleterious impacts of medical marijuana facilities; and (c) preserve the City's law enforcement services, in that monitoring and addressing the negative secondary effects and adverse impacts will likely burden the City's law enforcement resources. The City Council further finds that due to the negative secondary effects and adverse impacts of facilities dispensing medical marijuana, the establishment and the operation of these facilities will negatively impact residential uses and neighborhoods in the City, particularly disruptive to the City of Rancho Cordova; and

WHEREAS, this Urgency Ordinance is consistent with the City of Rancho Cordova General Plan in that the General Plan, its objectives, policies and goals do not permit or contemplate the establishment or operation of medical marijuana cooperatives, collectives or similar facilities that engage in dispensing of marijuana for medicinal purposes.

THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and made a part of this Urgency Ordinance

SECTION 2. Rancho Cordova Municipal Code Title 9, "Public Peace, Morals and Safety," Chapter 9.102, "Medical Marijuana Dispensaries," is hereby added to the Municipal Code and shall read as follows:

Chapter 9.102 MEDICAL MARIJUANA DISPENSARIES

Sections:

- 9.102.010 Findings and Purpose.**
- 9.102.020 Definitions.**
- 9.102.030 Medical Marijuana Dispensaries Prohibited.**
- 9.102.040 Penalty.**

9.102.010 Findings and Purpose.

A. In enacting this Chapter, it is the intent of the City Council of Rancho Cordova to protect the safety and welfare of the general public.

B. The City Council finds that medical marijuana dispensaries are public nuisances in that many violent crimes have been committed that can be traced back to the proliferation of marijuana dispensaries, including armed robberies and murders. Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of victims, are commonly encountered just outside marijuana collectives, cooperatives and dispensaries.

C. Allowing medical marijuana collectives, cooperatives and dispensaries would be inconsistent with the City of Rancho Cordova's City wide goals, which include: "Foster a Positive Image of Rancho Cordova," "Ensure a Safe Community," "Foster Responsible Citizenship."

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Therefore, in order to protect the integrity of the City and the goals upon which this City were founded, the City Council finds that it is in the best interest of the residents of the City to prohibit marijuana dispensaries.

D. It is the stated purpose of this Chapter to prohibit medical marijuana dispensaries from being opened or established in the City of Rancho Cordova. Nothing in this Chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any State or Federal law.

9.102.020 Definitions.

For the purpose of this Chapter, unless the context clearly requires a different meaning, the words, terms and phrases hereinafter shall have the meaning given them in this Section.

A. "Medical marijuana" means marijuana used for medical purposes in accordance with the Compassionate Use Act (California Health & Safety Code § 11362.5) and the Medical Marijuana Program Act (California Health & Safety Code § 11362.7 *et seq.*).

B. "Medical marijuana dispensary" or "dispensary" means: (1) any facility, building, structure, delivery service, vehicle or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver, in strict accordance with California Health and Safety Code section 11362.5 *et seq.*; or (2) any facility, building, structure, delivery service, vehicle or location, whether fixed or mobile, where qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate in order to collectively or cooperatively, distribute, sell, dispense, transmit, process, deliver, exchange or give away marijuana for medicinal purposes pursuant in California Health and Safety Code section 11362.5 *et seq.* and such group is organized as a Medical Marijuana Cooperative or Collective as set forth in the Attorney General Guidelines. The terms "primary caregiver," "qualified patient," and "person with an identification card" shall be as defined in California Health and Safety Code section 11362.5 *et seq.*

For purposes of this Chapter, a "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the California 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 California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, California Health and Safety Code section 11362.5 *et seq.*

C. "Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability corporation, collective, cooperative, or combination thereof in whatever form or character.

ATTACHMENT 1**9.102.030 Medical Marijuana Dispensaries Prohibited**

Medical marijuana dispensaries are prohibited in the City of Rancho Cordova. It shall be unlawful for any person to engage in, conduct, carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Rancho Cordova, the operation of a medical marijuana dispensary.

9.102.040 Penalty.

- A. Violation of this Chapter is a public nuisance and shall be a misdemeanor.
- B. Nothing in this Chapter in any way limits any other remedy that may be available to the City, or any penalty that may be imposed by the City, for violations of this Chapter. Such additional remedies, include, but are not limited to, injunctive relief, administrative citations, or a cause of action under the California Narcotics Nuisance Abatement Act (Health & Safety Code § 11570).

SECTION 3. Rancho Cordova Municipal Code Title 4, "Business Regulations," of Chapter 4.06 "General Business License" Section 4.06.085, "Issuance," is hereby amended as follows to add the underlined Subsection E:

4.06.085 Issuance

The Finance Director shall act upon an application by denying the application or issuing a license not later than 45 days after the date a complete application is validly filed excepting where RCMC 4.06.206 is applicable. The license shall automatically be granted and issued upon failure of the Finance Director to act upon an application within 45 days. An application is deemed complete and validly filed when the applicant files the application form with all information therein as provided in RCMC 4.06.075, and the application fee, with the Finance Director. The Finance Director shall act upon the application by issuing the license unless one or more of the following situations apply:

- A. The Finance Director or Planning Director find in writing that the applicant has failed to provide information as required by RCMC 4.06.075, and the finding cites the specific information and provision or provisions of RCMC 4.06.075 that is applicable; or
- B. The Planning Director finds, in writing, that the enterprise is, or would be, operated or maintained in a manner, or is, or would be, located on grounds, or within a building which violates or is in violation of the laws described by RCMC 4.06.060, and by operation of such laws, the termination of the enterprise or denial of the application are required. The findings shall specify the specific provision or provisions of law violated; or
- C. With respect to an enterprise required by Chapter 4.10 RCMC to obtain a special business license, the special business license has not been issued; or
- D. Pursuant to Section 16000, Subdivision (c), of the Business and Professions Code, when the applicant or enterprise holds a contractor's license, as issued by the State of California Contractors State License Board, the Finance Director finds in writing that the applicant does not have a valid unexpired, unsuspended, unrevoked contractor's license.

ATTACHMENT 1**E. The Finance Director or Planning Director finds in writing that the use is a medical marijuana dispensary, or other use not permitted in the City.**

A general business license issued under this Chapter shall authorize the holder thereof to operate or conduct a business enterprise only on such property the address of which is stated on the license. In the event the licensee ceases to use the property for the business, activity or enterprise listed on the license for a period of 90 days, the license shall have no further force or effect and becomes void.

SECTION 4. Severability

If any provision of this Urgency Ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of the Urgency Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Urgency Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid or unenforceable.

SECTION 5. Effective Immediately

The City Council of the City of Rancho Cordova desires to adopt this Urgency Ordinance prohibiting the establishment of medical marijuana dispensaries in the City. This Urgency Ordinance is necessary for the immediate preservation of the public peace, health and safety and shall take effect immediately pursuant to Government Code Section 36937(b). The City's current moratorium on medical marijuana dispensaries is expiring on May 20, 2013. The Council will consider establishing another moratorium due to changed circumstances, however, adopting this Urgency Ordinance will assist the City defend itself against challenges to the new moratorium. If this Urgency Ordinance is not adopted, and the new moratorium is successfully challenged, the City's residents would be subjected to the negative impacts identified in the recitals of this Urgency Ordinance.

Pursuant to Government Code section 36937(b), this Urgency Ordinance requires four-fifths (4/5) vote of the City Council.

ADOPTED, THIS _____ day of _____ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Budge, Mayor

ATTEST:

Mindy Cuppy, CMC, City Clerk
2080867.2

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CITY OF RANCHO CORDOVA

URGENCY ORDINANCE NO. 17-2013

AN URGENCY ORDINANCE OF THE CITY COUNCIL ADDING CHAPTER 23.925 "MEDICAL MARIJUANA DISPENSARIES," TO TITLE 23 "ZONING CODE" AND AMENDING TITLE 23, CHAPTER 23.304 "LAND USE CLASSIFICATIONS," PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY

WHEREAS, on November 5, 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act of 1996" ("the CUA" or "Act"), codified as California Health and Safety Code section 11362.5 *et seq.*. The intent of Proposition 215 was to enable seriously ill Californians access to medical marijuana under limited, specified circumstances; and

WHEREAS, despite voter approval of the Compassionate Use Act, various problems and uncertainties in the Act impeded law enforcement's ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medicinal purposes; and

WHEREAS, the Compassionate Use Act is limited in scope, in that it only provides a defense from State criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers; and

WHEREAS, in 2003, the California Legislature adopted Senate Bill 420, effective January 1, 2004, adding Article 2.5, "Medical Marijuana Program" to Division 10 of the California Health and Safety Code section 11362.7 *et seq.* ("Medical Marijuana Program Act" or "MMPA"), which authorizes cities to adopt and enforce rules and regulations consistent with the MMPA (Health & Safety Code § 11362.83.); and

WHEREAS, on January 3, 2006, the City adopted Ordinance 29-2005 prohibiting uses that are "illegal under local, state, or federal law." The Ordinance codified Section 23.304.020(C) into the Rancho Cordova Municipal Code to read as follows: "Illegal Uses. No use that is illegal under local, state, or federal law shall be allowed in any zoning district within the city." Because medical marijuana dispensaries are not legal under Federal law, this section prohibits the establishment of such a use within the City. However, the Ordinance did not specifically list medical marijuana dispensaries as a prohibited use, which has caused many dispensaries to argue against the ordinance; and

WHEREAS, on May 24, 2011, the City Council adopted Urgency Ordinance 7-2011 imposing another 45-day moratorium on the establishment and operation of medical marijuana dispensaries. The additional moratorium was imposed due to the significant changes in the enforcement of Federal laws and interpretation of current State laws. Under Government Code section 65858(f), a city may adopt another interim ordinance on the same uses "provided that the new interim ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior interim ordinance"; and

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WHEREAS, the 2011 temporary moratorium was extended twice by Ordinances 9-2011 and 10-2012 for a total period of two (2) years as allowed under California Government Code section 65858. The moratorium will expire on May 20, 2013; and

WHEREAS, on May 6, 2013, the California Supreme Court issued the long-awaited decision in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al., (S198638) upholding the ban by the City of Riverside on medical marijuana collectives, cooperatives and dispensaries. The Court held that Riverside's ban on medical marijuana dispensaries was not preempted by California law, as set forth in the CUA or the MMPA, and thus, the ban was valid; and

WHEREAS, the recent California Supreme Court decision finally provides the City guidance regarding its options related to medical marijuana dispensaries. The City can now complete its analysis and consider possible regulations on these establishments consistent with the recent California Supreme Court decision; and

WHEREAS, staff anticipates that the new court decision will result in more aggressive behavior and probing of legal issues by the medical marijuana dispensaries towards jurisdictions that have not yet established regulations or bans on such facilities. This Urgency Ordinance will make clear that medical marijuana dispensaries are prohibited in the City; and

WHEREAS, in adopting this Urgency Ordinance, the City Council takes legislative notice of the following cases that it finds to be relevant to its actions:

1. City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al., (2013) (S198638) [California Supreme Court upholds the ban by the City of Riverside on medical marijuana collectives, cooperatives and dispensaries. The Court held that Riverside's ban on medical marijuana dispensaries was not preempted by California law, as set forth in the CUA or the MMPA, and thus, the ban was valid. The Court concluded that because neither the CUA nor the MMPA expressly or impliedly preempt the authority of local governments, local governments may, under traditional land use and police powers, allow, restrict, limit or entirely exclude medical marijuana dispensaries];
2. Claremont v. Kruse (2009) 177 Cal.App.4th 1153 [California Court of Appeal holding that neither the Act nor the Program expressly or impliedly preempt local exercise of land use and zoning police powers];
3. People v. Urziceanu (2005) 132 Cal.App.4th 747 [California Court of Appeal noting that courts consistently have rejected attempts to broaden the scope of the Act and the Program and recognizing that the Act did not create a constitutional right to obtain marijuana];

WHEREAS, Marijuana remains an illegal substance under the Federal Controlled Substances Act, 21 U.S.C. § 801, et seq., and is classified as a "Schedule I Drug" which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for its use under medical supervision. Furthermore, the Federal Controlled Substances Act makes it unlawful for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense marijuana. The Controlled Substances Act contains no statutory exemption for the possession of marijuana for medical purposes; and

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WHEREAS, the City Council, in adopting this Urgency Ordinance, takes further legislative notice of the existence and content of the following reports concerning the negative secondary effects and adverse impacts of facilities dispensing medical marijuana: September 2009, "California Police Chief's Association Position Paper on Decriminalizing Marijuana"; April 22, 2009, "White Paper on Marijuana Dispensaries" issued by California Police Chiefs Association's Task Force on Marijuana Dispensaries; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association, April through June 2010; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association, January through March 2010; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association, July through September 2009; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association, April to June 2009; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association, January to March 2009; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association, September to December 2007; "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chiefs of Police Association; and

WHEREAS, the City Council finds that these reports are relevant to the problems addressed by the City in enacting this Urgency Ordinance to preserve and safeguard public health, safety and welfare by protecting against the negative secondary effects and adverse impacts of facilities dispensing medical marijuana, and more specifically finds that these reports provide convincing evidence that:

1. There is substantial evidence that other California cities that have permitted the establishment and operation of facilities for the purpose of dispensing medical marijuana have experienced negative secondary effects and adverse impacts, including an increase in crimes of marijuana and narcotics distribution and use; an increase in other criminal activities in the vicinity of these facilities, such as robbery of patients as they go in or leave the dispensaries, increase instances of DUIs and street dealings of illegal drugs; burglary of facilities dispensing medical marijuana; increase in violent crimes, such as armed robberies and murders; loss of trade for other commercial businesses located near these facilities; organized crime involvement in the ownership and operation of marijuana dispensaries; money laundering and firearm violations; physicians making recommendations for questionable or potentially questionable cases of qualified use of medical marijuana; unjustified and fictitious physician recommendations; street dealers in the vicinity of dispensaries offering marijuana at a lower price to arriving patrons; smoking of marijuana in the public; and increased noise and pedestrian traffic.
2. In light of the negative secondary effects and adverse impacts described above, the City Council finds that operation of facilities dispensing medical marijuana will burden and strain the City's law enforcement resources, in that law enforcement assistance would often be required to address and respond to various identified criminal activities.
3. California communities have also experienced that the operation of facilities dispensing medical marijuana negatively impact minors. For example, medical marijuana dispensaries advertise to high school students by leaving fliers on cars in the students' parking lot and offering discounts on marijuana products; medical marijuana shops target healthy minors through street contacts, suggesting that

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students obtain medical marijuana cards; high school students are reportedly obtaining physician recommendations to use marijuana for such conditions as sleeplessness and stress; and minors are obtaining medical marijuana cards or physical recommendation for recreational and non-medicinal purposes. The City Council recognizes the possible harmful effects on minors exposed to the negative secondary effects and adverse impacts of facilities dispensing medical marijuana and recognizes the need to adopt this Ordinance, which will minimize and/or eliminate such exposure within the City of Rancho Cordova.

4. California communities have reported that the vast majority of facilities dispensing medical marijuana, purportedly as “cooperatives” or “collectives,” are operating in violation and contrary to the CUA and the MMPA, in that these marijuana dispensing facilities are large money making enterprises and are generally operating for profit and are engaging in the “sale” of marijuana, instead of distributing or making marijuana available to qualified patients.
5. In addition to the illegal operations of these money-making entities that sell marijuana, California communities have reported concerns over the quality of marijuana, in that certain chemicals including pesticides and insecticides, have been discovered in the marijuana. In 2010, testing of certain “medical marijuana” distributed through a dispensary in Los Angeles County revealed high levels of Bifenthrin, a known form of pesticide or insecticide. Most marijuana dispensaries do not test the marijuana for dangerous and poisonous substances, nor are warning labels generally attached. The unmonitored, untested and unlabeled distribution of marijuana poses serious health and safety concerns.
6. These reports and experiences from other California cities and counties establish, by convincing evidence, that facilities dispensing and distributing medical marijuana negatively impact the health, safety and welfare of the community because of the secondary negative effects and adverse impacts described in Subparagraphs (1) - (5), above.
7. Relying on the above, the City Council also finds that facilities dispensing and distributing medical marijuana may lead to the detrimental secondary effects and adverse impacts, as specifically described in Subparagraphs (1)-(6) above. The City bases this conclusion on the experiences of California communities which the City has a reasonable basis to believe reflect the experiences of its own community.

WHEREAS, persons in the City of Rancho Cordova that may be in need of medical marijuana have access to facilities dispensing marijuana in neighboring cities within a short car ride away, including, but not limited to, the City of Sacramento and City of Stockton; and

WHEREAS, pursuant to the City’s police powers authorized in Article XI, Section 7 of the California Constitution, the California Supreme Court decision in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al., (2013) (S198638), as well as under the Rancho Cordova Municipal Code, the City has the power to regulate permissible land uses throughout the City and to enact regulations for the preservation of public health, safety and welfare of its residents and community. And, pursuant to Government Code section 38771, the City has the power through its City Council to declare actions and activities that constitute a public nuisance; and

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WHEREAS, the City Council finds that the public health, safety and general welfare of the City and its residents necessitates and requires the adoption of this Urgency Ordinance, prohibiting the establishment and operation of medical marijuana dispensaries, cooperatives and collectives in order to: (a) protect and safeguard against the detrimental secondary negative effects and adverse impacts of facilities dispensing medical marijuana, as more specifically described in these findings; (b) preserve and safeguard the minors, children and students in the community from the deleterious impacts of medical marijuana facilities; and (c) preserve the City's law enforcement services, in that monitoring and addressing the negative secondary effects and adverse impacts will likely burden the City's law enforcement resources. The City Council further finds that due to the negative secondary effects and adverse impacts of facilities dispensing medical marijuana, the establishment and the operation of these facilities will negatively impact residential uses and neighborhoods in the City, particularly disruptive to the City of Rancho Cordova; and

WHEREAS, this Urgency Ordinance is consistent with the City of Rancho Cordova General Plan in that the General Plan, its objectives, policies and goals do not permit or contemplate the establishment or operation of medical marijuana cooperatives, collectives or similar facilities that engage in dispensing of marijuana for medicinal purposes.

THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and made a part of this Urgency Ordinance

SECTION 2. Rancho Cordova Municipal Code Title 23, "Zoning Code," Chapter 23.925, "Medical Marijuana Dispensaries," is hereby added to the Municipal Code and shall read as follows:

Chapter 23.925 MEDICAL MARIJUANA DISPENSARIES

23.925.010 Purpose.

Pursuant to the City's police powers authorized in Article XI, Section 7 of the California Constitution, the City has the power to regulate permissible land uses throughout the City and to enact regulations for the preservation of public health, safety and welfare of its residents and community. In enacting this Chapter, it is the intent of the City Council of Rancho Cordova to protect the safety and welfare of the general public. The purpose of this Chapter is to clarify that medical marijuana dispensaries are not permitted uses in any zone of the City.

23.925.020 Medical Marijuana Dispensary as a Prohibited Use

A medical marijuana dispensary, as defined in RCMC 23.1101.020, is prohibited in all zones of the City of Rancho Cordova. No permit or any other applicable license or entitlement for use, nor any business license, shall be approved or issued for the establishment, maintenance or operation of a medical marijuana dispensary.

SECTION 3. Rancho Cordova Municipal Code Title 23, "Zoning Code," Chapter 23.1101, "Land Use Descriptions," Section 23.1101.020 "Land Use definitions" is hereby amended to include the following definition:

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“Medical marijuana dispensary” means (1) any facility, building, structure, delivery service, vehicle or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver, in strict accordance with California Health and Safety Code section 11362.5 *et seq.*; or (2) any facility, building, structure, delivery service, vehicle or location, whether fixed or mobile, where qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate in order to collectively or cooperatively, distribute, sell, dispense, transmit, process, deliver, exchange or give away marijuana for medicinal purposes pursuant in California Health and Safety Code section 11362.5 *et seq.* and such group is organized as a Medical Marijuana Cooperative or Collective as set forth in the Attorney General Guidelines. The terms “primary caregiver,” “qualified patient,” and “person with an identification card” shall be as defined in 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 applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the California 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 California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, California Health and Safety Code section 11362.5 *et seq.*

SECTION 4. Severability

If any provision of this Urgency Ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of the Urgency Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Urgency Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid or unenforceable.

SECTION 5. Effective Immediately

The City Council of the City of Rancho Cordova desires to adopt this Urgency Ordinance prohibiting the establishment of medical marijuana dispensaries in the City. This Urgency Ordinance is necessary for the immediate preservation of the public peace, health and safety and shall take effect immediately pursuant to Government Code Section 36937(b). The City's current moratorium on medical marijuana dispensaries is expiring on May 20, 2013. The Council will consider establishing another moratorium due to changed circumstances, however, adopting this Urgency Ordinance will assist the City defend itself against challenges to the new moratorium. If this Urgency Ordinance is not adopted, and the new moratorium is successfully challenged, the City's residents would be subjected to the negative impacts identified in the recitals of this Urgency Ordinance.

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Pursuant to Government Code section 36937(b), this Urgency Ordinance requires four-fifths (4/5) vote of the City Council.

ADOPTED, THIS ____ day of _____ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Budge, Mayor

ATTEST:

Mindy Cuppy, CMC, City Clerk

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