

April 18, 2006

**Honorable Mayor and Members of the  
Hermosa Beach City Council**

**Regular Meeting of  
April 25, 2006**

**SUBJECT: INTERIM URGENCY ORDINANCE TO PROHIBIT THE ESTABLISHMENT  
OF MEDICAL MARIJUANA DISPENSARIES**

**Recommendation:**

Adopt the attached urgency ordinance: Ordinance No. 06-\_\_\_,

“AN INTERIM ORDINANCE OF THE CITY OF HERMOSA BEACH PURSUANT TO GOVERNMENT CODE SECTION 65858 PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND DECLARING THE URGENCY THEREOF.” (ATTACHMENT A)

**Background**

In 1996, California voters enacted Proposition 215, called “The Compassionate Use Act of 1996.” The Act sets forth the circumstances under which marijuana may be prescribed, dispensed and used for medicinal purposes in California.

The United States Justice Department takes the position that the distribution and use of marijuana for medicinal purposes violates federal drug laws. Accordingly, the Drug Enforcement Administration has from time to time raided and shut down some medicinal marijuana dispensaries in California. Nonetheless, the DEA’s enforcement efforts have been inexplicably inconsistent, and numerous dispensaries have opened in the last two years throughout the State. The conflict between federal law and Proposition 215 has yet to be fully resolved in the courts.

**Analysis**

The purpose of the present agenda item is to consider an urgency ordinance to place a 45-day moratorium on the establishment of new medical marijuana dispensaries in the City of Hermosa Beach. Currently medical marijuana dispensaries are considered to be a permitted use of property similar to dispensing medicines in a medical clinic, pharmacy or medical office as allowed in the commercial zones under Article 17 of the Municipal Code (Zoning Ordinance). Potential dispensaries can be permitted if they meet minimum parking and development standards. There is no requirement for a conditional use permit or other discretionary review to establish these facilities. The City has comported itself in conformance with Proposition 215.

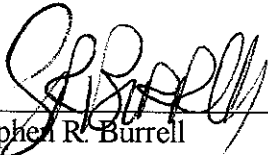
Medical marijuana dispensaries have been established throughout commercial zones in the region and may locate in close proximity to residentially zoned properties and sensitive land uses. Staff believes that it is necessary to review and analyze the impact of medical marijuana dispensaries and to formulate any necessary regulations, consistent with State law, governing the location and operation of the facilities in order to protect residents and businesses from harmful secondary effects. Regulation similar to liquor establishments or requiring a certain distance from schools or parks may be necessary. Other cities have developed such requirements. Due to the potential proliferation of such establishments in the city, and because time will be required to

prepare and adopt those regulations, this Ordinance is intended to place an interim moratorium on the establishment of any new medical marijuana dispensaries for 45 days, effective from the date of adoption of the urgency ordinance.

Consistent with Government Code Section 65858, the Council may adopt up to two extensions of the moratorium after providing notice pursuant to Section 65090 and holding a public hearing. The maximum duration of the extensions are ten (10) months, fifteen (15) days for the first, and twelve (12) months for the second.

FISCAL IMPACT

There is no fiscal impact for this item at this time.



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Stephen R. Burrell  
City Manager

Attachments

1. Urgency Ordinance

P:/MedMJ

**ORDINANCE NO. 06-\_\_\_\_\_**

**AN INTERIM ORDINANCE OF THE CITY OF HERMOSA BEACH  
PURSUANT TO GOVERNMENT CODE SECTION 65858 PROHIBITING  
THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND  
DECLARING THE URGENCY THEREOF.**

The City Council of the City of Hermosa Beach does hereby ordain as follows:

SECTION 1. Purpose and findings. Currently medical marijuana dispensaries are considered to be a permitted use of property in the commercial zones under the City's zoning ordinance. Medical marijuana dispensaries may be established in the City within close proximity to residentially zoned properties and sensitive uses such as residential property, schools and day care centers. Other cities with medical marijuana dispensaries have reported an increase in loitering around dispensaries, an incident of armed burglary within dispensaries, parking and traffic violations, and increased complaints from neighbors about increased pedestrian and vehicular traffic and noise. City staff believes that it is necessary to formulate regulations, consistent with State law, governing the location and operation of medical marijuana dispensaries in order to protect residents and businesses from harmful secondary effects of these establishments. Due to the recent proliferation of such establishments in cities throughout the region, and because such uses are permitted under the City's zoning regulations and further, because time will be required to prepare and adopt those regulations, this Ordinance is intended to place an interim moratorium on the establishment of any new medical marijuana dispensaries as of the date of adoption hereof, until new regulations are prepared and adopted by the City Council.

SECTION 2. Moratorium established. A moratorium is hereby established on the establishment of medical marijuana dispensaries in the City. Notwithstanding any provision of the Hermosa Beach Municipal Code to the contrary, no medical marijuana dispensary shall be established in the City, whether or not a permit of any kind is required from the City; further, no application for a permit of any kind (including a building permit) will be accepted, processed or considered during the pendency of this ordinance or any extension thereof for establishment of a medical marijuana dispensary. This Ordinance and the moratorium established herein applies to any site, facility, location, use, cooperative or business that distributes, dispenses, stores, sells, exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers, or physicians, pursuant to Health & Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any State regulations adopted in furtherance thereof.

SECTION 3. Definitions. For purposes of this Ordinance, a "medical marijuana dispensary" means a facility where marijuana is made available for medical purposes in accordance with Health & Safety Code Section 11362.5. The word "marijuana" shall have the same meaning as the definition of that word in Health & Safety Code Section 11018.

SECTION 4. Penalties. Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$1,000 or by imprisonment in County jail for not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. In addition to the foregoing, any violation of this Ordinances hall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

SECTION 5. Severability. If any part or provision of this Ordinance or the application to any person or circumstance is held invalid, the remainder of this Ordinance, including the application of such part of provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

SECTION 6. Urgency. Based on the findings set forth in Section 1 hereof, the recent proliferation of medical marijuana dispensaries in the City and the secondary effects of those dispensaries poses a current and immediate threat to the public health, safety and welfare. This Ordinance is necessary to alleviate and address that threat until permanent zoning regulations can be established. This ordinance is adopted pursuant to California Government Code Section 65858 and shall take effect immediately upon adoption by a four-fifths vote of the City Council. This ordinance shall be in full force and effect for a period of forty-five (45) days from the date of its adoption unless extended by the City Council in accordance with the provisions of California Government Code Section 65858.

SECTION 7. Conflicting Laws. For the term of this Ordinance, or any extension thereof, the provisions of this Ordinance shall govern over any conflicting provisions of any other City code, ordinance, resolution or policy.

PASSED, APPROVED AND ADOPTED this 25th day of April, 2006.

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Mayor

ATTEST:

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City Clerk