

February 12, 2007

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

**Regular Meeting of
February 27, 2007**

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

Recommendation:

Adopt the attached urgency ordinance, Ordinance No. 07-___,

AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA, PURSUANT TO GOVERNMENT CODE SECTION 65858, EXTENDING ORDINANCE NO. 1265U WHICH ESTABLISHED A MORATORIUM PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND DECLARING THE URGENCY THEREOF. (ATTACHMENT 1)

Background

On April 25, 2006 the City Council approved an interim urgency ordinance prohibiting the establishment of medical marijuana dispensaries in the City. On May 23, 2006, the Council extended that ordinance for a period of ten months and 15 days to provide time to further research the issue. That extension will expire on April 7, 2007. The purpose of the present agenda item is to adopt a new extension of the ordinance for one additional year to allow time to further consider how to address the issue.

Analysis

Prior to adoption of the moratorium ordinance in April 2006, medical marijuana dispensaries were 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 could be permitted if they met minimum parking and development standards. There was no requirement for a conditional use permit or other discretionary review to establish these facilities. City regulations were therefore consistent with the requirements of Proposition 215.

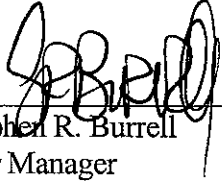
In other cities, medical marijuana dispensaries have been established throughout commercial zones, sometimes in close proximity to residentially zoned properties and sensitive land uses. Staff continues to believe that it is necessary to review and analyze the impact of medical marijuana dispensaries 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.

Following adoption of the interim ordinance, staff diligently began the process of researching and analyzing the operation of marijuana dispensing facilities and potential compatibility issues with nearby land uses. Staff also began research on operational and development regulations that could minimize any potential impacts. However, litigation and case law regarding Proposition 215 and other applicable state and federal statutes are still evolving, along with issues relating to whether federal law preempts Proposition 215 and other state and local jurisdiction. Thus, staff research will not be completed before the expiration date of the moratorium on April 7, 2007. Therefore, staff recommends that the urgency ordinance be extended for one year, i.e. to April 7, 2008.

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 months, fifteen days for the first, and twelve months for the second. Therefore, the present extension will be the last permitted.

FISCAL IMPACT

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



Stephen R. Burrell
City Manager

Attachments

1. Extension Ordinance

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ORDINANCE NO. 07-...

AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA, PURSUANT TO GOVERNMENT CODE SECTION 65858, EXTENDING ORDINANCE NO. 1265U WHICH ESTABLISHED A MORATORIUM PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND DECLARING THE URGENCY THEREOF.

THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Moratorium extended. Ordinance No. 06-1265U, adopted April 25, 2006, which was extended to April 7, 2007 pursuant to Ordinance No. 06-1268U, is hereby extended for an additional 12 months to April 7, 2008.

SECTION 2. 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 Ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

SECTION 3. 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 4. Purpose and findings; Urgency. Currently medical marijuana dispensaries are considered to be a permitted use of property in the commercial zones under the City's zoning ordinance. There has been a proliferation of medical marijuana dispensaries throughout the region with some in close proximity to residentially zoned properties and sensitive uses such as day care center. Other cities with medical marijuana dispensaries have reported an increase in loitering around dispensaries, an incident of armed burglary within a dispensary, 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. Because

1 of the recent proliferation of such establishments in other cities and the potential harmful effects of
2 such proliferation in Hermosa Beach and the uncertainties created by the recent litigation and
3 evolution of case law regarding such facilities, additional time will be required to prepare and
4 adopt those regulations. Therefore, this Ordinance is intended to extend an interim moratorium on
5 the establishment of any new medical marijuana dispensaries as of the date of adoption hereof,
6 until new regulations are prepared and adopted by the City Council. Based on the foregoing, the
7 recent proliferation of medical marijuana dispensaries in the region and the secondary effects of
8 those dispensaries pose a current and immediate threat to the public health, safety and welfare.
9 This Ordinance is necessary to alleviate and address that threat until permanent zoning regulations
10 can be established.

11 This Ordinance is adopted pursuant to California Government Code Section 65858 and shall take
12 effect immediately upon adoption by a four-fifth's vote of the City Council. This Ordinance shall
13 be in full force and effect for one full year from April 7, 2007 to April 7, 2008.

14 **SECTION 5.** Conflicting Laws. For the term of this Ordinance, or any extension thereof,
15 the provisions of this Ordinance shall govern over any conflicting provisions of any other City
16 code, ordinance, resolution or policy.

17 **SECTION 6.** The City Clerk shall certify to the passage and adoption of this Ordinance,
18 shall enter the same in the book of original ordinances of said city, and shall make minutes of the
19 passage and adoption thereof in the records of the proceedings of the City Council at which the
20 same is passed and adopted.

21 **PASSED, APPROVED and ADOPTED** this 27th day of February, 2007 by the following vote:

- 22 AYES:
- 23 NOES:
- 24 ABSENT:
- 25 ABSTAIN:

26 **PRESIDENT** of the City Council and **MAYOR** of the City of Hermosa Beach, California

27 ATTEST:

APPROVED AS TO FORM:

28 _____
City Clerk

City Attorney