

# ITEM 9-D

## PLANNING BOARD STAFF REPORT

**DATE:** December 14, 2009

**TO:** HONORABLE PRESIDENT AND MEMBERS OF THE  
PLANNING BOARD

**FROM:** Andrew Thomas, Planning Manager  
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**APPLICATION:** An Ordinance Adding Subsection 30-5.15 to the Alameda Municipal Code to Prohibit the Operation of Medical Marijuana Dispensaries in the City of Alameda.

**ACRONYMS:** AMC – Alameda Municipal Code  
CEQA – California Environmental Quality Act  
CSA-Controlled Substances Act  
CUA-Compassionate Use Act  
MMP-Medical Marijuana Program Act

**ZONING DISTRICT:** Citywide

**GENERAL PLAN:** Citywide

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### **EXECUTIVE SUMMARY**

The proposed amendment to the Alameda Municipal Code would prohibit the establishment and operation of medical marijuana dispensaries in the City of Alameda. The proposed ordinance would not bar the private use of medical marijuana by qualified persons.

As described in the attached materials and articles, medical marijuana dispensaries raise a number of difficult issues and questions for California communities. The legality of such dispensaries is dubious, and many cities and counties have prohibited them altogether. Some communities, including Alameda have established temporary bans in order to study the issue and develop regulations. A few cities and counties have established zoning codes to

regulate and monitor the location and operation medical marijuana dispensaries. However, as indicated, it is not clear that these facilities can operate legally under Federal or even California law.

Given the concerns raised by the community in regards to the health and safety issues that might be generated by these facilities, the City adopted a moratorium on medical marijuana dispensaries in December of 2008. The current moratorium expires on June 30, 2010, and staff is recommending that the City Council adopt an ordinance amending the Alameda Municipal Code to define the medical marijuana dispensary land use and associated terms and prohibit the establishment of the use within in the City of Alameda.

## **BACKGROUND**

Based on the potential threat to public health, safety and welfare and the City's lack of express provisions dealing with medical marijuana dispensaries and inquiries to the Community Development Department about locating medical marijuana dispensaries within the City, the City Council adopted an emergency ordinance on November 6, 2008 which was extended on December 2, 2008, placing a moratorium on the establishment of medical marijuana dispensaries in Alameda. Unless extended, this temporary moratorium expires on June 30, 2010. Staff has had the opportunity to draft proposed regulations, dealing with medical marijuana dispensaries for the Planning Board to consider.

## **STAFF ANALYSIS**

In 1970, Congress enacted the Controlled Substances Act (CSA), which makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States. In 1996, California voters approved Proposition 215, or the Compassionate Use Act of 1996 (CUA), which allows a qualified person to use and cultivate marijuana for medical purposes. California voters approved this initiative in order to exempt certain patients and their primary caregivers from criminal liability for possession and cultivation of marijuana. In 2003, the state legislature enacted further regulations by passing Senate Bill 420, or the Medical Marijuana Program Act (MMP) to establish and maintain a program for voluntary registration of qualified patients and their primary caregivers through a statewide identification card.

Since the passage of the CUA, some cities have experienced "storefront" marijuana businesses, often called dispensaries, sprouting up in their jurisdictions. These facilities operate as if they are pharmacies and often dispense different types of marijuana and some offer-baked goods that contain marijuana. Monetary donations are collected from patients or primary caregivers in exchange; since it would be a criminal violate to sell these items. Under federal law, the mere existence of these storefront dispensaries is illegal and some have been subject to raids.

The use, possession, distribution and sale of marijuana remains illegal under federal law and the U.S. Supreme court has held that the federal government

may enforce the CSA despite California law. *Gonzales v. Raich*, 125 S.Ct. 2195.

There is no apparent authority for the existence of these storefront marijuana businesses under California law either. Under California law, patients and their primary caregivers may grow and cultivate marijuana and no one else. Although California law offers some protection for “collectives and cooperatives” no protection exists for any storefront dispensaries.

Furthermore, the California Attorney General has adopted certain guidelines for interpretation and implementation of the State’s medical marijuana laws and has stated that “[a]lthough medical marijuana “dispensaries” have been operating in California for years, dispensaries as such, are not recognized under the law.

More than 100 cities and counties in California have enacted bans on medical marijuana dispensaries. A limited number of other cities have enacted detailed ordinances designed to manage and regulate the location and operation of medical marijuana dispensaries. (See attached ordinances from San Mateo County and the City of Santa Barbara.) However, because under federal law, distribution of marijuana remains illegal in the United States and the State law does not expressly provide for such dispensaries, it is not clear that these dispensaries are operating within the legal framework.

One purpose of the Compassionate Use Act and the Medical Marijuana Program is to encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana. However, neither the federal nor the state government has implemented a plan to provide medical marijuana under these guidelines. The Medical Marijuana Program provides additional statutory guidance for medical marijuana use and cultivation, but does not explicitly address the role of dispensaries, nor does it require cities provide for or allow the establishment and/or operation of medical marijuana dispensaries.

Setting aside the dubious legal status of medical marijuana dispensaries, many of the communities that have such dispensaries have reported negative secondary effects on the community, which include, illegal drug activity and drug sales in the vicinity of dispensaries; robbery of persons leaving dispensaries; driving under the influence of a controlled substance by persons who have obtained marijuana from a dispensary; persons acquiring marijuana from a dispensary and then selling it to a nonqualified person; burglaries and robberies; and an increase in vacancies in the commercial areas in the vicinity of the dispensary.

The California Police Chiefs Association (See attached White Paper) has compiled an extensive report detailing negative secondary effects associated with medical marijuana dispensaries. The report contains anecdotal and documented evidence that medical marijuana dispensaries pose a threat to public health, safety, and welfare.

The proposed ordinance does not prohibit nor eliminate the availability and use of medical marijuana. The ordinance guards against abuses of the law and responsibly protects the health, safety, and welfare of Alameda’s citizens and

businesses.

## **FINDINGS**

The proposed amendments are consistent with the General Plan. The amendments are consistent with General Plan policies regarding public health and safety of the Alameda's residential and commercial areas and promote complimentary businesses that are necessary to maintain the safety and protection of the community.

The proposed amendments will benefit the general welfare of the community. The proposed amendments provide protections to support the general welfare, economic vitality, and safety of the community.

The proposal is equitable. The proposed amendment is consistent with the Federal law, the Act, and the MMP. The ordinance does not prohibit use of medical marijuana for those who meet the requirements of State Law.

## **ENVIRONMENTAL REVIEW**

This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to §§ 15060 (c)(2) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060 (c)(3) the activity is not a project as defined in § 15378 of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated studies. This ordinance also is exempt from CEQA pursuant to the "common sense" exemption under § 15061(b)(3) of the CEQA Guidelines, because the City Council hereby determines and finds that there is no possibility that the ordinance may have a significant effect on the environment.

## **PUBLIC NOTICE**

A notice for this hearing was published in the Alameda Journal. Staff received public comments on this proposal from one Alameda resident that inquired about the feasibility of establishing a dispensary for medical marijuana and other herb therapies.

## **RECOMMENDATION**

That the Planning Board recommend that the City Council, by Ordinance, add new Section 30-5.15 to the Alameda Municipal Code prohibiting the establishment and operation of Medical Marijuana Dispensaries in the City of Alameda.

RESPECTFULLY SUBMITTED BY:

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ANDREW THOMAS  
PLANNING SERVICES MANAGER

Attachment(s):

1. Draft Ordinance
2. State of California Department of Justice Guidelines.
3. White Paper on Medical Marijuana Dispensaries
4. San Mateo County Ordinance
5. Santa Barbara Ordinance
6. Los Angeles Times Article
7. Santa Barbara Article
8. Associated Press Article
9. Santa Cruz Article