
Revision to ASR and/or Exhibits/Attachments

Date: November 17, 2010

To: Darlene J. Bloom, Clerk of the Board of Supervisors

cc: County Executive Office 

From: Jess A. Carbajal, Director, OC Public Works 

RE: Agenda Item No. 32 for the November 23, 2010 Board Meeting
ASR Control #: 10-001364

Subject: Prohibition of Medical Marijuana Stores, Collectives, and/or Cooperatives

Explanation:

On September 21, 2010, your Board continued the recommendation for a temporary moratorium on the establishment of medical marijuana collectives or cooperatives to November 9, 2010, and directed the County Executive Office and OC Public Works to immediately begin preparation of a new ordinance implementing a use permit process; look into the requirements for the location of liquor stores as some of that logic may apply; consider the possibility of adding monetary penalties for the establishment of these businesses without a use permit, e.g. \$1,000 per day for every day of operation without a use permit; and prepare a taxation policy should Proposition 19 be approved by the voters.

OC Public Works worked closely with CEO, OC Sheriff, and the Health Care Agency (HCA) and is recommending your Board adopt an Ordinance prohibiting the approval of any permit, businesses, and/or activities in Orange County unincorporated areas involving the sale or distribution of medical marijuana or any other illegal controlled substance; and establishing that any violation of such prohibition shall be punishable as a misdemeanor pursuant to Section 1-1-34 of the County Codified Ordinances with a civil fine of \$1,000 per day. Staff believes that development and implementation of a specific use permit process for the establishment of medical marijuana stores, collectives, and/or cooperatives in Orange County unincorporated areas would be futile as it would produce the same outcome as a prohibition given that most unincorporated areas are comprised of residential zoning districts with the vast majority of the remaining areas zoned for commercial and light industrial use in close proximity to residential zoned areas and other sensitive uses, such as schools, daycare centers, parks, and/or religious facilities.

Revised Recommended Action(s)

1. Find that the subject activity is not a project as defined by CEQA pursuant to Sections 15060c(2)(3) and 15378(b)(5) of the CEQA Guidelines.
2. Read the title of the Ordinance as follows: AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA ADDING SECTIONS 5-1-31 THROUGH 5-1-33 TO ARTICLE 2 OF DIVISION 1 OF TITLE V OF THE CODIFIED ORDINANCES OF THE COUNTY OF ORANGE PROHIBITING THE APPROVAL OF ANY PERMIT IN ORANGE COUNTY UNINCORPORATED AREAS THAT INVOLVES THE SALE OR DISTRIBUTION OF MEDICAL MARIJUANA OR ANY OTHER ILLEGAL CONTROLLED SUBSTANCE; PROHIBITING BUSINESSES OR ACTIVITIES IN ORANGE COUNTY UNINCORPORATED AREAS THAT INVOLVE THE SALE OR DISTRIBUTION OF MEDICAL MARIJUANA OR ANY OTHER ILLEGAL CONTROLLED SUBSTANCE; AND ESTABLISHING AND SETTING OF CIVIL FINES.
3. Order further reading of the Ordinance be waived.
4. Consider the matter.
5. Direct Ordinance be placed on the agenda of the next regularly scheduled Board meeting.
6. At the next regularly scheduled Board meeting, consider the matter and adopt the Ordinance.

Revised Exhibits/Attachments (attached)

Attachment A – Proposed Ordinance
Attachment B – OC Sheriff's Memorandum dated October 7, 2010
Attachment C – Health Care Agency Memorandum dated October 6, 2010

Additional Information and/or Correspondence

ADDITIONAL BACKGROUND

Implementing a specific use permit process for the establishment of medical marijuana stores, collectives, and/or cooperatives in Orange County unincorporated areas would be futile as it would produce the same outcome as a prohibition given that the current location of most commercial and light industrial zoned unincorporated areas are near residential zoned areas and the vast majority are in close proximity to other sensitive uses, such as schools, daycare centers, parks, and/or religious facilities. Therefore, it is recommended that your Board adopt an Ordinance prohibiting approval of any permits, businesses, and/or activities in Orange County unincorporated areas that involve the sale or distribution of medical marijuana or any other illegal controlled substance and establishing that violation of Section 5-1-31 through 5-1-33 to Article 2 of Division 1 of

Title V of the Orange County Codified Ordinances shall be punishable as a misdemeanor pursuant to Section 1-1-34 of the County Codified Ordinances and a civil fine of \$1,000 per day.

The basis for the recommended Ordinance to prohibit all permits, businesses, and/or activities involving the sale or distribution of medical marijuana or an illegal controlled substance is summarized as follows:

- Significant public health and safety concerns have been identified by the OC Sheriff and the OC Health Care Agency (HCA). Please see Attachments B and C, respectively.

The OC Sheriff's Memorandum dated October 7, 2010, addressing Medical Marijuana Storefronts describes the adverse secondary effects associated with these storefronts. In summary, evidence suggests that criminal activity is prevalent in the proximity to marijuana storefronts.

The Health Care Agency Memorandum dated October 6, 2010, indicates that food products containing marijuana are being sold at medical marijuana storefront, collective, and/or cooperative locations. HCA currently has no regulatory oversight over these food items. In summary, unregulated production of food products containing marijuana could potentially contain harmful ingredients, as well as food borne disease and/or pesticide residue.

OC Public Works believes any land use permitting of medical marijuana stores, collectives, and/or collectives would be a public health, safety, and welfare concern and most likely lead to an unequitable concentration of these uses within specific Orange County unincorporated areas.

- Although the Compassionate Use Act was adopted in 1996, the County has recently experienced an increase in medical marijuana stores, collectives, and/or cooperatives being established without approved use permits in the Orange County unincorporated areas within the past year or so.

The California Attorney General issued guidelines on medical marijuana collectives and cooperatives only two years ago, which clarified that medical marijuana collectives and cooperatives may be consistent with applicable law (though the law does not specifically permit them).

Additionally, only in the past year, the United States Attorney General Holder indicated that the federal government would not prioritize the enforcement of federal laws prohibiting marijuana as applied to possession of small amounts in states with laws permitting medical marijuana. As a result, federal enforcement, which in the past had been a deterrent to the opening of medical marijuana stores, collectives, and/or cooperatives is now absent.

Further, within the past couple of years, most cities in the County of Orange have taken steps against marijuana stores, collectives, and/or cooperatives. This has contributed to the growing number of marijuana collectives and/or cooperatives being located without an approved use permit in the Orange County unincorporated areas as they move out of the cities.

In the period prior to the effective date of the recommended Ordinance, permit applications for medical marijuana stores, collectives, and/or cooperatives will not be processed.

USE PERMIT PROCESS

Following the Board meeting on September 21, 2010, staff evaluated the potential for developing and implementing a specific use permit process for the establishment of medical marijuana stores, collectives, and/or cooperatives. A specific use permit ordinance would require a zoning code amendment with a public hearing review and recommendation from the Planning Commission prior to your Board's consideration. Due to public health, safety, and welfare, staff would recommend prohibiting medical marijuana stores, collectives, and/or cooperatives in any residential zone and within 1,500 feet of any residential use and other sensitive uses such as schools, daycare centers, parks or religious facilities. A criminal background check would be recommended to be incorporated into the permitting process. The timing for preparation of a zoning code amendment, hearings, and adoption would take approximately 3 to 6 months on an aggressive schedule.

Orange County unincorporated areas are comprised of predominantly residential zoning districts with commercial and industrial zoned land minimal. Small pockets of commercially zoned land currently exist in the Midway City, Santa Ana, Sunset Beach and Ladera Ranch unincorporated areas. If the minimum 1,500 feet distance is required to buffer nearby residential zoning districts and the proximity to other sensitive uses, marijuana establishments would most likely not be permitted in the vast majority of Orange County unincorporated commercial areas and in effect be a prohibition. If the minimum distance was determined to be possible, it could result in an overconcentration of medical marijuana stores, collectives, and/or cooperatives in the Midway City and Ladera Ranch unincorporated areas.

The three Orange County unincorporated areas that are zoned for light industrial uses include: 1) the Bolsa Chica unincorporated area just south of Talbert Regional Park, which is located adjacent to Whittier Elementary School; 2) the Orange unincorporated area north of the intersection of Lincoln Avenue and Orange Olive Road, which is located across the street from Olive Elementary School; and 3) Ladera Ranch unincorporated area includes an urban activity area on the east side of Antonio Parkway that allows for light industrial uses, which includes two residential apartment communities. If the minimum 1,500 feet distance is required to buffer the proximity of these areas to residential zoned areas and sensitive uses, a use permit process would most likely be futile as applicants would not qualify for approval.

There are no cities within Orange County, with the exception of the City of Laguna Woods, that are currently allowing marijuana stores, collectives, and/or cooperatives.

The City of Laguna Woods' Ordinance makes a successful permit application extremely challenging and there are presently no known permitted operators.

The following summarizes the actions taken by cities within Orange County regarding the establishment of medical marijuana stores, collectives, and cooperatives.

Action	# of cities	City
Urgency Moratorium	9	Fountain Valley, La Habra, Laguna Niguel, Newport Beach, Orange, San Juan Capistrano, Santa Ana, Tustin, and Villa Park
Prohibition Ordinance	22	Aliso Viejo, Anaheim, Brea, Buena Park, Costa Mesta, Cypress, Fullerton, Garden Gove, Huntington Beach, Laguna Beach, Laguna Hills, Lake Forest, La Palma, Los Alamitos, Mission Viejo, Placentia, Rancho Santa Margarita, San Clemente, Seal Beach, Stanton, Westminster, and Yorba Linda
Interpret Zoning Ordinance as Prohibitive	2	Dana Point, Irvine
Zoning Ordinance Permissive Subject to Standards	1	Laguna Woods

STATE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL MODEL

The Orange County Codified Ordinances (including the zoning code) do not specifically regulate alcohol sales or provide zoning code development standards related to alcohol sales. If a proposed use such as a bar or restaurant requires a use permit in a specific zone, the approval body, typically the Planning Commission, can consider whether the use is appropriate for the location with the knowledge that alcohol sales are proposed.

The State Department of Alcoholic Beverage Control (ABC) oversees the issuance of liquor licenses and requires a County or City Zoning clearance for the use prior to issuing their license. If the County does not issue a zoning clearance (Planning Commission or Director Denial), ABC will withhold issuance of a liquor license. According to ABC, an overconcentration of liquor licenses is defined as more than one (1) license per 1,500 residents in a given census tract. Due to its urbanization, several Orange County unincorporated areas are considered in an overconcentration status. When an applicant to ABC is requesting a license in an area of overconcentration, ABC must make a finding of convenience and necessity. According to ABC, making this finding is generally routine; however, if the license is protested by any member of the public, ABC will conduct a hearing before an Administrative Law Judge and conditions of approval are usually applied as appropriate (i.e. hours of operation restrictions). In determining the conditions, ABC staff takes into consideration the proximity of sensitive uses to the proposed liquor license location. These sensitive uses include residential,

schools, churches, hospitals, playgrounds, and youth facilities, however, there are no adopted criteria related to minimum distances from any of these uses.

Presently, there is no State required license review for medical marijuana sales and there is no State agency established to administer a program similar to ABC. While the State Attorney General offers guidelines on medical marijuana collectives and cooperatives, the entire review, approval, and monitoring is the sole responsibility of the local jurisdiction.

PENALTIES

County Neighborhood Preservation Code Enforcement actions are typically only initiated upon complaint. Once a complaint is received, the County will issue a notice of violation to the owner of the property operating a medical marijuana storefront illegally without an approved permit. Under the present conditions, if the owner/operator does not apply for the required use permit or discontinue the un-permitted use, the County may issue civil citations on a monthly basis as follows:

- 1st Notice: \$100
- 2nd Notice: - \$200
- 3rd Notice: - \$500

On October 5, 2010, OC Public Works issued citation letters to all known operators that have not filed for a use permit and are operating the unpermitted illegal use. To date, two of these operators have come in for pre-file meetings with County staff, but have not filed formal applications. One of the operators is located in unincorporated Santa Ana in a commercial center, which is in close proximity to a residential neighborhood and the other is in Midway City within an R3 Apartment Zone.

The recommended Ordinance, would make violations for operation of businesses or activities in the Orange County unincorporated area that involves the sale or distribution of medical marijuana or any other illegal controlled substance punishable as a misdemeanor pursuant to Section 1-1-34 of the County Codified Ordinances and establish a civil fine of \$1,000 per day.

The OC Sheriff has indicated that substantial fines are a mechanism that may have some deterrent effect towards unpermitted marijuana storefronts. The County may also continue to record a notice of violation against the property title for construction activity and operation of a use undertaken without permits. If the above mentioned mechanisms do not result in compliance, the District Attorney can then engage and take court action against the property owner.

TAXATION POLICY

The State Board of Equalization is responsible for defining and implementing taxation policy. Although a resolution addressing taxation, fee, and policy considerations was prepared by the County Executive Office, the resolution is not recommended for adoption at this time given the unofficial failure of Proposition 19, known as the Regulate, Control and Tax Cannabis Act of 2010.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA
ADDING SECTIONS 5-1-31 THROUGH 5-1-33 TO ARTICLE 2 OF DIVISION 1 OF
TITLE V OF THE ORANGE COUNTY CODIFIED ORDINANCES PROHIBITING
THE APPROVAL OF ANY PERMITS IN ORANGE COUNTY UNINCORPORATED
AREAS THAT INVOLVE THE SALE OR DISTRIBUTION OF MARIJUANA OR
ANY OTHER ILLEGAL CONTROLLED SUBSTANCE AND PROHIBITING
BUSINESSES OR ACTIVITIES IN ORANGE COUNTY UNINCORPORATED
AREAS INVOLVING THE SALE OR DISTRIBUTION OF MARIJUANA OR ANY
OTHER ILLEGAL CONTROLLED SUBSTANCE AND SETTING CIVIL FINES.

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, the
Compassionate Use Act of 1996, codified in the California Health and Safety Code as
Section 11362.5 (“CUA”); and

WHEREAS, the California Legislature subsequently enacted SB 420, the Medical
Marijuana Program Act, Health and Safety Code Sections 11362.7, et seq., which went
into effect on January 1, 2004, and set guidelines for the application of the CUA
(“MMPA”); and

WHEREAS, medical marijuana stores have been established in cities and counties
throughout the State in increasing numbers under the claim that the CUA and the MMPA
allows for such stores without regard to local regulation; and

WHEREAS, the CUA and MMPA provide for personal possession, use, and cultivation
of marijuana, as well as collective cultivation, in limited circumstances, but do not
authorize or legalize the sale of marijuana for profit on an individual basis or from a
store-front; and

WHEREAS, pursuant to federal law, it is illegal to possess, use, manufacture, or
distribute marijuana in any form as well as other controlled substances; and

WHEREAS, the County of Orange (“County”) does not currently have an ordinance or
regulatory scheme that allows facilities that cultivate or sell marijuana for any purpose;
and

WHEREAS, establishments selling or dispensing marijuana, in any form and for any
reason, are not listed as a permitted use in any zoning district in the Orange County
Zoning Code, are inconsistent with any other use listed therein, and therefore are
prohibited uses under the Orange County Zoning Code; and

WHEREAS, the County does not require business licenses to operate a business in the
Orange County unincorporated areas; and

WHEREAS, the Orange County Sheriff's Department and other public entities have reported adverse impacts from medical marijuana stores, including, but not limited to, an increase in crimes such as burglary, robbery, loitering, and the sale of other illegal drugs (including the resale of marijuana from medical marijuana stores) in the areas immediately surrounding such medical marijuana stores; and

WHEREAS, medical marijuana stores are locating themselves in close proximity to residential areas, schools, churches, day care centers, and other sensitive areas; and

WHEREAS, the County may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, preemption of the County's authority will not be implied when the legislative scheme of the law, including the MMPA and CUA, either permits or recognizes local regulation; and

WHEREAS, the MMPA explicitly provides that a County shall not be prevented from adopting or enforcing laws consistent with the MMPA; and

WHEREAS, the CUA and MMPA do not contemplate or mention in any way or fashion the creation of medical marijuana retail or distribution outlets to be permitted in a city or county; and

WHEREAS, regulations related to the sale and distribution of substances controlled by State and Federal law are necessitated by the small size of the Orange County unincorporated areas and the close proximity of residential, school, park, and religious uses to commercial and industrial properties; and

WHEREAS, regulations are further needed to protect the public, health, safety, and welfare of residents, children, and businesses from harmful secondary effects of sales of marijuana and any other illegal controlled substances under local, state or federal laws.

The Board of Supervisors of the County of Orange ordains as follows:

SECTION 1. Section 5-1-31 is hereby added to Article 2 of Division 1 of Title V of the Codified Ordinances of the County of Orange, to read as follows:

“Section 5-1-31. Sale or Distribution of Marijuana or Any Other Controlled Substances

- (a) Notwithstanding any other provision of this Code, no permit, license or other discretionary approval will be issued by the County of Orange, pursuant to any applicable section of the Orange County Codified Ordinances, or otherwise, that would permit the sale or distribution of Marijuana or any other Controlled Substances, as defined herein, under

local, state or federal law or which is illegal to sell or distribute under local, state or federal law.

- (b) This section does not prohibit the issuance of permits, licenses, or approvals, which are otherwise expressly permitted under local, state or federal law.
- (c) For the purposes of Sections 5-1-31 through 5-1-33 of this Code, the term “Marijuana” shall have the same meaning as that set forth in California Health and Safety Code Section 11018 and shall apply to Marijuana used for any purpose, including medical.
- (d) For the purposes of Sections 5-1-31 through 5-1-33 of this Code, the term ‘Controlled Substance(s)’ shall mean any drug or chemical substance whose possession and use are illegal under local, state or federal law.”

SECTION 2. Section 5-1-32 is hereby added to Article 2 of Division 1 of Title V of the Codified Ordinances of the County of Orange, to read as follows:

“Section 5-1-32. Businesses Selling or Distributing Marijuana or Any Other Controlled Substances

- (a) No person shall operate, maintain, conduct, facilitate, or permit any business, activity, or use involving the sale or distribution of Marijuana or any other Controlled Substances, as defined in Section 5-1-31(c) of this Code, under local, state or federal law or which is illegal to sell or distribute under local, state or federal law.
- (e) In addition to any penalties set forth in Section 1-1-34 of this Code, violation of this Section shall be punishable with a civil fine as set forth in Section 5-1-32.”

SECTION 3. Section 5-1-33 is hereby added to Article 2 of Division 1 of Title V of the Codified Ordinances of the County of Orange, to read as follows:

“Section 5-1-33. Civil Fine; Businesses Selling or Distributing Marijuana or Any Other Controlled Substances

- (a) Notwithstanding any other Code section or resolution on the subject, violation of section 5-1-32 of this Code shall be subject to a fine of \$1,000 per day that a business, activity, or use operates in violation of section 5-1-32, and may be processed as set forth in section 1-1-40.15 of this Code.
- (b) Interest shall accrue on delinquent fines and penalties at the rate of ten percent (10%) for fines not paid within thirty (30) days of their due date.”