

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: TLMA - PLANNING DEPARTMENT

SUBMITTAL DATE:
September 29, 2006

SUBJECT: Ordinance No. 348.4422, an Ordinance of the County of Riverside, amending Ordinance No. 348 relating to zoning.

RECOMMENDED MOTION: That the Board of Supervisors make the findings set forth below and adopt Ordinance No. 348.4422.

BACKGROUND: As directed by the Board of Supervisors on September 26, 2006, staff has prepared the above-referenced ordinance. It would, if adopted, amend the Riverside County Land Use Ordinance to immediately prohibit the establishment of medical marijuana dispensaries in Riverside County. It would, in addition, make other minor changes to the Land Use Ordinance so that the prohibition could be properly situated within that ordinance. Findings that support the adoption of the ordinance are set forth below following a summary of the applicable law relating to marijuana, a discussion of the secondary effects of medical marijuana dispensaries, and a discussion of the County's actions to date.

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REVIEWED BY EXECUTIVE OFFICE
 DATE: 9/29/06
 Department of Administration

Robert C. Johnson
Planning Director

FINANCIAL DATA

Current F.Y. Total Cost: \$
 Current F.Y. Net County Cost: \$
 Annual Net County Cost: \$

In Current Year Budget:
 Budget Adjustment:
 For Fiscal Year:

SOURCE OF FUNDS:

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

County Executive Office Signature

Dep't Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.:

District:

Agenda Number:

3.29

FORM APPROVED COUNTY COUNSEL

SEP 29 2006

BY: [Signature]

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A. Summary of Marijuana Law:

Under the *Controlled Substances Act*, enacted by the United States Congress in 1970, marijuana is classified as a Schedule I controlled substance. This classification is based on a determination that marijuana (1) has a high potential for abuse, (2) has no currently accepted use for medical treatment, and (3) is not accepted as safe, even when used under medical supervision. This federal law makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States. Use of marijuana is also prohibited under the "California Uniform Controlled Substances Act," passed in 1972.

On November 5, 1996, California voters passed Proposition 215, the "*Compassionate Use Act of 1996*," with the stated intent of ensuring that seriously ill individuals have the right to obtain and use marijuana for medical purposes when recommended by a physician. This voter initiative exempts patients and their primary caregivers from prosecution under State laws that otherwise prohibit the cultivation or possession of marijuana.

Shortly after Proposition 215 passed, medical marijuana dispensaries began appearing in Oakland, San Francisco and Santa Cruz. The federal Drug Enforcement Agency (DEA) took an aggressive role to close these businesses as being in violation of federal law. This enforcement activity resulted in a number of significant court decisions. The first of these decisions was *United States v. Oakland Cannabis Buyers Cooperative, et al.* (2001) 532 U.S. 483. In that case, the United States Supreme Court held that there is no medical necessity exception to the prohibition against possession and use of marijuana under federal law, even when the patient is "seriously ill" and lacks alternate sources of relief. In *People v. Mower* (2002) 28 Cal. 4th 457, the California Supreme Court held that although Proposition 215 exempts qualified individuals from certain state marijuana laws, it does not grant an absolute immunity from arrest. Instead, it provides a limited immunity from prosecution, and may provide a basis for a pretrial motion to set aside an indictment or a defense at trial.

In 2003, the State legislature passed Senate Bill 420, effective January 1, 2004, which established the Medical Marijuana Program. This legislation creates a voluntary system for qualified patients and their caregivers to obtain identification cards, issued by counties, which will insulate them from arrest for violations of State law relating to marijuana. It does not expressly authorize establishment of medical marijuana dispensaries. Nevertheless, after passage of SB 420 a number of people opened, or attempted to open, medical marijuana dispensaries in cities throughout the state.

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On June 6, 2005, the United States Supreme Court issued its decision in *Gonzales v. Raich* (2005) 125 S. Ct. 2201, which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and, under the federal Controlled Substances Act, the power to prohibit local cultivation and use of marijuana even though it would be allowed under California law. As a result of this decision, federal law enforcement officers may enforce federal drug laws against Californians who cultivate or use medical marijuana.

Presently, the counties of San Diego, San Bernardino, and Merced have joined in a lawsuit against the State of California to seek the court's declaration that California's Proposition 215 (Health & Safety Code §11362.5) and its implementing legislation (Health & Safety Code §§ 11362.7-11362.83) are preempted under the Supremacy Clause of the United States Constitution. (See San Diego County Superior Court Case No. GIC 860665).

Given the conflict between federal and state law regarding marijuana regulation, permitting medical marijuana dispensaries may constitute illegal activity under federal law and may subject the County and/or its officials and employees to prosecution under federal law.

B. Secondary Effects of Dispensaries and Similarly Operating Cooperatives:

Medical marijuana dispensaries and similarly operating cooperatives have secondary effects. The California Court of Appeal found via undisputed declarations that there had been an "indiscriminate and uncontrolled pattern of sale to thousands of persons among the general public, including persons who had not demonstrated any recommendation or approval of a physician and, in fact, some of whom were not under the care of a physician, such as undercover officers. Young children were seen wandering in and out of the premises, and some persons who had purchased marijuana on respondents' premises were reselling it unlawfully on the street." *People ex rel. Lungren v. Peron*, 59 Cal. App. 4th 1383, at 1387.

In addition, crimes highly correlated with medical marijuana dispensary operations have been committed in surrounding communities. There are numerous reported incidents of crimes related to medical marijuana dispensaries and similarly operating cooperatives.

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The following is a compilation of reports generated by various public agencies relating to the secondary effects of medical marijuana dispensaries and similarly operating cooperatives:

1. In June 2006, the City of El Cerrito's Police Department created a "Report on Medical Marijuana Dispensaries". In preparation for this report, El Cerrito Police Department searched media databases and contacted law enforcement agencies in 25 cities, 11 counties and 2 unincorporated towns in California where medical marijuana dispensaries are currently located. This report summarizes the problems that the medical marijuana dispensaries caused in each of these jurisdictions, including, but not limited to robberies, assaults, burglaries, homicides, car-jacking, resale of marijuana to individuals outside of the dispensary, loitering, excessive amounts of pedestrian and vehicular traffic and disruption of neighboring businesses. (Exhibit A)

This report was presented to the California Chiefs of Police Association and is available online at:

http://www.californiapolicechiefs.org/nav_files/search/ordinances.html.

This site contains a list of law enforcement concerns with medical marijuana dispensaries and an April 2006 survey of how California cities approach dispensaries. (Exhibit B)

2. A May 8, 2006 report by the Police Chief, City Attorney, and Community Development Director of the City of Livermore, California identified enforcement issues associated with medical marijuana dispensaries including, but not limited to: Marijuana related driving under the influence (DUI), increase of unreported crimes to avoid negative publicity to the dispensary, street dealers selling at lower prices to entice qualified patients from dispensaries, problems of patients selling to non-patients, robberies, sale of other illegal drugs in dispensaries. (Exhibit C)
3. A September 27, 2006 memorandum from the City of Fremont Police Chief listed many of the same secondary effects of dispensaries identified by the City of Livermore. In addition, the City of Fremont also included

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burglaries, trading marijuana for sex, and presence of a "physician" on the premises issuing recommendation for use. (Exhibit D)

4. David J. Wolfe, Assistant City Attorney for the City of Clovis, California prepared the "Report on Laws Pertaining to Medical Marijuana: Review of Statewide Approach by Cities and Counties" on April 22, 2005. Mr. Wolfe identified on pages 10 to 13 of his report an extensive list of concerns with both distribution and cultivation of medical marijuana. These concerns varied from crimes related to sales and thefts of marijuana to the offensive "skunk like" odors being detected far beyond the property boundaries of the marijuana gardens. (Exhibit E)
5. In the staff report presented at the May 2, 2006 city council meeting for the City of Dublin, California, there are reports on crimes around dispensaries in the unincorporated areas of Alameda County and the City of Berkeley. Attachment 3 to the staff report is a memorandum from the City of Dublin's Police Department on the statistics of crimes occurring at both active and inactive marijuana dispensaries in the unincorporated areas of San Leandro and Hayward. Included in Attachment 4 to the staff report is an April 23, 2004 memorandum from Lieutenant A. Yuen to Berkeley's Chief of Police R. L. Meisner stating "there is also a tremendous potential for crime and violence associated with the distribution and cultivation of marijuana." (Exhibit F)
6. The Police Chief for the City of Rocklin, California in his July 13, 2005 memorandum to his mayor and council members detailed the negative impacts reported by cities such as Roseville, Oakland, Hayward, Lake County and Fairfax. (Exhibit G)
7. In September 2006, the Riverside County District Attorney's Office issued a white paper entitled "Medical Marijuana: History and Current Complications." This white paper reported the secondary effects of dispensaries to include the commission of crimes such as murders, robberies, possession of stolen guns, etc... (See white paper Page 7-8) (Exhibit H)

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C. County of Riverside's Actions Taken to Date:

On August 23, 2005, the Board of Supervisors approved Ordinance No. 449.223, thereby placing a 45-day moratorium on medical marijuana dispensaries that might seek to locate in the County of Riverside. The moratorium was subsequently extended twice on September 27, 2005 and again on March 28, 2006. Pursuant to state law, the moratorium may not be extended more than twice. The moratorium will expire on October 4, 2006.

In light of the above, staff recommends that the Board make the following findings:

FINDINGS:

1. There is currently a conflict between federal and state law relating to marijuana regulation. Permitting medical marijuana dispensaries may constitute illegal activity under federal law and may subject the County and/or its officials and employees to prosecution under federal law.
2. The immediate prohibition of medical marijuana dispensaries is necessary due to the impending expiration of the County's moratorium on the establishment of such dispensaries in the County.
3. The immediate prohibition of medical marijuana dispensaries is necessary to protect the health, safety and welfare of Riverside County residents given the secondary effects of such dispensaries.
4. The ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3), which provides that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The prohibition on the establishment of medical marijuana dispensaries would not result in any direct or indirect physical change in the environment and would not, therefore, cause a significant environmental effect.

ORDINANCE NO. 348.4422
AN ORDINANCE OF THE COUNTY OF RIVERSIDE
AMENDING ORDINANCE NO. 348
RELATING TO ZONING

The Board of Supervisors of the County of Riverside Ordains as Follows:

Section 1. The first sentence of Section 3.1 of Ordinance No. 348 is amended to read as follows:

“SECTION 3.1. ZONES. For the purpose of providing a uniform basis for zoning, the following zone classifications, referred to alternatively herein as zones, may be applied to the lands in the unincorporated area of the County of Riverside:”

Section 2. Section 3.2 of Ordinance No. 348 is amended to read as follows:

“SECTION 3.2. ZONE CLASSIFICATION BOUNDARIES. Where uncertainty exists as to the boundaries of any zone classification, the following rules shall apply:

- a. Where boundaries are indicated as approximately following street lines, alley lines, or lot lines, such lines shall be construed to be boundaries.
- b. Where boundaries divide lots, the location of such boundaries shall be determined by use of the scale appearing on the underlying map, unless the boundaries are indicated by specific dimensions.
- c. If any public street, alley or other right of way is vacated or abandoned, the land formerly in such street, alley or right of way shall be included within the boundaries of the zone classification applicable to the adjoining property on each side. In the event such street, alley or right of way was a zone classification boundary, the new zone classification boundary shall be the former center line of such street, alley or right of way.”

Section 3. A new Section 3.3 is added to Ordinance No. 348 to read as follows:

“SECTION 3.3. USES ALLOWED IN ZONE CLASSIFICATIONS. The terminology used in Section 3.1 of this ordinance is general only and is not intended to be descriptive of all uses allowed in the zone classifications. The zone classifications are specifically set forth in subsequent articles of this ordinance to which reference should be made to determine all the uses permitted therein. When a use is not specifically listed as permitted or conditionally permitted in a

1 zone classification, the use is prohibited unless, in circumstances where this ordinance empowers
2 him to do to, the Planning Director makes a determination that the use is substantially the same in
3 character and intensity as those uses permitted or conditionally permitted in the zone
4 classification. In no event, however, shall a medical marijuana dispensary as defined in this
5 ordinance be considered a permitted or conditionally permitted use in any zone classification. A
6 medical marijuana dispensary is hereby prohibited in all zone classifications and no permit of any
7 type shall be issued therefor.”

8 Section 4. A new Section 21.51i. is added to Ordinance No. 348 to read as follows:
9 “SECTION 21.51i. MEDICAL MARIJUANA DISPENSARY. Any facility or location,
10 whether fixed or mobile, where medical marijuana is made available to, distributed to,
11 or distributed by, one or more of the following: a primary caregiver, a qualified patient, or
12 a patient with an identification card as those terms are defined in Health and
13 Safety Code section 11362.5 et seq. A “medical marijuana dispensary” shall not include
14 the following uses, provided that such uses comply with this ordinance and all other
15 applicable laws, including, but not limited to, Health and Safety Code section
16 11362.5 et seq.: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and
17 Safety Code, a health facility licensed pursuant to Chapter 2 of Division 2 of the Health
18 and Safety Code, a residential care facility for persons with chronic life threatening illness
19 licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a
20 residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the
21 Health and Safety Code, a residential hospice or a home health agency licensed pursuant
22 to Chapter 8 of Division 2 of the Health and Safety Code.”

23 Section 5. This ordinance is hereby declared to be an urgency measure and shall take effect
24 immediately upon its adoption. In accordance with the requirements of Government Code section 25123,
25 subdivision (d), the Board of Supervisors hereby declares that the provisions contained herein are
26 necessary for the immediate preservation of the public peace, health, or safety for the following reasons:
27 1) on October 4, 2006, the County’s moratorium on the establishment of medical marijuana dispensaries
28 will expire; 2) the moratorium cannot be further extended; 3) upon expiration of the moratorium, medical

1 marijuana dispensaries could arguably be established anywhere in the County ; and 4) based on reports
2 generated by various public agencies throughout California, the establishment of medical marijuana
3 dispensaries cause harmful secondary effects in communities, including, but not limited to, increased
4 homicides, increased robberies, increased assaults, increased burglaries, increased car-jackings, the resale
5 of marijuana to individuals, including minors, outside of the dispensaries, loitering, excessive amounts of
6 pedestrian and vehicular traffic and the disruption of neighboring businesses.
7

8 BOARD OF SUPERVISORS OF THE COUNTY
9 OF RIVERSIDE, STATE OF CALIFORNIA

10
11 By: _____
12 Chairman, Board of Supervisors

13 ATTEST:
14 NANCY ROMERO
15 Clerk of the Board

16
17 By: _____
18 Deputy

19 (SEAL)

20
21 APPROVED AS TO FORM
22 September 29, 2006

23
24 By: Katherine A. Lind
25 KATHERINE A. LIND
26 Principal Deputy County Counsel
27