

## **REPORT TO CITY COUNCIL**

**DATE:           SEPTEMBER 10, 2008**

**TO:             HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM:          GREG RAMIREZ, CITY MANAGER**

**BY:             LOUIS CELAYA, ASSISTANT TO THE CITY MANAGER**

**SUBJECT:       ADOPTION OF ORDINANCE NO 08-355; AN ORDINANCE OF THE  
CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA,  
AMENDING TITLE X (ZONING) OF THE AGOURA HILLS  
MUNICIPAL CODE PROHIBITING MEDICAL MARIJUANA  
DISPENSARIES IN ALL ZONES**

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At the August 27, 2008, City Council meeting, the Council held a public hearing, introduced, read by title only, and waive further reading of Ordinance No. 08-355, an amendment to Title X (Zoning) of the Agoura Hills Municipal Code prohibiting medical marijuana dispensaries in all zones of the City.

The proposed ordinance would prohibit medical marijuana dispensaries in all zones of the City and clarify that it would be “unlawful for any person or entity to own, manage, establish, conduct operate, or permit to be established, conducted, operated, owned, or managed as landlord, property owner, any medical marijuana dispensary, or to participate in as a landlord, owner, employee, contractor, agent or volunteer, or in any other manner or capacity, in medical marijuana dispensary in the City”. Additionally, the ordinance prohibits and voids the issuance of a business license or any other City permit to any business that violates federal law. At the meeting, the City Council was also advised that although the ordinance prohibits dispensaries, it does not limit qualified individual’s rights to process, use, or cultivate marijuana for their own medical purposes, as is presently authorized by Proposition 215 – Compassionate Use Act of 1996.

Following the adoption of the ordinance, City staff will notify all commercial property owners within the City limits of the new ordinance and its prohibition.

### **RECOMMENDATION**

Staff respectfully recommends the City Council adopt Ordinance No. 08-355 of the City Council of the City of Agoura Hills, California, Amending Title X (zoning) of the Agoura Hills Municipal Code prohibiting medical marijuana dispensaries in all zones.

Attachment: Ordinance No. 08-355

**ORDINANCE NO. 08-355**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING TITLE IX (ZONING) OF THE AGOURA HILLS MUNICIPAL CODE PROHIBITING MEDICAL MARIJUANA DISPENSARIES IN ALL ZONES**

**THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA** does ordain as follows:

**SECTION 1. Findings.**

The City Council of the City of Agoura Hills, as the legislative body of the City, makes the following findings in support of this zoning ordinance regulating land use within the City of Agoura Hills.

A. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, et seq., and entitled the Compassionate Use Act of 1996 (“the Act”). The Act decriminalized the use of marijuana for medical purposes.

B. On January 1, 2004, SB 420 went into effect. SB 420 was enacted by the Legislature to clarify the scope of the Act. On May 22, 2008, the constitutionality of SB 420 was called into question by the California Court of Appeal in *People v. Kelly*, -- Cal. Rptr. 3d -- (2 Dist. 2008).

C. Notwithstanding the status of SB 240, neither the Act nor its implementing legislation authorizes medical marijuana dispensaries nor requires the City to provide for medical marijuana dispensaries.

D. On September 27, 2006, the City Council adopted a forty-five (45) day interim zoning ordinance prohibiting the establishment of medical marijuana dispensaries in any zoning district within the city.

E. On November 27, 2006, the City Council adopted a second and final interim zoning ordinance, extending the moratorium on medical marijuana dispensaries in the City for an additional 22 months and 15 days.

F. Some California cities that have permitted the establishment of medical marijuana dispensaries have witnessed an increase in crime, such as burglaries, robberies, and sales of illegal drugs in the areas immediately surrounding such dispensaries, as shown in the studies and reports from the California Chiefs of Police Association, the Riverside County District Attorney’s Office, the City of Rocklin, and reports of various news agencies. Furthermore, the United States Department of Justice’s California Medical Marijuana Information report has advised that large-scale drug traffickers have been posing as “caregivers” to obtain and sell marijuana. A medical marijuana dispensary opened briefly in the City after providing false information regarding the nature of the use to the City in a business license application and to its landlord in an application to rent business space. If any of these circumstances were repeated in Agoura Hills, it could increase the likelihood that parties would traffic in illegal drugs in the City, thereby endangering the public health, safety and welfare.

G. In May 2001, the United States Supreme Court issued its decision in *United States v. Oakland Buyers' Cooperative*, 532 U.S. 483 (2001), holding that distribution of medical marijuana is illegal under the Federal Controlled Substances Act and that there is no medical necessity defense allowed under federal law. On June 6, 2005, the United States Supreme Court issued its decision in *Gonzales v. Raich*, 545 U.S. 1 (2005), which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and, under the Federal Controlled Substances Act, 21 USC Section 841, the power to prohibit local cultivation and use of marijuana even though it would be in compliance with California law. Further, the federal Drug Enforcement Agency has continued to enforce federal law by raiding and prosecuting medical marijuana dispensaries in other California cities. In light of these decisions and actions, it would be inconsistent and contrary to the public health, safety, and general welfare to permit the establishment of medical marijuana dispensaries, as defined herein, within the City insofar as such activities would constitute illegal activity under federal law.

H. This Ordinance is necessary to preserve the public health, safety and general welfare of the City and is not in conflict with the general laws.

I. This Ordinance is consistent with the City's General Plan and each element thereof.

J. California Environmental Quality Act (CEQA). It can be seen with certainty that this ordinance has no likelihood of causing a significant negative effect on the environment and accordingly both the City Council's action of adopting this ordinance and the effects derivative from that adoption are found to be exempt from the application of the California Environmental Quality Act of 1970, as amended, pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Title 14 CCR. 15061.(b)(3).) This finding is premised on the fact that the adoption of this ordinance will maintain the current environmental conditions arising from the current land use regulatory structure as adopted by the City without change or alteration.

K. On July 17, 2008, the Planning Commission of the City of Agoura Hills held a duly noticed public hearing to consider Ordinance 2008-355. Following the close of the public hearing, the Planning Commission adopted Resolution No. 940 recommending approval of Ordinance 2008-355.

L. On August 27, 2008, the City Council held a duly noticed public hearing on Ordinance 2008-355.

Title IX, Chapter 6, Part 2, Division 10, Section 9660, of the Agoura Hills Municipal Code is hereby adopted to read as follows:

**DIVISION 10 MEDICAL MARIJUANA DISPENSARIES PROHIBITED.**

9660

**(A) Purpose and Findings.**

The City Council finds that Federal and State laws prohibiting the possession, sale and distribution of marijuana would preclude the lawful opening and operation of Medical

Marijuana Dispensaries sanctioned by the City, and in order to serve public health, safety, and welfare of the residents and businesses within the City, the declared purpose of this chapter is to prohibit the operation or establishment of Medical Marijuana Dispensaries within the City, as provided in this section.

**(B) *Definitions.***

For purposes of this section, the following term is defined:

(1) **Medical Marijuana Dispensary:** is any location, structure, facility, vehicle, store, co-op, residence, or similar facility used, in full or part, as a place at or in which marijuana is sold, traded, exchanged, bartered for in any way, made available, located, stored, placed, or cultivated, including any of the foregoing if used in connection with the delivery of marijuana.

**(C) *Medical Marijuana Dispensaries Prohibited.***

A Medical Marijuana Dispensary is not a permitted use anywhere in the City. It shall be unlawful for any person or entity to own, manage, establish, conduct, or operate, or permit to be established, conducted, operated, owned or managed as a landlord or property owner, any Medical Marijuana Dispensary, or to participate as a landlord, owner, employee, contractor, agent or volunteer, or in any other manner or capacity, in any Medical Marijuana Dispensary, in the City. The issuance of business license or other City permit to any business prohibited by federal law is prohibited and void.

**(D) *Use or Activity Prohibited by State or Federal Law.***

Nothing contained in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any State or Federal law.”

**SECTION 2.** Existing Nonconforming Uses. Any Medical Marijuana Dispensary, or Marijuana Dispensary, Store, or Co-Op, existing within the City on the effective date of this ordinance shall cease operations immediately.

**SECTION 3.** No Conflict With Existing Law. This zoning ordinance shall in no way limit qualified individuals’ right to possess, use or cultivate marijuana for their own medicinal purposes as is presently authorized by the laws of the State of California as set forth in the applicable provisions of the Health and Safety Code. Any court called upon to construe this ordinance shall do so in a way that does not conflict with state law while preserving the intent of the City Council in enacting this ordinance.

**SECTION 4.** Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of the this ordinance. The City Council hereby declares it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

**SECTION 5.** Savings Clause. Neither the adoption of this Ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution of any violation of any City ordinance or provision of the Agoura Hills Municipal Code, committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof.

**SECTION 6.** The City Clerk shall certify to the passage of this Ordinance and shall cause same to be published pursuant to state law within fifteen (15) days after its passage, and said Ordinance shall become effective 30 days after its passage.

**INTRODUCED** this 27<sup>th</sup> day of August, 2008.

**PASSED, APPROVED, AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_ 2008 by the following vote:

AYES:           ( )  
NOES:           ( )  
ABSENT:       ( )  
ABSTAIN:       ( )

ATTEST:

BY:

\_\_\_\_\_  
Kimberly Rodrigues, CMC, City Clerk  
City of Agoura Hills

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John M. Edelston, Mayor  
City of Agoura Hills

APPROVED AS TO FORM:

\_\_\_\_\_  
CRAIG A. STEELE, City Attorney  
City of Agoura Hills