



CITY OF CARSON

PLANNING COMMISSION STAFF REPORT

PUBLIC HEARING: June 24, 2008
SUBJECT: Medical Marijuana Dispensaries Ordinance
APPLICANT: City of Carson
REQUEST: Recommend approval of an Ordinance Amendment prohibiting the establishment or use of an existing business for the distribution or sale of medical marijuana within the City of Carson
PROPERTY INVOLVED: Citywide

COMMISSION ACTION

- Concurred with staff
 Did not concur with staff
 Other

COMMISSIONERS' VOTE

AYE	NO		AYE	NO	
		Chairperson Faletogo			Graber
		Cannon			Saenz
					Verret

Item No. 11A

I. Introduction

The City of Carson is proposing an Ordinance to prohibit the establishment or use of an existing business for the distribution or sale of medical marijuana within all zoning districts. Modifications to the Carson Municipal Code (CMC) include the addition of a definition (Section 9191.3915), prohibiting medical marijuana dispensaries within all zones in the City.

II. Background

On April 3, 2007, the Carson City Council adopted Ordinance No. 07-1374U, establishing a 45-day moratorium on the establishment of medical marijuana dispensaries and prohibiting existing businesses from dispensing medical marijuana. Since then, Staff has taken measures to alleviate the conditions that led to the adoption of Ordinance No. 07-1374U.

At the time of the adoption of this Ordinance, a business by the name of Herbal Blessings was seeking authorization to continue operations as a medical marijuana dispensary. Since the adoption of the Ordinance, staff has assisted the owner of Herbal Blessings in obtaining an early termination of its lease agreement and the business is closed.

On May 15, 2007, the City Council directed staff to develop a comprehensive and appropriate revision to the City's Zoning Ordinance including, but not limited to: a) an assessment of whether medical marijuana dispensaries are an appropriate use in the city; (b) if such uses are appropriate in the city, the preparation of development and operating standards for the establishment and operation of medical marijuana dispensaries; and (c) if such uses are appropriate in the city, the incorporation of adequate conditions of approval relative to the establishment and operation such establishment and operation of such businesses and establishments.

Subsequently, City Council approved Ordinance No. 07-1386U, extending the prohibition on the establishment of medical marijuana dispensaries and prohibiting existing businesses from dispensing medical marijuana during the pendency of the City's review and adoption of permanent zoning regulations (Exhibit 1 and 2). The Ordinance established a ten-month fifteen-day moratorium period, which expired on March 30, 2008.

City staff has prepared an assessment and draft ordinance addressing medical marijuana dispensaries in the CMC as requested by the City Council.

III. Project Description

The proposed action would modify the CMC. Specifically, the proposed modifications will prohibit the establishment of facilities that sell, distribute, give, or otherwise transmit marijuana for medicinal purposes, including medical marijuana dispensaries. The modifications to the CMC include the addition of a definition (Section



9191.3915), prohibiting medical marijuana dispensaries within all zones in the City. No other modifications to the CMC are proposed.

IV. Analysis

Immediately upon the adoption of Urgency Ordinance No. 07-1386 and in order to address the existing conditions that led to the adoption of the ordinance, planning staff initiated the following efforts:

- Initiated discussions with the Los Angeles County Sheriff's Department regarding their concerns in relation to medical marijuana dispensaries in the city;
- Initiated a survey of areas within the city to determine which sites would be suitable for medical marijuana dispensaries and made some preliminary identification of sites within those areas what would be appropriate for such businesses and establishments;
- Initiated the conduct of a survey of other cities to learn about their regulatory requirements concerning the establishment and operation of medical marijuana dispensaries, determine their effectiveness, and assess their applicability to Carson;
- Requested that the City Attorney's office research allowable regulations upon medical marijuana dispensaries and held meetings with representatives of the City Attorney's office and City Manager's office to discuss such regulations and the results of surveys conducted by Planning staff to identify suitable sites for medical marijuana dispensaries.

State of California Regulations

In 1996, California voters 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 intent of Proposition 215 was to enable persons who are in need of marijuana for medicinal purposes to obtain and use it under limited, specified circumstances. On January 1, 2004, Senate Bill (SB) 420 went into effect. SB 420 was enacted by the Legislature to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act. However, neither Proposition 215, nor SB 420 authorizes the *establishment* of medical marijuana dispensaries within the State of California.



Federal Regulations

It is a federal crime to manufacture, distribute, dispense, or possess marijuana. The State of California also prohibits the possession or cultivation of marijuana. Unlike federal law, California creates an exception from these prohibitions for certain parties relating to the use of marijuana for medical purposes ("medical marijuana").

On June 6, 2005, the Supreme Court of the United States rendered an opinion in *Gonzales v. Raich* that, in spite of California's exception for medical marijuana, federal law still prohibits marijuana in all circumstances, and the federal government has the right to enforce its laws against private individuals using medical marijuana for purely personal consumption. Accordingly, the possession or use of medical marijuana is a federal crime even though such actions may not violate state law.

Review of Other Ordinances

Staff has reviewed fourteen (14) Medical Marijuana Dispensary Ordinances from the following cities: Albany, Berkeley, Gardena, Hawthorne, Hermosa Beach, Lawndale, Malibu, Oakland, Rancho Palos Verdes Estates, Redondo Beach, Torrance, West Hollywood, Whittier, and Los Angeles (County).



CITY	Ordinance Banning Medical Marijuana Dispensaries	Ordinance Regulating Medical Marijuana Dispensaries	COMMENTS
Albany		X	Use is permitted with a Conditional Use Permit (CUP), however only one (1) dispensary is permitted within the city limits at any one time.
Berkeley		X	Use is permitted within commercial zones and some residential zones. Cultivation of plants are permitted with a use permit. Locational requirements are imposed.
Gardena	X		Use is prohibited within all zoning districts within the city.
Hawthorne	X		Use is prohibited within all zoning districts within the city.
Hermosa Beach	X		Use is prohibited within all zoning districts within the city.
Lawndale	X		Use is prohibited within all zoning districts within the city.
Malibu	X		Use is prohibited within all zoning districts within the city.
Oakland		X	Use is permitted with a Conditional Use Permit (CUP), however only four (4) dispensaries are permitted within the city limits at any one time.
Rancho Palos Verdes Estates	X		Use is prohibited within all zoning districts within the city.
Redondo Beach	X		Use is prohibited within all zoning districts within the city.
Torrance	X		Medical Marijuana dispensaries are regulated through business licenses. Prohibits the issuance of business licenses for any illegal activity (state or federal).
West Hollywood		X	Use is permitted with a Conditional Use Permit (CUP), however only four (4) dispensaries are permitted within the city limits at any one time.
Whittier		X	Use is permitted with a Conditional Use Permit (CUP).
Los Angeles County		X	Use is permitted with a Conditional Use Permit (CUP).



The majority of the ordinances reviewed, including those from neighboring cities, prohibit medical marijuana dispensaries. However, even though federal law prohibits medical marijuana dispensaries numerous cities throughout California continue to permit and regulate them within their jurisdictions. As of May 2008, approximately sixty-three (63) cities and four (4) California counties have banned medical marijuana dispensaries, while twenty-nine (29) cities and eight (8) counties allow dispensaries in certain regulated circumstances. Approximately seventy-nine (79) cities and seven (7) counties still have moratoria in effect (<http://www.safeaccessnow.org/>).

Those cities and counties that have permitted medical marijuana dispensaries have seen a number of negative impacts on their communities, despite their attempts to regulate secondary impacts. Investigations into the illegal distribution of drugs have led enforcement agencies to medical marijuana dispensaries from which drugs are being diverted either by "patient" resale to people without prescriptions, by armed robbery of facilities' stocks, or by active collusion of operators with dealers in the illegal market.

For instance, on June 15, 2005, the head of the San Francisco Police Department's Bayview station noted that medical marijuana dispensaries had been used as a cover for illegal sales. On December 12, 2005, Drug Enforcement Administration agents raided thirteen (13) medical marijuana dispensaries in the San Diego area, indicating that the dispensaries had been operating as a front for the distribution of marijuana without a doctor's recommendation. Then, on July 25, 2007, the Drug Enforcement Administration raided ten (10) local medical marijuana facilities in the County of Los Angeles. The number of dispensaries had grown to more than 400 in Los Angeles County and the surrounding area. In addition, the City of Anaheim Police Department stated in the Orange County Register, "Anaheim wins marijuana challenge" (2007) that an undercover police officer went to a medical marijuana dispensary (*under investigation*) and got a name of a doctor to give him a prescription. The officer told the doctor that he had no medical problems, but was still given a recommendation for marijuana from the doctor in exchange for \$200.

Existing Condition

The City of Carson currently has no medical marijuana dispensaries operating within the city. Currently, the CMC does not specifically address the existence or location of medical marijuana dispensaries within the City of Carson. Pursuant to Section 9131.3 of the CMC, all uses are prohibited except as expressly permitted by the provisions of the CMC. As such, medical marijuana dispensaries have been determined to be a prohibited use. An ordinance amendment is proposed to add a definition of a medical marijuana dispensary so there is no uncertainty as to the use being prohibited.

Presently there is a conflict between the Federal Regulations which prohibit the manufacturing, distribution, dispensing, or possession of marijuana and the exemption created by the State of California Proposition 215 and SB 420 allowing



the possession or use of marijuana for medicinal purposes by a person with a physician's recommendation of the primary caregiver of a person with a physician's recommendation. Based on staff's review of other cities' medical marijuana dispensary ordinances, Proposition 215, Senate Bill 420, *Gonzales v. Raich*, and recent events in regards to illegal dispensary activities, staff recommends upholding current Federal regulations and adopting an ordinance prohibiting the establishment of medical marijuana dispensaries within the City.

Proposed Ordinance

The proposed ordinance adds the following to Part 9. Definitions:

Section 9191.391.5, "General definitions – Medical Marijuana Dispensary" hereby added to the Carson Municipal Code and shall read in its entirety as follows:

"Medical marijuana dispensary" means any establishment, business, enterprise, or location where marijuana is distributed, transmitted, given to, or otherwise provided to qualified patients or primary caregivers in accordance with California Health and Safety Code Sections 11362.5 through 11362.83, inclusive, commonly referred to as "The Compassionate Use Act of 1996" and "Senate Bill 420." A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Health and Safety Code Division 2, Chapter 1; a health care facility licensed pursuant to Health and Safety Code, Division 2, Chapter 2; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Health and Safety Code, Division 2, Chapter 3.01; a residential care facility for the elderly licensed pursuant to Health and Safety Code, Division 2, Chapter 3.2; a residential hospice, or a home health agency licensed pursuant to Health and Safety Code, Division 2, Chapter 8; as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code § 11362.5 et seq. Medical marijuana dispensaries are prohibited in the City of Carson.

General Plan

The proposed ordinance supports and is consistent with General Plan Land Use Goal LU-3, removal of incompatible and non-conforming uses which detract from the aesthetics and safety of the community.



V. Environmental Review

The proposed Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not considered a "project" as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, since it has no potential for resulting in physical change to the environment, directly or indirectly.

VI. Conclusion

The implementation of the ordinance would uphold federal law and facilitate the on-going protection of the health, safety and welfare of the community.

VII. Recommendation

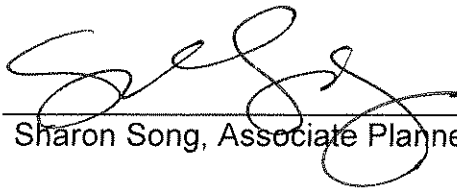
That the Planning Commission:

WAIVE further reading and RECOMMEND APPROVAL of Resolution No. 08--- entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON RECOMMENDING TO CITY COUNCIL THE APPROVAL OF AN ORDINANCE ADDING CARSON MUNICIPAL CODE SECTION 9191.391.5 DEFINING AND PROHIBITING THE ESTABLISHMENT OR USE OF ANY BUSINESS THAT DISTRIBUTES OR SELLS MEDICAL MARIJUANA WITHIN THE CITY OF CARSON".

VIII. Exhibits

1. Ordinance No. 07-1374U
2. Ordinance No. 07-1386U
3. Proposed Resolution


Prepared by:


Sharon Song, Associate Planner

Reviewed by:


John F. Signo, AICP, Senior Planner

Approved by:


Sheri Repp, Planning Manager



ORDINANCE NO. 07-1374 U

**AN INTERIM ORDINANCE OF THE CITY OF CARSON ENACTED
PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858
PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA
DISPENSARIES AND PROHIBITING EXISTING BUSINESSES FROM
DISPENSING MEDICAL MARIJUANA DURING THE PENDENCY OF THE
CITY'S REVIEW AND ADOPTION OF PERMANENT ZONING
REGULATIONS FOR SUCH USES AND DECLARING THE URGENCY
THEREOF**

WHEREAS, the Carson Municipal Code, including the Carson Zoning Code, currently lacks the ability to regulate medical marijuana dispensaries or the sale of medical marijuana by an existing business; and

WHEREAS, the City of Carson ("City") has received inquiries from potential business owners regarding the possibility of locating a medical marijuana dispensary in the city and from potential business owners implying that their business may ultimately expand to include the sale of medical marijuana; and

WHEREAS, the City Council anticipates that an existing business may begin selling medical marijuana before a non-urgency ordinance would become effective; and

WHEREAS, other California cities that have permitted the establishment of medical marijuana dispensaries have witnessed negative secondary effects including increased crime, such as burglaries, robberies, and sale of illegal drugs in the areas immediately surrounding such dispensaries; and

WHEREAS, City staff require time to develop appropriate regulations of medical marijuana dispensaries consistent with state and federal law; and

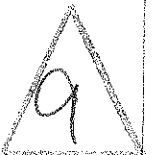
WHEREAS, the City Council desires, on an urgency basis, to temporarily prohibit medical marijuana dispensaries within the City; and

WHEREAS, Government Code Sections 36934, 36937 and 65858 expressly authorize the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health or safety and to prohibit a use that is in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings

EXHIBIT 1



A. In 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Sections 11362.5, *et. seq.*, "The Compassionate Use Act of 1996" ("Act")) to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances. The State legislature subsequently enacted Senate Bill 420 in 2003 to clarify the scope of the Act, allowing local governments to adopt and enforce rules and regulations consistent with Senate Bill 420.

B. There are currently no ordinances in the Carson Municipal or Zoning Code (collectively, "Code") specifically regulating or monitoring the location, zoning standards, or other aspects of the facilities where medical marijuana will be dispensed to eligible persons under the Act.

C. Although the City has made a conscientious effort to plan for specific uses within all zone districts and to anticipate conflicts between competing land uses in order to protect the public's health, safety, and welfare, the Code does not currently provide specific development regulations or definitions relative to the use or placement of dispensaries intended for the distribution of marijuana for medicinal purposes.

D. The City has received inquiries regarding applications for medical marijuana dispensaries and has concerns that existing businesses may begin selling medical marijuana.

E. Carson Municipal Code Section 9131.1 states that all uses are prohibited except as expressly permitted by the provision of the Zoning Ordinance. To authorize the establishment of medical marijuana dispensaries, the Carson Municipal Code would require revisions to specifically identify such use and provide for the method by which they may be permitted by the City.

F. The establishment of medical marijuana dispensaries without appropriate rules and regulations could result in the creation of negative secondary effects such as an increase in crime in the areas immediately surrounding such dispensaries and an irreversible incompatibility of land uses. Other jurisdictions such as the City of West Hollywood, Alameda County, Oakland and the City of Anaheim have received and investigated a number of complaints of violent criminal activity, including armed robberies and burglaries, at or near medical marijuana dispensaries. Such criminal activity is the type of negative secondary effect associated with the presence of medical marijuana facilities that a zoning study will seek to limit.

G. To allow time for the City to consider, study and enact regulations for medical marijuana dispensaries, it is necessary to temporarily suspend the approval of medical marijuana dispensaries and to prohibit existing businesses from selling medical marijuana as such use may be in conflict with the development standards and implementing regulations that the City ultimately imposes after the City considers and studies within a reasonable time.

H. A moratorium will provide the City with time to draft and adopt regulations, that are consistent with the Act and Senate Bill 420, to regulate the location and operation of medical marijuana dispensaries and existing businesses which seek to supplement their current services offered to include the sale of medical marijuana in a manner that is consistent with the Code, compatible with surrounding neighborhoods and in the best interests of the residents of the City.



I. A moratorium will also provide the City time to evaluate the impact, if any, that the recent United States Court case of *Gonzalez, et al. v. Raich, et al.*, 125 S.Ct. 2195 (June 6, 2006) has on any land use regulations that the City may consider in regulating these facilities. The *Gonzales* case found that federal law prohibiting the possession, use and distribution of marijuana is enforceable in California as to those persons who are eligible to use marijuana under the Act, finding that Congress has the authority under the Commerce Clause to prohibit the local cultivation and use of marijuana for medicinal purposes, even if that activity is in compliance with California law. The result of this opinion implies that, unless Congress acts to change federal law, medical marijuana uses in California will be subject to federal prosecution under existing federal law.

SECTION 2. Interim Prohibition

From and after the date of this ordinance, no use permit, variance, building permit, business license or any other entitlement for use shall be approved or issued for the establishment or operation of, and no person shall otherwise establish, a "medical marijuana dispensary" and no existing business shall begin dispensing medical marijuana for a period of 45 days.

For purposes of this ordinance, "medical marijuana dispensary" shall mean any facility or location where marijuana is made available, sold, transmitted, given, or otherwise provided to qualified individuals in accordance with the Act.

SECTION 3. Urgent Need

This interim ordinance is urgently needed for the immediate preservation of the public health, safety, and general welfare, and it shall take effect immediately upon adoption, and it shall be of no further force and effect 45 days following the date of its adoption unless extended in accordance with the provisions set forth in Government Code Section 65858.

SECTION 4. Authority

Government Code Section 65858 provides that an urgency measure in the form of an initial interim ordinance may be adopted without prior public notice by a four-fifths vote of the City Council, which shall be effective for only 45 days following its date of adoption. Government Code Section 65858 further provides that such an urgency measure may be extended following compliance with that section for up to an additional 22 months and 15 days beyond the original 45-day period.

SECTION 5. Penalties

The definitions and penalties for land use violations that are prescribed in the Carson Zoning Code shall apply to violations of the provisions of this Interim Ordinance.

SECTION 6. Severability

If any provision of this Interim Ordinance or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Interim Ordinance which can be given effect without the invalid provision or application and to this end the provisions of this Interim Ordinance are hereby declared to be severable.

PASSED, APPROVED AND ADOPTED THIS 4th DAY OF APRIL, 2007.


MAYOR JIM DEAR

ATTEST:


CITY CLERK HELEN KAWAGOE

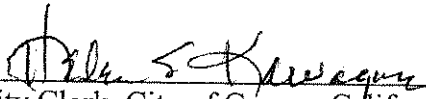
APPROVED AS TO FORM:


CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF CARSON)

I, Helen S. Kawagoe, City Clerk of the City of Carson, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing ordinance, being Ordinance No. 07-1374(U) was duly and regularly adopted by the City Council of said City on an urgency basis at an adjourned regular meeting of said Council, duly and regularly held on the 4th day of April, 2007, and that the same was passed and adopted by the following roll call vote:

AYES:	COUNCIL MEMBERS:	Mayor Dear, Santarina, Williams, Gipson, and Davis-Holmes
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None


City Clerk, City of Carson, California



ORDINANCE NO. 07-1386U

**AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF CARSON, CALIFORNIA,
EXTENDING ORDINANCE NO. 07-1374U, TEMPORARILY PROHIBITING
THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND
PROHIBITING EXISTING BUSINESSES FROM DISPENSING MEDICAL
MARIJUANA, FOR AN ADDITIONAL TEN MONTHS AND FIFTEEN DAYS**

Summary: This Interim Ordinance would extend Interim Ordinance No. 07-1374U, temporarily prohibiting the establishment of medical marijuana dispensaries and the sale of medical marijuana by existing business within the City of Carson for an additional ten months and fifteen days.

WHEREAS, the City Council of the City of Carson ("City Council") adopted Ordinance No. 07-1374U on April 4, 2007; and

WHEREAS, Interim Ordinance No. 07-1374U prohibits the establishment of medical marijuana dispensaries and the sale of medical marijuana by existing business within the City of Carson; and

WHEREAS, Interim Ordinance No. 07-1374U is a temporary ordinance which will expire on May 19, 2007, 45 days after its adoption; and

WHEREAS, the Carson Municipal Code ("CMC"), including the Carson Zoning Code, currently lacks the ability to regulate medical marijuana dispensaries or the sale of medical marijuana by an existing business; and

WHEREAS, City staff require time to develop appropriate regulations for medical marijuana dispensaries and the sale of medical marijuana by an existing business which are consistent with state and federal law; and

WHEREAS, pursuant to State law, before the City may adopt revisions to its Zoning Code, the City must refer such matter to its Planning Commission for evaluation and recommendation; and

WHEREAS, with assistance from staff, the City's Planning Commission is undertaking a comprehensive and unified study of medical marijuana dispensaries, including an analysis of the applicable laws and standards relating to medical marijuana dispensaries which are being imposed in other cities, and will be preparing recommendations for a permanent ordinance regulating medical marijuana dispensaries and the sale of marijuana by existing businesses, but will not complete its work before the interim ordinance expires on May 19, 2007; and

WHEREAS, after notice and a public hearing, Government Code Sections 65858, 36934 and 36937 permit the City Council to extend Interim Ordinance No. 07-1374U for an additional

ten months and fifteen days to allow the Planning Commission additional time to complete its analysis and recommendations; and

WHEREAS, the proposed extension of Interim Ordinance No. 07-1374U was agendized for a duly noticed public hearing before the City Council on May 15, 2007; and

WHEREAS, at its public meeting of May 15, 2007, evidence was heard and presented from all persons interested in affecting said proposal, from all persons protesting the same and from members of the City staff, and the City Council has reviewed, analyzed and studied said proposal.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Carson finds that the above recitals are true and correct and incorporated herein by this reference.

SECTION 2. Interim Ordinance No. 07-1374U is hereby extended for an additional ten months and fifteen days beyond its original expiration date, such that Interim Ordinance No. 07-1374U will now expire twelve months following its April 4, 2007, adoption date.

SECTION 3. Urgency Interim Ordinance No. 07-1374U is hereby extended pursuant to the authority conferred upon the City Council of the City of Carson by Government Code Sections 65858, 36934 and 36937, and shall remain in full force and effect immediately upon adoption of this extension by a four-fifths (4/5) vote of the City Council as if and to the same extent that such ordinance had been adopted pursuant to each of the individual sections set forth hereinabove.

SECTION 4. In adopting this extension, the City Council finds and determines that each of the recitals contained in Interim Ordinance No. 07-1374U remains true and correct, and that the adoption of this extension is necessary to continue protecting the public safety, health and welfare, in at least the following respects:

(a) If the establishment of medical marijuana clinics is not regulated by the Carson Municipal Code, clinics may be established in locations that may be inappropriate such as those locations in close proximity to schools, parks and recreation areas where children congregate, and

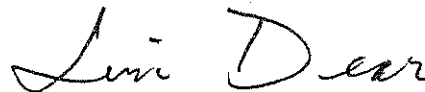
(b) If the establishment of medical marijuana clinics is not regulated, the Planning Commission and City Council will not be able to impose conditions to mitigate the potential negative impacts of clinics that could result from a large number of clinics or the potential for crime.

SECTION 5. That, pursuant to Government Code Section 65858(d), ten days prior to consideration of this ordinance, the City issued a written report describing the measures taken to

alleviate the condition which led to the adoption of Interim Ordinance No. 07-1374U and this extension thereof.

SECTION 6. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

PASSED, APPROVED, AND ADOPTED this 15th day of May, 2007.



MAYOR JIM DEAR

ATTEST:


CITY CLERK HELEN KAWAGOE

APPROVED AS TO FORM:


CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF CARSON)

I, Helen S. Kawagoe, City Clerk of the City of Carson, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing ordinance, being Ordinance No. 07-1386U) was duly and regularly adopted by the City Council of said City on an urgency basis at an special joint meeting of said Council, duly and regularly held on the 15th day of May, 2007, and that the same was passed and adopted by the following roll call vote:

AYES: COUNCIL MEMBERS: Mayor Dear, Santarina, Williams, Gipson, and Davis-Holmes
NOES: COUNCIL MEMBERS: None
ABSTAIN: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None


City Clerk, City of Carson, California

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CITY OF CARSON
PLANNING COMMISSION
RESOLUTION NO. 08-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON RECOMMEND TO CITY COUNCIL THE APPROVAL OF AN ORDINANCE ADDING CARSON MUNICIPAL CODE SECTION 9191.391.5 TO DEFINE AND PROHIBIT THE ESTABLISHMENT OR USE OF ANY BUSINESS THAT DISTRIBUTES OR SELLS MEDICAL MARIJUANA WITHIN THE CITY OF CARSON

THE PLANNING COMMISSION OF THE CITY OF CARSON, CALIFORNIA, HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS:

Section 1. The Planning Commission is recommending approval of an ordinance amendment as described in Exhibit "A" attached hereto to the Carson City Council. The proposed ordinance would define and prohibit the establishment or use of any business that sells or distribute medical marijuana. A public hearing was duly held on June 24, 2008, at 6:30 P.M. at City Hall, Council Chambers, 701 East Carson Street, Carson, California. A notice of time, place and purpose of the aforesaid meeting was duly given.

Section 2. Evidence, both written and oral, was duly presented to and considered by the Planning Commission at the aforesaid meeting.

Section 3. The Planning Commission finds that:

- a) The proposed ordinance defining and prohibiting medical marijuana dispensaries supports and is consistent with the City of Carson General Plan.
- b) The implementation of the proposed ordinance facilitates the on-going protection of the health, safety and welfare of the Carson community.

Section 4. The Planning Commission further finds that proposed Ordinance No. --- is pursuant to Section 15308 of the California Environmental Quality Act (CEQA) and is considered categorically exempt as an action by a regulatory agency for the protection of the environment.

Section 5. The Secretary shall certify to the adoption of the Resolution and shall transmit copies of the same to the applicant.

Section 7. This action shall become final and effective fifteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of the Carson Zoning Ordinance.

PASSED, APPROVED AND ADOPTED THIS 24th DAY OF JUNE, 2008

ATTEST:

CHAIRMAN

SECRETARY

EXHIBIT "A"
DRAFT ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF CARSON, CALIFORNIA, ADDING CARSON
MUNICIPAL CODE SECTION 9191.391.5 TO DEFINE AND
PROHIBIT THE ESTABLISHMENT OR USE OF ANY
BUSINESS THAT DISTRIBUTES OR SELLS MEDICAL
MARIJUANA WITHIN THE CITY OF CARSON**

THE CITY COUNCIL OF THE CITY OF CARSON HEREBY ORDAINS AS FOLLOWS:

Section 1. California Health and Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996" or "Act") legalized the use of medical marijuana for medical purposes; and

Section 2. California Senate Bill 420 clarified Proposition 215 and further explained protections afforded to patients, their primary caregivers and the establishments that dispense medical marijuana to patients with recommendations; and

Section 3. the Carson Municipal Code, including the Carson Zoning Code, does not currently regulate medical marijuana dispensaries or the sale or distribution of medical marijuana by an existing business; and

Section 4. the City Council of the City of Carson ("City Council") adopted Ordinance No. 07-1374U on April 3, 2007, establishing a 45-day moratorium on the establishment of medical marijuana dispensaries and prohibiting existing businesses from dispensing medical marijuana; and

Section 5. the City Council adopted No. 07-1386U extending the medical marijuana moratorium by an additional ten months and fifteen days on May 15, 2007; and

Section 6. City staff has reviewed Proposition 215, codified as Health and Safety Code Sections 11362.5, *et. seq.*, which authorizes persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances, and Senate Bill 420 which clarifies the scope of the Act to allow local governments to adopt and enforce rules and regulations consistent with Senate Bill 420; and

Section 7. City staff has also reviewed the decision of the United States Supreme Court in *Gonzales, et al. v. Raich, et al.*, 545 U.S. 1 (2005) which found that federal laws prohibiting the possession, use, and distribution of marijuana are enforceable in California as to those persons who are eligible to use marijuana under the Act because the Commerce Clause gives the federal

Congress authority to prohibit the local cultivation and use of marijuana as a controlled substance, even if such activity is for medicinal purposes and complies with California law; and

Section 8. At a public hearing held on June 24, 2008, the City's Planning Commission studied this issue and forwarded a recommendation that the City Council revise the Carson Municipal Code to prohibit the establishment or use of an existing business for the distribution or sale of medical marijuana within the City; and

Section 9. At a public hearing held during a regular meeting on June 24, 2008, evidence was heard and presented from all persons interested in affecting said proposal, from all persons protesting the same and from members of the City staff and the City Council has reviewed, analyzed and studied said proposal.

Section 10. Section 9191.391.5, "General definitions – Medical Marijuana Dispensary" hereby added to the Carson Municipal Code and shall read in its entirety as follows:

"Medical marijuana dispensary" means any establishment, business, enterprise, or location where marijuana is distributed, transmitted, given to, or otherwise provided to qualified patients or primary caregivers in accordance with California Health and Safety Code Sections 11362.5 through 11362.83, inclusive, commonly referred to as "The Compassionate Use Act of 1996" and Senate Bill 420." A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Health and Safety Code division 2, chapter 1; a health care facility licensed pursuant to Health and Safety Code, division 2, chapter 2; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Health and Safety Code, division 2, chapter 3.01; a residential care facility for the elderly licensed pursuant to Health and Safety Code, division 2, chapter 3.2; a residential hospice, or a home health agency licensed pursuant to Health and Safety Code, division 2, chapter 8; as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code § 11362.5 et seq. Medical marijuana dispensaries are prohibited in the City of Carson (Ord. ____).

Section 11. If any section, subsection, clause or phrase of this Ordinance is for any reason, held to be unconstitutional, or otherwise invalid, such decision shall not affect the validity of the remaining sections of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 12. The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted. This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption.



PASSED, APPROVED, AND ADOPTED this __th day of _____, 2008.

MAYOR JIM DEAR

ATTEST:

State of California)
County of Los Angeles) SS.
City of Carson)

I, Helen S. Kawagoe, City Clerk of the City of Carson, California, do hereby certify that the foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council held on the __th day of _____, 2008, and was duly approved and adopted at a regular meeting of said Council held on the __th day of _____, 2008, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY CLERK HELEN KAWAGOE

APPROVED AS TO FORM:

CITY ATTORNEY

