



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Richard Thompson, Director of Community Development
Robert V. Wadden Jr., City Attorney
Eric Haaland, Associate Planner

DATE: May 20, 2008

SUBJECT: Adoption of Ordinance No. 2114 Approving a Zoning Code (Title 10) Amendment to the Manhattan Beach Municipal Code and Local Coastal Program Amendment Regarding the Prohibition of Medical Marijuana Dispensaries in All Zones

RECOMMENDATION:

Staff recommends that the City Council **ADOPT** Ordinance No. 2114 approving the proposed amendment, and **ADOPT** Resolution No. 6139 transmitting the ordinance to the California Coastal Commission.

FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action.

DISCUSSION:

The Planning Commission, at its regular meeting of April 23, 2008, conducted a public hearing for a proposed zoning amendment prohibiting medical marijuana dispensaries in the City. The City Council conducted a public hearing and **INTRODUCED** Ordinance 2114 at its regular meeting of May 6, 2008. The proposed amendment to the City's Municipal Code and Local Coastal Program would define medical marijuana dispensaries in substantial detail and prohibit that use entirely.

After adoption of Ordinance No. 2114 and Resolution No. 6139, staff will submit the Local Coastal Program Amendment to the Coastal Commission for certification.

Attachments:

Ordinance No. 2114
Resolution No. 6139

ORDINANCE NO. 2114

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, ADDING A NEW SECTION 10.60.160 OF CHAPTER 10.60 OF THE MANHATTAN BEACH MUNICIPAL CODE (ZONING ORDINANCE) AND SECTION 160.160 OF THE IMPLEMENTATION PROGRAM OF THE LOCAL COASTAL PROGRAM PERTAINING TO MEDICAL MARIJUANA DISPENSARIES

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach hereby finds as follows:

- A. In 1996 the voters of California adopted the "compassionate Use Act" which permits the possession and sale of marijuana for medical purposes. Subsequently the use of collective dispensaries for the sale of prescription marijuana has been permitted as a commercial enterprise;
- B. Despite being permitted under California law marijuana, whether for medical, recreational, religious or any other purpose is illegal under the Federal Controlled substances Act. Federal agencies have been aggressively enforcing Federal laws against those using or dispensing marijuana in accordance with California law;
- C. The United States Supreme Court issued its decision in *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, in which the Court held that there is no medical necessity defense or exemption for the possession of medical marijuana under the Controlled Substances Act and in 2005, the United States Supreme Court also held in *Gonzalez v. Raich* (2005) 545 U.S. 1, that the United States Congress has authority under the Commerce Clause of the United States Constitution to prohibit the manufacture, cultivation, distribution and possession of marijuana pursuant to the Controlled Substances Act, even as such prohibitions apply to marijuana manufactured, cultivated, distributed or possessed within the State of California under the auspices of the Compassionate Use Act;
- D. In addition to being illegal under Federal law and subject to enforcement by Federal agents medical marijuana dispensaries have been known to create secondary effects beyond the possibility of being raided by Federal agents. These include increased crime, loitering, drug abuse, theft, burglary, decreased property values. In general medical marijuana dispensaries have a strong potential to create a public nuisance situation and should be sited away from residential, school and daycare, church and community service centers;
- E. The California Police Chiefs Association has compiled an extensive report detailing a number of the negative secondary effects associated with medical marijuana dispensaries. The Planning Commission hereby finds that such report contains further persuasive documented evidence that medical marijuana dispensaries pose a threat to public health, safety and welfare;
- F. Due to the small geographical size and primarily residential character of Manhattan Beach there are no areas within the City which are suitable for the location of a medical marijuana dispensary;
- G. In addition to the fact that medical marijuana dispensaries are a use which is unsuitable for a small residential community the fact that it is currently illegal under Federal law despite its legality under State law (See: *Gonzales v. Raich* 545 U.S. 1 (2005)) raises serious questions about the City's legal capacity to allow such a use. (See, for example: *Qualified Patients' Association v. County of Orange* (2008) Orange County Superior Court Case No. 07CC09524.);
- H. In light of the serious problems presented by location and operation of medical marijuana dispensaries it is in the best interests of the citizens of Manhattan Beach and in furtherance of their health, safety and welfare to prohibit medical marijuana dispensaries within the City of Manhattan Beach;

- I. The proposed ordinance is consistent with the General Plan of the City of Manhattan Beach;
- J. This ordinance is not subject to the California Environmental Quality Act pursuant to Section 15061(b)(3) in that the activity will not result in direct or indirect or reasonably foreseeable direct or indirect physical change to the environment.
- K. The proposed amendments will have no impact on Fish and Game resources pursuant to Section 21089(b) of the Public Resources Code.
- L. At a public hearing held on April 23, 2008 the Manhattan Beach Planning commission heard public testimony and conducted discussion regarding the proposed code amendments resulting in their adoption by a 4-1 vote of Resolution Number Penal Code 08-07 adopting specific findings in support of the code amendment and recommending adoption.

SECTION 2. A new Section 10.60.160 is hereby added to Chapter 10.60 of Title 10 of the Manhattan Beach Municipal Code and new Section A.60.160 to the Implementation Program of the Local Coastal Program to read as follows:

"10.60.160/A 60.160 Medical Marijuana Dispensaries

(a). Except where the context otherwise requires, the definitions given in this subsection govern the construction of this section:

A. 'Identification card' is a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

B. 'Marijuana' means all parts of the *Cannabis Sativa* plant, whether growing or not, including but not limited to: the leaves; the flowers; the stems; the seeds thereof; the resin extracted from any part of the plant; every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. The term shall include marijuana infused in foodstuffs. The term shall not include fiber produced from the stalks, oil or cake made from the seeds of the plant or any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks (except resin extracted therefrom).

C. 'Medical marijuana dispensary' is any facility or location where medical marijuana is cultivated or made available to and/or distributed by any of the following: a qualified patient, a person with an identification card, or a primary caregiver. Each of these terms is defined herein and shall be interpreted in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq. as such sections may be amended from time to time.

C. 'Primary caregiver' is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

D. 'Qualified patient' is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

(b). Medical marijuana dispensaries shall be a prohibited use in all zones of the City.

SECTION 3. This ordinance shall apply to any application for such a use which has not yet obtained substantial vested rights as defined by the California Supreme Court in *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785.

SECTION 4. All other provisions of Manhattan Beach Municipal Code shall remain unchanged and continue in full force and effect.

SECTION 5. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 6. If any section, subsection, sentence, clause, or phrase of this ordinance 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 remaining portions of the ordinance. The City 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 sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 7. This ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 8. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 20th day of May, 2008.

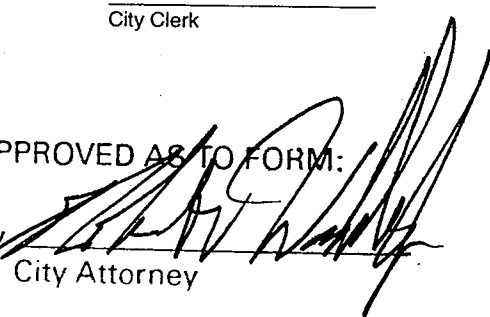
Ayes:
Noes:
Absent:
Abstain:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

APPROVED AS TO FORM:

By 

City Attorney

RESOLUTION NO. 6139

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, SUBMITTING ORDINANCE NO. 2114 TO THE CALIFORNIA COASTAL COMMISSION TO ADD SECTION A.60.160 OF THE CITY OF MANHATTAN BEACH LOCAL COASTAL PROGRAM (LCP) - IMPLEMENTATION PROGRAM, RELATING TO MEDICAL MARIJUANA DISPENSARIES

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

- A. The City Council of the City of Manhattan Beach, conducted a public hearing, pursuant to applicable law, on May 6, 2008 to consider the proposed amendment to the City of Manhattan Beach Local Coastal Program (LCP) - Implementation Plan; and,
- B. The City Council adopted Ordinance No. 2114 at the regular meeting of May 6, 2008, which became effective on October 21, 2004; and,
- C. The subject amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061 (b)(3) in that it can be seen with certainty that the proposed project does not have the potential for causing a significant effect on the environment; and
- D. The City Council certifies that the subject amendment will be implemented in a manner fully in conformity with the California Coastal Act of 1976, as amended, and the City of Manhattan Beach Local Coastal Program.

SECTION 2. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution. The City Clerk shall send a certified copy of this resolution to the applicant, and if any, the appellant at the address of said person set forth in the record of the proceedings and such mailing shall constitute the notice required by Code of Civil Procedure Section 1094.6.

SECTION 3. The City Clerk shall make this Resolution reasonably available for public inspection within thirty (30) days of the date this Resolution is adopted.

SECTION 4. The City Clerk shall certify to the adoption of this Resolution and thenceforth and thereafter the same shall be in full force and effect.

PASSED, APPROVED, and ADOPTED this 20th day of May, 2008.

Ayes:
Noes:
Absent:
Abstain:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

APPROVED AS TO FORM:

By 

City Attorney