

**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING STAFF REPORT**

AGENDA ITEM NO.: C.1	SITE LOCATION: City-Wide
HEARING DATE: April 21, 2011	GENERAL PLAN: L-C (Light Commercial)
CASE NO.: Amendment No. A-159-11	ZONE: C-2 (Community Commercial Zone)
APPLICANT: City of Garden Grove	APN: Not Applicable
PROPERTY OWNER: Not Applicable	CEQA DETERMINATION: Exempt

REQUEST:

Obtain recommendation to the City Council for adoption of an ordinance amending Subsections 9.16.020.100 and 9.16.020.030, respectively, of Title 9 (Land Use Code) of the Garden Grove Municipal Code to establish zoning regulations authorizing the location of medical marijuana dispensaries in portions of the C-2 (Community Commercial Zone) zoning district, subject to minimum distance and other requirements, and to make corresponding changes to the Land Use Matrix.

BACKGROUND:

In 1996, California voters approved Proposition 215 (the "Compassionate Use Act"), an initiative measure that exempted qualified patients and their primary caregivers from criminal liability under State law for the possession and cultivation of marijuana for personal medical use, where medical use is deemed appropriate and has been recommended by a physician. The purpose of this initiative was to allow patients suffering from a number of serious illnesses the opportunity to find relief through the use of doctor recommended marijuana.

In 2004, the State Legislature enacted Senate Bill 420, known as the Medical Marijuana Program Act (the "Program"). In addition to providing for the establishment of a voluntary statewide identification card program and extending protection from criminal prosecution beyond possession and cultivation to related activities such as transportation, delivery, and storage of medical marijuana, the Program also recognized a right of patients and primary caregivers to associate "in order collectively or cooperatively to cultivate marijuana for medical purposes."

In August 2008, pursuant to one of the Program's mandates, the California Attorney General adopted Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (the "Attorney General's Guidelines"). Among other things, the Attorney General's Guidelines set forth suggested standards for the lawful operation of medical marijuana cooperatives and collectives, including medical marijuana dispensaries properly organized and operated as collectives or cooperatives. These standards include:

- Operating as a *non-profit* organization;
- Obtaining a Seller's Permit for state sales tax purposes and a City business license;
- Maintaining membership records and verifying member's status as qualified patients or primary caregivers;
- Acquiring/distributing medical marijuana only from/to members;
- Providing adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime.

Several cities and counties in the State have adopted ordinances to allow and regulate medical marijuana dispensaries, while many others have enacted complete bans. In 2008, the City adopted an ordinance prohibiting medical marijuana dispensaries throughout the City for the purpose of eliminating the adverse secondary impacts to the public health, safety and welfare associated with medical marijuana dispensaries. This ordinance is currently codified in Subsection 9.16.020.100 of the Land Use Code.

However, recently, there has been a proliferation of unauthorized medical marijuana dispensaries in the community. The operation of dispensaries without review and regulation may cause serious land use problems for our community. As a result, Staff has prepared proposed amendments to the City's Municipal Code to permit a limited number of medical marijuana dispensaries to be legally located and operated in the City, subject to reasonable regulatory and zoning standards to address the associated adverse secondary impacts to the public health, safety and welfare and to ensure minimal impacts to sensitive land uses.

DISCUSSION:

Staff has developed a proposed regulatory program for medical marijuana dispensaries in Garden Grove to be implemented through two separate ordinances.

One ordinance would establish business operation regulations and permitting requirements for medical marijuana dispensaries. These provisions are proposed to be located in Title 8 (Peace, Safety and Morals) of the Garden Grove Municipal Code and are subject to City Council review and approval only. A copy of the current draft of the proposed Title 8 ordinance is attached to this Report for the Planning Commission's information; however, this ordinance is not the subject of the public hearing before the Planning Commission.

The second ordinance would address the zoning aspects of the proposed program through amendments to Title 9 (Land Use Code) of the Garden Grove Municipal Code. Specifically, this proposed ordinance would amend the existing provisions of Subsection 9.16.020.100 of the Land Use Code to establish zone location and distance limitations for permitted medical marijuana dispensaries and would amend Subsection 9.16.020.030 of the Land Use Code to make corresponding changes to the Land Use Matrix. A copy of the proposed Ordinance to amend Title 9 is included as Exhibit "A" to the proposed Planning Commission Resolution attached to this Report. Before the City Council may consider the proposed amendments to the Land Use Code, the Planning Commission must conduct a public hearing and make a recommendation to the City Council regarding the proposed amendments.

SUMMARY OF PROPOSED MEDICAL MARIJUANA DISPENSARY PROGRAM

Some of the key components of the proposed medical marijuana dispensary regulatory program include provisions addressing the following issues:

- Zoning Location Limitation (Title 9)
- Distance Limitations (Title 9)
- Limits on number and term of permits (Title 8)
- Operating Requirements (Title 8)
- Hours of operation (Title 8)
- Facility Size (Title 8)
- Status of existing dispensaries (Title 9)

1. **Zone Location Limitation:** Staff is proposing that medical marijuana dispensaries be limited to the C-2 zone (Community Commercial Zone) of the City. The proposed Ordinance would further limit the location of dispensaries along Harbor Boulevard from the City's northern boundary with the City of Anaheim to the State Route 22 Freeway. Dispensaries would also be required to locate in an area that is highly visible and has good views of the entrance, windows and premises from a public street. Presently, C-2 zoned properties generally are further removed from areas having single-family homes, places of worship, schools and parks. As one of the requirements of the proposed Title 8 regulatory ordinance is that no one under the age of 18 be admitted to the dispensary, limiting the use to the C-2 zone will help to protect sensitive land uses. The Zone Location Limitation is one of the aspects of the proposed amendments to the Land Use Code subject to review and recommendation by the Planning Commission. A copy of the zoning map showing the C-2 areas in which medical marijuana dispensaries are proposed to be located is available for review at the Community Development Department and will be displayed for reference at the public hearing.
2. **Distance Limitations:** Staff is recommending that medical marijuana dispensaries be located at least 1,000 feet from sensitive land uses such as schools, parks, tutoring and youth club facilities, child care facilities, and churches. Staff is also recommending that there be a minimum 1,000 foot buffer between each permitted dispensary. The Distance Limitations are

another aspect of the proposed amendments to the Land Use Code subject to review and recommendation by the Planning Commission.

3. **Limits on number and term of permits:** Pursuant to the proposed Title 8 regulatory ordinance, dispensaries will be required to obtain a dispensary permit to legally operate in the City, and operators will be required to obtain a City business license. Permits would be subject to the approval of the City Manager and would be subject to annual review and renewal. Staff is recommending limiting the total number of permitted dispensaries in the City to not more than 5. This equates to approximately one dispensary for every 35,000 residents of the City. Based upon research of other cities that allow, but cap the number of, medical marijuana dispensaries, Staff believes that this ratio is more than adequate to service the legitimate medical marijuana needs of City residents. In addition, limiting the number of dispensaries to 5 will help the Police Department in managing the use in terms of reviewing applications and on-going compliance matters. A lottery is proposed to determine which dispensaries are allowed to operate. All persons proposing to operate a dispensary would be required to complete an application process and meet certain eligibility requirements in order to qualify for participation in the lottery.

4. **Operating Requirements:** The proposed Ordinance amending Title 9 contains a requirement that each dispensary comply with all applicable requirements of the Municipal Code (including the regulatory provisions proposed to be added to Title 8) and State law. The proposed Title 8 regulations would require each permitted medical marijuana dispensary to strictly comply with all operating criteria required by State law and the suggested standards set forth in the Attorney General's Guidelines. In addition, the proposed regulations will include specific detailed operating requirements for permitted medical marijuana dispensaries, including, but not limited to:
 - A prohibition of for-profit sales of medical marijuana from dispensaries;
 - Limitations on on-site cultivation of medical marijuana;
 - Limitations on the amount of medical marijuana permitted to be stored on the premises;
 - A prohibition on the consumption of medical marijuana on or near the premises;
 - A prohibition on dispensary owners, operators, or employees that have specified past criminal convictions;
 - Provisions prohibiting minors from being employed by a dispensary and from being allowed on the premises of a dispensary (unless the minor is accompanied by his or her parent or guardian);
 - Requirements regarding control, size, and access to dispensary premises;
 - Operating plan requirements addressing floor plans, storage, staffing, order control, and security;

CASE NO. A-159-11

- Record-keeping requirements; and
 - Signage requirements and limitations.
5. **Hours of operation:** Staff is proposing that dispensaries be allowed to operate between the hours of 8 a.m-7p.m. Monday through Saturday, and 8 a.m-6 p.m. on Sundays. Hours of operation and other operational criteria are set forth in the proposed Title 8 regulatory ordinance.
6. **Facility Size:** Staff is recommending that dispensaries be limited in size to tenant spaces of not more than 1,500 square feet, which Staff believes is adequate to provide for the needs of the operation, including a lobby, dispensing area and storage. The provision limiting facility size is set forth in the proposed Title 8 regulatory ordinance.
7. **Status of existing facilities:** Staff is recommending that only dispensaries that are successful lottery participants will be authorized to operate in the City.

REQUIRED FINDINGS

Pursuant to Municipal Code Section 9.32.030.D.1, the Planning Commission must make the following two (2) findings in order to approve an application for an amendment to the Land Use Code:

1. That the Amendment is internally consistent with the goals, objectives and elements of the City's General Plan.
 2. That the Amendment is deemed to promote the public interest, health, safety and welfare.
1. That the Amendment is internally consistent with the goals, objectives and elements of the City's General Plan.

The proposed Amendment to Title 9 (Land Use Code) would authorize permitted medical marijuana dispensaries to be legally located and operated only in certain areas within the C-2 (Community Commercial Zone) zone district and would require such dispensaries to be located at least 1,000 feet from certain sensitive land uses. The C-2 zone district is located within the Light Commercial (LC) land use designation of the City's General Plan. The Light Commercial (LC) designation is intended to allow a range of commercial activities that serve residential neighborhoods and the larger community, and includes a variety of retail services such as markets, drug stores, retail shops, financial institutions, service establishments and restaurants. Lawfully organized and operated medical marijuana dispensaries would serve the medical needs of those Garden Grove residents suffering from a number of serious illnesses for whom licensed physicians have recommended the use of marijuana.

CASE NO. A-159-11

Limiting medical marijuana dispensaries to the C-2 Zone is also consistent with Policy LU-2.1 of the General Plan's Land Use Element that residential areas be protected from the effects of potentially incompatible uses. The zone location limitation and distance limitations set forth in the proposed Amendment are also consistent with Policies LU-4.7 and 4.8 of the Land Use Element, which specify that certain types of establishments that typically generate certain adverse secondary impacts (such as establishments that offer adult merchandise or liquor for sale) be located in appropriate locations in order to protect the health, safety, and welfare of citizens and that minimum distances be maintained between such establishments and other land uses defined as sensitive to their presence.

Accordingly, the proposed Amendment is consistent with the City's General Plan.

2. That the Amendment is deemed to promote the public interest, health, safety and welfare.

The number of unauthorized and unregulated medical marijuana dispensaries in the City has recently proliferated. Because these dispensaries are not currently allowed uses, there are no controls or regulations on such dispensaries. The operation of dispensaries without review and regulation could cause serious land use problems for the community.

The proposed Amendment is part of a comprehensive regulatory scheme that will allow a limited number of medical marijuana dispensaries to legally locate and operate in the City, subject to reasonable regulatory and zoning standards to address the associated adverse secondary impacts to the public health, safety and welfare and to ensure minimal impacts to sensitive land uses. Pursuant to the proposed Amendment, those medical marijuana dispensaries that are granted a dispensary permit will be authorized to locate and operate only in certain areas within the C-2 (Community Commercial Zone) zone district. C-2 zoned areas are generally set apart from residential areas and sensitive land uses such as churches, schools, and parks; however, pursuant to the proposed Amendment, medical marijuana dispensaries would explicitly not be allowed to be located within 1,000 feet of youth oriented facilities, schools, churches, smoke shops, which sell paraphernalia for consuming drugs or tobacco products, or other dispensaries. In addition, medical marijuana dispensaries would be required to be located in areas that are highly visible and have good views of the entrance, windows and premises from a public street and would be required to comply with all applicable requirements of the Garden Grove Municipal Code and State law.

Therefore, the proposed Amendment will promote the public interest, health, safety and welfare.

ENVIRONMENTAL REVIEW

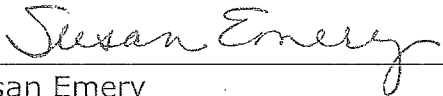
The proposed Amendment to the Land Use Code is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of

CASE NO. A-159-11

Regs., Title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

RECOMMENDATION

Adopt the attached Resolution No. 5737-11 recommending approval of Amendment No. A-159-11 and adoption of the attached ordinance to amend Title 9 of the Garden Grove Municipal Code relating to the zoning regulation of Medical Marijuana Dispensaries.



Susan Emery
Community Development Director

Attachment No. 1: Proposed Resolution No. 5737-11 (including proposed Ordinance attached as Exhibit "A" thereto)

Attachment No. 2: Draft Ordinance Adding Chapter 86 Entitled "Regulation of Medical Marijuana Dispensaries" to Title 8 "Peace, Safety and Morals" (for information only)

RESOLUTION NO. 5737-11

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE RECOMMENDING APPROVAL OF AMENDMENT NO. A-159-11 AND ADOPTION OF THE ATTACHED ORDINANCE TO AMEND TITLE 9 OF THE GARDEN GROVE MUNICIPAL CODE RELATING TO THE ZONING REGULATION OF MEDICAL MARIJUANA DISPENSARIES.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove in regular session assembled on April 21, 2011, considered an amendment to Title 9 (Land Use) of the Garden Grove Municipal Code, which includes amendments to Subsections 9.16.020.100 and 9.16.020.030, respectively, to establish zoning regulations authorizing the location of medical marijuana dispensaries in the C-2 zone (Community Commercial Zone) district, subject to minimum distance and other requirements, and to make corresponding changes to the Land Use Matrix. The Planning Commission does hereby recommend approval of Amendment No. A-159-11 to the City Council. Upon consideration of the item, pursuant to the below report and findings, the Planning Commission does hereby find that the Amendment is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

BE IT FURTHER RESOLVED in the matter of Amendment No. A-159-11 the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by the City of Garden Grove.
2. The City of Garden is proposing to amend Title 9 (Land Use) of the Garden Grove Municipal Code to amend Subsection 9.16.020.100 pertaining to medical marijuana dispensaries and Subsection 9.16.020.030 to make corresponding changes to the Land Use Matrix, as more specifically set forth in the proposed Ordinance attached hereto as Exhibit "A".
3. As amended, Subsection 9.16.020.100 would authorize permitted medical marijuana dispensaries be located only in the C-2 zoning district (Community Commercial Zone) of the City. Dispensaries would further not be permitted to be located fronting Harbor Boulevard from the City's northern boundary with the City of Anaheim to the State Route 22 Freeway. Dispensaries would also be required to be located in an area that is highly visible and has good views of the entrance, windows and premises from a public street. In addition, each dispensary would be required to comply with all applicable requirements of the Municipal Code and State law.

4. The Land Use Matrix in Table 1 of Subsection 9.16.020.030 would also be amended to add "medical marijuana dispensaries" as a permitted use in the C-2 zoning district.
5. The Community Development Department has determined that the Amendment is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
6. A Report submitted by City Staff was reviewed.
7. Pursuant to a legal notice, a public hearing was held on April 21, 2011, and all interested persons were given an opportunity to be heard.
8. The Planning Commission gave due and careful consideration to the matter at its meeting on April 21, 2011; and

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Section 9.32.030, are as follows:

FACTS:

In 1996, California voters approved Proposition 215 (the "Compassionate Use Act"), an initiative measure that exempted qualified patients and their primary caregivers from criminal liability under State law for the possession and cultivation of marijuana for personal medical use, where medical use is deemed appropriate and has been recommended by a physician. The purpose of this initiative was to allow patients suffering from a number of serious illnesses the opportunity to find relief through the use of doctor recommended marijuana.

In 2004, the State Legislature enacted Senate Bill 420, known as the Medical Marijuana Program Act (the "Program"). In addition to providing for the establishment of a voluntary statewide identification card program and extending protection from criminal prosecution beyond possession and cultivation to related activities such as transportation, delivery, and storage of medical marijuana, the Program also recognized a right of patients and primary caregivers to associate "in order collectively or cooperatively to cultivate marijuana for medical purposes."

In August 2008, pursuant to one of the Program's mandates, the California Attorney General adopted Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (the "Attorney General's Guidelines"). Among other things, the Attorney General's Guidelines set forth suggested standards for the lawful operation of medical marijuana cooperatives and collectives, including medical marijuana dispensaries properly organized and operated as collectives or cooperatives.

Several cities and counties in the State have adopted ordinances to allow and regulate medical marijuana dispensaries, while many others have enacted complete bans. In 2008, the City of Garden Grove adopted an ordinance prohibiting medical marijuana dispensaries throughout the City for the purpose of eliminating the adverse secondary impacts to the public health, safety and welfare associated with medical marijuana dispensaries. This ordinance is currently codified in Subsection 9.16.020.100 of the Land Use Code.

However, recently, there has been a proliferation of unauthorized medical marijuana dispensaries in the community. The operation of dispensaries without review and regulation may cause serious land use problems for our community.

The proposed Amendment to Title 9 is part of a comprehensive regulatory scheme that will allow a limited number of medical marijuana dispensaries to be legally located and operated in the City, subject to reasonable regulatory and zoning standards to address the associated adverse secondary impacts to the public health, safety and welfare and to ensure minimal impacts to sensitive land uses. The proposed Amendment would authorize permitted medical marijuana dispensaries to legally locate and operate only in certain areas within the C-2 (Community Commercial Zone) zoning district. Dispensaries would not be permitted to be located fronting Harbor Boulevard from the City's northern boundary with the City of Anaheim to the State Route 22 Freeway. Pursuant to the proposed Amendment, medical marijuana dispensaries would explicitly not be allowed to be located within 1,000 feet of youth oriented facilities, schools, churches, smoke shops which sell paraphernalia for consuming drugs or tobacco products, or other dispensaries. Dispensaries would also be required to be located in areas that are highly visible and have good views of the entrance, windows and premises from a public street. In addition, each dispensary would be required to comply with all applicable requirements of the Municipal Code and State law.

The proposed Ordinance implementing the Amendment also provides that only dispensaries that are successful lottery participants will be authorized to operate in the City.

FINDINGS AND REASONS:

1. The Amendment is internally consistent with the goals, objectives and elements of the City's General Plan.

The proposed Amendment to Title 9 (Land Use Code) would authorize permitted medical marijuana dispensaries to be legally located and operated only in certain areas within the C-2 (Community Commercial Zone) zone district and would require such dispensaries to be located at least 1,000 feet from certain sensitive land uses. The C-2 zone district is located within the Light Commercial (LC) land use designation of the City's General Plan. The Light Commercial (LC) designation is intended to allow a range of commercial activities that serve residential neighborhoods and the larger community, and includes a variety of retail services such as markets, drug stores, retail shops,

financial institutions, service establishments and restaurants. Lawfully organized and operated medical marijuana dispensaries would serve the medical needs of those Garden Grove residents suffering from a number of serious illnesses for whom licensed physicians have recommended the use of marijuana.

Limiting medical marijuana dispensaries to the C-2 Zone is also consistent with Policy LU-2.1 of the General Plan's Land Use Element that residential areas be protected from the effects of potentially incompatible uses. The zone location limitation and distance limitations set forth in the proposed Amendment are also consistent with Policies LU-4.7 and 4.8 of the Land Use Element, which specify that certain types of establishments that typically generate certain adverse secondary impacts (such as establishments that offer adult merchandise or liquor for sale) be located in appropriate locations in order to protect the health, safety, and welfare of citizens and that minimum distances be maintained between such establishments and other land uses defined as sensitive to their presence.

Accordingly, the proposed Amendment is consistent with the City's General Plan.

2. The Amendment is deemed to promote the public interest, health, safety and welfare.

The number of unauthorized and unregulated medical marijuana dispensaries in the City has recently proliferated. Because these are not currently allowed uses, there are no controls or regulations on such dispensaries. The operation of dispensaries without review and regulation could cause serious land use problems for the community.

The proposed Amendment is part of a comprehensive regulatory scheme that will allow a limited number of medical marijuana dispensaries to be legally located and operated in the City, subject to reasonable regulatory and zoning standards to address the associated adverse secondary impacts to the public health, safety and welfare and to ensure minimal impacts to sensitive land uses. Pursuant to the proposed Amendment, those medical marijuana dispensaries that are granted a dispensary permit will be authorized to be located and operated only in certain areas within the C-2 (Community Commercial Zone) zone district. C-2 zoned areas are generally set apart from residential areas and sensitive land uses such as churches, schools, and parks; however, pursuant to the proposed Amendment, medical marijuana dispensaries would explicitly not be allowed to be located within 1,000 feet of youth oriented facilities, schools, churches, smoke shops which sell paraphernalia for consuming drugs or tobacco products, or other dispensaries. In addition, medical marijuana dispensaries would be required to be located in areas that are highly visible and have good views of the entrance, windows and premises from a public street and would be required to comply with all applicable requirements of the Garden Grove Municipal Code and State law.

Therefore, the proposed Amendment will promote the public interest, health, safety and welfare.

INCORPORATION OF FACTS AND FINDINGS SET FORTH IN STAFF REPORT:

In addition to the foregoing, the Planning Commission incorporates herein by this reference, the facts and findings set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. Amendment No. A-159-11 possesses characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.32.030.D.1 (Code Amendment).
2. The Planning Commission recommends the approval of Amendment No. A-159-11 and the adoption of the proposed Ordinance attached hereto as Exhibit "A".

ORDINANCE NO: _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING CODE AMENDMENT NO. A-159-11, AMENDING SUBSECTIONS 9.16.020.100 AND 9.16.020.030 OF CHAPTER 16 OF TITLE 9 OF THE GARDEN GROVE MUNICIPAL CODE RELATING TO THE ZONING REGULATION OF MEDICAL MARIJUANA DISPENSARIES

CITY ATTORNEY'S SUMMARY

This ordinance amends Garden Grove Municipal Code subsection 9.16.020.100 by establishing zoning regulations authorizing the location of medical marijuana dispensaries in the C-2 zone (Community Commercial Zone) district and providing for minimum distance requirements for dispensaries in relation to designated land uses. This ordinance also makes corresponding changes to the Land Use Matrix in subsection 9.16.020.030 of the Municipal Code.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE FINDS AND DETERMINES AS FOLLOWS:

WHEREAS, the case, initiated by the City of Garden Grove, proposes an amendment to Title 9 (Land Use) of the Garden Grove Municipal Code, which includes amendments to Subsections 9.16.020.100 and 9.16.020.030, respectively, to establish zoning regulations authorizing the location of medical marijuana dispensaries in the C-2 zone (Community Commercial Zone) district, subject to minimum distance and other requirements, and to make corresponding changes to the Land Use Matrix;

WHEREAS, the Planning Commission, at a Public Hearing held on April 21, 2011, determined that Amendment No. A-159-11 is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment;

WHEREAS, pursuant to Resolution No. 5737-11, the Planning Commission, at a Public Hearing held on April 21, 2011, recommended approval of Amendment No. A-159-11;

WHEREAS; pursuant to a legal notice, a Public Hearing was held by the City Council on _____, 2011, and all interested persons were given an opportunity to be heard;

WHEREAS, the voters of the State of California approved Proposition 215 entitled the "Compassionate Use Act of 1996" (Act), codified as Health and Safety Code sections 11362.5 et seq., permitting the use of medical marijuana under statutorily specified circumstances;

WHEREAS, sections 11362.7 et seq. of the Health and Safety Code permit cities and other governing bodies to adopt and enforce rules and regulations consistent with the Medical Marijuana Program Act (Program);

WHEREAS, the State legislature enacted the Program to clarify the scope of the Compassionate Use Act of 1996, and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the Program;

WHEREAS, to protect the public health, safety, and welfare, it is the desire of the City Council to modify the municipal code consistent with the Program as to the maximum number, location, and operation of medical marijuana dispensaries within the City of Garden Grove. The regulatory provisions of this chapter are enacted pursuant to the City's zoning authority and pursuant to its police powers under Article XI, section 7 of the California Constitution;

WHEREAS, the City Council takes legislative notice, based on the materials presented to the City Council during the legislative process leading to the enactment of this ordinance, of the fact that several California cities and counties that have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. According to these communities, news stories widely reported, and according to medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries. The City of Garden Grove reasonably could anticipate experiencing similar adverse impacts and effects;

WHEREAS, the City Council further finds and declares that zoning and police power regulations are necessitated because of the growing number of adverse secondary effects arising from the operation of these dispensaries through California. The adverse secondary effects have been chronicled in detail by a 56 page report prepared by the California Police Chiefs Association, dated April 22, 2009. In this report, various crimes consisting of armed robberies and murders, and burglary, arising from, or connected with, the operation of these establishments have been recorded by law enforcement agencies in, among numerous other communities, the California communities of Santa Barbara, Mendocino, San Leandro, Hayward, Laytonville, Bellflower, Claremont, and Willits;

WHEREAS, the City Council of the City of Los Angeles specifically found that reports from its police department and the media showed an increase in and escalation of violent crime at the location of medical marijuana dispensaries, and further that, medical marijuana that has not been collectively or personally grown constitutes a unique health hazard to the public because it is not regulated, inspected, or analyzed for contamination by the state or federal government;

WHEREAS, the California Police Chiefs' Association report further found: (a) that there have been reported poisonings from distribution of marijuana products due to contamination issues which are more likely because such products are not inspected by health agencies; (b) that adverse traffic, noise, and drug dealing impacts occur commonly outside marijuana dispensaries; (c) that gang involvement in the ownership and operation of these dispensaries has occurred in some communities;

WHEREAS, numerous other media and agency reports have documented criminal and nuisance activities associated with medical marijuana dispensaries;

WHEREAS, the City Council further takes legislative notice that concerns about non-medical marijuana use arising in connection with the Act and the Program also have been recognized by state and federal courts. See, e.g., *People ex rel. Lungren v. Peron*, 59 Cal. App. 4th 1383, 1386-1387 (1997); *Gonzales v. Raich*, 125 S.Ct. 2195, 2214 n. 43 (2005);

WHEREAS, it is the City Council's intention that nothing in this chapter shall be construed to: (i) allow persons to engage in conduct that endangers others or causes a public nuisance; (ii) allow the use of medical marijuana for nonmedical purposes; or (iii) allow any activity relating to the cultivation, distribution, or consumption of medical marijuana that is otherwise not permitted under State law;

WHEREAS, a sampling of other cities with caps on the number of medical marijuana dispensaries allowed indicates the following approximate authorizations:

<u>City</u>	<u>Dispensaries per Capita</u>
Los Angeles	1 per 39,000
Oakland	1 per 55,875
Santa Rosa	1 per 54,333
Berkeley	1 per 36,000
Martinez	1 per 36,000

With 5 dispensaries, Garden Grove will have approximately 1 dispensary per every 35,000 residents, a ratio which the City Council believes is more than adequate to service the legitimate medical marijuana needs of City residents; and

WHEREAS, the City Council hereby finds and determines that this ordinance is not subject to environmental review pursuant to CEQA Guidelines Section 15061(b)(3)

because it can be seen with certainty there is no possibility this ordinance or its implementation may have a significant effect on the environment.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY ORDAINS AS FOLLOWS:

Section 1. Amendment No. A-159-11 is hereby approved pursuant to the facts, findings, and reasons stated in Planning Commission Resolution No. 5737-11, a copy of which is on file in the Office of the City Clerk and incorporated herein by reference with the same force and effect as if set forth in full.

Section 2. Code Amendment.

Subsection 9.16.020.100 entitled "Medical Marijuana Dispensaries" of Section 9.16.020 "Permitted uses in Commercial, Office Professional, Industrial and Open Space" of Chapter 16 "Commercial, Official Professional, Industrial, and Open Space Standards" of Title 9 "Land Use" of the Garden Grove Municipal Code is hereby amended in its entirety to read as follows:

"9.16.020.100 Medical Marijuana Dispensary Zoning Regulations.

(a) Zone Location Limitation.

A medical marijuana dispensary may only be located within the following zoning district of the City: C-2 (Community Commercial Zone). Notwithstanding the foregoing, no dispensary may be located fronting on Harbor Boulevard from the City's northern boundary with the City of Anaheim to the State Route 22 Freeway. The definition of "medical marijuana dispensary" or "dispensary" set forth in section 8.86.180 shall apply in this chapter as well.

(b) Visibility.

A dispensary shall be in a highly visible location that provides good views of the dispensary entrance, windows and premises from the public street.

(c) Distance Limitation.

A dispensary shall not be allowed in the following areas at the time of its permitted establishment:

(1) Within 1,000 feet of a youth-oriented facility as defined in Section 8.86.180, any school, a smoke shop which sells paraphernalia for consuming drugs or tobacco products, churches and other places of worship, or another dispensary.

(d) Distance Measurement.

The distance between a dispensary and above listed uses in subsection (c)(1) shall be made in a straight line from the closest boundary line of the property on which the dispensary is located to the closest boundary line of the property on which the building or structure, or portion of the building or structure, in which any of the uses listed above in subsection (c)(1) occurs or is located.

(e) Each dispensary shall comply with all applicable requirements of this Municipal Code and State law.

Section 3. Land Use Matrix.

Table 1, entitled "City of Garden Grove Land Use Matrix", of Subsection 9.16.020.030 "Uses Permitted" of Section 9.16.020 "Permitted Uses in Commercial, Office Professional, Industrial and Open Space" of Chapter 16 "Commercial, Office Professional, Industrial, and Open Space Standards" of Title 9 "Land Use" of the Garden Grove Municipal Code is hereby amended to add "Medical Marijuana Dispensary" to the current list of Commercial "Retail Trade" uses, to be placed in alphabetical order, as follows:

COMMERCIAL							
Retail Trade	O-P	C-1	C-2	C-3	M-1	M-P	O-S
Medical Marijuana Dispensaries	-	-	P*	-	-	-	-

Section 4. No use, business or activity of any kind which distributed marijuana prior to the enactment of this Ordinance shall be deemed to have been a legally established use under the provisions of the Zoning Code and such use shall not be entitled to claim legal nonconforming status.

Section 5. By regulating medical marijuana dispensaries, the City of Garden Grove is only assuming an undertaking to preserve the general welfare through the provision of a method of implementing the Compassionate Use Act. The City Council is not assuming, nor is it imposing on its officers and employees, an obligation for which a breach thereof would expose the City to a liability in money damages to any person who claims that such breach proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to any provision of this Ordinance or for the activities of any medical marijuana dispensary. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City. Nothing in this Ordinance shall be deemed or considered in any respects to constitute authorization to violate any state or federal law.

Section 6. Severability.

If any term, provision, condition or covenant of this Ordinance or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this ordinance, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Ordinance shall be valid and enforceable to the fullest extent permitted by law.

Section 7. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

ORDINANCE NO.: _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE ADDING CHAPTER 86 ENTITLED "REGULATION OF MEDICAL MARIJUANA DISPENSARIES" TO TITLE 8 "PEACE, SAFETY AND MORALS" OF THE GARDEN GROVE MUNICIPAL CODE

City Attorney's Summary

This ordinance adds Chapter 86 to Title 8 of the Garden Grove Municipal Code providing for the regulation of medical marijuana dispensaries, including such regulations as the permitting, number, operating standards and permit process for such dispensary operations. These regulations are designed to protect the public health, welfare and safety of the public from potential adverse secondary effects arising out of the operation medical marijuana dispensaries.

The City Council of the City of Garden Grove hereby ordains as follows:

Section 1. Code Amendment.

Chapter 86 entitled "Regulation of Medical Marijuana Dispensaries" is hereby added to Title 8 "Peace, Safety, and Morals" of the Garden Grove Municipal Code to read as follows:

"CHAPTER 86. REGULATION OF MEDICAL MARIJUANA DISPENSARIES.

- 8.86.010 Findings and Intent.
- 8.86.020 Dispensary Permit Required To Operate.
- 8.86.030 Annual Term of Permits and Renewals Required.
- 8.86.040 Business License.
- 8.86.050 Permit Fees.
- 8.86.060 Maximum Limitation On Number Of Dispensaries.
- 8.86.070 Operating Requirements.
- 8.86.080 Application Preparation and Filing.
- 8.86.090 Criteria For Review Of Permit Application.
- 8.86.100 Investigation and Action On Application.
- 8.86.110 Appeal From City Manager's Permit Decision.
- 8.86.120 Effect of Permit Denial.
- 8.86.130 Suspension and Revocation of Permit/Appeals.

- 8.86.140 Transfer of Permit Prohibited.
- 8.86.150 Violations.
- 8.86.160 Judicial Review.
- 8.86.170 No Waiver of Immunity.
- 8.86.180 Definitions.

8.86.010 Findings and Intent.

(a) The voters of the State of California approved Proposition 215 entitled the "Compassionate Use Act of 1996" (Act), codified as Health and Safety Code sections 11362.5 et seq., permitting the use of medical marijuana under statutorily specified circumstances.

(b) Sections 11362.7 et seq. of the Health and Safety Code permit cities and other governing bodies to adopt and enforce rules and regulations consistent with the Medical Marijuana Act Program (Program).

(c) The State legislature enacted the Program to clarify the scope of the Compassionate Use Act of 1996, and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the Program.

(d) To protect the public health, safety, and welfare, it is the desire of the City Council to modify the municipal code consistent with the Program as to the maximum number, location, and operation of medical marijuana dispensaries within the City of Garden Grove. The regulatory provisions of this chapter are enacted pursuant to the City's police powers under Article XI, section 7 of the California Constitution.

(e) The City Council takes legislative notice, based on the materials presented to the City Council during the legislative process leading to the enactment of this Ordinance, of the fact that several California cities and counties that have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. According to these communities, news stories widely reported, and medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries. The City of Garden Grove reasonably could anticipate experiencing similar adverse impacts and effects.

(f) The City Council further finds and declares that such police power regulations are necessitated because of the growing number of adverse secondary effects arising from the operation of these dispensaries throughout California. The adverse secondary effects have been chronicled in detail by a 56 page report prepared by the California Police Chiefs' Association, dated April 22, 2009. In this report, various crimes consisting of armed robberies and murders, and burglary, arising from, or

connected with, the operation of these establishments have been recorded by law enforcement agencies in, among numerous other communities, the California communities of Santa Barbara, Mendocino, San Leandro, Hayward, Laytonville, Bellflower, Claremont, and Willits.

(g) The City Council of the City of Los Angeles specifically found that reports from its police department and the media showed an increase in and escalation of violent crime at the location of medical marijuana dispensaries, and further that, medical marijuana that has not been collectively or personally grown constitutes a unique health hazard to the public because it is not regulated, inspected, or analyzed for contamination by the state or federal government.

(h) The California Police Chiefs' Association report further found: (a) that there have been reported poisonings from distribution of marijuana products due to contamination issues which are more likely because such products are not inspected by health agencies; (b) that adverse traffic, noise, and drug dealing impacts occur commonly outside marijuana dispensaries; (c) that gang involvement in the ownership and operation of these dispensaries have been reported in some communities.

(i) Numerous other media and agency reports have documented criminal and nuisance activities associated with medical marijuana dispensaries.

(j) The City Council further takes legislative notice that concerns about non-medical marijuana use arising in connection with the Act and the Program also have been recognized by state and federal courts. See, e.g., *People ex rel. Lungren v. Peron*, 59 Cal. App. 4th 1383, 1386-1387 (1997); *Gonzales v. Raich*, 125 S.Ct. 2195, 2214 n. 43 (2005).

(k) It is the City Council's intention that nothing in this chapter shall be construed to: (i) allow persons to engage in conduct that endangers others or causes a public nuisance; (ii) allow the use of medical marijuana for nonmedical purposes of any kind; or (iii) allow any activity relating to the cultivation, distribution, or consumption of medical marijuana that is not otherwise permitted under State law.

(l) A sampling of other cities with caps on the number of medical marijuana dispensaries allowed indicates the following approximate authorizations:

<u>City</u>	<u>Dispensaries per Capita</u>
Los Angeles	1 per 39,000
Oakland	1 per 55,875
Santa Rosa	1 per 54,333
Berkeley	1 per 36,000
Martinez	1 per 36,000

With 5 dispensaries, Garden Grove will have approximately 1 dispensary per every 35,000 residents, a ratio which the City Council believes is more than adequate to service the legitimate medical marijuana needs of City residents.

(m) This chapter is found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) in that the Council finds and determines that there is nothing in this chapter or its implementation that could reasonably have any significant effect on the environment.

8.86.020 Dispensary Permit Required To Operate.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any property in the City the operation of a dispensary unless the person first obtains and continues to maintain in full force and effect a dispensary permit from the City as required in this chapter.

8.86.030 Annual Term Of Permits And Renewals Required.

(a) Permits issued under this chapter shall expire one year following the date of their issuance.

(b) Permits may be renewed by the City Manager for additional one-year periods upon application by the permittee, unless the permit is suspended or revoked in accordance with the provisions of this chapter.

(c) Applications for renewal shall be made at least 45 days before the annual expiration date of the permit and shall be accompanied by the nonrefundable application fee referenced herein.

(d) Applications for renewal made less than 45 days before the annual expiration date shall not stay the annual expiration date of the permit.

(e) Permits may be revoked or suspended by the City Manager as provided in this chapter.

8.86.040 Business License.

An operator of a dispensary shall also be required to apply for and obtain a business license as a prerequisite to obtaining a permit.

8.86.050 Permit Fees.

A permit application shall be accompanied by a nonrefundable application processing fee as established by City Council resolution. This fee shall be in addition to the business license tax.

8.86.060 Maximum Limitation On Number of Dispensaries.

(a) Maximum Number Limitation. Subject to the provisions of this section, there is hereby established a maximum cap of not more than five (5) dispensaries that may operate within the City.

(b) Application Procedure/Notice, Preparation, Filing/Lottery. Any person, desiring to operate a dispensary, including anyone operating a dispensary as of the effective date of this chapter, must comply with the permit application procedure set forth in section 8.86.080. A lottery-type drawing process shall be conducted in accordance with the following procedural steps:

(1) The City Manager shall publish a "Notice for submittal of dispensary permit application" at least 30 days in advance of a dispensary permit application submittal deadline, as established by the City Manager. It shall be published once in a newspaper of general circulation and posted on the city's web-site. The notice shall identify the deadline by which applications are required to be submitted to the City Manager, using forms provided by the city.

(2) Upon receipt of fully completed dispensary permit applications within the application deadline timeframe, the City Manager shall apply the criteria of section 8.86.100 in determining which applications are eligible for a lottery-type drawing leading to a dispensary permit approval subject to the maximum limitation of this section.

(3) The City Manager shall thereafter notify each applicant for a dispensary permit as to whether the applicant is eligible to be considered for placement into a lottery-type drawing. The names of the eligible applicants shall be chosen from the lottery-type drawing on a date selected by the City Manager, made known to the public. Each applicant name drawn shall be assigned a priority number in accordance with the order in which applicant names are chosen. The City Manager shall conduct the lottery-type drawing in a manner that allows all applicants deemed eligible pursuant to section 8.86.100 an equal opportunity in the process.

(4) Thereafter, each application in the order selected from the lottery-type drawing shall then be further reviewed for compliance with this chapter including a site inspection of the dispensary premises.

(5) Final approval of a dispensary permit application shall be in accordance with the applicable provisions of this chapter.

(6) The permit application process shall be concluded as final when five (5) applications have been deemed approved.

(7) If the number of approved dispensaries drops below five (5) within two (2) years following the lottery-type drawing, the City Manager shall continue

reviewing applications in the order submitted in the drawing to provide for five (5) dispensaries. If the number of approved dispensaries drops below five (5) more than two (2) years following the drawing, the City Manager shall conduct another lottery-type process pursuant to this section to allow for the continued operation of five dispensaries.

(8) Application fees paid to the City by unsuccessful drawing participants shall be refunded to such participants within thirty (30) days following the final City determination of the successful drawing participants, except to the extent that the City has paid a portion of such application fees to third parties as part of the application / investigation process.

8.86.070 Operating Requirements.

(a) Criminal History. Any applicant for, or owner, operator, agent or employee of, a dispensary shall not have been convicted of a felony, a misdemeanor involving moral turpitude, or a violation of drug laws, and shall not have engaged in misconduct related to the qualifications, operations, functions or duties of a dispensary permittee in any jurisdiction. A conviction within the meaning of this section means a plea or verdict of guilty, or plea of nolo contendere.

(b) Minors. It is unlawful for any permittee, owner, operator, or other person in charge of any dispensary to employ any person in a dispensary who is not at least 18 years of age.

Persons under the age of 18 shall not be allowed on the premises of a dispensary unless they are in the presence of their parent or guardian.

The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that any person under the age of 18 is precluded from entering the premises unless they in the presence of their parent or guardian.

(c) Operating Hours. A dispensary shall only be open during the following days and hours:

- (1) Monday through Saturday: 8:00 a.m. to 7:00 p.m.
- (2) Sunday: 8:00 a.m. to 6:00 p.m.

(d) Dispensary Control, Size and Access.

(1) The entrance into the dispensary building shall be locked at all times with entry strictly controlled; e.g., a buzz-in electronic/mechanical entry system is highly encouraged. A viewer shall be installed in the door that allows maximum angle of view of the exterior entrance.

(2) Security personnel shall be employed to monitor site activity and control loitering, potential nuisance activity and site access.

(3) Only dispensary staff, primary caregivers, qualified patients and persons with bona fide purposes for visiting the site shall be permitted at a dispensary.

(4) Potential patients or caregivers shall not visit a dispensary without first having obtained a valid written recommendation from their physician recommending use of medical marijuana.

(5) Only primary caregivers and qualified patients shall be permitted in the designated dispensing area with dispensary personnel. All other authorized visitors shall remain in the designated waiting area in the front entrance/lobby.

(6) Dispensaries shall not exceed 1,500 square feet in size.

(7) Restrooms shall remained locked and under the control of management.

(e) Dispensary Supply. A dispensary may possess no more than eight (8) ounces of dried medical marijuana per qualified patient or primary care giver, and maintain no more than six mature or 12 immature medical marijuana plants per qualified patient or primary caregiver. However, if a qualified patient or primary caregiver has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may possess an amount of medical marijuana consistent with the patient's needs.

(f) Dispensing Operations.

(1) A dispensary shall dispense medical marijuana to meet the medication needs of qualified patients.

(2) A dispensary shall only dispense to qualified patients or primary caregivers with a currently valid physician's approval or recommendation in compliance with Health and Safety Code sections 11362.5 et seq. Each member of the dispensary shall be a qualified patient or primary caregiver. To the extent that a patient uses the services of a primary caregiver, the dispensary shall maintain a notarized written authorization from the patient designating the primary caregiver as such.

(3) Prior to dispensing medical marijuana, the dispensary shall obtain either the signed verification form or verbal authorization from the recommending physician that the individual requesting medical marijuana is a qualified patient. If the physician recommendation is verbal, the dispensary shall document such recommendation in writing, including the physician's and qualified patient's names, addresses and telephone numbers, the date of issuance of the recommendation, the date the recommendation is provided to the dispensary, and the name of the dispensary

employee receiving the recommendation, the amount of medical marijuana recommended, frequency for dispensing and the period of time for which the recommendation is valid. Physician recommendations for medical marijuana shall be verified by the dispensary at least every six months. The dispensary shall retain documentation of such verifications by date and verifying employee.

(4) A dispensary shall not employ, permit or allow a physician on the premises to evaluate patients and provide a recommendation for medical marijuana.

(5) Patient records shall be maintained, and verified as needed, and at least every six months with the qualifying patient's physician or doctor of osteopathy.

(6) If edible medical marijuana products (including but not limited to lollipops, brownies, cookies and ice cream) are offered for distribution at a dispensary, the applicant shall secure, in advance, all County of Orange Department of Health Services permits and approvals (and any and all other applicable permits and approvals) required for handling such products.

(7) Information on the dispensary's annual operations shall be provided by the permittee to the City annually, as required in this chapter, including audited financial statements, within generally accepted auditing and accounting principles, to be submitted within sixty days of the end of the calendar year for the preceding year.

(8) Each dispensary shall fully comply with and meet all operating criteria required pursuant to the Compassionate Use Act, State law, the provisions of this chapter and any specific, additional operating procedures and measures as may be imposed as conditions of approval of the dispensary permit in order to ensure that the operation of the dispensary is consistent with the protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses. Each dispensary shall also comply with all of the provisions, recommendations, and guidelines of Sections IV.A. and IV.B. (1-8) of the Attorney General's Guidelines.

(9) Each dispensary shall obtain and maintain in effect at all times a Seller's Permit from the California Board of Equalization and file and pay all required sales taxes in accordance with State law.

(10) All transactions involving money, in-kind contributions, reimbursements, dispensary representative compensation and medical marijuana shall be fully documented, including each member's contribution of labor, resources or money to the dispensary. Such records shall be provided to the City upon request.

(11) No dispensary shall be operated for profit for itself or its members.

(g) Consumption Restrictions.

(1) Medical marijuana shall not be consumed on the premises of the dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other surroundings within 200 feet of the dispensary's entrance.

(2) No owner, operator, permittee, employee or agent of a dispensary shall cause, permit or allow illegal redistribution of medical marijuana obtained from the dispensary or use of medical marijuana on the dispensary premises.

(h) Cultivation and Commercial Sales Prohibited.

(1) No medical marijuana shall be cultivated on the premises of the dispensary, except in compliance with the Act and the Program. Any cultivation on the premises shall occur indoors.

(2) No dispensary shall sell or display any drug paraphernalia or any implement that may be used to administer medical marijuana.

(3) No dispensary shall conduct or engage in the commercial sale of any product, good or service. The term "commercial sale" does not include the provision of medical marijuana on terms and conditions consistent with this chapter and applicable law.

(4) A dispensary shall not cultivate, distribute or sell medical marijuana for a profit.

(5) A dispensary shall not pay any supplier(s) of medical marijuana more than the costs incurred for cultivation and preparation.

(6) A dispensary shall distribute only medical marijuana cultivated on the premises, by a member of the dispensary or by the member's primary caregiver. The dispensary shall perform an inventory on the first business day of each month and record the total quantity and source of each form of medical marijuana on the premises. These records shall be retained for two years from the date created and be provided to the City upon request.

(7) A dispensary shall meet all of the operating criteria for the dispensing of medical marijuana as is required pursuant to Health and Safety Code sections 11362.5 et seq.

(i) Operating Plans.

(1) Floor Plan. A dispensary shall have a lobby waiting area at the entrance to receive clients, and a separate and secure designated area for dispensing

medical marijuana to qualified patients or designated caregivers. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

(2) Storage. A dispensary shall have a suitable locked safe on the premises, identified as a part of the security plan, for after-hours storage of medical marijuana.

(3) Minimum Staffing Levels. The premises shall be staffed with at least one person during hours of operation who shall not be responsible for dispensing medical marijuana.

(4) Odors Control. A dispensary shall have an air treatment system that ensures off-site odors shall not result.

(5) Security Plans. A dispensary shall submit to and obtain the City Manager's approval of a security plan for the premises, including provisions for lighting, security personnel licensed by the State of California and present during all hours of business operations, and alarms, in order to insure the safety of persons and to protect the premises from theft.

(6) Security Cameras. Security surveillance cameras shall be installed to monitor the main entrance and exterior of the premises to discourage loitering, crime and illegal or nuisance activities. Security cameras shall be maintained in good condition with at least 120 concurrent hours of digitally recorded documentation. The cameras shall be in use 24 hours per day, 7 days per week. The areas covered by the cameras shall also include, but are not limited to, the storage areas, cultivation areas, all doors and windows and other areas as reasonably determined by the City Manager.

(7) Security Recording Retention. Security recordings shall be maintained for at least 120 hours and made available to the City upon request.

(8) Alarm System. A professionally monitored robbery alarm system shall be installed and maintained in good working condition.

(9) Emergency Contact. The name, phone number and facsimile number of the owner/manager of the premises shall be given to City designated personnel in the event notice needs to be given to the operator of operating problems associated with the dispensary.

(j) Signage.

(1) The dispensary building entrance shall be clearly posted with a notice stating that smoking, ingesting or consuming medical marijuana on or about the premises is prohibited.

(2) Windows and glass doors of a dispensary shall not be tinted or blocked with signs or other materials that limit visibility into the dispensary from the outside.

(k) Employee Records. The owner/operator of a dispensary shall maintain a current register of the names and residential addresses of all dispensary employees and shall provide such register for inspection upon request by any city officer or official for purposes of determining compliance with the requirements of this chapter.

(l) Patient Records. Each dispensary shall maintain records of all patients and primary caregivers using only (i) the identification and card number issued by the county, or its agent, pursuant to Health and Safety Code sections 11362.71 et seq., as a protection of the confidentiality of the cardholders, or (ii) the written recommendation, or oral documentation thereof, from a physician or doctor of osteopathy stating the need for medical marijuana. Copies of such records shall be maintained for a period of three (3) years beyond the date that the patient ceases to be a member of the dispensary.

(m) Staff Training. The owner and operator of each dispensary shall ensure that dispensary employees receive appropriate training for their duties to ensure understanding of rules and procedures regarding dispensing medical marijuana in compliance with State and local law, and properly trained security personnel.

(n) Site Management.

(1) The owner/operator shall take all reasonable steps to discourage and eliminate nuisance conditions on the dispensary premises, including in parking areas, sidewalks, alleys and areas surrounding the premises and on adjacent properties during business hours if directly related to the activities of patrons of the premises. "Nuisance" includes, but is not limited to, disturbances of the peace, open consumption of medical marijuana, excessive pedestrian or vehicular traffic accessing the property, and illegal drug activity.

(2) The operator shall take all reasonable steps to reduce loitering in public areas, sidewalks, and areas surrounding the dispensary premises during business hours.

(o) Trash, Litter, Graffiti.

(1) The operator shall clear and clean the sidewalks adjoining the dispensary premises as needed to control litter, debris and trash.

(2) The operator shall remove any applied graffiti to the dispensary premises within 72 hours of its application.

(p) Display of Permit. Every dispensary shall display the dispensary permit at all times during business hours at a conspicuous place within the entrance of the premises.

(q) Lighting. The dispensary entrance and all windows shall be illuminated during evening hours.

(r) Reporting of Number of Patients/Payment of Fees. Each permittee shall file an annual report, signed under penalty of perjury under the laws of the State of California, with the City Clerk's office indicating the number of patients served by the dispensary within the previous calendar year, and pay to the Finance Department all annual permit fees. This annual report shall also include a monthly breakdown of the quantity of medical marijuana dispensed, the amount grown onsite, the name and address of each source of medical marijuana produced offsite, along with the volume attributable to each such source and any other information that the City Manager reasonably determines is relevant to ascertain compliance with this chapter and State law.

(s) The City Manager shall have the right to enter into the dispensary from time to time unannounced to make reasonable inspections and to observe and enforce compliance with State and local law.

8.86.080 Application Preparation and Filing.

(a) Application Filing. A complete application submittal packet shall be submitted including all necessary fees and all other information and materials required by the City. All applications for permits shall be filed with the City Manager, using forms provided by the City. The application shall be made under penalty of perjury under the laws of the State of California.

(b) Eligibility for Filing. Applications may only be filed by the owner of the subject property, or a lessee with a lease signed by the property owner, which lease specifically authorizes the use of the property for medical marijuana dispensary purposes. The effectiveness of the lease may be contingent upon the applicant successfully obtaining a dispensary permit through the lottery and application process. The City Manager may waive the requirement for a signed lease if the applicant has not yet entered into a lease in which case the applicant shall provide a statement signed by the property owner stating that the property owner is willing to lease the property to the applicant for a dispensary operation upon mutually agreeable terms.

(c) Incomplete Application. The permit application shall not be processed until such time that the application has been deemed complete by the City Manager.

(d) Submittal Requirements. The permit application shall include the following information:

- (1) The Applicant's full name, present address, and telephone number;
- (2) The address of the proposed dispensary;
- (3) Proof that the applicant is over 18 years of age;
- (4) Description of applicant's height, weight, color or eyes, hair;
- (5) Passport quality photograph;
- (6) Occupation or employment of applicant for last five years;
- (7) Dispensary business history of applicant, including whether such person has operated in another political jurisdiction, the time period of such operation(s) and whether any dispensary permit license or approval was ever suspended or revoked, including the reasons therefor;
- (8) Names and residential addresses of person(s) who will be operating and/or managing the business;
- (9) Past criminal conviction history of owner(s), operator(s), employee(s) and business manager(s);
- (10) Identification of the names and residential addresses of all dispensary employees;
- (11) Plan of Operations describing how the dispensary will operate including but not limited to compliance with non-profit law requirements; access for and dispensing to patients or caregivers only; cultivation of medical marijuana, names and addresses of supply sources for medical marijuana, whether delivery service will be provided and the extent of such service and other information reasonably requested by the City Manager to document compliance by the dispensary with State and local law;
- (12) Description of dispensary physical size and estimate of the number of primary caregivers and qualified patients to be served by the dispensary;
- (13) The application shall include a written response as to how the requirements of this chapter will be satisfied;
- (14) A security plan to insure safety of those in contact with the operation, including but not limited to security cameras and a robbery alarm system;

- (15) A site plan and floor plan depicting floor area and interior configurations drawn to a designated scale, including but not limited to dispensing, storage and cultivation areas, and signage;
- (16) A diagram showing the exterior configuration of the proposed facility;
- (17) A neighborhood map depicting the location of all properties and uses within 1,000 feet of the boundary of the dispensary property;
- (18) A lighting plan, including both interior and exterior lighting;
- (19) Such other information as reasonably deemed necessary by the City Manager to further the purposes of this chapter.

(e) Annual Renewal. Applications for annual renewal shall contain the following minimum information:

- (1) Number of patients served and payment of applicable fees;
- (2) Any changes made to the dispensary operation;
- (3) Any change in any information provided in connection with the original application or the prior annual renewal applications, as appropriate;
- (4) Any problems encountered during operations and how were they addressed;
- (5) The names and addresses of all current dispensary employees;
- (6) Such other information as reasonably deemed necessary by the City Manager to further the purposes of this chapter.

8.86.090 Criteria For Review Of Permit Application.

The City Manager shall consider the following criteria in determining whether to grant, conditionally grant or deny an application for a dispensary permit or an annual renewal thereof:

- (a) Whether the dispensary is identified as having crime issues related to the dispensary operations;

(b) Whether all required application materials have been provided and, for renewals, whether the dispensary has operated in a manner consistent with the operating standards of this chapter;

(c) Whether all fees have been paid;

(d) Whether the size of the operation is necessitated by a demonstrated need for the rendered services;

(e) Whether, for the initial application, the location is consistent with the locational restrictions in this chapter and in section 9.16.020.100;

(f) Whether the site plan, floor plan, and security plan are adequate for the purpose of reducing crime-related problems commonly associated with dispensary operations;

(g) Whether any owner, operator, manager or employee of a dispensary has violated any City requirement relating to dispensaries or has been convicted of (i) a felony, (ii) misdemeanor involving moral turpitude, or (iii) any violation of drug laws;

(h) Whether the dispensary operation will adversely affect the health, peace, safety of those in the surrounding neighborhood; and whether it has resulted in repeated nuisance activities including, but not limited to, disturbances of the peace, illegal drug activity, littering, and loud noises;

(i) Whether the applicant has made a false statement in the application;

(j) Whether the applicant has engaged in unlawful or fraudulent business acts;

(k) Whether the owner, operator or manager has been associated with a dispensary in any jurisdiction that has had its permit, license or approval to operate suspended or revoked, or whether such operation was closed for reasons relating to non-compliance with legal requirements;

(l) Whether the dispensary permit application is otherwise consistent with applicable provisions of State and local law;

(m) For renewal applications whether the applicant has demonstrated compliance with the provisions of the City's regulations and State law applicable to dispensaries;

(n) In reviewing applications for dispensary permits, the City Manager may, in the exercise of his reasonable discretion, waive minor deviations from the application requirements.

8.86.100 Investigation and Action On Application.

After the making of a fully completed initial or renewal application as required by this chapter, the City Manager shall conduct a background check of the applicant and all employees and conduct an investigation of the application, including a site inspection, and shall take action as follows:

(a) Refer the application to any other city departments to complete the investigation;

(b) Either grant, conditionally grant or deny the application within 45 days after completion of the investigation. Upon completing the review process, the applicant shall be deemed qualified, unless the City Manager finds any of the following:

- (1) The applicant has made one or more false or misleading statements, or omissions on the application or during the application process; or
- (2) The proposed dispensary is not allowed by State or local law, statute, ordinance or regulation, including this Code, at a particular location; or
- (3) The applicant is not a primary caregiver or qualified patient or the legal representative of the dispensary; or
- (4) The applicant or any person who owns is to operate or manage or is otherwise responsible for the activities of the dispensary, or any employee, if any, has been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution or similar activities related to controlled substances. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*; or
- (5) The applicant or any person who is managing or is otherwise responsible for the activities of the dispensary has engaged in unlawful, fraudulent, unfair or deceptive business acts or practices; or
- (6) The application does not establish that the applicant will operate a dispensary in compliance with this chapter and the applicable land use requirements of this Code; or
- (7) The applicant has not satisfied each and every requirement of this chapter.

Based on the information set forth in the application and the City Manager's investigation, the City Manager may impose reasonable terms and conditions on the proposed operations in addition to those specified in this Section. A determination to grant or conditionally grant an initial application shall entitle the Applicant only to participate in the drawing process. Successful drawing participants shall have six (6) months following notice from the City in which to commence dispensary operations. The failure to commence dispensary operations within the six (6) month period shall result in the successful drawing participation being deemed void. The City may then notify the next applicant on the drawing list to proceed with dispensary operations.

(c) Issue and serve a written notice of decision on the applicant by United States mail, postage prepaid, or by personal service;

(d) In the alternative, the City Manager may refer the completed application for a permit to the City Council for final action.

8.86.110 Appeal From City Manager's Permit Decision.

(a) An applicant may appeal a permit application decision by filing a written appeal with the City Clerk within ten (10) calendar days of the date of the decision. If the appeal is not filed within such time, the decision shall be final. The appeal shall be accompanied by a fee, which shall be established by resolution of the City Council and a written, verified declaration setting forth each basis, and all facts supporting each basis, for the claim that the permit was improperly approved, denied, conditioned or revoked. Filing of an appeal shall suspend the issuance of all regulatory permits until action is taken on the appeal.

(b) The City Council shall consider the appeal within 45 days of the filing of the appeal, or as soon as practicable thereafter. The City Clerk shall notify the appellant at least 7 days prior to the date of the scheduled City Council hearing on the matter. The decision of the City Council shall be final and binding.

8.86.120 Effect Of Permit Denial.

In the event of permit application denial by either the City Manager or the City Council, no new application may be filed by the same party for a period of at least one year thereafter or until the next drawing process, whichever is later.

8.86.130 Suspension and Revocation of Permit/Appeals.

(a) Suspension and Revocation Authority. Any dispensary permit may be suspended or revoked by the City Manager if it is determined that the permittee has (1) violated any City requirements relating to dispensaries; (2) violated any provision of State law related to medical marijuana; (3) ceased dispensing operations for more than ninety (90) calendar days, including during any change of ownership proceedings; (4)

changed ownership without securing a dispensary permit; or (5) otherwise adversely affected the health, safety or welfare of the community through its operations.

(b) Notice of Intent. No dispensary permit shall be revoked or suspended by virtue of this section until written notice of intent to suspend or revoke the permit has been served upon the person to whom the permit was issued at least 10 days prior to the date set for a review of such action with the permittee. If after a review of the facts with the permittee during the review, the City Manager concludes a suspension or revocation is appropriate, he shall issue a notice of decision regarding such matter. Such notice of decision shall contain a statement of grounds forming the basis for the action in question and shall be served by the United States mail postage prepaid, or by personal service.

(c) Appeal of Suspension/Revocation to City Council. In the event of a suspension or revocation of a dispensary permit, the aggrieved party may file an appeal of such action with the City Council pursuant to the procedure set forth in section 8.86.110. The City Council shall decide the matter consistent with the procedure set forth in section 8.86.110.

8.86.140 Transfer of Permit Prohibited.

A permittee may not transfer a dispensary permit to any other party under any circumstance.

8.86.150 Violations.

Any person violating any provision of this chapter shall be subject to (i) criminal and civil remedies as provided for in Chapter 4 of Title 1 of the Municipal Code; (ii) administrative citations as provided for in Chapter 22 of Title 1 of the Municipal Code; (iii) permit suspension or revocation; and (iv) any other remedy provided by law.

8.86.160 Judicial Review.

Judicial review of a decision made under this chapter shall be in accordance with the requirements of administrative mandamus procedure, California Code of Civil Procedure 1094.5. Any such action shall be filed within 90 days after the day the decision becomes final as provided in Code of Civil Procedure 1094.6.

8.86.170 No Waiver of Immunity.

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, and expressly does not waive sovereign immunity, with respect to medical marijuana, or for the activities of any dispensary.

8.86.180 Definitions.

For the purpose of this chapter, the following words and phrases shall mean:

"Applicant" means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

"Attorney General's Guidelines" means the California Attorney General's August 2008 "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use," including any amendments thereto and updates thereof.

"City" means the City of Garden Grove.

"City Manager" means the City Manager of the City of Garden Grove, or his or her chosen designee.

"Drug paraphernalia" shall have the same definition as set forth in Health and Safety Code section 11326.5.

"Medical marijuana dispensary" or "dispensary" means five or more qualified patients and caregivers who collectively or cooperatively cultivate and share physician-recommended medical marijuana or medical marijuana in a manner strictly consistent with the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued August 2008, by the Office of the Attorney General for the State of California, as may be amended from time to time, on file in the Office of the City Clerk. The term "medical marijuana dispensary" shall not include dispensing by primary caregivers to qualified patients in the following locations and uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of the Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a residential hospice; or a home health agency licensed pursuant to Chapter 8 of Division 2 of Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5 and 11362.7 *et. seq.*

"Operator" means the person or persons primarily responsible for the day to day conduct of dispensary operations.

"Permittee" means the person: (1) to whom a dispensary permit is issued, and (2) who is identified in Health and Safety Code section 11362.7(c), or (d), or (e), or (f). For purposes of dispensary operations, a permittee shall be responsible for acts or omissions of all employees, operators, managers and agents of the dispensary.

"Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

"Premises" means the building, or portion thereof, occupied by the dispensary, as well as any accessory structures, parking areas or other immediately surroundings.

"Primary caregiver" shall have the same definition as set forth in section 11362.5 et seq. of the Health and Safety Code. As explained in People v. Metch (2008) 45 Cal.4th 274, a primary caregiver is a person who consistently provides caregiving to a qualified patient, independent of any assistance in taking medical marijuana, at or before the time he or she assumed responsibility for assisting with medical marijuana.

"Qualified patient" shall have the same definition as set forth in section 11362.5 et seq. of the Health and Safety Code.

"School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the Education Code. This definition includes elementary school, middle or junior high school, senior high school, or any special institution of education.

"Youth-oriented facility" means elementary school, middle school, high school, public park, tutoring facility, youth club facility, State licensed youth day care facility and any establishment that caters to or provides services primarily intended for minors.

Section 2.

No use, business, or activity of any kind which distributed marijuana prior to the enactment of this Ordinance shall be deemed to have been a legally established use under the provisions of the Land Use Regulations in Title 9 of this Municipal Code and such use shall not be entitled to claim legal nonconforming status.

Section 3.

By regulating medical marijuana dispensaries, the City of Garden Grove is only assuming an undertaking to preserve the general welfare through the provision of a method of implementing the Compassionate Use Act. The City Council is not assuming, nor is it imposing on its officers and employees, an obligation for which a breach thereof would expose the City to a liability in money damages to any person who claims that such breach proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to any provision of this Ordinance or for the activities of any medical marijuana dispensary. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City. Nothing in this

Ordinance shall be deemed or considered in any respects to constitute authorization to violate any state or federal law.

Section 4. Severability

If any term, provision, condition or covenant of this Ordinance or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Ordinance shall be valid and enforceable to the fullest extent permitted by law.