

**CITY COUNCIL AGENDA ITEM
(unfinished business)**

Council Meeting Date: February 20, 2007

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: City Administrator Gary P. Keefe g_keefe@ci.lompoc.ca.us

DATE: February 20, 2007

SUBJECT: Medicinal Marijuana Dispensaries in the City of Lompoc

RECOMMENDATION: That, after receipt of public comment and review of pertinent facts, the City Council respond to the approaching April 17, 2007 expiration of Lompoc's moratorium on operation of medicinal marijuana clinics within the City by:

- A. Prohibiting the operation of medicinal marijuana dispensaries within the City by introducing Ordinance No. 1540(07), waiving reading in full, and approving the proposed Ordinance; or
- B. Directing staff to prepare an ordinance regulating the operation of medicinal marijuana dispensaries within the City and return to Council for approval; and/or
- C. Directing staff to take such other actions as Council deems appropriate.

BACKGROUND: It has been more than a decade since California voters approved The Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5), joining ten other states that decriminalized the personal use of marijuana by eligible patients under specific limited circumstances. In the past ten years, the State Legislature supplemented the Act with implementing statutes (Health and Safety Code Sections 11362.7 – 11632.9, known as the Medical Marijuana Program), and several important issues moved slowly through the judicial system.

In 2004 and 2005, several people asked the City to allow them to operate mobile marijuana dispensaries or store front dispensaries, to make medicinal marijuana available to persons authorized to use the drug for certain serious medical conditions. Since the City then had no ordinances to regulate the effects of such activities, on April 19, 2005, the City Council imposed a moratorium on marijuana dispensaries to safeguard the public health, safety, and welfare while the matter was studied by staff. In compliance with Government Code Section 65858, the moratorium was extended twice, through April 17, 2007.

DISCUSSION: During the moratorium, the City Attorney, the Police Chief, the Community Development

Director, and the City Planner monitored developments in other jurisdictions, researched pertinent medicinal marijuana issues, tracked litigation against other cities and counties involving medicinal marijuana, analyzed judicial decisions, and conferred with persons concerned with medicinal marijuana.

I. The most significant considerations that emerged during the moratorium were:

(1) Neither the Compassionate Use Act nor the Medical Marijuana Program *requires* any city to permit the operation of medicinal marijuana dispensaries. The provisions of the law merely provide a defense to prosecution for those persons apprehended while possessing or using marijuana for medical reasons, in compliance with State law.

(2) The United States Supreme Court decision in Gonzalez v. Raich, 541 U.S. 1 (2005), holding that marijuana remains a controlled substance under federal law and that persons who choose to use this drug for medicinal purposes are subject to prosecution by the United States Department of Justice.

(3) Reports of negative secondary effects arising from the operation of medicinal marijuana clinics in other jurisdictions, namely, robberies, burglaries, illegal drug sales, forgery of identification documents, fraudulent assumption of primary caregiver status, and other criminal activity requiring use of law enforcement resources. A sampling of these effects and other pertinent data are attached to this report at Exhibit A, to document these facts for Council's information.

II. In the interest of a balanced presentation, information promulgated by several groups advocating the operation of medicinal marijuana dispensaries is attached at Exhibit B.

III. Copies of several ordinances allowing and regulating the operation of medicinal marijuana clinics are attached at Exhibit C, to provide examples of legislation in other jurisdictions should Council wish to permit marijuana dispensaries in Lompoc.

SUMMARY AND RECOMMENDATION: Staff recommends that the City Council review the facts presented in this report and provided by public comment, and, based on those facts, find that protection of the health, safety, and welfare of the residents of Lompoc requires the prohibition of the operation of mobile and/or store front medicinal marijuana dispensaries within the City, as set forth in the proposed Ordinance No. 1540(07).

Respectfully submitted,

Gary P. Keefe
City Administrator

Attachments: [Proposed Ordinance No. 1540\(07\)](#)
With [Exhibit A, Supplemental Information \(8.9 Mb file - SLOW Download\)](#)
[Exhibit B, Advocacy Information \(2.56 Mb file\)](#)
[Exhibit C, Samples of Regulatory Ordinances \(2.14 Mb file\)](#)