



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814

www.CityofSacramento.org

Meeting Date: 2/26/2013

Report Type: Public Hearing

Title: Zoning Code Ordinance Amendment - Location of Medical Marijuana Dispensaries in Relation to Parks and K-12 Schools (M12-006)

Report ID: 2013-00182

Location: Citywide

Recommendation: Conduct a public hearing and upon conclusion: 1) pass an Ordinance amending Section 17.24.050 of Title 17 of the Sacramento City Code (the Zoning Code) relating to location requirements for medical marijuana dispensaries; and 2) provide direction to the city Manager on additional changes to the Zoning Code relating to location requirement for medical marijuana dispensaries.

Contact: Joy Patterson, Principal Planner, (916) 808-5607, Community Development Department

Presenter: Joy Patterson, Principal Planner, (916) 808-5607, Community Development Department

Department: Community Development Dept

Division: Zoning

Dept ID: 21001224

Attachments:

1-Description/Analysis

2-Background Information

3-Map of current location of dispensaries and sensitive use overlay 2.19.13.

4-Map of dispensaries with sensitive use criteria modified to 1,000 feet from parks and schools

5-Federal Background for 1000 ft Distance Restriction

6-Original Ordinance (January 29, 2013)

7-Revised Ordinance redlined

8-Revised Ordinance (staff recommended).

City Attorney Review

Approved as to Form
Paul Gale
2/20/2013 3:58:13 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
City Treasurer

Approvals/Acknowledgements

Department Director or Designee: Max Fernandez (Per Joy Patterson) - 2/20/2013 3:39:42 PM

Description/Analysis

Issue: At the City Council meeting of January 29, 2013, the Sacramento City Council held a public hearing and discussed adopting an ordinance that would modify the location criteria for medical marijuana dispensaries in relation to parks and K-12 public and private schools. The current distance requirement for a dispensary is 600 feet from a park and from a school. The ordinance reviewed on January 29th proposed that the distance requirement be increased from 600 feet to 1,000 feet for parks and schools (Attachment 6). The City Council voted to continue the item for three weeks so that staff could provide answers to questions that came up regarding distance requirements, prepare an alternative ordinance for consideration (Attachment 8), and research options for possible future modification of the Zoning Code to allow for some flexibility when reviewing sensitive uses in relation to a dispensary location.

Policy Considerations: Since October 2011, the four California-based United States Attorneys have taken increased enforcement action against dispensaries that are located within 1,000 feet of schools. The 1,000 foot restriction is based on the enhanced penalties that apply under federal law for distribution of controlled substances, including marijuana, within 1,000 feet of schools (21U.S.C. Section 860[a]). In addition, the Sacramento City Council recently expressed concern with the influence of tobacco sales on youth within 1,000 feet of schools and adopted Ordinance 2012-016 on June 19, 2012, requiring any store proposing to sell tobacco within 1,000 feet of a school to obtain a Zoning Administrator's special permit. Sacramento City Code Section 9.08.120.A.1 also prohibits the smoking of marijuana upon or within 1,000 feet of the grounds of any school or park. At the time Section 9.08.120 was adopted the Council found that the open and public consumption of marijuana is potentially harmful to youths in that it sets a deleterious example regarding the use of illicit drugs. The proposed ordinance would be consistent with the other city ordinances mentioned above by setting a 1,000 feet proximity restriction around schools and not only serve to protect children, but also dispensaries that might expose themselves to additional federal scrutiny by locating within 1,000 feet of a school.

Economic Impacts: None.

Environmental Considerations: The adoption of the ordinance would have no significant effect on the environment and is exempt pursuant to CEQA Guidelines section 15061(b)(3).

Sustainability: None.

Commission/Committee Action: On October 11, 2012, the Sacramento City Planning and Design Commission voted 7 ayes, 4 noes, and 2 absent to recommend approval of the proposed ordinance and forward to City Council. On

January 15, 2013, the Law and Legislation Committee voted to recommend approval of the proposed ordinance and forward to City Council.

Rationale for Recommendation: Council discussion on January 29, 2013, included concerns about the U.S. Attorneys' actions on prosecuting dispensaries located within 1,000 feet of a school and the enhanced penalties associated with the enforcement. However, there could be instances where a dispensary is located within 1,000 feet of a park or school, but also reasons why this distance would not be detrimental to the public health or welfare. The revised ordinance gives the hearing body the discretion and ability to evaluate the location of a specific dispensary in relation to parks and/or schools as part of the special permit review and determine whether or not a location between 600 and 1,000 feet is appropriate.

Financial Considerations: None.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

Background Information

At the January 29, 2013, City Council hearing on location requirements for medical marijuana dispensaries in relation to parks and schools, the Council asked the City Attorney's office to report back on how the federal government measures the 1,000 foot distance and if the targeting of dispensaries by the U.S. Attorney's office is based on enhanced penalties under federal law.

According to the City Attorney, in determining whether a person violates federal law and is subject to enhanced penalties for illegal marijuana sales within 1,000 feet of a school, relevant distance is between actual point of possession and school property line. The distance is measured "as the crow flies" and not as pedestrians would walk. The federal courts have consistently held that the phrase "within 1,000 feet" of a school requires measurement in a straight line from the school property and not according to some pedestrian route. (*United States v. Watson*, 887 F.2d 980, 981 (9th Cir. 1989)).

The decision by the four California United States Attorneys to target dispensaries within 1,000 feet of a school is based on the enhanced penalties that apply under federal law. (See 21 U.S.C. Section 860 (a)). City staff learned this from the published press releases. See Attachment 5 for more detail that provides the reasoning that led staff to conclude the federal government was taking a focused interest on dispensaries within 1,000 feet.

The City Zoning Code measures the distance from the property lines where the use is located. If a sensitive use is located within the radius created from the property lines, the dispensary would be considered too close to the use and would not be able to locate on that specific property. This method is consistent with how the Zoning Code requires measurement for other land uses, such as the distance of a convenience market from residential uses (section 17.24.050.34), the distance of a check cashing center from a variety of sensitive uses (section 17.24.050.84), and the distance of a tobacco store from a school (section 17.24.050.89).

Councilmember McCarty requested that staff prepare an ordinance that has similarities to the ordinance recently adopted by the City Council relating to tobacco sales within 1,000 feet of schools. This ordinance requires a Zoning Administrator special permit in order to sell tobacco within 1,000 feet of a school.

Staff has prepared a revised ordinance related to medical marijuana dispensaries (Attachment 8). The proposed ordinance sets a 1000 foot distance requirement for a dispensary from a park or K-12 school; however, the dispensary could apply for this distance to be modified or reduced to a distance not less than 600 feet as part of the medical marijuana dispensary's special permit review by the appropriate hearing body. This would allow discretion for cases where a dispensary is located within 1,000 feet of

a park or school, but there could be a reason why this distance would not be detrimental to the public health or welfare. For example a natural or man-made barrier, such as a river or a freeway, might be located between the medical marijuana dispensary and the park or school, making it impossible for a child to walk by the dispensary to and from the park or school. Staff finds that the revised ordinance, giving the hearing body the ability to evaluate the location of a specific dispensary in relation to a park and/or school as part of the special permit review is appropriate as it allows the commission to evaluate the specific locations as part of the land use permitting process. Staff recommends that the City Council adopt the revised ordinance.

This discretion, to allow the hearing body to modify the distance requirements found in the City Code, could be applied to any or all of the listed sensitive uses found in the Zoning Code. If directed by the City Council, the City Manager's staff can prepare a draft ordinance allowing for modification of the sensitive use criteria by the hearing body as part of the special permit process for review and discussion by the City's Law and Legislation Committee.

MM Dispensaries: Current Radius Restrictions

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Legend

-  Registered Medical Marijuana Dispensary
-  1,000 Foot Radius around Medical Marijuana Dispensary Property
-  Within 300 Feet of a Residential Zoned Property and/or 600 Feet of a Public Park or Private, Public, Charter School

Map Revised 02-19-13
Map Created 7-16-12
*Spatial Analysis was based on residential zoned properties.

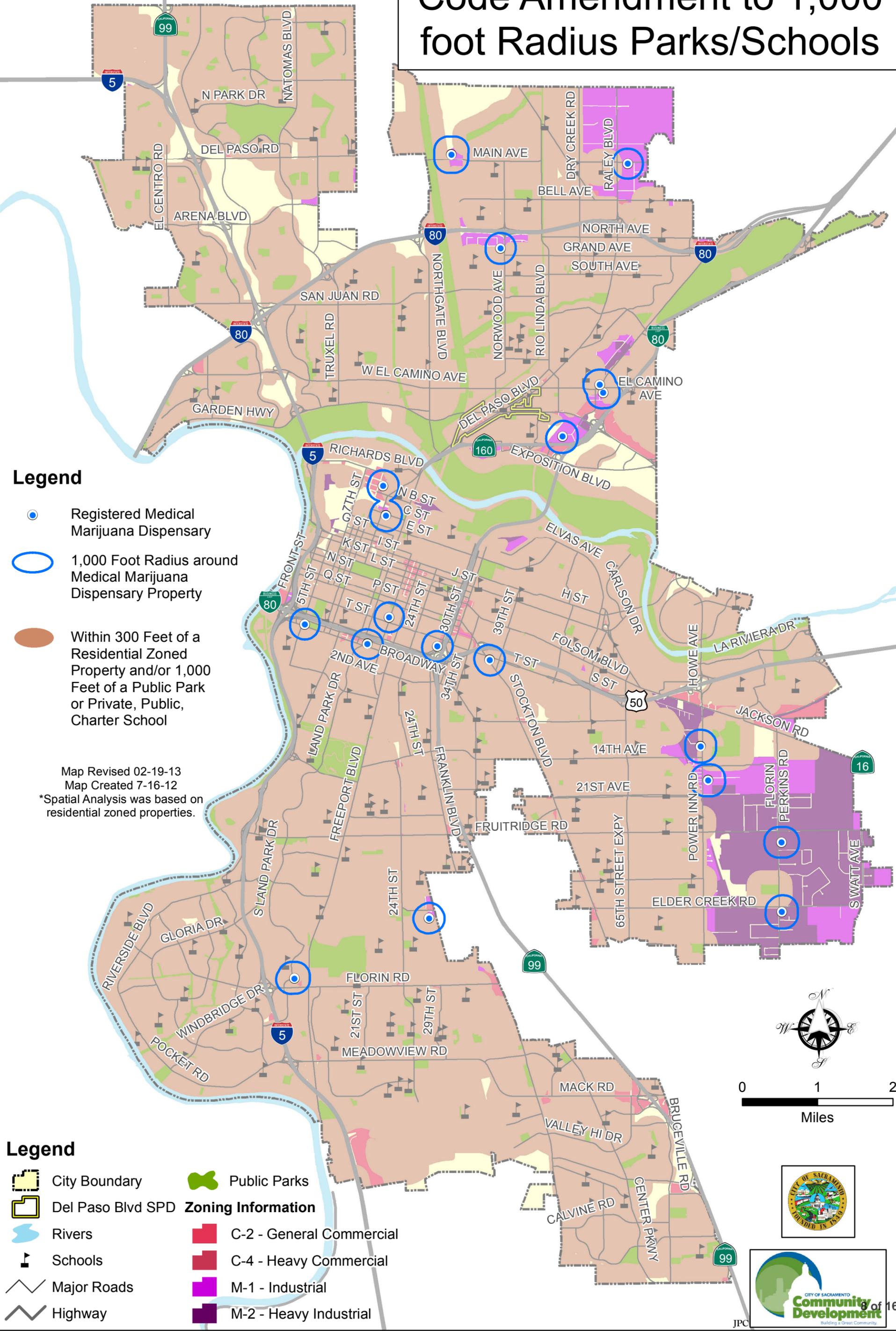
Legend

- | | |
|--|--|
|  City Boundary |  Public Parks |
|  Del Paso Blvd SPD | Zoning Information |
|  Rivers |  C-2 - General Commercial |
|  Schools |  C-4 - Heavy Commercial |
|  Major Roads |  M-1 - Industrial |
|  Highway |  M-2 - Heavy Industrial |



MM Dispensaries: Proposed Code Amendment to 1,000 foot Radius Parks/Schools

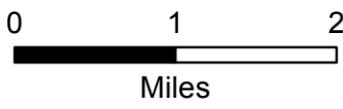
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Legend

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Map Revised 02-19-13
 Map Created 7-16-12
 *Spatial Analysis was based on residential zoned properties.



Legend

- | | |
|-------------------|---------------------------|
| City Boundary | Public Parks |
| Del Paso Blvd SPD | Zoning Information |
| Rivers | C-2 - General Commercial |
| Schools | C-4 - Heavy Commercial |
| Major Roads | M-1 - Industrial |
| Highway | M-2 - Heavy Industrial |



Federal Background Supporting the Restriction on Dispensaries Operating within 1000 feet of Schools

On October 7, 2011, the four California-based United States Attorneys announced coordinated enforcement actions targeting the illegal operations of commercial marijuana dispensaries. As part of that strategy the US Attorney for the Northern District of California, Melinda Haag, stated that marijuana stores operating in proximity to schools sent the wrong message to those in our society who are the most impressionable. (See Attachment 1, “October 7, 2011, California’s Top Federal Law Enforcement Officials Announce Enforcement Actions Against State’s Widespread and Illegal Marijuana Industry.”)

Since the above mentioned announcement the United States Attorneys have taken enforcement action against dispensaries that are located within 1000 feet of schools. The 1000 feet restriction is based on the enhanced penalties that apply under federal law for distribution of controlled substances (including marijuana) within 1000 feet of schools. (See 21 U.S.C. Section 860 (a)). This policy or prohibition originally announced by the California based United States Attorneys has been most recently followed by the United States Attorneys in Colorado. There 23 dispensaries were specifically targeted throughout Colorado because they were located within 1,000 feet of a school. (See Attachment 2, “January 12, 2012, U.S. Attorney Sends Letters to 23 Marijuana Dispensaries within 1,000 feet of Schools Warning Them to Shut Down or Face Federal Enforcement Action.”)

From this enforcement activity it has become clear that the United States Attorneys throughout the country, and in California and Colorado, specifically, are unwilling to tolerate dispensaries operating within 1000 feet of schools. While the line has been drawn at 1000 feet that does not mean that dispensaries located more than 1000 feet from a school will be safe from federal prosecution. However, the proposed amendment’s compliance with the federal proximity restriction to schools will at least not expose dispensary operators to the enhanced penalties of 21 U.S.C. Section 860 (a) and will be consistent with the federal enforcement announcements to date.

Attachment 1

FOR IMMEDIATE RELEASE

October 7, 2011

California's Top Federal Law Enforcement Officials Announce Enforcement Actions Against State's Widespread and Illegal Marijuana Industry

SACRAMENTO, Calif. – The four California-based United States Attorneys today announced coordinated enforcement actions targeting the illegal operations of the commercial marijuana industry in California.

The statewide enforcement effort is aimed at curtailing the large, for-profit marijuana industry that has developed since the passage of California's Proposition 215 in 1996. That industry has swelled to include numerous drug-trafficking enterprises that operate commercial grow operations, intricate distribution systems and hundreds of marijuana stores across the state — even though the federal Controlled Substances Act makes illegal the sale and distribution of marijuana.

While the four United States Attorneys have tailored enforcement actions to the specific problems in their own districts, the statewide enforcement efforts fall into three main categories:

- Civil forfeiture lawsuits against properties involved in drug trafficking activity, which includes, in some cases, marijuana sales in violation of local ordinances;
- Letters of warning to the owners and lienholders of properties where illegal marijuana sales are taking place; and
- Criminal cases targeting commercial marijuana activities, including arrests over the past two weeks in cases filed in federal courts in Los Angeles, San Diego, Sacramento and Fresno.

The enforcement actions being announced today are the result of the four United States Attorneys working with federal law enforcement partners and local officials across California to combat commercial marijuana activities that are having the most significant impacts in communities.

“The DEA and our partners are committed to attacking large-scale drug trafficking organizations, including those that attempt to use state or local law to shield their illicit activities from federal law enforcement and prosecution,” said DEA Administrator Michele M. Leonhart. “Congress has determined that marijuana is a dangerous drug and that its distribution and sale is a serious crime. It also provides a significant source of revenue for violent gangs and drug organizations. The DEA will not look the other way while these criminal organizations conduct their illicit schemes under the false pretense of legitimate business.”

"The actions taken today in California by our U.S. Attorneys and their law enforcement partners are consistent with the Department's commitment to enforcing existing federal laws, including the Controlled Substances Act (CSA), in all states," said Deputy Attorney General James Cole. "The department has maintained that we will not focus our investigative and prosecutorial resources on individual patients with serious illnesses like cancer or their immediate caregivers. However, U.S. Attorneys continue to have the authority to prosecute significant violations of the CSA, and related federal laws."

Benjamin B. Wagner, the United States Attorney for the Eastern District of California stated: "Large commercial operations cloak their moneymaking activities in the guise of helping sick people when in fact they are helping themselves. Our interest is in enforcing federal criminal law, not prosecuting seriously sick people and those who are caring for them. We are making these announcements together today so that the message is absolutely clear that commercial marijuana operations are illegal under federal law, and that we will enforce federal law."

André Birotte Jr., the United States Attorney for the Central District of California, stated: "The federal enforcement actions are aimed at commercial marijuana operations, including marijuana grows, marijuana stores and mobile delivery services - all illegal activities that generate huge profits. The marijuana industry is controlled by profiteers who distribute marijuana to generate massive and illegal profits."

Laura E. Duffy, the United States Attorney for the Southern District of California, commented: "The California marijuana industry is not about providing medicine to the sick. It's a pervasive for-profit industry that violates federal law. In addition to damaging our environment, this industry is creating significant negative consequences, in California and throughout the nation. As the number one marijuana producing state in the country, California is exporting not just marijuana but all the serious repercussions that come with it, including significant public safety issues and perhaps irreparable harm to our youth."

Melinda Haag, the United States Attorney for the Northern District of California, said: "Marijuana stores operating in proximity to schools, parks, and other areas where children are present send the wrong message to those in our society who are the most impressionable. In addition, the huge profits generated by these stores, and the value of their inventory, present a danger that the stores will become a magnet for crime, which jeopardizes the safety of nearby children. Although our initial efforts in the Northern District focus on only certain marijuana stores, we will almost certainly be taking action against others. None are immune from action by the federal government."

Dozens of letters have been sent over the past few days to the owners and lienholders of properties where commercial marijuana stores and grows are located. In the Southern and Eastern Districts, the owners of buildings where marijuana stores operate have received letters warning that they risk losing their property and money derived from renting the space used for marijuana sales. In the Central District, where more than 1,000 stores are currently operating, prosecutors have sent letters to property owners in selected cities where officials have

requested federal assistance, and they plan to continue their enforcement actions in other cities as well. In the Northern District, owners and lienholders of marijuana stores operating near schools and other locations where children congregate have been warned that their operations are subject to enhanced penalties and that real property involved in the operations is subject to seizure and forfeiture to the United States.

In the Central District and Eastern District, prosecutors this week filed a total of seven civil forfeiture complaints against properties where landlords are knowingly allowing marijuana stores to operate. One complaint filed against a south Orange County strip mall, for example, alleges that eight of the 11 second-floor suites in the buildings are occupied by marijuana stores and that one small city has spent nearly \$600,000 in legal fees in its attempt to eradicate the illegal operations.

Criminal cases recently unsealed across the state reveal marijuana operations that produce huge profits, send their money and illegal narcotics to other states, and market products to young people. In a case involving a now-closed marijuana store in the San Fernando Valley, two conspirators allegedly used encrypted smartphones to coordinate marijuana sales to places as far away as New York and estimated that they would each receive \$194,000 in profits per month. In a San Diego dispensary case unsealed last week, six defendants were charged in a 77-count indictment that alleges a wide-ranging conspiracy that included numerous marijuana sales to under-aged persons.

Victor S.O. Song, Chief, IRS Criminal Investigation, stated: "IRS Criminal Investigation is proud to work with our law enforcement partners and lend its financial expertise to this effort. We will continue to use the federal asset forfeiture laws to take the profits from criminal enterprises."

Across California, the federal government will continue to investigate and prosecute those whose actions not only violate federal laws, but also the state laws regarding the use of marijuana. The problems associated with the marijuana business have dramatically increased over the past two years, even in areas where local governments and citizens actively oppose these businesses.

The statewide coordinated enforcement actions were announced this morning at a press conference in Sacramento.

Attachment 2

FOR IMMEDIATE RELEASE

January 12, 2012

U.S. ATTORNEY SENDS LETTERS TO 23 MARIJUANA DISPENSARIES WITHIN 1,000 FEET OF SCHOOLS WARNING THEM TO SHUT DOWN OR FACE FEDERAL ENFORCEMENT ACTION

DENVER – U.S. Attorney John Walsh today issued letters to 23 marijuana stores, formally notifying them that action will be taken to seize and forfeit their property if they do not discontinue the sale and/or distribution of marijuana within 45 days from today, January 12, 2012. Those who do not comply will be subject to potential criminal prosecution and civil enforcement actions by the United States Attorney’s Office for the District of Colorado and the Drug Enforcement Administration (DEA). The 23 stores, located in various cities and towns around the state, are each within 1,000 feet of a school. Many are far closer.

Because the stores are operating within 1,000 feet of a school, enhanced penalties apply under federal law. See 21 U.S.C. § 860(a).

“When the voters of Colorado passed the limited medical marijuana amendment in 2000, they could not have anticipated that their vote would be used to justify large marijuana stores located within blocks of our schools,” said U.S. Attorney John Walsh. He noted that data shows that since the opening of marijuana dispensaries in Colorado in 2010, many school districts in Colorado have seen a dramatic increase in student abuse of marijuana, with resulting student suspensions and discipline.

The United States Attorney’s Office and its law enforcement partners continue to work to identify marijuana stores within 1,000 feet of schools. As a result, today’s letters are merely a first step to address this issue, and the office will continue to insist marijuana stores near schools shut down.

The Department of Justice has earlier provided U.S. Attorneys with guidance in the form of a memo written by then Deputy Attorney General David Ogden in 2009, later amplified by Deputy Attorney General James Cole in 2011. Those memos address resource issues, and set forth parameters for individual U.S. Attorneys to exercise their discretion to handle marijuana trafficking matters, including marijuana trafficking near schools. Today’s action is pursuant to and consistent with the guidance given by the Department of Justice in these memos.

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

**AN ORDINANCE AMENDING SECTION 17.24.050 OF TITLE 17 OF THE
SACRAMENTO CITY CODE (THE ZONING CODE) RELATING TO LOCATION
REQUIREMENTS FOR MEDICAL MARIJUANA DISPENSARIES**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

- A. Subsection d of Footnote 85 of Section 17.24.050 of Title 17 of the Sacramento City Code (the Zoning Code) is amended to read as follows:
- d. Location and Permit Requirements. Except as provided in subsection m of this footnote, the following location requirements apply to all medical marijuana dispensaries and may not be waived or modified by special permit or variance:
- i. No medical marijuana dispensary shall be established or located within one thousand (1,000) feet, measured from the nearest property lines of each of the affected parcels, of any other medical marijuana dispensary, park or school (public or private K-12).
- ii. No medical marijuana dispensary shall be established or located within three hundred (300) feet, measured from the nearest property lines of each of the affected parcels, of any existing residential zone or residential use.
- iii. No medical marijuana dispensary shall be established or located within six hundred (600) feet, measured from the nearest property lines of each of the affected parcels, of any child care center, child care-family day care home (large or small), youth-oriented facility, church/faith congregation, substance abuse center, movie theater/cinema, or tobacco store.
- B. Except as amended as set forth in subsection A, footnote 85 of Section 17.24.050 remains unchanged and in full force and effect.

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i. No medical marijuana dispensary shall be established or located within one thousand (1,000) feet, measured from the nearest property lines of each of the affected parcels, of any other medical marijuana dispensary.

ii. No medical marijuana dispensary shall be established or located within three hundred (300) feet, measured from the nearest property lines of each of the affected parcels, of any existing residential zone or residential use.

iii. No medical marijuana dispensary shall be established or located within six hundred (600) feet, measured from the nearest property lines of each of the affected parcels, of any child care center, child care-family day care home (large or small), youth-oriented facility, church/faith congregation, substance abuse center, movie theater/cinema, or tobacco store.

iv. No medical marijuana dispensary shall be established or located within one thousand (1,000) feet, measured from the nearest property lines of each of the affected parcels, of any park or school (public or private K-12). Notwithstanding contrary language in this subsection d, except as otherwise provided by state law, the location requirements for parks or schools (public or private K-12) may be modified by special permit to allow medical marijuana dispensaries to be located six hundred (600) feet or more, measured from the nearest property lines of each of the affected parcels, from any park or school (public or private K-12).

B. Except as amended in subsection A, footnote 85 of Section 17.24.050 remains unchanged and in full force and effect.

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B. Except as amended in subsection A, footnote 85 of Section 17.24.050 remains unchanged and in full force and effect.