



# REPORT TO PLANNING COMMISSION City of Sacramento

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915 I Street, Sacramento, CA 95814-2671

**PUBLIC HEARING**  
October 11, 2012

To: Members of the Planning Commission:

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

**Location:** Citywide

**Contact:** Joy Patterson, Principal Planner, 916-808-5607

**Recommendation:** Staff recommends that the Planning Commission recommend approval of the proposed ordinance amending the Zoning Code relating to modifying the distance requirement for medical marijuana dispensaries from parks and K-12 schools and forward its recommendation to the City Council.

### **Summary:**

At the City Council meeting of April 17 2012, Council member Darrell Fong requested that Community Development Department staff prepare a report for the Law and Legislation Committee on modifying 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. At the Law and Legislation meeting of July 24, 2012, committee members discussed amending the distance requirement to 1,000 feet from a park or school. The committee directed Planning staff to prepare an ordinance for the review and recommendation of the Planning Commission regarding expanding the distance requirement to 1000 feet.

### **Background Information:**

The current Zoning Code regulations, adopted by the City Council of November 9, 2010, requires that a newly located medical marijuana dispensary be located a minimum of 600 feet from a school. The City Council adopted this standard to be consistent with Assembly Bill 2650, authored by Assemblywoman Joan Buchanan, prohibiting any medical marijuana cooperative or collective to locate within 600 feet of a school. This bill was signed into law by Governor Brown on September 30, 2010. The adopted regulations also require a dispensary to be located 600 feet from a park.

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 U.S. 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 2, "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 3, "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.

**Proposed Zoning Code Amendment:**

Staff has prepared a draft ordinance (Attachment 4) which deletes the current requirement that states a medical marijuana dispensary shall not be located within six hundred feet of a park or public or private K-12 school. In its place, the requirement is added that no dispensary shall be established within 1,000 feet of a park of school.

Of the 34 dispensaries that have passed the Phase I requirements of the Revenue Division, four dispensaries have obtained special permits. If this ordinance is approved by the City Council these dispensaries could continue to operate at their current location and would not have to relocate even if they are within 1000 feet of a park or school, if they meet all other requirements of the city code.

The Zoning Code states that if an application for a medical marijuana dispensary is for the location where the dispensary has been in continuous operation since October 26, 2010, the location requirements (distance from residences, parks, schools, child care centers, child care-family day care homes, youth-oriented facilities, church/faith congregations, substance abuse centers, movie theaters/cinemas, tobacco stores and other dispensaries) do not apply and the applicant can submit a special permit application. The proposed amendment would still allow this exemption for parks and K-12 schools at the new 1,000 foot radius. While an applicant can apply for a special

permit and not meet the distance requirements, the hearing body can take the sensitive uses into consideration when deciding whether or not to approve, conditionally approve, or deny a special permit.

Twenty-seven (27) of the Phase I dispensaries are registered at the location they have operated at since October 26, 2010. These dispensaries would be able to continue to process an application at this location if the ordinance is adopted as proposed even if they are within 1000 feet of a school. If they choose to re-locate and the 1,000 distance requirement is adopted, they will be required to meet the new distance requirement.

Two (2) of the Phase I dispensaries have relocated. When they relocated they were required to meet all of the location requirements. It appears that both of these dispensaries would also meet the 1,000 foot location requirement from parks and K-12 schools if the proposed code amendment is adopted.

One (1) of the Phase I dispensaries could not apply for a special permit at their October 26, 2010 location as it was not located in a zone that permitted dispensaries. If the proposed code amendment is adopted it will be required to meet the new distance requirement.

The dispensary regulations found in Title 5 of the City Code only permit the 34 Phase I dispensaries to apply for a special permit. However, in the future, others may be allowed to apply. These applicants will be required to meet the location requirement of the Zoning Code including, if adopted, the 1,000 foot distance requirement for parks and K-12 schools.

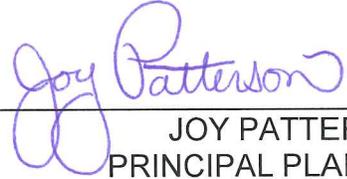
**Public/Neighborhood Outreach and Comments:** Dispensary owners attended the Law and Legislation Committee meeting and have been informed of the review of the proposed amendment before the Planning Commission.

**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).

**Policy Considerations:** After the announcement by the US Attorneys in October 2011, City Manager John Shirey informed the Mayor and City Council that City staff, in order to avoid a sharp contrast and in deference to the US Attorneys announcement, would not support medical marijuana dispensary applications before the Planning Commission and Zoning Administrator that were located within 1000 feet of a school or park. In addition, the Sacramento City Council recently expressed concern with the influence of tobacco sales on youth within 1000 feet of a school and adopted Ordinance 2012-016 on June 19, 2012, requiring a store proposing to sell tobacco within 1000 feet of a school obtain a Zoning Administrator's special permit.

October 11, 2012

Respectfully submitted by: \_\_\_\_\_



JOY PATTERSON  
PRINCIPAL PLANNER

Recommendation Approved:

  
\_\_\_\_\_  
DAVID KWONG  
PLANNING DIRECTOR

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**Attachment 1**

**City Planning Commission Record of Decision/Recommendation:  
Location of Medical Marijuana Dispensaries (M12-006)**

- A. The Planning Commission recommends approval and forwards to the City Council the **Ordinance Amending Sections 17.24.050 of the Sacramento City Code Relating to the Location of Medical Marijuana Dispensaries** as set forth in Attachment 4.

**Attachment 2**

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 3**

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.

## Draft

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 **park, school (public or private K-12)**, 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.