

CITY of LAGUNA WOODS CITY COUNCIL AGENDA

Special Meeting
Thursday, September 10, 2015
1:00 p.m.

Laguna Woods City Hall
24264 El Toro Road
Laguna Woods, California 92637

Cynthia Connors
Mayor

Noel Hatch
Mayor Pro Tem

Bert Hack
Councilmember



Shari L. Horne
Councilmember

Carol Moore
Councilmember

Welcome to a meeting of the Laguna Woods City Council!

This meeting may be recorded, televised, and made publically available.

Public Comments: Persons wishing to address the City Council are requested to complete and submit a speaker card to City staff. Speaker cards are available near the entrance to the meeting location. Persons wishing to address the City Council on an item appearing on this agenda will be called upon at the appropriate time during the item's consideration. Persons wishing to address the City Council on an item *not* appearing on the agenda will be called upon during the "Public Comments" item. Persons who do not wish to submit a Speaker Card, or who wish to remain anonymous, may indicate their desire to speak from the floor. Speakers are requested, but not required, to identify themselves.

Americans with Disabilities Act (ADA): It is the intention of the City to comply with the ADA. If you need assistance to participate in this meeting, please contact either the City Clerk's Office at (949) 639-0500/TTY (949) 639-0535 or the California Relay Service at (800) 735-2929/TTY (800) 735-2922. The City requests at least two business days' notice in order to effectively facilitate the provision of reasonable accommodations.

REGULAR MEETING SCHEDULE

The Laguna Woods City Council regularly meets on the third Wednesday of each month at 2 p.m.

AGENDA POSTING AND AVAILABILITY

Regular and Adjourned Regular Meetings: Pursuant to California Government Code Section 54954.2 of the Ralph M. Brown Act, the City of Laguna Woods posts agendas at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, California 92637; on the City’s website (www.cityoflagunawoods.org); and, at other locations designated by Resolution No. 02-33, at least 72 hours in advance of regular and adjourned regular meetings. Agendas and agenda materials are available at Laguna Woods City Hall during normal business hours and on the City’s website. Printed copies of agendas and agenda materials are provided at no charge in advance of meetings. After meetings have occurred, a per page fee is charged for printed copies.

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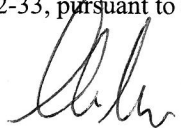
FOR ADDITIONAL INFORMATION

For additional information, please contact the City Clerk’s Office at (949) 639-0500/TTY (949) 639-0535, cityhall@cityoflagunawoods.org, or 24264 El Toro Road, Laguna Woods, California 92637.

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, Christopher Macon, City Manager, City of Laguna Woods, hereby certify under penalty of perjury that this agenda was posted at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, California 92637; on the City’s website (www.cityoflagunawoods.org); and, at other locations designated by Resolution No. 02-33, pursuant to California Government Code Section 54954.2 of the Ralph M. Brown Act.



CHRISTOPHER MACON, City Manager

9/4/15

Date

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. PLEDGE OF ALLEGIANCE**
- IV. PRESENTATIONS AND CEREMONIAL MATTERS**
- V. PUBLIC COMMENTS**

About Public Comments: This is the time and place for members of the public to address the City Council on items *not* appearing on this agenda. Pursuant to State law, the City Council is unable to take action on such items, but may engage in brief discussion, provide direction to City staff, or schedule items for consideration at future meetings.

- VI. CONSENT CALENDAR**

About the Consent Calendar: All items listed on the Consent Calendar are considered routine and will be enacted by one vote. There will be no separate discussion of these items unless a member of the City Council, City staff, or the public requests that specific items be removed from the Consent Calendar for separate discussion and consideration of action.

- VII. PUBLIC HEARINGS**

- 7.1 Medical Marijuana Dispensaries Ordinance

Recommendation:

- 1. Receive staff report.

AND

- 2. Open public hearing.

AND

- 3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Adopt an ordinance – read by title with further reading waived
– entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF LAGUNA WOODS, CALIFORNIA
PURSUANT TO CALIFORNIA GOVERNMENT CODE
SECTIONS 36934, 36937, AND 65858, ADOPTING A
MORATORIUM ON ESTABLISHING, LOCATING, OR
OPERATING MEDICAL MARIJUANA DISPENSARIES

VIII. CITY COUNCIL BUSINESS

IX. CITY COUNCIL REPORTS AND COMMENTS

About City Council Comments and Reports: This is the time and place for members of the City Council to provide reports on meetings attended including, but not limited to, meetings of regional boards and entities to which they have been appointed to represent the City and meetings attended at the expense of the City pursuant to California Government Code Section 53232.3. Members of the City Council may also make other comments and announcements.

9.1 Comments and Reports

X. CLOSED SESSION

XI. CLOSED SESSION REPORT

XII. ADJOURNMENT

Next Regular Meeting: Wednesday, September 16, 2015 at 2 p.m.
Laguna Woods City Hall
24264 El Toro Road, Laguna Woods, California 92637



City of Laguna Woods Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager
David B. Cosgrove, City Attorney

FOR: September 10, 2015 Special Meeting

SUBJECT: Medical Marijuana Dispensaries Ordinance

Recommendation

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Adopt an ordinance – read by title with further reading waived – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, ADOPTING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES

Background

The City presently has a regulatory ordinance permitting medical marijuana dispensaries, codified at Section 13.26.025 of the Laguna Woods Municipal Code. The ordinance was adopted in 2008 and subsequently amended in 2012.

Discussion

1. The City's Medical Marijuana Dispensary Ordinance.

The regulatory ordinance permitting medical marijuana dispensaries requires an applicant to undergo a background check from the Police Chief, and requires the Police Chief's input with respect to the acceptability of the applicant's background, suitability of the proposed location, format and location of security cameras, and other matters as may be determined appropriate by the Police Chief. The ordinance also provides that in the event that an applicant is not the legal owner of a property, an application must be accompanied by a notarized acknowledgement from the applicable property owner that a medical marijuana dispensary will be operated on the property. City staff believes that latter provision has proven to be a significant hurdle to past parties interested in locating dispensaries in Laguna Woods.

To date, the City has not received a completed application for a medical marijuana dispensary. With the medical marijuana dispensary bans that exist in almost all other Orange County cities, as well as the interest in permitted medical marijuana dispensary facilities currently experienced by the City of Santa Ana and others; recovery in the local real estate market since the regulatory ordinance was originally enacted in 2008; and, information that City staff has received that one or more properties in the City are being marketed for sale for purchase by prospective medical marijuana dispensary permit applicants, City staff believes that renewed interest in locating a medical marijuana dispensary within Laguna Woods will result in one or more applications being received soon.

2. The City's Land Use Regulatory Review Process.

The City is in the process of updating its overall land use regulatory structure. On April 16, 2014, the City Council adopted an update of the General Plan Safety Element. On December 17, 2014, the City Council adopted a Climate Adaptation Plan. On July 29, 2015, the City Council adopted an update of the General Plan Conservation Element. On May 20, 2015 the City Council adopted an update of the Building & Planning Services Fee Schedule.

The City's land use regulatory analysis is ongoing. On June 24, 2015, City Council included within its budget and work plan for Fiscal Year 2015-16, a General Plan Comprehensive Update Project and a Commercial Zoning Code Uses and Parking Standards Update Project. Staff is presently working to advance those directives.

3. Communication from the Orange County Sheriff's Department.

Realizing that local conditions pointed to the probability of a medical marijuana dispensary seeking to locate in Laguna Woods, and in analyzing how the present regulatory climate for medical marijuana dispensaries fits within a broader scheme of the City's review of land uses generally, City staff consulted with the Sheriff's Department regarding its contemplated role in the medical marijuana dispensary permitting process. That consultation resulted in a letter from the Sheriff's Department dated August 24, 2015 (Attachment A).

In the aforementioned letter, the Sheriff's Department makes clear its position that medical marijuana dispensaries are inconsistent with federal law and often operated in a manner that is inconsistent with state law. The Sheriff's Department further indicates a lack of support for any municipal code provision that would allow the establishment of medical marijuana dispensaries for reasons including described "adverse secondary effects" and conditions compromising the "health and welfare of the community and negatively [impacting] the residents' quality of life." Accordingly, the Sheriff's Department urges repeal of the City's regulatory ordinance and, likewise, recommends that the City consult with the cities of Dana Point, Laguna Hills, and Lake Forest, all of which have had prior experience with medical marijuana dispensaries and their effects.

The Sheriff's Department states that while it will conduct a LiveScan background check that it believes is consistent with its contractual obligations under the City's law enforcement services contract, it will not "review or approve any security plan of a dispensary, and will not determine the 'acceptability' of any applicant and the 'suitability' of the proposed location."

4. Federal and California Law regarding Medical Marijuana.

The adverse secondary effects alleged by the Sheriff's Department arise against a developing but still somewhat uncertain legal background regarding a city's ability to permit medical marijuana dispensaries.

The California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, (2013) 56 Cal. 4th 729, noted that under the federal Controlled Substances Act, marijuana is considered as a drug, without accepted medical use and treatment, and without any medical necessity exception to prosecution and conviction under federal law. Notwithstanding, California has had medical marijuana legislation for some time. In 1996, the electorate enacted the Compassionate Use Act, Health and Safety Code Section 11362.5. That Act decriminalized possession and cultivation of marijuana for medical purposes, under specified circumstances. In 2004, the California Legislature adopted the Medical Marijuana Program, Health and Safety Code Section 11362.7, which expanded the Compassionate Use Act, provided for identification cards for qualified patients and their caregivers, and decriminalized collective cultivation and various possession, processing, transportation and distribution prohibitions.

Despite the broad legislative statements of intent in the Compassionate Use Act and Medical Marijuana Program, courts have taken a more limited view of their practical impact. The California Supreme Court has specifically denied that either ensures Californians of a right to obtain and use marijuana for medical purposes, and has upheld the authority of cities to regulate, and even ban, medical marijuana dispensaries, under their traditional local zoning power (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, *supra*; 56 Cal. 4th 729, 749.).

Although the law is clear that a city can ban medical marijuana dispensaries, it is significantly less clear how, and whether, a city may permit them. In the *Riverside* case, the California Supreme Court specifically declined to pass on the City of Riverside's argument that, if the Compassionate Use Act and Medical Marijuana Program were construed to require local jurisdictions to accommodate medical marijuana dispensaries, they would be pre-empted by federal law. The California Supreme Court likewise refused to consider whether Government Code Section 37100 forbids a city from adopting ordinances authorizing local land use for medical marijuana dispensaries, as being potentially in conflict with federal law.

The cities of Long Beach and Santa Ana both have enacted medical marijuana dispensary permit regulations, based on a lottery assignment of eligible locations. The Long Beach ordinance was overturned by the appellate court in *Pack v. Superior Court of Los Angeles*, (2011) 199 Cal. App. 4th 1070, indicating it was inconsistent with, and pre-empted by, Federal law (the opinion has subsequently been de-published). Santa Ana's lottery system is currently the subject of litigation, *Dillon, et al. v. City of Santa Ana*, Orange County Superior Court Case No. 30-

2015-00786940. In the *Dillon* case, a preliminary injunction was denied on June 19, 2015, which would have prevented the City from permitting medical marijuana dispensaries that won the lottery. The case is now proceeding through pleading and discovery phases and is being monitored by City staff.

5. The Potential Moratorium for Further Study of Dispensary Uses.

City staff believes that the overall situation described herein leaves the City in an uncertain and compromised position with respect to its medical marijuana dispensary permitting regulations. As a practical matter, without the cooperation of the Sheriff's Department, the City cannot fulfill the portions of its regulatory ordinance that call for participation of the Police Chief. It is uncertain the extent to which the City could privately contract with investigative or other public safety consultants for similar services, and whether the information gleaned from such private consultants would yield the same level of efficacy and safety in terms of reviews that might otherwise be conducted by the Sheriff's Department. The result raises the prospect of incomplete reviews of medical marijuana dispensaries, which is particularly troubling given the roster of adverse secondary effects that the Sheriff's Department alleges such medical marijuana dispensaries pose.

There are a number of other practical land use questions that also arise regarding the establishment, location, and operation of medical marijuana dispensaries in Laguna Woods. It is City staff's understanding that medical marijuana dispensaries that formerly operated in other South Orange County cities received significant amounts of traffic, which could reasonably be expected to be compounded if a lone South Orange County permitted medical marijuana dispensary were to arise within Laguna Woods. As such, City staff believes that it needs to undertake analysis of parking and traffic demands from those types of operations, to avoid unsafe traffic turning movements, parking or stopping, and to assure that adequate parking and access to such facilities is required, to avoid negative effects on surrounding uses.

City staff would also like to pursue the Sheriff's Department's recommendation of discussion with neighboring cities regarding their experiences with the municipal service and public safety demands attendant to medical marijuana dispensaries. Issues such as appropriate lighting; hours of operation; distance from potentially sensitive surrounding uses; the nature, format, and availability of security camera monitoring; and, the balance between patient privacy and the safety of medical marijuana dispensary patrons and surrounding uses, all require further study.

At today's meeting, City staff is recommending adoption of an urgency ordinance adopting a moratorium on the establishment, location, or operation of medical marijuana dispensaries (Attachment B). Such moratoria are authorized under Government Code Section 65858, which requires a finding that there is a current and immediate threat to public health, safety, or welfare, and that the approval of use permits or entitlements for use otherwise required in order to comply with the ordinance would result in that threat to public health, safety, or welfare.

Here, City staff believes that the required findings are met for the reasons stated in this agenda report, and as further elaborated on in the proposed urgency ordinance. Under present statements from the Sheriff's Department regarding its level of participation with respect to the City's regulatory ordinance, the City would have to apply either a truncated or amended permit application review process that would likely result in a review less thorough than that originally contemplated as required under the regulatory ordinance. The adverse secondary effects alleged by the Sheriff's Department certainly pose the types of threat to public health, safety, or welfare contemplated under the urgency ordinance, and City staff requires time to investigate the background information upon which the Sheriff's Department's letter has been issued, as well as to investigate the experience of other cities.

If the City Council chooses to adopt the urgency ordinance, the moratorium would be in effect for a period of 45 days. City staff would be required to provide a report to the City Council on measures taken to alleviate the conditions leading to the urgency ordinance 10 days before it expires. If conditions warrant, the moratorium could be extended for up to 10 months and 15 days, upon a regular noticed public hearing otherwise consistent with standard zoning measure requirements. Should the conditions that led to the initial enactment of the urgency ordinance persist, the moratorium could be extended for up to another year beyond that.

City staff is aware that there are strong and deeply-held opinions on all sides of the medical marijuana dispensaries issue; however, the City's land use policies must deal with the legal uncertainty on the subject, the uncertainty with respect to the City's regulatory ordinance and the role of its Police Chief, and the prospect of adverse secondary effects that have been raised by the City's law enforcement services provider. City staff believe that a moratorium would allow further study, discussion with other cities that have experience with medical marijuana dispensaries, and further development of the City's updated land use regulatory structure, in order to determine whether or how medical marijuana dispensaries might compatibly be integrated into the City's land use.

Environmental Review

The adoption of the proposed urgency ordinance and moratorium is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15601(b)(3) of the CEQA Guidelines.

Fiscal Impact

Fiscal impacts associated with the proposed urgency ordinance and moratorium are uncertain at this time. For City staff to take measures to alleviate the conditions leading to the urgency ordinance, and provide associated reporting, it is anticipated that costs would be incurred for services including legal, planning, and traffic engineering, as well as potential public safety services and public noticing. City staff would seek to accommodate such costs in the City's budget.

Attachments: A – Orange County Sheriff's Department Letter
B – Proposed Ordinance

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ORANGE COUNTY SHERIFF'S DEPARTMENT

ITEM 7.1 - Attachment A

550 N. FLOWER STREET
SANTA ANA, CA 92703
(714) 647-7000
WWW.OCS.D.ORG

SHERIFF-CORONER
SANDRA HUTCHENS

OFFICE OF THE SHERIFF

August 24, 2015

Chris Macon, City Manager
City of Laguna Woods
24264 El Toro Road
Laguna Woods, CA 92637

Dear Mr. Macon,

I am writing to express my strong opposition to the City of Laguna Woods' issuance of any permits for medical marijuana dispensaries in the City. I believe that if the City were to issue a permit for a medical marijuana dispensary in the City, the City would see an increase in crime to the detriment of the safety and security of its residents. I urge the City Council to repeal the municipal code section allowing the establishment of medical marijuana dispensaries in the City and instead join other cities and counties in refusing to allow medical marijuana dispensaries in their communities.

The Orange County Sheriff's Department has taken an active role in investigating marijuana storefronts. These storefronts have used the title of "dispensaries", "collectives", "cooperatives", and "alternative health care" to name a few. In our experience, these businesses distribute/sell marijuana outside of California law. California law provides an affirmative defense to charges of possession or cultivation of marijuana only when individuals with a valid physician's recommendation for the use of marijuana to treat a specified illness, or their designated primary caregivers associate to collectively or cooperatively cultivate marijuana for medical purposes. However, our investigations have shown that these storefronts are simply businesses that distribute marijuana for cash to any individual with a physician's recommendation without having any other relationship with the customer and do not require the customer to participate in cooperatively or collectively cultivating marijuana, which violates California law. Even if the collective were to operate within California law, sale or distribution of marijuana has been, and remains illegal under Federal Law.

The adverse secondary effects of medical marijuana distribution storefronts are well documented. The California Police Chiefs' Association documented specific effects on communities as a result of marijuana dispensaries. These adverse effects include, but are not limited to: increased traffic, noise, drug dealing, money laundering and firearms violations. Throughout the state, many violent

crimes have occurred including robberies, aggravated assaults and murder. Some of these crimes, have been traced back to medical marijuana businesses.

While it is understood that crimes involving marijuana dispensaries are vastly underreported, we have documented numerous incidents of serious and violent crimes that are directly related to these businesses. Crimes reported in Sheriff's jurisdiction include burglaries, robberies, assaults, vandalisms, thefts and shootings. During that time, a large number of illegal dispensaries were being operated in the Sheriff's jurisdiction. We worked with the Cities of Laguna Hills, Dana Point and Lake Forest to investigate these dispensaries at significant taxpayer expense. I recommend that you consult with the City Managers of these cities to hear about the difficulties and drain on the cities' resources in dealing with medical marijuana dispensaries.

During these times when illegal medical marijuana dispensaries were operating in Sheriff's jurisdiction, the Sheriff's Department frequently served search warrants related to marijuana businesses at both businesses and residences in our jurisdiction. These search warrants exposed an extensive amount of firearms. In one search warrant, 15 rifles, 8 handguns and 2 shotguns were seized. On another search warrant, 3 handguns, 3 shotguns, 1 rifle and 1 AK-47 Assault Rifle were seized. Undercover narcotic officers conducted surveillance of these businesses. Officers observed numerous hand-to-hand drug transactions occur in the parking lot of these businesses and in adjoining areas. The increase in vehicle and pedestrian traffic surrounding these medical marijuana dispensaries affected the quality of life for individuals working and living in the area.

The City of Laguna Woods is the only City in Sheriff's jurisdiction which has a municipal code allowing a permit for a medical marijuana dispensary. After reviewing the City of Laguna Woods Municipal Code 13.26.025. – "Medical Marijuana Dispensaries," there are several sections that require the approval, opinion or recommendation of the Police Chief. Please be advised that the Lieutenant will not review or approve any security plan of a dispensary, and will not determine the "acceptability" of any applicant and the "suitability" of the proposed location. I do not agree with, nor do I support those sections in the municipal code. I do not support any municipal code that would allow a business to operate in violation of state and/or federal law.

Pursuant to the contract for law enforcement services between the County of Orange and the City of Laguna Woods, the Sheriff's Department will comply with its contractual obligation to complete a background investigation of any permit applicant. That investigation will be forwarded to the City Manager as provided in our contract. (Section C.7, page 6 of 26; Section F, page 11 of 26.)

I am adamantly opposed to the issuance of any permit allowing the operation of a medical marijuana dispensary or any other medical marijuana storefront because: 1 – In my experience, these storefronts do not operate within California law; 2 – Marijuana is illegal under Federal Law. 3 – It has been demonstrated that medical marijuana storefronts may have the potential to increase

Mr. Chris Macon
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August 24, 2015

crime. 4 – These storefronts compromise the health and welfare of the community and negatively impact the residents' quality of life.

The City of Laguna Woods is a valued contract partner and I appreciate your consideration of my input regarding these important issues. It is our goal to keep the City and its residents safe. Please do not hesitate to contact us if we may provide further information and assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sandra Hutchens". The signature is fluid and cursive, with the first name "Sandra" being more prominent and the last name "Hutchens" written in a smaller, more connected script.

Sandra Hutchens
Sheriff-Coroner

SH/jl

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ORDINANCE NO. 15-XX

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, ADOPTING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES

WHEREAS, in 2008, the City adopted a regulatory process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which potentially allows medical marijuana dispensaries in the City’s community commercial (CC) and professional and administrative office (PA) zoning districts; and

WHEREAS, to date, the City does not have any medical marijuana dispensaries operating within its jurisdiction; and

WHEREAS, under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City’s regulatory process for issuance of a permit to operate a medical marijuana dispensary calls for the City’s Police Chief (provided under contract with the Orange County Sheriff’s Department) to approve components of the applicant’s “security plan”, make a determination as to the “acceptability” of the applicant’s background, and make a determination as to the “suitability” of the proposed location of the dispensary; and

WHEREAS, in a letter dated August 24, 2015, the Orange County Sheriff’s Department advised the City that it does not believe that the tasks assigned to it under the City’s medical marijuana dispensary permitting ordinance are included within the City’s law enforcement services contract, and except as to limited background investigations specifically called for under such contract, the Orange County Sheriff declines to perform such services, for the reasons stated in the letter; and

WHEREAS, the Orange County Sheriff Department’s letter also advised that, in its experience, medical marijuana dispensaries have numerous “adverse secondary effects” on communities, many of which, should they be legitimately ascribed to the presence of medical marijuana dispensaries, would present an immediate threat to public health, safety, or welfare; and

WHEREAS, in 2013, the California Supreme Court ruled in *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* that cities can prohibit

medical marijuana dispensaries in their jurisdictions as part of their “broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction’s borders” (56 Cal.4th 729, 738); and

WHEREAS, the California Supreme Court’s decision in *City of Riverside* did not address the extent to which State and Federal law “forbid[] a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would ‘conflict with the ... laws of ... the United States’” (*Id.*, at 762, fn. 14); and

WHEREAS, to date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in its jurisdiction; and

WHEREAS, the City is in the process of a broad analysis and updating of its General Plan, zoning, and land use regulations, which has included adoption of a Safety Element, a Climate Adaptation Plan, a Conservation Element, and a Building and Planning Services Fee Schedule. In addition, City Council has included in the Fiscal Year 2015-16 Budget and Work Plan a comprehensive update of the General Plan and Commercial Zoning Code Uses and Parking Standards Update; and assessment of the compatibility of medical marijuana dispensary uses in various zoning districts of the City, or at all, is timely given the revisions and analysis the City is undertaking with respect to other land uses in its jurisdiction; and

WHEREAS, in light of the foregoing, among other issues, the City has determined that it is appropriate to suspend the allowance of medical marijuana dispensaries, and any establishment, location, or operation of any such facility, in order to undertake further investigation and study on the following issues relating to the potential siting and operation of a medical marijuana dispensary within the city limits of Laguna Woods:

1. The scope of the City’s authority under both federal and state law to allow and/or issue permits to medical marijuana dispensaries, pursuant to its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.
2. The extent to which it is safety feasible to implement or amend a permitting process in a manner that will accommodate the Orange County Sheriff’s Department refusal to approve components of an applicant’s “security plan” or make determinations as to the “acceptability” of the applicant and the “suitability” of the proposed location of the dispensary.

3. The potential adverse secondary effects of medical marijuana dispensaries, including those adverse secondary effects recited by the Orange County Sheriff in her letter of August 24, 2015, as well as other land-use related impacts, such as impacts to traffic, parking, and surrounding uses.
4. What experience other cities with medical marijuana dispensaries operating or formerly operating in their jurisdictions have had regarding the compliance of such medical marijuana dispensaries with the provisions of California law governing the use of medical marijuana, and the adverse secondary effects recited by the Orange County Sheriff.
5. Whether appropriate land use regulations might be adopted to mitigate potential adverse secondary effects from medical marijuana dispensaries, such as parking, access, security, lighting, hours of operation, distance requirements from potentially sensitive surrounding uses, the nature, format, and availability of security camera monitoring, and others.
6. The compatibility of medical marijuana dispensaries with other land uses that are permitted in the zoning districts where medical marijuana dispensaries are or may be permitted.
7. The extent to which an agreement for indemnification to the City from medical marijuana dispensary applicants, operators, and property owners can be required to provide protection to the City for whatever range of land use authority discretion it is permitted under the law with respect to the regulation and permitting of medical marijuana dispensaries.

WHEREAS, based on the foregoing, the City Council finds and declares there is a current and immediate threat to the public health, safety, or welfare that calls for a temporary moratorium on any allowance or permitting of medical marijuana dispensaries within the City’s jurisdiction; and

WHEREAS, pursuant to Government Code sections 36934, 36937 and 65858, a City may adopt an urgency ordinance to impose a moratorium as an interim measure for the immediate preservation of the public health, safety, and welfare, to prohibit any uses that may be in conflict with a contemplated zoning proposal that the legislative body, planning commission, or city planning department is considering or intends to study within a reasonable time; and

WHEREAS, adoption of this Urgency Ordinance will allow City staff to effectively study, and City staff intends to study in the near future and within a reasonable time, the issues set forth above.

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In adopting this Urgency Ordinance, the City Council finds and determines that each of the recitals to this Urgency Ordinance are true and correct, are adopted herein as findings, and that the adoption of this Urgency Ordinance is necessary to protect the public safety, health and welfare, as those terms are defined in Government Code Sections 36937(b) and 65858(a) in at least the following respects:

A. In 1996, California voters approved Proposition 215 (Health and Safety Code section 11362.5, et. seq.), entitled “The Compassionate Use Act of 1996” (“Act”), to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances.

B. In 2003, the State legislature enacted Senate Bill 420 to clarify the provisions of the Act and empower local governments to adopt and enforce regulations consistent with Senate Bill 420 in this field.

C. In 2008, the City adopted a permitting process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which allows medical marijuana dispensaries in the City’s community commercial (CC) and professional and administrative office (PA) zoning districts, subject to the issuance of a regulatory permit.

D. Under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City cannot issue a permit to operate a medical marijuana dispensary unless the Orange County Sheriff’s Department, acting as the City’s Police Chief, has approved components of the applicant’s “security plan”, made a determination as to the “acceptability” of the applicant’s background, and made a determination as to the “suitability” of the proposed location of the dispensary. In a letter dated August 24, 2015, the Orange County Sheriff’s Department advised the City that it “will not review or approve any security plan of a dispensary, and will not determine the ‘acceptability’ of any applicant and the ‘suitability’ of the proposed location.”

E. The Orange County Sheriff Department’s letter also indicated that, in its experience, medical marijuana dispensaries have numerous “adverse secondary effects” on communities.

F. While the City has made a conscientious effort to plan for specific uses within all zone districts and to anticipate conflicts between competing land uses in order to protect the public’s health, safety and welfare, the City Council is concerned that the City’s current permitting process for medical marijuana dispensaries may not be effective without the contemplated participation of the Orange County Sheriff’s Department, and may not provide sufficient development regulations for the establishment, location, or operation of medical marijuana dispensaries.

G. In 2013, the California Supreme Court ruled that cities and counties can *prohibit* medical marijuana dispensaries in their jurisdictions as part of their “broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction’s borders.” (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 738.)

H. The California Supreme Court did not address the extent to which State and Federal law may “*forbid*[] a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would ‘conflict with the ... laws of ... the United States.’” (*City of Riverside, supra*, at 762, fn. 14.)

I. To date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in their jurisdiction.

J. The City Council finds that allowing the establishment, location, and operation of medical marijuana dispensaries without the ability to implement existing security safeguards in the Laguna Woods Municipal Code, and in the face of assertions that permitting such facilities could result in the creation of adverse secondary effects.

K. Among other issues, City staff needs time to study:

1. The scope of the City’s authority under both federal and state law to allow and/or issue permits to medical marijuana dispensaries, pursuant to its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.
2. The extent to which it is safety feasible to implement or amend a permitting process in a manner that will accommodate the Orange County

Sheriff’s Department refusal to approve components of an applicant’s “security plan” or make determinations as to the “acceptability” of the applicant and the “suitability” of the proposed location of the dispensary.

3. The potential adverse secondary effects of medical marijuana dispensaries, including those adverse secondary effects recited by the Orange County Sheriff in her letter of August 24, 2015, as well as other land-use related impacts, such as impacts to traffic, parking, and surrounding uses.
4. What experience other cities with medical marijuana dispensaries operating or formerly operating in their jurisdictions have had regarding the compliance of such medical marijuana dispensaries with the provisions of California law governing the use of medical marijuana, and the adverse secondary effects recited by the Orange County Sheriff.
5. Whether appropriate land use regulations might be adopted to mitigate potential adverse secondary effects from medical marijuana dispensaries, such as parking, access, security, lighting, hours of operation, distance requirements from potentially sensitive surrounding uses, the nature, format, and availability of security camera monitoring, and others.
6. The compatibility of medical marijuana dispensaries with other land uses that are permitted in the zoning districts where medical marijuana dispensaries are or may be permitted.
7. The extent to which an agreement for indemnification to the City from medical marijuana dispensary applicants, operators, and property owners can be required to provide protection to the City for whatever range of land use authority discretion it is permitted under the law with respect to the regulation and permitting of medical marijuana dispensaries.

L. In order to allow the City to consider, study, and adopt any appropriate regulations for medical marijuana dispensaries, it is necessary to suspend the operation and effectiveness of Section 13.26.025 of the Laguna Woods Municipal Code, and to temporarily prohibit businesses from the establishment, location, and operation of medical marijuana dispensaries within the City’s jurisdiction.

M. A moratorium will provide the City time to study the effect of medical marijuana dispensaries on the community, and to assess its ability to draft and adopt

regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

SECTION 2. The City Council hereby declares a temporary moratorium prohibiting the establishment and operation of medical marijuana dispensaries within the City. All operation of Section 13.26.025 of the Laguna Woods Municipal Code is hereby suspended, and the City may not issue any regulatory permits in furtherance of, the establishment, location, or operation of a medical marijuana dispensary within the City for the life of the moratorium.

SECTION 3. The penalties that are set forth in the Laguna Woods Municipal Code shall apply to violations of the provisions of this Urgency Ordinance.

SECTION 4. This Ordinance is declared to be an Urgency Ordinance by authority conferred on the City Council of the City of Laguna Woods by Government Code sections 36934, 36937, and 65858, and shall be in full force and effect immediately upon its adoption by a four-fifths vote of the City Council.

SECTION 5. This Urgency Ordinance shall be of no further force and effect forty-five (45) days from and after the date of its adoption unless the same is extended pursuant to the authority conferred upon the City Council by Government Code Section 65858.

SECTION 6. If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 7. The Deputy City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

PASSED, APPROVED AND ADOPTED this XX day of XX 2015.

CYNTHIA S. CONNERS, Mayor

ATTEST:

YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do
HEREBY CERTIFY that the foregoing **Ordinance No. 15-XX** was duly adopted
and passed at a special meeting of the City Council on the XX day of XX 2015 by
the following vote to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

YOLIE TRIPPY, Deputy City Clerk