

## CITY OF ALAMEDA

### Memorandum

To: Honorable Mayor and  
Members of the City Council

From: Ann Marie Gallant  
Interim City Manager

Date: May 4, 2010

Re: Introduce an Ordinance Adding Subsection 30-5.15 to the Alameda  
Municipal Code to Prohibit the Operation of Medical Marijuana  
Dispensaries in the City of Alameda

### BACKGROUND

In November 2008, the City Council adopted a moratorium on the establishment of medical marijuana dispensaries in the City of Alameda. The moratorium was extended on December 2, 2008 and is set to expire in June 2010. The purpose of establishing the moratorium was to give the City of Alameda time to establish appropriate amendments for the Alameda Municipal Code for the regulation of the use. Currently, the Alameda Municipal Code does not include or address this type of use.

In December 2009, staff publicly noticed and made available for public consideration a recommendation to amend the municipal code to prohibit medical marijuana dispensaries in Alameda. The proposed amendment was published and distributed for public review in the Planning Board packet for December 14, 2009, but due to a long agenda, the Planning Board continued its consideration of the item to the regular meeting of January 11, 2010.

On January 11<sup>th</sup>, the Planning Board unanimously recommended that the City Council not adopt the draft ordinance. The Planning Board recommended that the City Council refer the matter back to the staff and the Planning Board for further deliberation and hearings to allow time for preparation of a draft ordinance that might allow a limited number of dispensaries in carefully controlled locations and under certain limited conditions. Given the complete lack of policy direction on this issue in any existing City of Alameda documents (e.g. City Charter, General Plan, or Municipal Code), limited staff, Board resources, and time, the Planning Board felt that it would be inappropriate to continue the discussion and expend city and community resources and time to craft a revised ordinance, if in fact, the City Council felt that such an effort would be contrary to the best interests of the community. Therefore, the Planning Board recommended denial of the draft ordinance rather than continuing the item, which gives the City Council the ability to adopt the ordinance tonight, if the City Council so chooses.

## DISCUSSION

Medical marijuana raises a number of difficult legal, social, safety, and medical issues for the California cities.

In 1970, Congress enacted the Controlled Substances Act (CSA), which makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States. In 1996, California voters approved Proposition 215, or the Compassionate Use Act of 1996 (CUA), which allows a qualified person to use and cultivate marijuana for medical purposes. California voters approved this initiative in order to exempt certain patients and their primary caregivers from criminal liability for possession and cultivation of marijuana. In 2003, the state legislature enacted further regulations by passing Senate Bill 420, or the Medical Marijuana Program Act (MMP) to establish and maintain a program for voluntary registration of qualified patients and their primary caregivers through a statewide identification card.

Since the passage of the CUA, "storefront" marijuana dispensaries began to open in jurisdictions around the state. These facilities operate as if they are pharmacies and often dispense different types of marijuana and some offer baked goods that contain marijuana. Monetary donations are collected from patients or primary caregivers in exchange; since it would be a criminal violation to sell these items.

Under federal law, the mere existence of these storefront dispensaries is illegal and some have been subject to raids. The use, possession, distribution and sale of marijuana remains illegal under federal law and the U.S. Supreme court has held that the federal government may enforce the CSA despite California law. *Gonzales v. Raich*, 125 S.Ct. 2195. Under California law, patients and their primary caregivers may grow and cultivate marijuana.

Furthermore, the California Attorney General has adopted certain guidelines for interpretation and implementation of the State's medical marijuana laws and has stated that "[a]lthough medical marijuana "dispensaries" have been operating in California for years, dispensaries as such, are not recognized under the law.

One purpose of the Compassionate Use Act and the Medical Marijuana Program is to encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana. However, neither the federal nor the state government has implemented a plan to provide medical marijuana under these guidelines. The Medical Marijuana Program provides additional statutory guidance for medical marijuana use and cultivation, but does not explicitly address the role of dispensaries, nor does it require cities provide for or allow the establishment and/or operation of medical marijuana dispensaries.

Cities throughout California are struggling with this difficult and evolving legal and medical issue. This issue forces cities to balance the needs of qualified patients in need of relief with the needs of the community to protect the public health and safety of the community from some of the unwanted potential impacts of such dispensaries. The

California Police Chiefs Association has compiled an extensive report detailing negative secondary effects associated with medical marijuana dispensaries (Exhibit 1 on file in the City Clerk's Office). The report contains anecdotal and documented evidence that medical marijuana dispensaries pose a threat to public health, safety, and welfare. The proposed ordinance does not prohibit nor eliminate the availability and use of medical marijuana. The ordinance guards against abuses of the law and responsibly protects the health, safety, and welfare of Alameda's residents and businesses.

The staff recommendation to adopt a citywide ban on medical marijuana dispensaries is based upon the following considerations:

1. The legal and regulatory context is evolving. Cities around the state are experimenting with different approaches to this new land use, some with modest success, and others with less success. This is not a land use issue that Alameda needs to or should be at the forefront.
2. The proposed prohibition is a simple ordinance that can be easily amended at a future date if the community wishes to do so. It establishes a definition of "medical marijuana dispensary" in the Municipal Code and then establishes a citywide prohibition on that use. At a future date, the citywide prohibition portion of the ordinance may be amended to allow dispensaries within certain locations under certain conditions if it is the will of the City Council and community.
3. At this time, staff is unable to identify any locations in Alameda that staff believes the community would deem to be acceptable for medical marijuana dispensaries. In reviewing potential locations in Alameda, staff immediately ruled out residential neighborhoods and the Webster Street or Park Street commercial areas based upon comments made by those business associations and the proximity of those business areas to residential areas. Once Alameda residential areas and the two main commercial areas are removed from consideration, the remaining possible locations include: the Northern Waterfront, Marina Village commercial areas, the Harbor Bay Business Park, and Alameda Point. Staff does not believe that there would be support for medical marijuana dispensaries at any of these locations at this time.
4. Although staff could draft an ordinance within a month allowing medical marijuana dispensaries in certain locations under certain conditions for public review and discussion, any such draft ordinance will likely be the subject of intense public debate. The community will need time to educate themselves and several hearings to discuss and debate this issue before the Planning Board and City Council. Given all of the other City of Alameda priorities in 2010, staff believes that such an effort will take time and may not be completed by November 2010. The moratorium expires in June 2010. By state law, the City Council cannot extend the moratorium beyond November 2010.
5. The City of Alameda must get some type of regulation adopted before the moratorium expires. Although many cities around the state are struggling with this issue, the cities that have allowed a number of unregulated dispensaries to open

prior to the adoption of coordinated well thought out regulations are adopted now have two problems to address: 1) what should their regulations be, and 2) how do they deal with the existing non-conforming dispensaries. Provided that Alameda amends its code prior to the expiration of the moratorium, Alameda can avoid having to address the difficult problem of existing non-conforming dispensaries, because no such dispensaries currently exist in Alameda to our knowledge.

#### Alternatives and Options:

At this time, the City Council has at least three options:

- The City Council may adopt the attached ordinance establishing a definition and citywide prohibition of Medical Marijuana Dispensaries.
- The City Council may reject the attached ordinance as recommended by the Planning Board and direct staff to: 1) work with the Planning Board and community to develop a draft ordinance to allow medical marijuana dispensaries under certain limited conditions, and 2) return with the necessary ordinances if and when necessary to extend the moratorium until November 2010. Under this option, the Planning Board would need to have a recommended ordinance to the City Council by late September or early October 2010 for City Council public hearings.
- The City Council may adopt the attached ordinance prohibiting medical marijuana and direct staff to work with the Planning Board and community to develop a draft ordinance amendment to allow medical marijuana dispensaries under certain limited conditions. Under this third option, the Planning Board and community would not be constrained by the time limits of the moratorium, which might allow for a more thoughtful and less time sensitive public process.

#### FINANCIAL IMPACT

If the City Council adopts the staff recommendation, there would be no financial impact from the proposed action.

If the City Council directs staff to work on a revised ordinance, the Community Development Department has a small remaining fund balance in the Community Planning Fund that may be used to fund staff time for this effort. The Community Planning Fund funds staff time for maintenance and update of the General Plan and Municipal Code.

#### MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

The proposed ordinance would amend the Alameda Municipal Code by establishing new section 30-5.15 Medical Marijuana Dispensaries. The proposed section does not conflict with any existing Municipal Code, General Plan or other city regulations or plans.

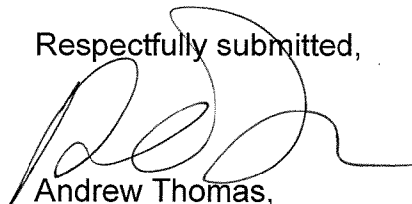
ENVIRONMENTAL REVIEW

This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to §§ 15060 (c)(2) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060 (c)(3) the activity is not a project as defined in § 15378 of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated studies. This ordinance also is exempt from CEQA pursuant to the "common sense" exemption under § 15061(b)(3) of the CEQA Guidelines, because the City Council hereby determines and finds that there is no possibility that the ordinance may have a significant effect on the environment.

RECOMMENDATION

Introduce an Ordinance adding Subsection 30-5.15 to the Alameda Municipal Code to prohibit the operation of Medical Marijuana Dispensaries in the City of Alameda.

Respectfully submitted,



Andrew Thomas,  
Planning Services Manager

Approved as to funds and account,



Evelyn Leung  
Interim Supervising Accountant

AT:nm

Exhibits:

1. The California Police Chiefs Association Report-On file in the City Clerk's Office
2. Interested Parties Correspondence

To the Planning Board: I have asked a friend to read my letter to you. I wish to remain anonymous due to the legal ramifications.

I would very much like to see a compassionate and well run medical marijuana club in Alameda.

I am a 57 year old single woman who has lived in Alameda for the past 24 years.

On my 50<sup>th</sup> birthday I was diagnosed with invasive breast cancer, one of the most aggressive forms of breast cancer. The treatment was brutal, two different chemo drugs given to me at the same time for 8 sessions. I was only able to take 6, and went toxic. Chemo damaged my liver, activated a dormant hepatitis C from 1974 work related injury. Needless to say, at 57, after 7 years of battling two diseases, I am permanently disabled.

My oncologist in 2002 was willing to give me a prescription for Marinol, the pharmaceutical concoction to mimic marijuana. I found half the time I couldn't swallow the pill, another quarter of the time it came back up, and when I did digest it, all I could do was go to bed because it made me sleepy. I was sleeping away what life I had!

It was then I decided to use marijuana to help me with all the side effects I was having, and to this day, continue to have. My doctor wasn't "enlightened" so he did not give me a letter for a club. I must admit, I was/am also hesitant of clubs out of town because I didn't feel like I would be safe in Oakland or could travel to purchase the drug.

Due to the complication of chronic hepatitis C and that I am not a candidate for treatment; I have relied on marijuana medicinally. Patients with chronic hepatitis C cannot take aspirin, any anti depressants, most antibiotics, and no ibuprofens or anti inflammatory medicines as these drugs are too harsh on the compromised liver. I am currently living with permanent side effects such as: neuropathy, vein reflux in both greater saphenous veins, constant fatigue, lack of appetite, blepharitis, R.A., (hepatitis induced), diverticulitis, and osteoporosis (both chemo and hepatitis c induced). I can no longer travel further than 20 miles without being in extreme pain.

I have found by using marijuana I have been able to keep my weight up, get a full night sleep, and while it doesn't completely alleviate the pain, it dulls it to the point that I can at least do some of my daily chores (cooking, cleaning some, going to the bank).

The best point I can make about using marijuana medicinally is that I know some days I may only take a few puffs and I can go on about my business, other days when my condition is worse, I may need more. It is easier to adjust the dose to what I need, AND I CAN STILL FUNCTION. I am also not addicted to a prescribed pain killer.

I would like to request the council strongly research the issue and show your compassion by allowing a medical marijuana club to be opened in Alameda. We need a site which will be compassionate, actually adheres to ADA requirements of their premises, accepts disabled women as well as men, and offers a secure and safe way in which people in my condition can get the help they need.

I have enclosed an abstract from research conducted by California Pacific Medical Center in San Francisco. My oncologist and surgeon from breast cancer believe my continued use of marijuana for medicinal purposes may be what has kept me from getting a recurrence my invasive breast cancer, and has helped me to live with my chronic hepatitis c.

Please know that there are real patients out here with real medical problems that do not want to be placed on methadone or other heavy morphine based pain medications and become lumps of society.

I thank you for your consideration of allowing medical marijuana clubs to operate in Alameda.



# Inhibition of Breast Cancer Aggressiveness by Cannabidiol

**Institution:** California Pacific Medical Center Research Institute

**Investigator(s):** Sean McAllister, Ph.D. -

**Award Cycle:** 2006 (Cycle 12)

**Grant #:** 12IB-0116

**Award:** \$183,000

**Award Type:** IDEA

**Research Priorities**

Innovative Treatments>Hormone and chemotherapy targets: improving today's arsenal

## Initial Award Abstract (2006)

An anti-cancer agent with a low toxicity profile that can both inhibit cancer cell growth and metastasis would be extremely valuable clinically. We have discovered that cannabidiol (CBD), a non-psychoactive cannabinoid constituent of the plant *Cannabis sativa*, can inhibit the growth, migration and invasion of aggressive breast cancer cells in culture. Cannabinoid compounds, in general, have low toxicity profiles. Furthermore, our preliminary research demonstrated that CBD is a novel inhibitor of a protein whose activity has been closely linked to the aggressiveness of human breast cancers; called inhibitor of DNA binding-1 (Id-1). Whether CBD can inhibit the spread of metastatic breast cancer in vivo (in the body), compared to cell culture conditions, has not been determined. However, CBD has been demonstrated to inhibit aggressive human brain cancers in vivo. Understanding the mechanisms behind the anti-cancer activity of CBD may lead to the validation of new biological targets for diagnostics and therapies for breast cancer.

To study the effects of CBD on the growth and spread of aggressive breast cancer, we will use time lapse microscopy to capture detailed changes in cell growth/death, migration, and morphology. Classical biochemical measures of cell growth/death and invasion will also be used in combination with novel compounds to identify receptors that CBD interacts with to produce its anti- breast cancer effects. A mouse model of breast cancer metastasis will be used to determine whether CBD effectively reduces the spread of aggressive breast cancer in vivo. At the intracellular level, we will study whether CBD, (1) regulates Id-1 in an extracellular signal-regulated kinase-dependent manner, and (2) serves to activate a pro-apoptotic (cell death) pathway in a caspase-dependent manner.

Novel and effective non-toxic therapies for aggressive breast cancers are urgently required. Plant cannabinoids are compounds that are well tolerated during chronic (long-term) administration. CBD, and compounds based on its structure, may be the basis for the treatment of metastatic breast cancer. If

successful, our studies will set the stage for additional translational work to develop CBD's eligibility for clinical trials.

### **Final Report (2008)**

We discovered that cannabidiol (CBD), a non-psychoactive compound from the plant *Cannabis sativa*, can inhibit the process of breast cancer cells that allow them to grow and spread (metastasis). CBD can also inhibit breast cancer metastasis in a mouse model. The research carried out in our CBCRP proposal demonstrated that CBD is a novel inhibitor of a gene whose activity is intimately linked to the aggressiveness of human breast cancers; this gene has been termed Id-1. Notably, our findings also indicated that Id-1 was a key gene whose expression needed to be reduced in order for CBD to inhibit aggressive breast cancer. One of the most significant high risk components of the initial application was to determine if CBD had appreciable efficacy against breast cancer in vivo (i.e., animal models). This high risk component was not pursued, since an independent group showed CBD was able to inhibit metastasis of MDA-MB231 cells to the lung of nude mice. Building on the previous findings, we made small structural changes to CBD that are expected to produce drugs that are much more active than CBD at inhibiting Id-1 and corresponding aggressive breast cancers. CBD has a low toxicity profile. An anticancer agent with a low toxicity profile that can both inhibit cancer cell growth and metastasis would be extremely valuable clinically. Understanding the mechanisms behind the anticancer activity of CBD may also lead to the discovery of new biological targets for the development of diagnostic tools and additional therapies for the treatment of cancer. In this project we found portions of the CBD structure essential to its biological activity for breast cancer cell growth inhibition. We are in the process of filing a patent on these discoveries. In addition, we studied the molecular mechanisms that underlie CBD activity, and found that sustained upregulation of Erk (extracellular signal-regulated kinases, a type of protein kinase intracellular signaling molecules) is key to the ability of CBD to regulate the metastasis-specific inhibition of the Id-1 transcription factor.

### **Symposium Abstract (2007)**

The spread (metastasis) of aggressive breast cancer cells to other parts of the body is the final and fatal step during cancer progression. Clinically, there are still limited therapeutic interventions for aggressive breast cancers available. Clearly, effective and non-toxic therapies are urgently required. The Id-1 gene, a helix-loop-helix type transcription factor, has recently been shown to be a key regulator of the metastatic potential of breast and additional cancers. We previously determined that aggressive breast cancer cells became significantly less invasive in vitro (in culture) and less metastatic in vivo (in mice) when Id-1 expression was reduced using a technique called gene antisense therapy. It is not possible at this point, however, to use this technology to reduce Id-1 expression in patients with metastatic breast cancer.

In our search for a non-toxic drug that could inhibit Id-1 expression, a potential candidate agent was discovered. Here we report that cannabidiol (CBD), a compound extracted from cannabis and with a low toxicity profile, can down-regulate Id-1 expression in aggressive human breast cancer cells. The CBD

concentrations effective at inhibiting Id-1 expression correlated with those used to inhibit the proliferative and invasive characteristics of aggressive breast cancer cells. CBD was able to inhibit Id-1 expression at the mRNA and protein level in a concentration-dependent fashion. Most importantly, constitutive expression of Id-1 in breast cancer cells abolished the effects of CBD on cell invasiveness. This suggests that Id-1 is indeed a key factor whose expression needs to be down-regulated in order to observe the effects of CBD on the reduction of breast cancer cell aggressiveness. In conclusion, CBD represents the first non-toxic drug that can significantly decrease Id-1 expression in metastatic breast cancer cells leading to reduction of tumor aggressiveness.

CBD and additional analogs based off its structure could be used as inhibitors of Id-1 and might be of benefit for patients with breast cancers. Cannabinoids are already being used in clinical trials for purposes unrelated to their anticancer activity and these compounds have been reported to be well tolerated. We expect that using CBD as a template will lead to the discovery of more potent and efficacious drugs. This research could lead to a new area of investigation in the treatment of aggressive forms of breast cancer with novel cannabinoid compounds.

*Cannabidiol as a novel inhibitor of Id-1 gene expression in aggressive breast cancer cells.*

**Periodical:** Molecular Cancer Therapeutics

**Index Medicus:** Mol Cancer Ther

**Authors:** McAllister SD, Christian RT, Horowitz MP, Garcia A, Desprez PY.

**Yr:** 2007

**Vol:** 6

**Nbr:** 11

**Abs:**

**Pg:**2921-7

Honorable President and Members of the Planning Board,

I am writing to insist that you vote NO on the recommendation to prohibit medical cannabis dispensaries in the City of Alameda. Cannabis is a natural medicine that people must have safe, local access to. We need to focus on the positive aspects, its medical possibilities and its potential to generate tax revenue! Allowing controlled access provides a safer way to acquire medicine that millions of people have used for thousands of years. Dispensaries can also sell many other products that can be taxed.

We, as a modern, intelligent, and civilized society need to move past the negative stigmas that were created through misleading and deceitful propaganda campaigns. In the 1920's and 30's, the oil, chemical and cotton industries, and the Federal Government led campaigns that were completely dishonest and bogus. It duped a generation and their kids into thinking that this plant, which grows from God's green earth, was the Devil and would make people play "evil jazz music". They demonized a plant that is one of the best natural medicines on the planet for human beings, and its cousin, the hemp plant, which can be used for countless things such as clothing, plastics, textiles, food, biofuels, and is renewable and sustainable.

There are no reported cases of anyone dying from the use of cannabis. It is not addictive, making it easy to stop using with no withdrawal. It does not cause men to become angry and beat up their spouses. It does not cause cancer. We need to stop following wrong, outdated ideologies that have no basis in scientific fact. We need to lead by example and embrace cannabis as a valuable resource with lasting revenue possibilities. We need to give citizens safe, local access to their medicine. The City of Alameda needs to be part of a bigger movement to help change the way we think about cannabis and to help get rid of the negativity and stigma surrounding it.

We are in the midst of one the worst fiscal crises ever. We need to explore new avenues, which will help stabilize our local economy. We should follow Oakland's lead and impose a City tax on all sales of medical cannabis. Some dispensaries also sell many other products such as local artwork, posters, shirts, hats, and other clothing items and accessories that we can get tax revenue from. Other cooperatives offer services, such as massage, acupuncture, herbal therapy, and chiropractic, which are also effective natural remedies.

If the citizens of Alameda cannot get their medicine in their beloved City, they will just go off the island, taking their tax money with them (and having to make a car trip; were against that, right?). We must accept the fact that medical cannabis is here to stay. We must embrace it and capitalize on it. Please help support the comeback of cannabis as one of the best natural medicines AND help stimulate the local economy. Help make Alameda a better, safer place for all.

Please vote NO on the recommendation to prohibit medical cannabis dispensaries in Alameda.

Sincerely,

Tony Ebster

CITY OF ALAMEDA ORDINANCE No. \_\_\_\_\_  
New Series

ADDING A NEW SECTION 30-5.15 TO THE ALAMEDA MUNICIPAL  
CODE TO PROHIBIT THE OPERATION OF MEDICAL MARIJUANA  
DISPENSARIES IN THE CITY OF ALAMEDA

BE IT ORDAINED by the City Council of the City of Alameda:


Section 1. Section 30-5.15 is hereby added to the Alameda Municipal Code to read as follows:

**Section 30-5.15. Medical Marijuana Dispensaries**

**a. Findings.**

In enacting this Section, the City Council finds as follows:

1. In 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States.
2. In 1996, the voters of the State of California approved Proposition 215, also known as the Compassionate Use Act of 1996 (the Act), codified at Cal. Health & Safety Code (H&S) Sec. 11362.5 et seq.
3. The Act creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.
4. On January 1, 2004, S.B. 420 went into effect. S.B. 420, known as the "Medical Marijuana Program" (MMP) (codified at Cal. H&S Code Secs. 11362.7-11362.83) was enacted by the state Legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with S.B. 420.
5. The Act expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes." Cal. H&S Code Sec. 11362.5.

Approved as to Form  
  
City Attorney

6. The City Council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. According to these communities, and according to news stories widely reported, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries. The City of Alameda reasonably could anticipate experiencing similar adverse impacts and effects.
7. The City Council further takes legislative notice of a California Police Chiefs Association compilation of police reports, news stories and statistical research setting forth the adverse secondary impacts associated with medical marijuana dispensaries. [http://www.californiapolicechiefs.org/nav\\_files/marijuana\\_files/Research.html](http://www.californiapolicechiefs.org/nav_files/marijuana_files/Research.html).
8. The City Council further takes legislative notice that as of July 2009, at least 29 cities and two counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The City Council further takes legislative notice that as of July 2009, at least 111 cities and seven counties in California have adopted permanent prohibitions against medical marijuana dispensaries.
9. The City Council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal under the CSA; that the federal courts have recognized that despite California's Act and MMP, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, (2005) 545 U.S. 1; *United States v. Oakland Cannabis Buyers' Cooperative*, (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers' Cooperative*, (2001) 532 U.S. 483); and that the federal government properly may enforce the CSA despite the Act and MMP. (*Gonzales v. Raich*, (2005) 545 U.S. 1).
10. While the City Council in no manner intends or undertakes by the adoption of this ordinance to enforce federal law, the City Council is concerned about interfering with federal law enforcement efforts.

11. The City Council further takes legislative notice that concerns about non-medical marijuana use arising in connection with the Act and the MMP also have been recognized by state and federal courts. See, e.g., *Bearman v. California Medical Bd.*, (2009) 176 Cal.App.4th 1588; *People ex rel. Lungren v. Peron*, (1997) 59 Cal.App.4th 1383, 1386-1387; *Gonzales v. Raich*, (2005) 545 U.S. 1, 32 n. 43.
12. Allowing medical marijuana dispensaries, and issuing permits, business licenses or other applicable licenses or entitlements providing for the establishment and/or operation of medical marijuana dispensaries poses a threat to the public health, safety and welfare.
13. An ordinance prohibiting medical marijuana dispensaries, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana dispensaries, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Alameda.
14. The City Council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the State's medical marijuana laws, entitled "*GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE* (August 2008)." ([http://ag.ca.gov/cms\\_attachments/press/pdfs/n1601\\_medicalmarijuana\\_guidelines.pdf](http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuana_guidelines.pdf).) The Attorney General has stated in the guidelines that "[a]lthough medical marijuana "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law."
15. The City Council further takes legislative notice that in *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, the Court held that neither the Act nor the MMP preempts cities from adopting land use regulations for medical marijuana dispensaries.
16. The City Council further takes legislative notice that the Act anticipates local regulations at Cal. H&S Code Sec. 11362.5(b)(2): "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes."

**b. Definitions.**

As used in this ordinance, the following terms shall be ascribed the following meanings:

1. "Medical Marijuana" means "marijuana" as that term is defined and used in the Act and the MMP, to wit, Cal. H&S Code Secs. 11362.5-11362.83.
2. "Medical marijuana dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is provided, sold, made available, or otherwise distributed to one or more of the following: a primary caregiver, a qualified patient or a person with an identification card.
3. A Medical Marijuana Dispensary shall not include the following uses, so long as such uses comply with this code, Cal. H&S Code Secs. 11362.5, 11362.7 et seq., as amended, and other applicable laws:
  - a) A clinic licensed pursuant to Chapter 1 (commencing with Sec. 1200) of Division 2 of the Cal. H&S Code, as amended.
  - b) A health care facility licensed pursuant to Chapter 2 (commencing with Sec. 1250) of Division 2 of the Cal. H&S Code, as amended.
  - c) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Sec. 1568.01) of Division 2 of the Cal. H&S Code, as amended.
  - d) A residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Sec. 1569) of Division 2 of the Cal. H&S Code, as amended.
  - e) A hospice or a home health agency, licensed pursuant to Chapter 8 (commencing with Sec. 1725) of Division 2 of the Cal. H&S Code, as amended.
4. "Person with an Identification Card" shall have the meaning given that term by Cal. H&S Code Sec. 11362.7, as amended.
5. "Primary Caregiver" shall have the meaning given that term by Cal. H&S Code Sec. 11362.7, as amended.
6. "Qualified Patient" shall have the meaning given that term by Cal. H&S Code Sec. 11362.7, as amended.

**c. Operation of Medical Marijuana Dispensaries Prohibited.**

Medical marijuana dispensaries are prohibited in the City of Alameda. No person or entity shall operate or permit to be operated a Medical Marijuana Dispensary in or upon any premises in the city. The City shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a medical marijuana dispensary

Section 2. Severability Clause. It is the declared intent of the City Council of Alameda that if any section, subsection, sentence, clause, phrase, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provision of this ordinance.

Section 3. This ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Section 4. CEQA. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Secs.15060 (c)(2) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060 (c)(3) the activity is not a project as defined in Sec.15378 of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated studies. This ordinance also is exempt from CEQA pursuant to the "common sense" exemption under Sec.15061(b)(3) of the CEQA Guidelines, because the City Council hereby determines and finds that there is no possibility that the ordinance may have a significant effect on the environment.

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Presiding Officer of the City Council

Attest:

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Lara Weisiger, City Clerk  
City of Alameda

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by Council of the City of Alameda in regular meeting assembled on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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Lara Weisiger, City Clerk  
City of Alameda