

Staff Report City of Loma Linda

From the Department of Community Development

PLANNING COMMISSION MEETING OF JUNE 1, 2011

TO: PLANNING COMMISSION

FROM: KONRAD BOLOWICH, DIRECTOR,
COMMUNITY DEVELOPMENT DEPARTMENT 

SUBJECT: DEVELOPMENT CODE AMENDMENT (DCA) NO. 11-66
(MEDICAL MARIJUANA DISTRIBUTION FACILITIES)

SUMMARY

The project is a request to add to the Loma Linda Municipal Code (LLMC), Chapter 9.24 (Public peace, morals, and welfare), to Title 9 and Chapter 17.100, to Title 17 (Zoning) for the regulation of Medical Marijuana Distribution Facilities.

RECOMMENDATION

The recommendation is that the Planning Commission recommend to the City Council the approval of DCA No. 11-66 for the addition of Chapters 9.24 and 17.100 based on the Findings.

PERTINENT DATA

Property Owners/Applicant:	Various/City of Loma Linda
General Plan:	All designations
Zoning:	All zones
Site:	Citywide
Topography:	N/A
Vegetation:	N/A
Special Features:	N/A

BACKGROUND

The passage of Proposition 215 ("The Compassionate Use Act of 1996" or "CUA") and the adoption of SB 420 ("The Medical Marijuana Program Act" or "MMPA") in 2003 has increased the interest in opening medical marijuana dispensaries. There is much

interest from the public of opening such facilities in the City of Loma Linda. In response to the sensitive nature of the request, the City enacted a moratorium on medical marijuana facilities in 2009 in order to allow the City more time to study the issue. The moratorium prohibited all medical marijuana facilities. Specifically, the City was waiting for court decisions such as *Qualified Patients Assoc. v. City of Anaheim* to address whether, as asserted by some marijuana advocacy groups, local ordinances regulating or prohibiting marijuana dispensaries were preempted by the State's laws on medical marijuana, namely the previously mentioned Compassionate Use Act ("CUA") and the Medical Marijuana Program Act ("MMPA"). Unfortunately, the Court in that case did not answer that question. Regardless of the court ruling, it was still seen as a benefit to adopt an ordinance that explicitly addresses the issue.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) STATUS

Staff has determined that the project is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15061(b)(3), which states the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the physical environment, the activity is not subject to CEQA. Amending the LLMC to add Chapter 9.24 (Medical Marijuana Distribution Facilities) to Title 9 and Chapter 17.100 to Title 17 would not involve new development or construction and would not result in any significant environmental impacts. Any future modifications to the proposed ordinance would be reviewed for potential environmental impacts.

ANALYSIS

Code Requirements

Medical marijuana dispensaries are not uses defined in the Loma Linda Municipal Code, and like many cities, Loma Linda has what is known as a "permissive" zoning system, under which any use—including medical marijuana dispensaries—that is not expressly enumerated as a permitted use is deemed to be prohibited. Thus, although the Loma Linda Municipal Code does not specifically define or regulate such dispensaries, the City's practice has always been to deem dispensaries to be prohibited. The City and its residents would benefit from an ordinance that specifically addresses the issue.

Findings

Text amendments to zoning documents are considered legislative acts and do not require findings. State law does require that the Municipal Code provisions be consistent with the General Plan. However, the General Plan (May 26, 2009) does not directly address issues regarding the sale of medical marijuana. General Plan documents are intended to promote the community's vision and to ensure that the quality of life remains high. According to Section 1.2.1 of the General Plan the vision for Loma Linda is that it will continue to be a safe, unique community in which to both live

and work. The City's people, natural assets, a unique economy and a strong health foundation will provide a beautiful City for generations of all ages to enjoy. Prohibiting the establishment of medical marijuana dispensaries will help to safeguard the General Plan's vision for the community.

Updates to the Municipal Code are necessary to address once unforeseeable interests. Under the City's "permissive" zoning system, uses that are not expressly enumerated as permitted are deemed to be prohibited. Two appellate cases have upheld cities' right to prohibit medical marijuana dispensaries on this basis (City of Corona v. Naulls; City of Claremont v. Kruse). A medical marijuana dispensary is not specifically defined in the zoning provisions of the Loma Linda Municipal Code. Potential applicants may wish to claim the use is similar to a pharmacy, medical office, or miscellaneous retail use and might assert that operation of a medical marijuana dispensary should be allowed in a variety of zoning locations including near schools or day care facilities. To prevent disputes about whether a medical marijuana facility is an allowed use, the zoning ordinance should be amended to specifically prohibit the establishment of medical marijuana facilities in all areas of the City.

CONCLUSION

The proposed amendments to Title 9 and Title 17 of the Municipal Code will prohibit the establishment of medical marijuana dispensaries in all areas of the City. The City's "permissive" zoning system may not be specific enough to address the issues related to the sale of marijuana. The amendments to the Municipal Code are consistent with the intent and purpose of the General Plan (May 26, 2009) to promote the community's vision and ensure that the quality of life in Loma Linda remains high.

Report prepared by:



Allan Penaflores
Assistant Planner

ATTACHMENTS

- A. Draft Ordinance

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Attachment A

Draft Ordinance

(DCA No. 11-66)

June 1, 2011

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA ADDING A NEW CHAPTER 9.24 (MEDICAL MARIJUANA DISTRIBUTION FACILITIES) TO TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) AND A NEW CHAPTER 17.100 (MEDICAL MARIJUANA DISTRIBUTION FACILITIES) TO TITLE 17 (ZONING) OF THE LOMA LINDA MUNICIPAL CODE

WHEREAS, 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; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act ("CUA") (codified as Health and Safety (H&S) Code Section 11362.5 et seq.); and

WHEREAS, the CUA 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; and

WHEREAS, on January 1, 2004, the "Medical Marijuana Program" (MMPA), codified as H&S Code Sections 11362.7 to 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 the MMPA; and

WHEREAS, the CUA 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 nonmedical purposes." (H&S Code Section 11362.5); and

WHEREAS, the City Council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana distribution facilities or "dispensaries" have experienced serious adverse impacts associated with and resulting from such uses. According to these communities, according to news stories widely reported and according to medical marijuana advocates, 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 distribution facilities. The City Council reasonably anticipates that the City of Loma Linda will experience similar adverse impacts and effects. A California Police Chiefs Association compilation of police reports, news stories and statistical research regarding such secondary impacts is contained in a 2009 white paper report located at <http://www.procon.org/sourcefiles/CAPCAWhitePaperonMarijuanaDispensaries.pdf> ; and

WHEREAS, the City Council further takes legislative notice that as of December 2010, according to at least one compilation, 103 cities and 14 counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The City Council further takes legislative notice that 139 cities and 11 counties have adopted prohibitions against medical marijuana dispensaries. The compilation is available at <http://www.safeaccessnow.org/article.php?id=3165>; and

WHEREAS, 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 NONDIVERSION OF MARIJUANA GROWN FOR MEDICAL USE (August 2008)"

(http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.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"; and

WHEREAS, the City Council further takes legislative notice that the experience of other cities has been that many medical marijuana distribution facilities or "dispensaries" do not operate as true cooperatives or collectives in compliance with the MMPA and the Attorney General Guidelines, and thus these businesses are engaged in cultivation, distribution and sale of marijuana in a manner that remains illegal under both California and federal law; as a result, the City would be obligated to commit substantial resources to regulating and overseeing the operation of medical marijuana distribution facilities to ensure that the facilities operate lawfully and are not fronts for illegal drug trafficking; and, furthermore, it is uncertain whether even with the dedication of significant resources to the problem, the City would be able to prevent illegal conduct associated with medical marijuana distribution facilities, such as illegal cultivation and transport of marijuana and the distribution of marijuana between persons who are not qualified patients or caregivers under the CUA and MMPA; and

WHEREAS, the City Council further takes legislative notice that concerns about nonmedical marijuana use arising in connection with the CUA and the MMPA 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 to 1387; *Gonzales v. Raich* (2005) 545 U.S. 1); and

WHEREAS, the City Council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal under the CSA (*Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588); that the federal courts have recognized that despite California's CUA and MMPA, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, 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*, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the CUA and MMP (*Gonzales v. Raich*, 545 U.S. 1); and

WHEREAS, the City Council further takes legislative notice that the United States Attorney General in 2008 announced its intention to ease enforcement of federal laws as applied to medical

marijuana dispensaries which otherwise comply with state law. There is no certainty how long this uncodified policy will remain in effect, and the underlying conflict between federal and state statutes still remains; and

WHEREAS, an ordinance prohibiting medical marijuana distribution facilities, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana distribution facilities, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Loma Linda; and

WHEREAS, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMA LINDA DOES ORDAIN as follows:

Section 1. Title 9 (Public Peace, Morals and Welfare) of the Loma Linda Municipal Code is amended by adding a new Chapter 9.24 (Medical Marijuana Distribution Facilities) to read as follows:

”Chapter 9.24

MEDICAL MARIJUANA DISTRIBUTION FACILITIES

9.24.010 Definitions.

9.24.020 Operation of medical marijuana distribution facilities prohibited.

9.24.030 Violation – penalty.

9.4.040 Public nuisance.

9.24.010 Definitions.

“Medical marijuana distribution facility” is any facility or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides marijuana to two or more persons with identification cards or qualified patients, as defined in California Health and Safety Code section 11362.5 et. seq., or any facility where qualified patients, persons with identification cards and primary caregivers meet or congregate collectively and cooperatively to cultivate or distribute marijuana for medical purposes under the purported authority of California Health and Safety Code section 11362.5 et. seq.

“Medical marijuana distribution facility” shall not include the following uses, so long as such uses comply with this Code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

(1) A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.

(2) A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.

(3) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.

(4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.

(5) A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

9.24.020 Operation of medical marijuana distribution facilities prohibited.

Medical marijuana distribution facilities, as defined in this chapter, are prohibited uses in the City of Loma Linda.

9.24.030 Violation—penalty.

(a) Any person found to be in violation of any provision of this chapter shall not be subject to the criminal enforcement remedies set forth in Title 1.

(b) Each violation of this chapter and each day of violation of this chapter shall be considered as separate and distinct violations thereof and the imposition of a penalty shall be as set forth in subsection (a) of this section for each and every separate violation and each and every day of violation.

9.24.040 Public nuisance. Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to the procedures set forth in Chapter 8.04.”

Section 2. Title 17 (Zoning) of the Loma Linda Municipal Code is amended by adding a new Chapter 17.100 (Distribution of Medical Marijuana) to read as follows:

“Chapter 17.100

MEDICAL MARIJUANA DISTRIBUTION FACILITIES

17.100.10. Medical marijuana distribution facilities.

17.100.010 Medical marijuana distribution facilities. Medical marijuana distribution facilities, as defined in Chapter 9.24, are prohibited uses in all zoning districts in the City of Loma Linda.”

Section 3. Validity. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such holding or holdings shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 4. Posting. Prior to the expiration of fifteen (15) days from its passage, the City Clerk shall cause this Ordinance to be posted pursuant to law in three (3) public places designated for such purpose by the City Council.

This Ordinance was introduced at the regular meeting of the City Council of the City of Loma Linda, California, held on the ____ day of _____ and was adopted on the ____ day of _____ by the following vote to wit:

Ayes: _____
Noes: _____
Abstain: _____
Absent: _____

Rhodes Rigsby, Mayor

Attest:

Pamela Byrnes-O'Camb, City Clerk