



**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 11/18/03  
AGENDA ITEM 6  
WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council  
**FROM:** City Manager  
**SUBJECT:** Medical Marijuana

**RECOMMENDATION:**

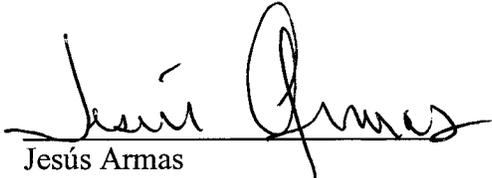
It is recommended that the City Council introduce the attached ordinance pertaining to medical marijuana, and grandfather the operation of Hayward Hempery and Local Patient's Cooperative.

**DISCUSSION:**

At the worksession of October 14, the Council was provided information with respect to the operation of medical marijuana dispensaries in Hayward, and the results of the work performed by the ad hoc task force to address this issue. The Council is referred to that report, a copy of which is attached, for background information.

This evening, the Council is being asked to consider and address a couple of issues. The first concerns a proposed ordinance acknowledging that Hayward will recognize validly-issued identification cards when in the possession of qualified patients and caregivers. The ordinance largely mirrors recent amendments to state law resulting from the approval of Senate Bill 420. Under this legislation, identification cards are to be issued by county health departments pursuant to state regulations. As it may be some time before the enabling regulations are promulgated, the ordinance states that Hayward will recognize and accept identification cards issued in accordance with ordinances adopted by cities or counties as a valid form of identification. Once State regulations are in effect, this provision becomes moot.

The second issue before the Council centers on the number of distribution facilities to be allowed in Hayward. As noted at the worksession and in the report presented to you at that time, staff recommends that two facilities—the Hayward Hempery and the Local Patient's Cooperative—be allowed to continue to operate in accordance with the "ground rules" presented to you at the October worksession. (See Attachment B to the worksession report.) As previously reported, a third facility is seeking authorization to operate. It should be noted this facility opened subsequent to the development of the compromise position crafted by the ad hoc task force limiting to two the number of medical marijuana facilities in Hayward. Because of this, and because the person proposing to operate the facility was a member of the task force and therefore aware of the proposed limit, staff does not recommend allowing the third facility to operate.

A handwritten signature in black ink, appearing to read "Jesús Armas". The signature is written in a cursive style with a large initial "J" and "A".

Jesús Armas  
City Manager

Attachments



**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 10/14/03  
AGENDA ITEM \_\_\_\_\_  
WORK SESSION ITEM WS #2

**TO:** Mayor and City Council  
**FROM:** City Manager  
**SUBJECT:** Medicinal Marijuana

**RECOMMENDATION:**

It is recommended that the City Council review and comment on this report.

**BACKGROUND:**

Earlier this year, the City received a land use application for permission to establish a facility in the downtown area to dispense marijuana for medicinal purposes. The applicant was advised such a use is not allowed under the City's zoning regulations. Subsequently, it became common knowledge that at least three such facilities were operating in Hayward: one on B St. and two on Foothill Blvd. Shortly thereafter, the Council received a request to establish an ad hoc task force to determine if and how such facilities might be allowed to continue. Eventually, the Mayor indicated she would establish such a task force, and the Council approved the use of staff resources in this regard. (Attachment A is a list of the individuals that participated in the task force.)

In comments submitted to the City, many expressed compassion for those using marijuana for medical purposes, likening it to any other instance in which medicine is used to alleviate pain. Some voiced concern that the number of dispensaries located in Hayward not proliferate. In a related observation, the Chamber and some retail establishments downtown expressed the view that having dispensaries on B St. runs counter to the numerous efforts currently underway to revitalize the downtown area. Others observed that the real problem lies in the conflict between State and Federal laws. While Proposition 215, approved by the voters in 1996, sanctioned the use of marijuana for medical purposes, the Federal Government does not recognize this authorization. This inconsistent treatment hinders the development of a satisfactory and fully acceptable solution to this matter.

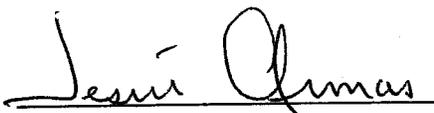
The task force met on at least two occasions. During the deliberations, it became clear that we are contending with two major issues. First, that individuals relying on marijuana to alleviate their pain or address a medical condition not be subject to arrest or other legal sanctions. A second issue focuses on how local governments contend with operators wishing to establish facilities to dispense marijuana. Available research indicates that to the extent local governments have dealt with the medicinal marijuana issue at all, most have dealt with the first issue, but sparingly with the second one. (It should be noted that although Proposition 215 was approved nearly ten years ago, the State has yet to promulgate regulations to implement it.)

One way local agencies have addressed the first issue is by developing a mechanism allowing for the issuance, on a voluntary basis, of identification cards for those possessing marijuana for legitimate, medical purposes. While possession of such cards does protect the individual from prosecution, it can be of assistance to local law enforcement personnel interacting with that person. I am advised that the counties of Marin and San Francisco have approved an I.D. card system, and Alameda approved its own system earlier this year. In the case of Alameda, the County may issue the card through its health department, or through a third party, should the County approve one.

On the issue of dispensaries, we were unable to find examples comparable to Hayward in terms of zoning regulations permitting such facilities. It may very well be that the conflict mentioned above between State and Federal law has resulted in most communities taking a wait and see attitude until the conflict is resolved.

The meetings of the task force were fruitful, and participants gained a better appreciation of the concerns and interests of the various parties. Because the dialogue was a constructive one, ultimately a compromise solution emerged which took into account the underlying objective of Proposition 215, while recognizing the fact there remains an ongoing conflict between Federal and State law. Essentially, this solution contains two major components. The first component asks the City Council to consider the development of an ordinance allowing for the issuance and acceptance of identification cards. The second element would allow for the two existing facilities on Foothill Blvd. to be "grandfathered", subject to adherence to certain conditions. (See Attachment B for a listing of the conditions.) During the meeting of the task force, the Chamber expressed strong objection to any facility being located on B St. However, at the meetings it was reported that the facility located on B Street was planning to move to another location in the County, making the matter of what to do with that facility moot. (Recently, it has come to our attention that although the B St. facility has closed, Ms. Jane Weirick has begun to dispense marijuana from her establishment on Foothill. From the staff perspective, we believe this is counter to the "compromise solution". Ms. Weirick believes it is consistent, contending that the objective of not having any dispensaries on B St. has been met and that the net number of facilities remains the same, with all of the facilities located on Foothill.)

The staff is seeking Council direction on whether an ordinance should be developed with regard to the issuance of identification cards. For your information, Attachment C is a copy of the ordinance adopted by the County, along with the related agenda report. If the Council supports preparation of an ordinance, staff suggests that it be modeled after the one adopted by the County. With regard to the facilities, if the approach herein is acceptable, staff would prepare letters of understanding to be executed with the operators of the dispensaries to assure compliance with the provisions as outlined in Attachment B.



Jesús Armas  
City Manager

Attachments

Medicinal Marijuana Ad Hoc Task Force

Jeff Jones, Oakland Cannabis Buyers Cooperative

Shon Squier, Local Patient's Cooperative

Jane Weirick, Medical Cannabis Association

John Wichman, Westminster Hills Church

Chris Zaballos, Hayward Chamber of Commerce

City Participants

Roberta Cooper, Mayor

Jesús Armas, City Manager

Michael O'Toole, City Attorney

Maureen Conneely, Assistant City Attorney

## ATTACHMENT B

### OPERATING CONDITIONS FOR GRANDFATHERED MEDICINAL MARIJUANA DISPENSARIES

1. The two existing Foothill dispensaries—Hayward Hempery and Local Patient's Cooperative—to be grandfathered and allowed to remain in operation, consistent with the items enumerated herein.
2. Operators must manage facilities to ensure they are safe and sanitary, and do not create a demand for police services.
3. Operators will actively discourage their patients/patrons from smoking or gathering in the sidewalk. Smoking on premises will be generally discouraged, except for extraordinary cases arising from physical necessity.
4. Operators will not advertise.
5. Operators will have no more than three pounds of marijuana on site at any one time.
6. Police personnel will periodically visit the facilities to confirm facility is safe and sanitary, and to verify that the quantity of marijuana on site does not exceed established limit.
7. If quantity is exceeded, or demand for police services is excessive, facilities will close within 30 days.
8. The facilities are grandfathered for three years, subsequent to which facilities must cease operation. If the conflict between federal and state law is resolved, the City will entertain amending the zoning ordinance to provide for the issuance of conditional use permits for marijuana dispensaries.

# DRAFT

ORDINANCE NO. \_\_\_\_\_

*mal*  
11/13/03

## ORDINANCE ADDING ARTICLE 15 TO CHAPTER 2 OF THE HAYWARD MUNICIPAL CODE RELATING TO CONTROL OF MEDICAL MARIJUANA

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. FINDINGS AND PURPOSE. The California Compassionate Use Act of 1996 (the "Act") prohibits qualified patients, upon written recommendation from a physician, and their designated primary caregivers, from being prosecuted for the possession or cultivation of marijuana for medical purposes of the patient. As stated therein, one of the purposes of the Act is to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes. The Act also prohibits punishing, prosecuting or denying any privilege to physicians who recommend marijuana to qualified patients for medical purposes. The Act further calls upon the state and federal governments to develop a plan for the safe and affordable distribution of marijuana for medical purposes. Reports of problems and uncertainties in the ability of law enforcement personnel to enforce the Act, and qualified patients and their designated caregivers to obtain the benefits of the Act, resulted in the enactment of a statewide Medical Marijuana Program (Health and Safety Code Sections 11362.7 *et seq.*). The Medical Marijuana Program creates a comprehensive voluntary state identification card program for qualified medical marijuana patients and their designated primary caregivers that will be administered by each county health department in the State of California, in accordance with the protocols established by the State of California Department of Health Services. It is the intent of the City Council of the City of Hayward to assure qualified patients and their designated primary caregivers, for whom medical marijuana is recommended by a physician, that validly-issued state medical marijuana identification cards will be recognized and accepted by the City of Hayward.

Section 2. The following provisions are hereby adopted and added to Chapter 2 of the Hayward Municipal Code as Article 15:

### "ARTICLE 15

#### MEDICAL MARIJUANA IDENTIFICATION CARD PROGRAM

Section 2-15.00 MEDICAL MARIJUANA IDENTIFICATION CARD PROGRAM. Existing state law prohibits the prosecution of qualified patients and their designated primary caregivers, who, upon written recommendation of a physician, possess and cultivate marijuana for medical purposes. State law further prohibits the prosecution, punishment or denial of any privilege to physicians who recommend marijuana to qualified

patients for medical purposes. As set forth in California Health and Safety Code Sections 11362.7 *et seq.*, the Medical Marijuana Program is a comprehensive, voluntary state identification card program for qualified medical marijuana patients and their designated primary caregivers administered by each county health department in the State of California, in accordance with protocols established the California Department of Health Services.

The City of Hayward will comply with and abide by the provisions of the Medical Marijuana Program, as set forth in California Health and Safety Code Sections 11362.7 *et seq.*

Section 2-15.01 IDENTIFICATION CARDS ISSUED PURSUANT TO MUNICIPAL OR COUNTY ORDINANCE. Until such time as the state Medical Marijuana Program referenced in Section 2-15.00 is fully operational, the City of Hayward will recognize any valid medical marijuana identification card issued pursuant to an ordinance adopted by the governing body of any California county or municipality. Once the state Medical Marijuana Program becomes fully operational, this section shall be without further force or effect.”

Section 3. SEVERABILITY AND VALIDITY. If any section, subsection, paragraph or sentence of this ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance.

Section 4. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days after adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_\_, 2003, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_\_ day of \_\_\_\_\_, 2003, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward