AGENDA ITEM NO. 10.b.2.

ORDINANCE NO. 2798-A

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE ESTABLISHING AN ELIGIBILITY CUT-OFF DATE AND A REGISTRATION PROCESS FOR POTENTIAL ELIGIBILITY OF MEDICAL MARIJUANA DISPENSARIES FOR FUTURE PERMITS, PENDING ADOPTION BY THE CITY OF REGULATIONS GOVERNING THE LOCATION AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES

City Attorney's Summary

This Ordinance establishes June 30, 2011, as the date by which a medical marijuana dispensary must have been established and operating in the City in order to be potentially eligible for a future permit to legally operate in the City and establishes a process for the registration of such medical marijuana dispensaries pending the adoption by the City of regulations governing the location, permitting and operation of medical marijuana dispensaries in the City. This Ordinance also prohibits any person to open, commence operation, or expand or modify operations of a medical marijuana dispensary, or to permit or allow such opening, operation, expansion or modification, at any location in the City of Garden Grove pending the adoption by the City of regulations governing the location and operation of medical marijuana dispensaries in the City.

The City Council of the City of Garden Grove hereby ordains as follows:

Section 1. Chapter 85 of Title 5 of the Garden Grove Municipal Code shall be added as follows:

"CHAPTER 85: REGISTRATION PROCESS FOR MEDICAL MARIJUANA DISPENARIES

Section 5.85.010 Findings.

A. In 1996, California voters approved Proposition 215, entitled "The Compassionate Use Act," later codified as Health and Safety Code sections 11362.5. The Compassionate Use Act ensures that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. In 2003, the State Legislature enacted Senate Bill 420, known as the Medical Marijuana Program Act and codified at Health and Safety Code sections 11362.7 et seq. The Medical Marijuana Program was intended to supplement, clarify, and give effect to the intent of the Compassionate Use Act and to allow, but not require, cities to adopt and enforce rules and regulations consistent with the Medical Marijuana Program.

B. Several California cities and counties that have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts and negative secondary effects on the public health, safety and welfare associated with and resulting from such dispensaries. According to these

communities, news stories widely reported, and 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 dispensaries.

C. There appears to be a proliferation throughout the state of medical marijuana dispensaries that do not comply with The Compassionate Use Act, the Medical Marijuana Program or the Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (2008).

D. The adverse secondary effects arising from the operation of these dispensaries throughout California have been chronicled in detail by a 56 page report prepared by the California Police Chiefs' Association, dated April 22, 2009. In this report, various crimes consisting of armed robberies and murders, and burglary, arising from, or connected with, the operation of these establishments have been recorded by law enforcement agencies in, among numerous other communities, the California communities of Santa Barbara, Mendocino, San Leandro, Hayward, Laytonville, Bellflower, Claremont, and Willits.

E. The City Council of the City of Los Angeles specifically found that reports from its police department and the media showed an increase in, and escalation of, violent crime at the location of medical marijuana dispensaries, and further that, medical marijuana that has not been collectively or personally grown constitutes a unique health hazard to the public because it is not regulated, inspected, or analyzed for contamination by the state or federal government.

F. The California Police Chiefs' Association report further found: (a) that there have been reported poisonings from distribution of marijuana products due to contamination issues, which are more likely, because such products are not inspected by health agencies; (b) that adverse traffic, noise, and drug dealing impacts occur commonly outside marijuana dispensaries; (c) that gang involvement in the ownership and operation of these dispensaries has been reported in some communities.

G. Numerous other media and agency reports have documented criminal and nuisance activities associated with medical marijuana dispensaries.

H. The City Council further takes legislative notice that concerns about non-medical marijuana use arising in connection with the Act and the Program also have been recognized by state and federal courts. See, e.g., *People ex rel. Lungren v. Peron*, 59 Cal. App. 4th 1383, 1386-1387 (1997); *Gonzales v. Raich*, 125 S.Ct. 2195, 2214 n. 43 (2005).

I. In 2008, the City Council adopted Ordinance No. 2734 prohibiting medical marijuana dispensaries throughout the city for the purpose of eliminating the adverse secondary impacts to the public health, safety and welfare associated with medical marijuana dispensaries.

J. Notwithstanding Finding I, above, medical marijuana dispensaries have been known to operate and advertise in the city of Garden Grove, often disguised as permitted retail or commercial establishments. These establishments are operating without having obtained any City discretionary or regulatory review, approvals, or permits, and the City has not adopted conditions or regulations governing or allowing such operations.

K. City staff has initiated the preparation of ordinances for the City Council's future consideration that would amend the existing Land Use Code provisions to permit legitimate medical marijuana dispensaries in certain zones, and that would establish Municipal Code provisions for the permitting and regulation of medical marijuana dispensaries.

L. It would defeat in whole or in part, the objectives of any proposed conditions and regulations if, during the period the proposed conditions and regulations are being studied and considered for adoption, further proliferation, establishment, expansion, or modifications of medical marijuana dispensaries occurs.

M. In addition, due to the numerous adverse secondary impacts to the public health, safety, and welfare associated with medical marijuana dispensaries, the City Council does not wish to encourage the proliferation of additional medical marijuana dispensaries in the city.

N. The following is a sampling of cities that have permitted medical marijuana dispensaries, their respective populations, and maximum number of dispensaries permitted in each:

City	Approximate Population	No. of Dispensaries Permitted	Dispensaries per Capita
Los Angeles	3,900,000	100	1 per 39,000
Oakland	447,000	4	1 per 55,875
Santa Rosa	162,000	3	1 per 54,333
Berkeley	113,000	3	1 per 37,667
Martinez	36,000	1	1 per 36,000

The city of Garden Grove has approximately 175,000 residents. It is believed that there are approximately thirty (30) establishments currently cultivating and/or distributing medical marijuana in the city. Based on the number of dispensaries permitted in other cities, the number of medical marijuana

dispensaries currently believed to be operating in the city is more than adequate to service the legitimate medical marijuana needs of city residents.

O. Accordingly, it is the City Council's desire that, in the event it subsequently adopts an ordinance which permits medical marijuana dispensaries to operate in the city, initial eligibility for medical marijuana dispensary permits will be limited to those medical marijuana dispensaries that register with the City and can establish they were operating in the city on or before June 30, 2011.

P. This Ordinance is found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) in that the City Council finds and determines that there is nothing in this Ordinance or its implementation that could reasonably have any significant effect on the environment.

Section 5.85.020 Purpose. The purpose of this Ordinance is to establish a date certain by which a medical marijuana dispensary must have been established and operating in the city in order to be potentially eligible for a future permit to legally operate in the city and to provide for a registration process to allow the City to identify such medical marijuana dispensaries. The establishment of such a date certain is necessary in order to discourage the further proliferation of unauthorized and unregulated medical marijuana dispensaries while new regulatory and zoning provisions are developed and considered. This Ordinance is not intended to, and shall not be interpreted to, authorize, sanction, or permit the operation of any medical marijuana dispensary in the city contrary to state or local law, including the Garden Grove Municipal Code, or to amend or modify any provision of the Garden Grove Municipal Code.

Section 5.85.030 Definitions. For purposes of this Ordinance, the following terms shall have the following meanings:

A. "Medical marijuana dispensary" or "dispensary" shall mean five or more qualified patients and caregivers who collectively or cooperatively cultivate and share physician-recommended medical marijuana or medical marijuana in a manner strictly consistent with the Compassionate Use Act, the Medical Marijuana Program Act, and the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued August 2008, by the Office of the Attorney General for the State of California, as each may be amended from time to time. The term "medical marijuana dispensary" shall not include dispensing by primary caregivers to qualified patients in the following locations and uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of the Division 2 of the Health and Safety Code; 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; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a residential hospice; or a home health agency licensed pursuant to

Chapter 8 of Division 2 of Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5 and 11362.7 et. seq.

B. "City Manager" shall mean the City Manager of the City of Garden Grove or his or her designee.

C. "Established operation" shall mean and refer to a medical marijuana dispensary that has been open, operating, and providing medical marijuana at a fixed location in the city of Garden Grove since at least June 30, 2011.

D. "Person" shall mean any cooperative or collective (within the meaning of the Medical Marijuana Program Act), individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company, or combination of the above in whatever form or character.

Section 5.85.040 Restriction on New Medical Marijuana Dispensaries.

A. Pending the adoption by the City of regulations governing the location and operation of medical marijuana dispensaries in the city, and consistent with Section 9.16.020.100 of the Garden Grove Municipal Code, no person shall open, commence operation, or expand or modify operations of a medical marijuana dispensary at any location in the city of Garden Grove, or permit or allow such opening, operation, expansion, or modification.

B. Pending the adoption by the City of regulations governing the location and operation of medical marijuana dispensaries in the city, and consistent with Section 9.16.020.100 of the Garden Grove Municipal Code, no application for a business operation tax certificate, building permit or other development-related permit or entitlement shall be reviewed or accepted, no hearing on an application (including appeals) for a discretionary entitlement shall be conducted, and no building permit or other development-related permit shall be issued or approved for a medical marijuana dispensary.

Section 5.85.050 Registration of Established Medical Marijuana Dispensaries.

A. Any person that wishes to be eligible for a future permit to operate a medical marijuana dispensary in the City shall submit a registration application in accordance with this Section, which, based on credible evidence, establishes to the satisfaction of the City Manager that the person is an owner or operator of an "established operation." The registration application shall be signed by the medical marijuana dispensary owner or operator under penalty of perjury; shall be submitted to the City's Finance Director on a form provided by the City on or before the date set forth in the notice of the registration application process published by the City pursuant to Section 5.85.060, which date shall be no less than thirty (30)

days from the date of publication of said notice; shall be accompanied by a registration application fee established by City Council resolution; and should include originals or true and correct copies of the following documents:

i. State Board of Equalization seller's permit;
ii. Commercial or business insurance policy evidencing liability insurance coverage of the owner's or operator's operations at its current location;
iii. If renting or leasing property at its current location, the current rental contract or lease executed by both landlord and tenant; or, if the property is owned by the medical marijuana dispensary owner or operator, the current real property deed evidencing such ownership;
iv. Utility bills for the premises for the period including June 30, 2011; and
v. Any additional evidence that the applicant is an owner or operator of an "established operation."

No "established operation" shall be subsequently eligible to operate in the City if the owner or operator of the medical marijuana dispensary has failed to timely file a complete registration application with the City's Finance Director.

B. The City Manager shall evaluate each registration application, conduct a reasonable investigation, and determine whether the applicant is an "established operation." In order to make this determination, the City Manager may request such supplemental or additional information or documentation from the applicant as the City Manager deems necessary. Such additional information or documentation shall be provided to the City by the applicant within the time period specified in writing by the City Manager. The City Manager shall mail the findings and conclusions to the applicant within thirty (30) days from the close of the registration application process.

C. Notwithstanding any other provision of the Garden Grove Municipal Code to the contrary, any decision pursuant to this Section 5.85.050 by the City Manager shall be final and conclusive, with no appeal to the City Council or any other appellate body.

D. The application and documents submitted to the City pursuant to this Section 5.85.050 shall not be used by the City in any criminal proceeding as evidence of an admission of guilt or violation of any provision of the Garden Grove Municipal Code by the applicant.

E. Nothing herein shall permit any medical marijuana dispensary to operate in any manner contrary to applicable state or local law, including the Garden Grove Municipal Code.

F. Notwithstanding this Section 5.85.050, no medical marijuana dispensary operating or purporting to operate prior to the date of adoption of this Ordinance shall be deemed to have been a legally established use under the provisions of the Garden Grove Municipal Code or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

G. Notwithstanding this Section 5.85.050, pending the adoption by the City of regulations governing the location and operation of medical marijuana dispensaries in the city, nothing in this Ordinance shall be construed to authorize the operation of a medical marijuana dispensary in violation of Section 9.16.020.100 of the Garden Grove Municipal Code.

H. Judicial review of a decision made under this Ordinance shall be in accordance with the requirements of administrative mandamus procedure, California Code of Civil Procedure 1094.5. Any such action shall be filed within 90 days after the day the decision becomes final as provided in Code of Civil Procedure 1094.6.

Section 5.85.060 Notice of Registration Process. The City Manager shall provide notice to the public of the registration application process set forth in Section 5.85.050 by each of the following methods:

i. publication of notice once in a newspaper of general circulation within the city;
ii. posting of notice on the City's website; and
iii. mailing of notice to any person who has submitted a request to the City Clerk for written notice.

Section 5.85.070 Penalties.

A. Any person who violates Subsection 5.85.040(A) of this Ordinance shall be guilty of a misdemeanor. Such person shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of Subsection 5.85.040(A) of this Ordinance occurs and shall be punishable as herein provided.

B. In addition to criminal sanctions, the City Attorney, in the name of and on behalf of the City and/or the people of the state, may bring a civil action in a court of competent jurisdiction to enforce any provision of this Ordinance, or to restrain or abate any violation of the provisions of this Ordinance as a public nuisance.

C. Unless otherwise expressly provided, the remedies, procedures, and penalties provided in this Ordinance are cumulative to each other and to any other remedies, procedures, and penalties available under state law or City Ordinance."

Section 2. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsection, subdivision, sentence, clause, phrase, or portions thereof be declared invalid or unconstitutional.

Section 3. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or a summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.