

**City of Garden Grove**

**INTER-DEPARTMENT MEMORANDUM**

To: Matthew Fertal  
Dept.: City Manager  
Subject: SUSPENSION OF MEDICAL MARIJUANA DISPENSARY REGISTRATION PROCESS

From: Thomas F. Nixon  
Dept.: City Attorney  
Date: January 17, 2012

OBJECTIVE

To request the City Council's adoption of a resolution suspending the medical marijuana dispensary registration process.

BACKGROUND

Currently, there is a ban on the operation of medical marijuana dispensaries in the City of Garden Grove. Last year, the City Council adopted Chapters 5.80 and 5.85 of the Garden Grove Municipal Code (collectively, the "Registration Ordinance"), which provides for a registration process to allow the City to identify those medical marijuana dispensaries that were established and operating in the City on or before June 30, 2011. Pursuant to the Registration Ordinance, the owners/operators of medical marijuana dispensaries that were "established operations" would potentially be eligible to apply for a permit to legally operate in the City in the future if, and only if, the City Council were to adopt a future ordinance permitting and regulating medical marijuana dispensaries.

City Staff has evaluated registration applications submitted prior to the close of the application period and made initial eligibility determinations concerning the applications. Applicants were authorized to request a review by the City Manger (or his designee) of City staff's initial determination as to eligibility.

DISCUSSION

In a change of position from the United States (U.S.) Attorney General's previously announced policy of tolerance for medical marijuana dispensaries operating in compliance with state laws, in October 2011, the U.S. Department of Justice ("DOJ") announced a crackdown against medical marijuana dispensaries in California. The DOJ's recent enforcement posture includes the threat of asset forfeitures against participants in dispensary operations, including landlords that rent to dispensaries. In addition, U.S. Attorneys have issued warnings to local public officials that actions taken into establish regulatory medical marijuana dispensary programs may constitute violations of federal law.

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Also, on October 4, 2011, the Court of Appeal (Second Appellate District in Los Angeles County) ruled in Pack v. Superior Court that the City of Long Beach's ordinance permitting and regulating medical marijuana dispensaries is invalid as it is preempted by federal law.

Completing the registration process and pending administrative hearings will require the expenditure of significant time and resources by the City, and completion of the registration process is only necessary in the event the City proceeds with adoption of a regulatory program for medical marijuana dispensaries. In light of recent legal developments, however, it may be prudent to suspend the registration process for the time being in order to ensure that City actions remain in compliance with law and to conserve City resources. These recent legal developments call into question cities' ability to enact regulatory programs permitting medical marijuana dispensaries in light of federal law, under which the possession and distribution of all marijuana is illegal.

In light of these recent legal developments, the City Council may wish to consider suspending the process of registering medical marijuana dispensaries pursuant to the Registration Ordinance.

FINANCIAL IMPACT

Suspending the medical marijuana dispensary process will save significant Staff time and City resources.

RECOMMENDATION

It is recommended that the City Council:

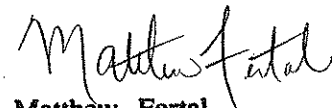
- Adopt the attached Resolution suspending the medical marijuana dispensary registration process.



THOMAS F. NIXON  
City Attorney

Attachment: Proposed Resolution

**Recommended for Approval**



**Matthew Fertal**  
City Manager

GARDEN GROVE CITY COUNCIL

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE  
SUSPENDING THE MEDICAL MARIJUANA DISPENSARY REGISTRATION PROCESS

WHEREAS, on October 14, 2008, the City Council adopted Ordinance No. 2734, currently codified in Section 9.16.020.100 of the Garden Grove Municipal Code, prohibiting medical marijuana dispensaries throughout the city of Garden Grove;

WHEREAS, in 2011, the City Council adopted Ordinance No. 2797-A (Chapter 5.80) and Ordinance No. 2798-A (Chapter 5.85) of the Garden Grove Municipal Code (collectively referred to herein as the "Registration Ordinance");

WHEREAS, the Registration Ordinance established 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 established a process for the registration of such medical marijuana dispensaries pending the consideration of a medical marijuana regulatory program by the City Council;

WHEREAS, the Registration Ordinance clearly provides that the City's prohibition on medical marijuana dispensaries remains in effect unless and until the City Council adopts an ordinance authorizing the operation of such dispensaries. To date, the City Council has not adopted such an authorization;

WHEREAS, recent legal developments call into question cities' ability to enact regulatory programs permitting medical marijuana dispensaries;

WHEREAS, these recent developments include, without limitation: (1) the U.S. Department of Justice's recent enforcement actions in California, including warnings from the Department of Justice to public officials that actions taken in establishing regulatory medical marijuana dispensary programs may violate federal law, and (2) the Second District Court of Appeal's decision in *Pack v. Superior Court*, holding that the City of Long Beach's regulatory ordinance affirmatively permitting medical marijuana dispensaries is preempted by federal law; and

WHEREAS, in light of these recent developments and the present legal uncertainty regarding cities' authority to enact regulatory programs permitting medical marijuana dispensaries, it is not in the City's interest at this time to continue to expend its limited resources to develop a regulatory program or to complete the process of registering medical marijuana dispensaries pursuant to the Registration Ordinance.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE  
HEREBY RESOLVES, DETERMINES, AND FINDS AS FOLLOWS:

SECTION 1. The process for registration of medical marijuana dispensaries as provided for in Sections 5.80.050 and 5.85.050 of the Garden Grove Municipal Code, including any related pending administrative proceedings, shall be suspended immediately.

SECTION 2. Except as expressly provided in Section 1, above, this Resolution is not intended to modify or affect the rights or obligations of any person pursuant to Chapter 5.80, Chapter 5.85, and/or Section 9.16.020.100 of the Garden Grove Municipal Code.