

# CITY of LAGUNA WOODS CITY COUNCIL AGENDA

Special Meeting  
Tuesday, October 13, 2015  
2:00 p.m.

Laguna Woods City Hall  
24264 El Toro Road  
Laguna Woods, California 92637

Cynthia Connors  
Mayor

Noel Hatch  
Mayor Pro Tem

Bert Hack  
Councilmember



Shari L. Horne  
Councilmember

Carol Moore  
Councilmember

***Welcome to a meeting of the Laguna Woods City Council!***

***This meeting may be recorded, televised, and made publically available.***

**Public Comments:** Persons wishing to address the City Council are requested to complete and submit a speaker card to City staff. Speaker cards are available near the entrance to the meeting location. Persons wishing to address the City Council on an item appearing on this agenda will be called upon at the appropriate time during the item's consideration. Persons wishing to address the City Council on an item *not* appearing on the agenda will be called upon during the "Public Comments" item. Persons who do not wish to submit a Speaker Card, or who wish to remain anonymous, may indicate their desire to speak from the floor. Speakers are requested, but not required, to identify themselves.

**Americans with Disabilities Act (ADA):** It is the intention of the City to comply with the ADA. If you need assistance to participate in this meeting, please contact either the City Clerk's Office at (949) 639-0500/TTY (949) 639-0535 or the California Relay Service at (800) 735-2929/TTY (800) 735-2922. The City requests at least two business days' notice in order to effectively facilitate the provision of reasonable accommodations.

REGULAR MEETING SCHEDULE

The Laguna Woods City Council regularly meets on the third Wednesday of each month at 2 p.m.

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FOR ADDITIONAL INFORMATION

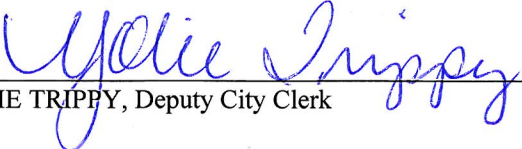
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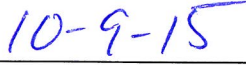
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AFFIDAVIT OF POSTING

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) ss.  
CITY OF LAGUNA WOODS    )

I, Yolie Trippy, Deputy City Clerk, City of Laguna Woods, hereby certify under penalty of perjury that this agenda was posted at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, California 92637; on the City’s website ([www.cityoflagunawoods.org](http://www.cityoflagunawoods.org)); and, at other locations designated by Resolution No. 02-33, pursuant to California Government Code Section 54954.2 of the Ralph M. Brown Act.

  
\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

  
\_\_\_\_\_  
Date

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE OF ALLEGIANCE
- IV. PRESENTATIONS AND CEREMONIAL MATTERS
- V. PUBLIC COMMENTS

About Public Comments: This is the time and place for members of the public to address the City Council on items *not* appearing on this agenda. Pursuant to State law, the City Council is unable to take action on such items, but may engage in brief discussion, provide direction to City staff, or schedule items for consideration at future meetings.

VI. CONSENT CALENDAR

About the Consent Calendar: All items listed on the Consent Calendar are considered routine and will be enacted by one vote. There will be no separate discussion of these items unless a member of the City Council, City staff, or the public requests that specific items be removed from the Consent Calendar for separate discussion and consideration of action.

VII. PUBLIC HEARINGS

7.1 Medical Marijuana Dispensaries Ordinance

*Recommendation:*

- 1. Receive staff report.

AND

- 2. Open public hearing.

AND

- 3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Take one of the following actions:

A. Adopt an ordinance – read by title with further reading waived – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF PURSUING PROHIBITION THEREOF

OR

B. Adopt an ordinance – read by title with further reading waived – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF FURTHER STUDY AND ANALYSIS

## **VIII. CITY COUNCIL BUSINESS**

8.1 North Orange County Groundwater Basin Contamination  
(agendized by Councilmember Moore)

*Recommendation:* Authorize Councilmember Moore to prepare and submit a letter, on behalf of the City, to the Orange County



Water District and the United States Environmental Protection Agency (EPA) supporting the EPA's role as the lead agency responsible for investigating North Orange County Groundwater Basin regional groundwater contamination under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or, Superfund).

## 8.2 General Plan Comprehensive Update Project

*Recommendation:* Approve a resident survey to be conducted as a part of the General Plan Comprehensive Update Project and provide related direction to staff.

## **IX. CITY COUNCIL REPORTS AND COMMENTS**

About City Council Comments and Reports: This is the time and place for members of the City Council to provide reports on meetings attended including, but not limited to, meetings of regional boards and entities to which they have been appointed to represent the City and meetings attended at the expense of the City pursuant to California Government Code Section 53232.3. Members of the City Council may also make other comments and announcements.

### 9.1 Comments and Reports

## **X. CLOSED SESSION**

## **XI. CLOSED SESSION REPORT**

## **XII. ADJOURNMENT**

Next Adjourned Regular Meeting: Wednesday, October 28, 2015 at 2 p.m.  
Laguna Woods City Hall  
24264 El Toro Road, Laguna Woods, California 92637

Next Regular Meeting: Wednesday, November 18, 2015 at 2 p.m.  
Laguna Woods City Hall  
24264 El Toro Road, Laguna Woods, California 92637

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7.1  
**MEDICAL MARIJUANA DISPENSARIES  
ORDINANCE**

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# City of Laguna Woods Agenda Report

**TO:** Honorable Mayor and City Councilmembers

**FROM:** Christopher Macon, City Manager  
David B. Cosgrove, City Attorney

**FOR:** October 13, 2015 Special Meeting

**SUBJECT:** Medical Marijuana Dispensaries Ordinance

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## **Recommendation**

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Take one of the following actions:

A. Adopt an ordinance – read by title with further reading waived – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA

GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858,  
EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR  
OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE  
PURPOSE OF PURSUING PROHIBITION THEREOF

OR

B. Adopt an ordinance – read by title with further reading waived – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA  
GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858,  
EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR  
OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE  
PURPOSE OF FURTHER STUDY AND ANALYSIS

**Background**

The City presently has a regulatory ordinance permitting medical marijuana dispensaries, codified at Section 13.26.025 of the Laguna Woods Municipal Code. The ordinance was adopted in 2008 and subsequently amended in 2012.

At a special meeting on September 10, 2015, the City Council adopted an urgency ordinance that imposed a moratorium on the establishment, location, or operation of medical marijuana dispensaries for a 45-day period (September 10, 2015 through October 24, 2015). During the moratorium, all operation of Section 13.26.025 of the Laguna Woods Municipal Code is suspended and the City may not issue regulatory permits in furtherance of the establishment, location, or operation of a medical marijuana dispensary within the City. The agenda report from the meeting on September 10, 2015, a letter from the Orange County Sheriff that was attached thereto, and the urgency ordinance are included as attachments A, B, and C.

For reasons, and in light of findings, set forth in the ordinance, and in accordance with applicable sections of State law, the moratorium was deemed necessary for the immediate preservation of the public health, safety, and welfare, to prohibit any uses that may be in conflict with a contemplated zoning proposal that the City is considering or intends to study within a reasonable time.

As described in the ordinance, the moratorium was intended to provide the City time to study the effect of medical marijuana dispensaries on the community, and to

assess its ability to draft and adopt regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

## **Discussion**

Since September 10, 2015, staff has undertaken a number of investigations related to medical marijuana dispensaries, including reviewing federal law and enforcement policies, examining California's proposed Medical Marijuana Regulation and Safety Act (which, at the time of this writing, is currently on the Governor's desk for signature or veto), discussing medical marijuana dispensary experiences and policies with a number of other cities, meeting with the Orange County Sheriff's Department, meeting with a representative of Law Enforcement Against Prohibition (a non-profit organization that advocates for the regulation and control of marijuana and other drugs), and conducting preliminary research on the availability and types of testing of marijuana products for potential use in medicinal contexts. The results of staff's investigations are organized under the subheadings below.

### A. Federal Law

Without question, marijuana is, and remains, illegal under federal law. It remains classified as a Schedule 1 controlled substance under the Controlled Substances Act (21 USC §§ 801 *et seq*). As indicated in the agenda report dated September 10, 2015, the California Supreme Court has held that bans on medical marijuana dispensaries are permissible under a city's inherent zoning power, but it has, thus far, declined to reach the issue whether permitting such dispensaries would violate the Controlled Substances Act or California Government Code Section 37100<sup>1</sup>.

Notwithstanding federal illegality, some 20 states and the District of Columbia have legalized or decriminalized certain marijuana-related activity. Such action has been a contributing factor in the promulgation of revised federal enforcement policies.

Specifically, on August 29, 2013, Deputy Attorney General James J. Cole issued a directive to all United States Attorneys entitled *Guidance Regarding Marijuana Enforcement*, which is included as Attachment D. The Cole Memorandum reaffirms the federal illegality of marijuana, but also indicates that the Department of Justice

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<sup>1</sup> California Government Code Section 37100, which relates broadly to cities' legislative powers, provides: "The legislative body may pass ordinances not in conflict with the Constitution and laws of the State or the United States." The City Council may, therefore, not pass an ordinance directly in conflict with either federal or State law.

is committed to using its limited investigative and prosecutorial resources to address what it has determined to be “priority threats,” including:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or illegal activity;
- Preventing violence and use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public land; and
- Preventing marijuana possession or use on federal property.

The aforementioned priorities were further referenced in a memorandum from the Department of Treasury, Financial Crimes Enforcement Network, dated February 14, 2014, which is included as Attachment E. The Treasury Memorandum provides guidance to various financial institutions that might deal with medical marijuana dispensaries operating under state law and requires different forms of “suspicious activity reports” depending upon individual facts and circumstances relating to the individual dispensary customers of financial institutions.

From those memoranda, one might infer that the current risk of federal enforcement against both medical marijuana dispensaries operating consistent with state law, and cities that adopt enabling regulations, is diminished, particularly if local regulatory efforts are directed at avoiding the priority federal threats identified above. It should be noted, however, that the aforementioned limitations on federal enforcement do not change congressional legislative policy under the Controlled Substances Act, nor do they confer immunity on any party from any federal criminal prosecution or forfeiture action. Further, federal enforcement policies may change at any time, potentially with the impending shift in presidential administrations.

The formal and public definition of enforcement priorities for marijuana-related activities undertaken pursuant to state law signals at least a present federal intention



to eschew strict enforcement, perhaps to see how state law and experiences with medical marijuana dispensing and usage develop.

Staff contacted the local United States Attorney's Office to inquire whether the Cole Memorandum was still in effect, and to solicit any guidance federal enforcement authorities had with respect to medical marijuana dispensaries. The United States Attorney's Office confirmed that the Cole Memorandum is still applicable, but (not surprisingly) declined to provide further guidance.

#### B. California Medical Marijuana Law

Staff's agenda report dated September 10, 2015 provided background regarding the California Compassionate Use Act (Health and Safety Code Section 11362.5) and the Medical Marijuana Program (Health and Safety Code Section 11362.7). A major reworking of those statutes appears to be in the making with the potential enactment of the Medical Marijuana Regulation and Safety Act ("MMRSA").

The MMRSA actually consists of three different pieces of legislation, Assembly Bill 243 (Wood), Assembly Bill 266 (Bonta), and Senate Bill 643 (McGuire). Each of the bills has passed the California Legislature and, as of the time of this writing, are on the Governor's desk for signature or veto. The bills are joined, meaning that all must be signed or all will fail. City staff understands that the Governor is expected to sign each of the bills, which is the action endorsed by the League of California Cities, California Police Chiefs Association, and Cannabis Industry Association. The California State Sheriffs' Association has taken a neutral position.

If signed into law, the MMRSA would provide for comprehensive state licensing and regulation of medical marijuana cultivation, transportation, and distribution. It would place the Department of Food and Agriculture in charge of licensing indoor and outdoor cultivation sites, mandate the Department of Pesticide Regulation to develop pesticide standards for cultivation, and require the Department of Public Health to develop standards for the production and labeling of edible products.

The MMRSA would also create a Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. It contemplates a dual licensing system, with the State issuing licenses and local governments issuing permits for medical marijuana dispensaries, beginning in 2018. It would require the Department of Consumer Affairs to license dispensaries, distributors, and transport entities dealing with medical marijuana, and provide restrictions on holding more than one such license in the medical marijuana cultivation and distribution chain. It would also

enact medical marijuana testing standards and tie the validity of state licenses to local permits (i.e., a state license becomes invalid if a local permit is denied or revoked). Under the MMRSA, local governments would retain the right to choose whether to permit or prohibit medical marijuana dispensaries.

The MMRSA looks to be a bit of game-changer for California law. It would provide a comprehensive state licensing and oversight authority for medical marijuana, from grower to patient. Regulations would include uniform requirements related to security, health, and safety, as well as quality assurance and testing protocols. It would also specifically authorize local governments to regulate medical marijuana dispensaries, including the ability to charge taxes and fees.

In many respects, for local governments favoring allowance of medical marijuana dispensaries, the systems contemplated under the MMRSA would take much of the guesswork out of how to tailor local regulations to comply with State law. Those systems would offer a defined regulatory framework within which local regulations and revenue measures are specifically contemplated and authorized. With current federal enforcement policies drawing heavily on whether local medical marijuana activities comply with state law, those systems would also afford some additional predictability on exposure under federal law.

### C. Communications with Other Jurisdictions

Staff has spent a substantial amount of time since September 10, 2015 interviewing and communicating with other cities having experience in medical marijuana issues. Staff reached out to both cities that permit medical marijuana dispensaries (Santa Ana, San Diego) and those that do not (Dana Point, Lake Forest). In addition, staff met with Orange County Sheriff Sandra Hutchens.

A number of common themes emerged from the communications conducted. Taken together, this information indicates to staff that if the City Council is interested in maintaining a regulatory approach to medical marijuana dispensaries, significant additional study would be required to develop regulations to protect the public health, safety, and welfare of residents, patients, and other affected parties, alike. It is staff's opinion that the City's existing regulatory ordinance is not only at an impasse due to the Orange County Sheriff's Department's unwillingness to be fully involved, but also inadequate, having not benefitted from the significant body of knowledge and practical experience garnered by other jurisdictions since its initial adoption in 2008, as medical marijuana dispensaries have become increasingly common.

The following are some of the recurring themes of the comments that staff received:

1. *Dispensaries Are Highly-Funded, Cash-Based Businesses*

It is clear to staff that while the particulars may vary amongst individual medical marijuana dispensaries, medical marijuana is a highly funded and growing industry. The demand for medical marijuana, coupled with restrictions on federally-chartered banking and credit card companies, results in large numbers of transactions of a primarily cash basis. That means that dispensaries frequently have large amounts of cash on-site, and patients travelling to dispensaries can be expected to do so with cash in-hand. Reports were that some dispensaries handled upwards of \$100,000 each week, with cash stored both on-site and at associated off-site locations.

The prevalence and influx of cash presents a number of security challenges, which are further evidenced by the reportedly frequent presence of armed guards and weapons at medical marijuana dispensaries. While armed guards and weapons can be lawfully present, the practice nevertheless speaks to a potential recognition of, and perceived susceptibility to, robbery and other crime. As a result, staff believes that if the City Council is interested in maintaining a regulatory approach, limitations should be placed on the amount of cash permitted to be on-site at any given time, and the proximity of dispensaries to banks and automatic teller machines where patients may obtain cash, thus creating potential secondary targets for robbery.

2. *Unpermitted Dispensaries Tend to Congregate, which May Be Indicative of Tendencies that would Also Attend Permitted Dispensaries*

Multiple jurisdictions advised that once a single, unpermitted medical marijuana dispensary opened in a specific neighborhood or location, other nearby dispensaries soon followed. One city indicated that it had as many as seven dispensaries operating on a single commercial property at one point. Whether related to convenience for patients, or a perception that a particular jurisdiction was “friendly” to dispensaries, the presence of a single dispensary tended to be a catalyst for others. This appeared to be more common in jurisdictions without permitting ordinances, which indicates that factors such as patient convenience, location, and market may drive dispensary siting decisions more than considerations of permissible zoning or permitting.

If the City Council is interested in maintaining a regulatory approach, staff believes that consideration should be given to limiting the maximum number of dispensaries and evaluating the compatibility of dispensaries relative to zoning districts, in order to promote land use balance in the city.

3. *Dispensaries Are Reported to Generate Substantial Adverse Secondary Effects, though Empirical Support for this Perception is Thin*

Medical marijuana dispensaries are widely regarded amongst government agencies as having the potential to generate adverse secondary effects. While it should be noted that no jurisdiction with whom staff spoke had specific statistical support for an increase in crime directly attributable to dispensaries, the anecdotal and personal experiences of the professionals with whom staff spoke were unequivocal. There is a lack of significant history with jurisdictions *explicitly* permitting dispensaries in Orange County and, as a result, most of the anecdotal and personal experiences shared related to unpermitted dispensaries. Still, all parties that staff interviewed, including Law Enforcement Against Prohibition, acknowledged that if unregulated, dispensaries raised the prospect of generating adverse secondary effects

In addition to robberies, which are believed to be underreported, a common adverse secondary effect cited was illegal transactions involving eligible medical marijuana patients transferring product to others, frequently in a dispensary's parking lot. On-site use of medical marijuana products was reportedly prevalent and some incidents of drugged-driving were reported in the immediate vicinity of dispensaries.

Staff concurs with the notion that some level of adverse secondary effects are likely to occur in Laguna Woods, from even lawfully operating medical marijuana dispensaries. Those effects may occur for reasons sometimes beyond the control of dispensary operators, including the actions of patients once medical marijuana has been purchased. Staff also believes that significant traffic could be expected at any Laguna Woods dispensary, because surrounding jurisdictions have enacted bans, and in some cases, have a demonstrated history of strict enforcement against any such uses. This higher level of expected traffic could correlate to higher levels of monitoring and enforcement efforts for the City<sup>2</sup>.

What remains unresolved is the City's ability to mitigate potential adverse secondary effects through some application of State law and local regulation. If the City Council is interested in maintaining a regulatory approach, staff would anticipate an intensive effort to draft regulations that would include additional outreach to public and private parties regarding best practices. It would also be informative to monitor experiences with permitted dispensaries in Santa Ana (first permitted dispensary

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<sup>2</sup> Even lawfully operating dispensaries would involve periodic monitoring, to assure compliance with conditions of approval and operations that maintain compliance with State law.

opened in August 2015) and San Diego (first permitted dispensary opened in March 2015), as well as other cities with more mature permit processes (e.g., Berkeley, Oakland, Richmond, West Hollywood).

While the Orange County Sheriff's Department has indicated that the need for law enforcement services will not automatically increase as a result of the permitting of one or more medical marijuana dispensaries, the potential for adverse secondary effects raises the distinct potential for a future escalation in staffing levels that could strain or exceed the City's financial resources absent a commensurate reduction in service levels elsewhere in the organization. Depending on the nature of the effects generated, a strain could also be placed on Orange County Sheriff's Department deputies assigned to the cities of Aliso Viejo, Laguna Hills, and other nearby cities, if the City's regular staffing proves insufficient to respond.

If the City Council is interested in maintaining a regulatory approach, the unknown extent to which potential adverse secondary effects may occur and the associated financial challenges that could be posed by increased enforcement activity, lead staff to recommend that the City Council consider pursuing a ballot measure to impose a supplemental tax on dispensaries (Santa Ana's Measure BB allows for an up to 10% business license tax on gross receipts, which is currently being collected at 5%), as well as a deployment study to most effectively align permitted hours of operations for dispensaries with available law enforcement resources.

#### *4. Traffic and Parking Require Additional Study*

The observable demand for medical marijuana dispensaries, coupled with feedback from other jurisdictions regarding local traffic and parking impacts and the lack of permitted dispensaries in South Orange County, leads to a staff concern about the adequacy of the limited traffic and parking standards contained in the City's existing regulatory ordinance. If the City Council is interested in maintaining a regulatory approach, staff recommends that a traffic and parking demand analysis be undertaken, including on-site traffic and parking counts at permitted dispensaries, in order to establish standards to mitigate potential adverse secondary effects.

#### *5. Product Accessibility to Minors Is a Particular Concern*

Regardless of individual opinions on the worth of marijuana for medicinal purposes, demand for its recreational use is undeniable. Jurisdictions frequently cited concerns with the perceived ease with which medical marijuana patient identification cards can be obtained (a factor beyond the control of medical marijuana dispensaries) and

the transfer of products from eligible medical marijuana patients to others, including minors. Those concerns exacerbated with dispensaries located near high schools (Laguna Hills High School is located just south of Laguna Woods). One jurisdiction's local school district reported a dramatic drop in drug-related school expulsions and suspensions following the closure of unpermitted dispensaries.

While the regulations adopted by the City Council in 2008 sought to limit the sale of medical marijuana to Laguna Woods residents, that provision was subsequently removed from the regulatory ordinance in the interest of constitutionality. The City Attorney advises that it remains unadvisable to consider such a territorial limit.

#### D. Testing Availability and Protocols

At the meeting on September 10, 2015, a concern was raised about the dispensing of medical marijuana products whose potency and purity is unknown to the patient. Staff conducted preliminary research of the types of testing commercially available, to see if it would make sense to require such testing as a part of potentially revised City regulations. It appears that such testing includes the following:

##### 1. *Potency Testing*

Potency testing informs patients about the concentration of active cannabinoids. Testing for THC, as well as other chemical components, is available, which medical users claim helps direct appropriate dosage for appropriate symptoms.

##### 2. *Pesticide Testing*

Pesticides are used in both indoor and outdoor growing operations. Pesticide testing permits identification of both the types and levels of pesticides, to test insecticide or fungicide constituents that may harm health.

##### 3. *Microbiological Screening*

The climate conditions that foster the cultivation of cannabis can also germinate bacteria and fungi. Microbiological screening can be performed to identify yeasts, molds, coliforms, and bacteria, such as salmonella.

##### 4. *Terpene Analysis*

Different strains of cannabis have different aromatic compounds that are said to produce different physical effects. Terpene analysis allows for characterization to distinguish various strains, said to be used for treatment of various symptoms.

#### 5. *Residual Solvent Testing*

Solvents are sometimes used in preparation of concentrated forms of cannabis (wax, hash or other oils, etc.), where after the concentrated product is produced, solvents (acetone, hexane, butane, propane, isopropanol, and others) are removed using heat or vacuum processes. Residual solvent testing can detect both the quality of solvents used and the effectiveness of the solvent removal efforts.

To date, staff has not generated information about the costs of those various tests, or analyzed what impact they might have on the accessibility of medical marijuana to patients. One concern staff has with potentially requiring medical marijuana product testing is that it would effectively dictate a violation of federal law (i.e., transport of medical marijuana for ultimate use). Securing the benefits of laboratory testing therefore poses legal risk<sup>3</sup>. That risk might be shielded, somewhat, with potential passage and implementation of the Medical Marijuana Regulation and Safety Act, which specifically requires the establishment of quality assurance testing protocols prior to transporting a product. Unless and until that State law becomes effective, however, any regulations requiring laboratory testing would entail some risk.

#### E. Potential Actions

As staff advised on September 10, 2015, the City's legally safest course, and the one followed by most Orange County cities, would be to prohibit medical marijuana dispensaries. In the City's case, that would take the form of a repeal of the medical marijuana dispensary regulatory ordinance. Such bans have been authorized by the California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4<sup>th</sup> 729. Repealing the regulatory ordinance would place the City on well-defined legal ground, help insulate against the adverse secondary effects that the City is advised such uses may generate, and allow the City to monitor the development of State law, and developing federal enforcement policies, with a minimum of legal risk. If this is the City Council's direction, staff requests that the existing moratorium be extended to allow for consideration and

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<sup>3</sup> This was one of the factors that led to the prior invalidation of the Long Beach medical marijuana dispensary regulations. The court found that by mandating laboratory testing, the city effectively compelled transportation of marijuana products, in contravention of federal law.

adoption of an appropriate ordinance (Attachment F). The operation of medical marijuana delivery services and personal cultivation for use as provided for in the Compassionate Use Act would not be affected by such a prohibition; only physical dispensaries – none of which currently exist – would be prohibited.

If it is the City Council's preference to continue to maintain a regulatory approach, staff believes that significant additional study is still required. That study would be consistent with the pursuit of regulations that seek to mitigate local concerns and potential adverse secondary effects, with an eye toward protecting public health, safety, and welfare, as well as quality of life and patient access. In this scenario, staff recommends that the existing moratorium be extended for a period of 10 months and 15 days (Attachment G). The moratorium could be shortened or lifted in advance of that date, should the additional study be completed and regulations adopted by the City Council. Such moratorium extension could be accompanied by direction to staff to undertake the following actions, all of which are recommended:

1. Review and thorough analysis of the provisions of the California Medical Marijuana Regulation and Safety Act, if enacted, including monitoring the activities of the departments of Consumer Affairs, Food and Agriculture, Pesticide Regulation, and Public Health, as they develop a more comprehensive statewide scheme for medical marijuana licensing, permitting, and control.

2. Analysis of traffic and parking for operating, permitted medical marijuana dispensaries, to help assess accessibility, parking demand, and traffic flow characteristics, to help staff determine what land use designations, zoning districts, and surrounding uses, would most compatibly allow medical marijuana dispensaries to integrate with the City's existing uses.

3. Review of the zoning designations in which existing permitting jurisdictions permit medical marijuana dispensaries, and their distance requirements from potentially sensitive uses.

4. Gathering of information on the availability and cost of laboratory services for testing the potency and purity of medical marijuana products, and the feasibility, desirability, and effectiveness of limiting permitted medical marijuana dispensaries to the sale of certified or otherwise tested products.

5. Monitoring of developments in federal enforcement practices on medical marijuana dispensaries operating under color of state law.



6. Investigation of the operating hours of medical marijuana dispensaries in other jurisdictions, along with similar medically-related businesses (including pharmacy counters), to help strike a balance between convenient access to medical marijuana and the prevention of sales to minors or recreational users.

7. Completion of a deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly.

8. Negotiation of processes and standards for in-depth background checks of potential medical marijuana dispensaries with the Orange County Sheriff's Department and/or potential private investigative services.

9. Assessment and analysis of the City's ability to implement a business license tax or other charge on medical marijuana dispensaries, at least in part to help fund oversight and enforcement efforts, and the procedural requirements (including potential Proposition 218 voter approval) for same.

10. Development of regulations and fees for City Council consideration, informed by the preceding studies and investigations, and intended to adequately mitigate potential adverse secondary effects resultant of the primarily cash basis of medical marijuana dispensaries, traffic and parking demand, and other public health, safety, and welfare concerns, while preserving quality of life and patient access. (The City Council would be under no obligation to adopt permitting regulations.)

### **Environmental Review**

The adoption of either proposed ordinance and extension of the moratorium is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines.

### **Fiscal Impact**

Prohibition of medical marijuana dispensaries could be accommodated in the City's existing budget.

It is estimated that the development of regulations for City Council consideration, including all of the associated actions recommended by staff, would require one-time expenditures of \$35,090 for planning, deployment, legal, and fee study-related

services over the next 10 months and 15 days. If that is the action taken, a resolution adopting an amended budget would be brought before the City Council at a future meeting. The cost of a potential ballot measure related to taxation of dispensaries has not yet been calculated.

- Attachments:
- A – Agenda Report from September 10, 2015
  - B – Orange County Sheriff’s Department Letter
  - C – Urgency Ordinance, Ordinance No. 15-03
  - D – United States Attorney’s Office “Cole Memorandum”
  - E – Department of Treasury, Financial Crimes Enforcement Network Memorandum
  - F – Proposed Ordinance for Pursuit of Prohibition
  - G – Proposed Ordinance for Further Study and Analysis



# City of Laguna Woods Agenda Report

**TO:** Honorable Mayor and City Councilmembers  
**FROM:** Christopher Macon, City Manager  
David B. Cosgrove, City Attorney  
**FOR:** September 10, 2015 Special Meeting  
**SUBJECT:** Medical Marijuana Dispensaries Ordinance

---

## **Recommendation**

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Adopt an ordinance – read by title with further reading waived – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, ADOPTING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES

## **Background**

The City presently has a regulatory ordinance permitting medical marijuana dispensaries, codified at Section 13.26.025 of the Laguna Woods Municipal Code. The ordinance was adopted in 2008 and subsequently amended in 2012.

## **Discussion**

### 1. The City's Medical Marijuana Dispensary Ordinance.

The regulatory ordinance permitting medical marijuana dispensaries requires an applicant to undergo a background check from the Police Chief, and requires the Police Chief's input with respect to the acceptability of the applicant's background, suitability of the proposed location, format and location of security cameras, and other matters as may be determined appropriate by the Police Chief. The ordinance also provides that in the event that an applicant is not the legal owner of a property, an application must be accompanied by a notarized acknowledgement from the applicable property owner that a medical marijuana dispensary will be operated on the property. City staff believes that latter provision has proven to be a significant hurdle to past parties interested in locating dispensaries in Laguna Woods.

To date, the City has not received a completed application for a medical marijuana dispensary. With the medical marijuana dispensary bans that exist in almost all other Orange County cities, as well as the interest in permitted medical marijuana dispensary facilities currently experienced by the City of Santa Ana and others; recovery in the local real estate market since the regulatory ordinance was originally enacted in 2008; and, information that City staff has received that one or more properties in the City are being marketed for sale for purchase by prospective medical marijuana dispensary permit applicants, City staff believes that renewed interest in locating a medical marijuana dispensary within Laguna Woods will result in one or more applications being received soon.

### 2. The City's Land Use Regulatory Review Process.

The City is in the process of updating its overall land use regulatory structure. On April 16, 2014, the City Council adopted an update of the General Plan Safety Element. On December 17, 2014, the City Council adopted a Climate Adaptation Plan. On July 29, 2015, the City Council adopted an update of the General Plan Conservation Element. On May 20, 2015 the City Council adopted an update of the Building & Planning Services Fee Schedule.

The City’s land use regulatory analysis is ongoing. On June 24, 2015, City Council included within its budget and work plan for Fiscal Year 2015-16, a General Plan Comprehensive Update Project and a Commercial Zoning Code Uses and Parking Standards Update Project. Staff is presently working to advance those directives.

3. Communication from the Orange County Sheriff’s Department.

Realizing that local conditions pointed to the probability of a medical marijuana dispensary seeking to locate in Laguna Woods, and in analyzing how the present regulatory climate for medical marijuana dispensaries fits within a broader scheme of the City’s review of land uses generally, City staff consulted with the Sheriff’s Department regarding its contemplated role in the medical marijuana dispensary permitting process. That consultation resulted in a letter from the Sheriff’s Department dated August 24, 2015 (Attachment A).

In the aforementioned letter, the Sheriff’s Department makes clear its position that medical marijuana dispensaries are inconsistent with federal law and often operated in a manner that is inconsistent with state law. The Sheriff’s Department further indicates a lack of support for any municipal code provision that would allow the establishment of medical marijuana dispensaries for reasons including described “adverse secondary effects” and conditions compromising the “health and welfare of the community and negatively [impacting] the residents’ quality of life.” Accordingly, the Sheriff’s Department urges repeal of the City’s regulatory ordinance and, likewise, recommends that the City consult with the cities of Dana Point, Laguna Hills, and Lake Forest, all of which have had prior experience with medical marijuana dispensaries and their effects.

The Sheriff’s Department states that while it will conduct a LiveScan background check that it believes is consistent with its contractual obligations under the City’s law enforcement services contract, it will not “review or approve any security plan of a dispensary, and will not determine the ‘acceptability’ of any applicant and the ‘suitability’ of the proposed location.”

4. Federal and California Law regarding Medical Marijuana.

The adverse secondary effects alleged by the Sheriff’s Department arise against a developing but still somewhat uncertain legal background regarding a city’s ability to permit medical marijuana dispensaries.

The California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, (2013) 56 Cal. 4<sup>th</sup> 729, noted that under the federal Controlled Substances Act, marijuana is considered as a drug, without accepted medical use and treatment, and without any medical necessity exception to prosecution and conviction under federal law. Notwithstanding, California has had medical marijuana legislation for some time. In 1996, the electorate enacted the Compassionate Use Act, Health and Safety Code Section 11362.5. That Act decriminalized possession and cultivation of marijuana for medical purposes, under specified circumstances. In 2004, the California Legislature adopted the Medical Marijuana Program, Health and Safety Code Section 11362.7, which expanded the Compassionate Use Act, provided for identification cards for qualified patients and their caregivers, and decriminalized collective cultivation and various possession, processing, transportation and distribution prohibitions.

Despite the broad legislative statements of intent in the Compassionate Use Act and Medical Marijuana Program, courts have taken a more limited view of their practical impact. The California Supreme Court has specifically denied that either ensures Californians of a right to obtain and use marijuana for medical purposes, and has upheld the authority of cities to regulate, and even ban, medical marijuana dispensaries, under their traditional local zoning power (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, *supra*; 56 Cal. 4<sup>th</sup> 729, 749.).

Although the law is clear that a city can ban medical marijuana dispensaries, it is significantly less clear how, and whether, a city may permit them. In the *Riverside* case, the California Supreme Court specifically declined to pass on the City of Riverside's argument that, if the Compassionate Use Act and Medical Marijuana Program were construed to require local jurisdictions to accommodate medical marijuana dispensaries, they would be pre-empted by federal law. The California Supreme Court likewise refused to consider whether Government Code Section 37100 forbids a city from adopting ordinances authorizing local land use for medical marijuana dispensaries, as being potentially in conflict with federal law.

The cities of Long Beach and Santa Ana both have enacted medical marijuana dispensary permit regulations, based on a lottery assignment of eligible locations. The Long Beach ordinance was overturned by the appellate court in *Pack v. Superior Court of Los Angeles*, (2011) 199 Cal. App. 4<sup>th</sup> 1070, indicating it was inconsistent with, and pre-empted by, Federal law (the opinion has subsequently been de-published). Santa Ana's lottery system is currently the subject of litigation, *Dillon, et al. v. City of Santa Ana*, Orange County Superior Court Case No. 30-

2015-00786940. In the *Dillon* case, a preliminary injunction was denied on June 19, 2015, which would have prevented the City from permitting medical marijuana dispensaries that won the lottery. The case is now proceeding through pleading and discovery phases and is being monitored by City staff.

5. The Potential Moratorium for Further Study of Dispensary Uses.

City staff believes that the overall situation described herein leaves the City in an uncertain and compromised position with respect to its medical marijuana dispensary permitting regulations. As a practical matter, without the cooperation of the Sheriff's Department, the City cannot fulfill the portions of its regulatory ordinance that call for participation of the Police Chief. It is uncertain the extent to which the City could privately contract with investigative or other public safety consultants for similar services, and whether the information gleaned from such private consultants would yield the same level of efficacy and safety in terms of reviews that might otherwise be conducted by the Sheriff's Department. The result raises the prospect of incomplete reviews of medical marijuana dispensaries, which is particularly troubling given the roster of adverse secondary effects that the Sheriff's Department alleges such medical marijuana dispensaries pose.

There are a number of other practical land use questions that also arise regarding the establishment, location, and operation of medical marijuana dispensaries in Laguna Woods. It is City staff's understanding that medical marijuana dispensaries that formerly operated in other South Orange County cities received significant amounts of traffic, which could reasonably be expected to be compounded if a lone South Orange County permitted medical marijuana dispensary were to arise within Laguna Woods. As such, City staff believes that it needs to undertake analysis of parking and traffic demands from those types of operations, to avoid unsafe traffic turning movements, parking or stopping, and to assure that adequate parking and access to such facilities is required, to avoid negative effects on surrounding uses.

City staff would also like to pursue the Sheriff's Department's recommendation of discussion with neighboring cities regarding their experiences with the municipal service and public safety demands attendant to medical marijuana dispensaries. Issues such as appropriate lighting; hours of operation; distance from potentially sensitive surrounding uses; the nature, format, and availability of security camera monitoring; and, the balance between patient privacy and the safety of medical marijuana dispensary patrons and surrounding uses, all require further study.

At today's meeting, City staff is recommending adoption of an urgency ordinance adopting a moratorium on the establishment, location, or operation of medical marijuana dispensaries (Attachment B). Such moratoria are authorized under Government Code Section 65858, which requires a finding that there is a current and immediate threat to public health, safety, or welfare, and that the approval of use permits or entitlements for use otherwise required in order to comply with the ordinance would result in that threat to public health, safety, or welfare.

Here, City staff believes that the required findings are met for the reasons stated in this agenda report, and as further elaborated on in the proposed urgency ordinance. Under present statements from the Sheriff's Department regarding its level of participation with respect to the City's regulatory ordinance, the City would have to apply either a truncated or amended permit application review process that would likely result in a review less thorough than that originally contemplated as required under the regulatory ordinance. The adverse secondary effects alleged by the Sheriff's Department certainly pose the types of threat to public health, safety, or welfare contemplated under the urgency ordinance, and City staff requires time to investigate the background information upon which the Sheriff's Department's letter has been issued, as well as to investigate the experience of other cities.

If the City Council chooses to adopt the urgency ordinance, the moratorium would be in effect for a period of 45 days. City staff would be required to provide a report to the City Council on measures taken to alleviate the conditions leading to the urgency ordinance 10 days before it expires. If conditions warrant, the moratorium could be extended for up to 10 months and 15 days, upon a regular noticed public hearing otherwise consistent with standard zoning measure requirements. Should the conditions that led to the initial enactment of the urgency ordinance persist, the moratorium could be extended for up to another year beyond that.

City staff is aware that there are strong and deeply-held opinions on all sides of the medical marijuana dispensaries issue; however, the City's land use policies must deal with the legal uncertainty on the subject, the uncertainty with respect to the City's regulatory ordinance and the role of its Police Chief, and the prospect of adverse secondary effects that have been raised by the City's law enforcement services provider. City staff believe that a moratorium would allow further study, discussion with other cities that have experience with medical marijuana dispensaries, and further development of the City's updated land use regulatory structure, in order to determine whether or how medical marijuana dispensaries might compatibly be integrated into the City's land use.



**Environmental Review**

The adoption of the proposed urgency ordinance and moratorium is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15601(b)(3) of the CEQA Guidelines.

**Fiscal Impact**

Fiscal impacts associated with the proposed urgency ordinance and moratorium are uncertain at this time. For City staff to take measures to alleviate the conditions leading to the urgency ordinance, and provide associated reporting, it is anticipated that costs would be incurred for services including legal, planning, and traffic engineering, as well as potential public safety services and public noticing. City staff would seek to accommodate such costs in the City's budget.

Attachments: A – Orange County Sheriff's Department Letter  
B – Proposed Ordinance

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# ORANGE COUNTY SHERIFF'S DEPARTMENT

ITEM 7.1 - Attachment B

550 N. FLOWER STREET  
SANTA ANA, CA 92703  
(714) 647-7000  
WWW.OCS.D.ORG

SHERIFF-CORONER  
SANDRA HUTCHENS

## OFFICE OF THE SHERIFF

August 24, 2015

Chris Macon, City Manager  
City of Laguna Woods  
24264 El Toro Road  
Laguna Woods, CA 92637

Dear Mr. Macon,

I am writing to express my strong opposition to the City of Laguna Woods' issuance of any permits for medical marijuana dispensaries in the City. I believe that if the City were to issue a permit for a medical marijuana dispensary in the City, the City would see an increase in crime to the detriment of the safety and security of its residents. I urge the City Council to repeal the municipal code section allowing the establishment of medical marijuana dispensaries in the City and instead join other cities and counties in refusing to allow medical marijuana dispensaries in their communities.

The Orange County Sheriff's Department has taken an active role in investigating marijuana storefronts. These storefronts have used the title of "dispensaries", "collectives", "cooperatives", and "alternative health care" to name a few. In our experience, these businesses distribute/sell marijuana outside of California law. California law provides an affirmative defense to charges of possession or cultivation of marijuana only when individuals with a valid physician's recommendation for the use of marijuana to treat a specified illness, or their designated primary caregivers associate to collectively or cooperatively cultivate marijuana for medical purposes. However, our investigations have shown that these storefronts are simply businesses that distribute marijuana for cash to any individual with a physician's recommendation without having any other relationship with the customer and do not require the customer to participate in cooperatively or collectively cultivating marijuana, which violates California law. Even if the collective were to operate within California law, sale or distribution of marijuana has been, and remains illegal under Federal Law.

The adverse secondary effects of medical marijuana distribution storefronts are well documented. The California Police Chiefs' Association documented specific effects on communities as a result of marijuana dispensaries. These adverse effects include, but are not limited to: increased traffic, noise, drug dealing, money laundering and firearms violations. Throughout the state, many violent

crimes have occurred including robberies, aggravated assaults and murder. Some of these crimes, have been traced back to medical marijuana businesses.

While it is understood that crimes involving marijuana dispensaries are vastly underreported, we have documented numerous incidents of serious and violent crimes that are directly related to these businesses. Crimes reported in Sheriff's jurisdiction include burglaries, robberies, assaults, vandalisms, thefts and shootings. During that time, a large number of illegal dispensaries were being operated in the Sheriff's jurisdiction. We worked with the Cities of Laguna Hills, Dana Point and Lake Forest to investigate these dispensaries at significant taxpayer expense. I recommend that you consult with the City Managers of these cities to hear about the difficulties and drain on the cities' resources in dealing with medical marijuana dispensaries.

During these times when illegal medical marijuana dispensaries were operating in Sheriff's jurisdiction, the Sheriff's Department frequently served search warrants related to marijuana businesses at both businesses and residences in our jurisdiction. These search warrants exposed an extensive amount of firearms. In one search warrant, 15 rifles, 8 handguns and 2 shotguns were seized. On another search warrant, 3 handguns, 3 shotguns, 1 rifle and 1 AK-47 Assault Rifle were seized. Undercover narcotic officers conducted surveillance of these businesses. Officers observed numerous hand-to-hand drug transactions occur in the parking lot of these businesses and in adjoining areas. The increase in vehicle and pedestrian traffic surrounding these medical marijuana dispensaries affected the quality of life for individuals working and living in the area.

The City of Laguna Woods is the only City in Sheriff's jurisdiction which has a municipal code allowing a permit for a medical marijuana dispensary. After reviewing the City of Laguna Woods Municipal Code 13.26.025. – "Medical Marijuana Dispensaries," there are several sections that require the approval, opinion or recommendation of the Police Chief. Please be advised that the Lieutenant will not review or approve any security plan of a dispensary, and will not determine the "acceptability" of any applicant and the "suitability" of the proposed location. I do not agree with, nor do I support those sections in the municipal code. I do not support any municipal code that would allow a business to operate in violation of state and/or federal law.

Pursuant to the contract for law enforcement services between the County of Orange and the City of Laguna Woods, the Sheriff's Department will comply with its contractual obligation to complete a background investigation of any permit applicant. That investigation will be forwarded to the City Manager as provided in our contract. (Section C.7, page 6 of 26; Section F, page 11 of 26.)

I am adamantly opposed to the issuance of any permit allowing the operation of a medical marijuana dispensary or any other medical marijuana storefront because: 1 – In my experience, these storefronts do not operate within California law; 2 – Marijuana is illegal under Federal Law. 3 – It has been demonstrated that medical marijuana storefronts may have the potential to increase

Mr. Chris Macon  
Page 3  
August 24, 2015

crime. 4 – These storefronts compromise the health and welfare of the community and negatively impact the residents' quality of life.

The City of Laguna Woods is a valued contract partner and I appreciate your consideration of my input regarding these important issues. It is our goal to keep the City and its residents safe. Please do not hesitate to contact us if we may provide further information and assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sandra Hutchens". The signature is fluid and cursive, with the first name "Sandra" written in a larger, more prominent script than the last name "Hutchens".

Sandra Hutchens  
Sheriff-Coroner

SH/jl

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**ORDINANCE NO. 15-03**

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, ADOPTING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES

**WHEREAS**, in 2008, the City adopted a regulatory process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which potentially allows medical marijuana dispensaries in the City's community commercial (CC) and professional and administrative office (PA) zoning districts; and

**WHEREAS**, to date, the City does not have any medical marijuana dispensaries operating within its jurisdiction; and

**WHEREAS**, under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City's regulatory process for issuance of a permit to operate a medical marijuana dispensary calls for the City's Police Chief (provided under contract with the Orange County Sheriff's Department) to approve components of the applicant's "security plan", make a determination as to the "acceptability" of the applicant's background, and make a determination as to the "suitability" of the proposed location of the dispensary; and

**WHEREAS**, in a letter dated August 24, 2015, the Orange County Sheriff's Department advised the City that it does not believe that the tasks assigned to it under the City's medical marijuana dispensary permitting ordinance are included within the City's law enforcement services contract, and except as to limited background investigations specifically called for under such contract, the Orange County Sheriff declines to perform such services, for the reasons stated in the letter; and

**WHEREAS**, the Orange County Sheriff Department's letter also advised that, in its experience, medical marijuana dispensaries have numerous "adverse secondary effects" on communities, many of which, should they be legitimately ascribed to the presence of medical marijuana dispensaries, would present an immediate threat to public health, safety, or welfare; and

**WHEREAS**, in 2013, the California Supreme Court ruled in *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* that cities can prohibit

medical marijuana dispensaries in their jurisdictions as part of their “broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction’s borders” (56 Cal.4th 729, 738); and

**WHEREAS**, the California Supreme Court’s decision in *City of Riverside* did not address the extent to which State and Federal law “forbid[] a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would ‘conflict with the ... laws of ... the United States’” (*Id.*, at 762, fn. 14); and

**WHEREAS**, to date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in its jurisdiction; and

**WHEREAS**, the City is in the process of a broad analysis and updating of its General Plan, zoning, and land use regulations, which has included adoption of a Safety Element, a Climate Adaptation Plan, a Conservation Element, and a Building and Planning Services Fee Schedule. In addition, City Council has included in the Fiscal Year 2015-16 Budget and Work Plan a comprehensive update of the General Plan and Commercial Zoning Code Uses and Parking Standards Update; and assessment of the compatibility of medical marijuana dispensary uses in various zoning districts of the City, or at all, is timely given the revisions and analysis the City is undertaking with respect to other land uses in its jurisdiction; and

**WHEREAS**, in light of the foregoing, among other issues, the City has determined that it is appropriate to suspend the allowance of medical marijuana dispensaries, and any establishment, location, or operation of any such facility, in order to undertake further investigation and study on the following issues relating to the potential siting and operation of a medical marijuana dispensary within the city limits of Laguna Woods:

1. The scope of the City’s authority under both federal and state law to allow and/or issue permits to medical marijuana dispensaries, pursuant to its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.
2. The extent to which it is safety feasible to implement or amend a permitting process in a manner that will accommodate the Orange County Sheriff’s Department refusal to approve components of an applicant’s “security plan” or make determinations as to the “acceptability” of the applicant and the “suitability” of the proposed location of the dispensary.



3. The potential adverse secondary effects of medical marijuana dispensaries, including those adverse secondary effects recited by the Orange County Sheriff in her letter of August 24, 2015, as well as other land-use related impacts, such as impacts to traffic, parking, and surrounding uses.
4. What experience other cities with medical marijuana dispensaries operating or formerly operating in their jurisdictions have had regarding the compliance of such medical marijuana dispensaries with the provisions of California law governing the use of medical marijuana, and the adverse secondary effects recited by the Orange County Sheriff.
5. Whether appropriate land use regulations might be adopted to mitigate potential adverse secondary effects from medical marijuana dispensaries, such as parking, access, security, lighting, hours of operation, distance requirements from potentially sensitive surrounding uses, the nature, format, and availability of security camera monitoring, and others.
6. The compatibility of medical marijuana dispensaries with other land uses that are permitted in the zoning districts where medical marijuana dispensaries are or may be permitted.
7. The extent to which an agreement for indemnification to the City from medical marijuana dispensary applicants, operators, and property owners can be required to provide protection to the City for whatever range of land use authority discretion it is permitted under the law with respect to the regulation and permitting of medical marijuana dispensaries.

**WHEREAS**, based on the foregoing, the City Council finds and declares there is a current and immediate threat to the public health, safety, or welfare that calls for a temporary moratorium on any allowance or permitting of medical marijuana dispensaries within the City's jurisdiction; and

**WHEREAS**, pursuant to Government Code sections 36934, 36937 and 65858, a City may adopt an urgency ordinance to impose a moratorium as an interim measure for the immediate preservation of the public health, safety, and welfare, to prohibit any uses that may be in conflict with a contemplated zoning proposal that the legislative body, planning commission, or city planning department is considering or intends to study within a reasonable time; and

**WHEREAS**, adoption of this Urgency Ordinance will allow City staff to effectively study, and City staff intends to study in the near future and within a reasonable time, the issues set forth above.

**THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. In adopting this Urgency Ordinance, the City Council finds and determines that each of the recitals to this Urgency Ordinance are true and correct, are adopted herein as findings, and that the adoption of this Urgency Ordinance is necessary to protect the public safety, health and welfare, as those terms are defined in Government Code Sections 36937(b) and 65858(a) in at least the following respects:

A. In 1996, California voters approved Proposition 215 (Health and Safety Code section 11362.5, et. seq.), entitled “The Compassionate Use Act of 1996” (“Act”), to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances.

B. In 2003, the State legislature enacted Senate Bill 420 to clarify the provisions of the Act and empower local governments to adopt and enforce regulations consistent with Senate Bill 420 in this field.

C. In 2008, the City adopted a permitting process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which allows medical marijuana dispensaries in the City’s community commercial (CC) and professional and administrative office (PA) zoning districts, subject to the issuance of a regulatory permit.

D. Under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City cannot issue a permit to operate a medical marijuana dispensary unless the Orange County Sheriff’s Department, acting as the City’s Police Chief, has approved components of the applicant’s “security plan”, made a determination as to the “acceptability” of the applicant’s background, and made a determination as to the “suitability” of the proposed location of the dispensary. In a letter dated August 24, 2015, the Orange County Sheriff’s Department advised the City that it “will not review or approve any security plan of a dispensary, and will not determine the ‘acceptability’ of any applicant and the ‘suitability’ of the proposed location.”

E. The Orange County Sheriff Department's letter also indicated that, in its experience, medical marijuana dispensaries have numerous "adverse secondary effects" on communities.

F. While the City has made a conscientious effort to plan for specific uses within all zone districts and to anticipate conflicts between competing land uses in order to protect the public's health, safety and welfare, the City Council is concerned that the City's current permitting process for medical marijuana dispensaries may not be effective without the contemplated participation of the Orange County Sheriff's Department, and may not provide sufficient development regulations for the establishment, location, or operation of medical marijuana dispensaries.

G. In 2013, the California Supreme Court ruled that cities and counties can *prohibit* medical marijuana dispensaries in their jurisdictions as part of their "broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders." (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 738.)

H. The California Supreme Court did not address the extent to which State and Federal law may "*forbid*[]" a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would "conflict with the ... laws of ... the United States." (*City of Riverside, supra*, at 762, fn. 14.)

I. To date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in their jurisdiction.

J. The City Council finds that allowing the establishment, location, and operation of medical marijuana dispensaries without the ability to implement existing security safeguards in the Laguna Woods Municipal Code, and in the face of assertions that permitting such facilities could result in the creation of adverse secondary effects.

K. Among other issues, City staff needs time to study:

1. The scope of the City's authority under both federal and state law to allow and/or issue permits to medical marijuana dispensaries, pursuant to its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.
2. The extent to which it is safety feasible to implement or amend a permitting process in a manner that will accommodate the Orange County

Sheriff's Department refusal to approve components of an applicant's "security plan" or make determinations as to the "acceptability" of the applicant and the "suitability" of the proposed location of the dispensary.

3. The potential adverse secondary effects of medical marijuana dispensaries, including those adverse secondary effects recited by the Orange County Sheriff in her letter of August 24, 2015, as well as other land-use related impacts, such as impacts to traffic, parking, and surrounding uses.
4. What experience other cities with medical marijuana dispensaries operating or formerly operating in their jurisdictions have had regarding the compliance of such medical marijuana dispensaries with the provisions of California law governing the use of medical marijuana, and the adverse secondary effects recited by the Orange County Sheriff.
5. Whether appropriate land use regulations might be adopted to mitigate potential adverse secondary effects from medical marijuana dispensaries, such as parking, access, security, lighting, hours of operation, distance requirements from potentially sensitive surrounding uses, the nature, format, and availability of security camera monitoring, and others.
6. The compatibility of medical marijuana dispensaries with other land uses that are permitted in the zoning districts where medical marijuana dispensaries are or may be permitted.
7. The extent to which an agreement for indemnification to the City from medical marijuana dispensary applicants, operators, and property owners can be required to provide protection to the City for whatever range of land use authority discretion it is permitted under the law with respect to the regulation and permitting of medical marijuana dispensaries.

L. In order to allow the City to consider, study, and adopt any appropriate regulations for medical marijuana dispensaries, it is necessary to suspend the operation and effectiveness of Section 13.26.025 of the Laguna Woods Municipal Code, and to temporarily prohibit businesses from the establishment, location, and operation of medical marijuana dispensaries within the City's jurisdiction.

M. A moratorium will provide the City time to study the effect of medical marijuana dispensaries on the community, and to assess its ability to draft and adopt

regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

SECTION 2. The City Council hereby declares a temporary moratorium prohibiting the establishment and operation of medical marijuana dispensaries within the City. All operation of Section 13.26.025 of the Laguna Woods Municipal Code is hereby suspended, and the City may not issue any regulatory permits in furtherance of, the establishment, location, or operation of a medical marijuana dispensary within the City for the life of the moratorium.

SECTION 3. The penalties that are set forth in the Laguna Woods Municipal Code shall apply to violations of the provisions of this Urgency Ordinance.

SECTION 4. This Ordinance is declared to be an Urgency Ordinance by authority conferred on the City Council of the City of Laguna Woods by Government Code sections 36934, 36937, and 65858, and shall be in full force and effect immediately upon its adoption by a four-fifths vote of the City Council.

SECTION 5. This Urgency Ordinance shall be of no further force and effect forty-five (45) days from and after the date of its adoption unless the same is extended pursuant to the authority conferred upon the City Council by Government Code Section 65858.

SECTION 6. If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 7. The Deputy City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

PASSED, APPROVED AND ADOPTED this 10<sup>th</sup> day of September 2015.

Cynthia S. Conners  
CYNTHIA S. CONNERS, Mayor

ATTEST:

Yolie Trippy  
YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

David B. Cosgrove  
DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) ss.  
CITY OF LAGUNA WOODS   )

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Ordinance No. 15-03** was duly adopted and passed at a special meeting of the City Council on the 10<sup>th</sup> day of September 2015 by the following vote to wit:

AYES:           COUNCILMEMBERS: Hack, Horne, Moore, Hatch, Conners  
NOES:           COUNCILMEMBERS: -  
ABSENT:        COUNCILMEMBERS: -

Yolie Trippy  
YOLIE TRIPPY, Deputy City Clerk





U.S. Department of Justice


Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

## MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole   
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.<sup>1</sup>

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

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<sup>1</sup> These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.



must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman  
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch  
United States Attorney  
Eastern District of New York  
Chair, Attorney General's Advisory Committee

Michele M. Leonhart  
Administrator  
Drug Enforcement Administration

H. Marshall Jarrett  
Director  
Executive Office for United States Attorneys

Ronald T. Hosko  
Assistant Director  
Criminal Investigative Division  
Federal Bureau of Investigation



# Department of the Treasury Financial Crimes Enforcement Network

## Guidance

### **FIN-2014-G001**

**Issued: February 14, 2014**

**Subject: BSA Expectations Regarding Marijuana-Related Businesses**

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The Financial Crimes Enforcement Network (“FinCEN”) is issuing guidance to clarify Bank Secrecy Act (“BSA”) expectations for financial institutions seeking to provide services to marijuana-related businesses. FinCEN is issuing this guidance in light of recent state initiatives to legalize certain marijuana-related activity and related guidance by the U.S. Department of Justice (“DOJ”) concerning marijuana-related enforcement priorities. This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities. This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.

### **Marijuana Laws and Law Enforcement Priorities**

The Controlled Substances Act (“CSA”) makes it illegal under federal law to manufacture, distribute, or dispense marijuana.<sup>1</sup> Many states impose and enforce similar prohibitions. Notwithstanding the federal ban, as of the date of this guidance, 20 states and the District of Columbia have legalized certain marijuana-related activity. In light of these developments, U.S. Department of Justice Deputy Attorney General James M. Cole issued a memorandum (the “Cole Memo”) to all United States Attorneys providing updated guidance to federal prosecutors concerning marijuana enforcement under the CSA.<sup>2</sup> The Cole Memo guidance applies to all of DOJ’s federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

The Cole Memo reiterates Congress’s determination that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Cole Memo notes that DOJ is committed to enforcement of the CSA consistent with those determinations. It also notes that DOJ is committed to using its investigative and prosecutorial resources to address the most

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<sup>1</sup> Controlled Substances Act, 21 U.S.C. § 801, *et seq.*

<sup>2</sup> James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement* (August 29, 2013), available at <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, the Cole Memo provides guidance to DOJ attorneys and law enforcement to focus their enforcement resources on persons or organizations whose conduct interferes with any one or more of the following important priorities (the “Cole Memo priorities”):<sup>3</sup>

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Concurrently with this FinCEN guidance, Deputy Attorney General Cole is issuing supplemental guidance directing that prosecutors also consider these enforcement priorities with respect to federal money laundering, unlicensed money transmitter, and BSA offenses predicated on marijuana-related violations of the CSA.<sup>4</sup>

### **Providing Financial Services to Marijuana-Related Businesses**

This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations. In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution. These factors may include its particular business objectives, an evaluation of the risks associated with offering a particular product or service, and its capacity to manage those risks effectively. Thorough customer due diligence is a critical aspect of making this assessment.

In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of

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<sup>3</sup> The Cole Memo notes that these enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA.

<sup>4</sup> James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes* (February 14, 2014).

products to be sold and the type of customers to be served (e.g., medical versus recreational customers); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk. With respect to information regarding state licensure obtained in connection with such customer due diligence, a financial institution may reasonably rely on the accuracy of information provided by state licensing authorities, where states make such information available.

As part of its customer due diligence, a financial institution should consider whether a marijuana-related business implicates one of the Cole Memo priorities or violates state law. This is a particularly important factor for a financial institution to consider when assessing the risk of providing financial services to a marijuana-related business. Considering this factor also enables the financial institution to provide information in BSA reports pertinent to law enforcement's priorities. A financial institution that decides to provide financial services to a marijuana-related business would be required to file suspicious activity reports ("SARs") as described below.

### **Filing Suspicious Activity Reports on Marijuana-Related Businesses**

The obligation to file a SAR is unaffected by any state law that legalizes marijuana-related activity. A financial institution is required to file a SAR if, consistent with FinCEN regulations, the financial institution knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution: (i) involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (ii) is designed to evade regulations promulgated under the BSA, or (iii) lacks a business or apparent lawful purpose.<sup>5</sup> Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law), in accordance with this guidance and FinCEN's suspicious activity reporting requirements and related thresholds.

One of the BSA's purposes is to require financial institutions to file reports that are highly useful in criminal investigations and proceedings. The guidance below furthers this objective by assisting financial institutions in determining how to file a SAR that facilitates law enforcement's access to information pertinent to a priority.

#### **"Marijuana Limited" SAR Filings**

A financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the Cole Memo priorities or violate state law should file a "Marijuana Limited" SAR. The content of this

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<sup>5</sup> See, e.g., 31 CFR § 1020.320. Financial institutions shall file with FinCEN, to the extent and in the manner required, a report of any suspicious transaction relevant to a possible violation of law or regulation. A financial institution may also file with FinCEN a SAR with respect to any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by FinCEN regulations.

SAR should be limited to the following information: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) the fact that the filing institution is filing the SAR solely because the subject is engaged in a marijuana-related business; and (iv) the fact that no additional suspicious activity has been identified. Financial institutions should use the term “MARIJUANA LIMITED” in the narrative section.

A financial institution should follow FinCEN’s existing guidance on the timing of filing continuing activity reports for the same activity initially reported on a “Marijuana Limited” SAR.<sup>6</sup> The continuing activity report may contain the same limited content as the initial SAR, plus details about the amount of deposits, withdrawals, and transfers in the account since the last SAR. However, if, in the course of conducting customer due diligence (including ongoing monitoring for red flags), the financial institution detects changes in activity that potentially implicate one of the Cole Memo priorities or violate state law, the financial institution should file a “Marijuana Priority” SAR.

#### “Marijuana Priority” SAR Filings

A financial institution filing a SAR on a marijuana-related business that it reasonably believes, based on its customer due diligence, implicates one of the Cole Memo priorities or violates state law should file a “Marijuana Priority” SAR. The content of this SAR should include comprehensive detail in accordance with existing regulations and guidance. Details particularly relevant to law enforcement in this context include: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) details regarding the enforcement priorities the financial institution believes have been implicated; and (iv) dates, amounts, and other relevant details of financial transactions involved in the suspicious activity. Financial institutions should use the term “MARIJUANA PRIORITY” in the narrative section to help law enforcement distinguish these SARs.<sup>7</sup>

#### “Marijuana Termination” SAR Filings

If a financial institution deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program, it should

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<sup>6</sup> Frequently Asked Questions Regarding the FinCEN Suspicious Activity Report (Question #16), *available at*: [http://fincen.gov/whatsnew/html/sar\\_faqs.html](http://fincen.gov/whatsnew/html/sar_faqs.html) (providing guidance on the filing timeframe for submitting a continuing activity report).

<sup>7</sup> FinCEN recognizes that a financial institution filing a SAR on a marijuana-related business may not always be well-positioned to determine whether the business implicates one of the Cole Memo priorities or violates state law, and thus which terms would be most appropriate to include (i.e., “Marijuana Limited” or “Marijuana Priority”). For example, a financial institution could be providing services to another domestic financial institution that, in turn, provides financial services to a marijuana-related business. Similarly, a financial institution could be providing services to a non-financial customer that provides goods or services to a marijuana-related business (e.g., a commercial landlord that leases property to a marijuana-related business). In such circumstances where services are being provided indirectly, the financial institution may file SARs based on existing regulations and guidance without distinguishing between “Marijuana Limited” and “Marijuana Priority.” Whether the financial institution decides to provide indirect services to a marijuana-related business is a risk-based decision that depends on a number of factors specific to that institution and the relevant circumstances. In making this decision, the institution should consider the Cole Memo priorities, to the extent applicable.

file a SAR and note in the narrative the basis for the termination. Financial institutions should use the term “MARIJUANA TERMINATION” in the narrative section. To the extent the financial institution becomes aware that the marijuana-related business seeks to move to a second financial institution, FinCEN urges the first institution to use Section 314(b) voluntary information sharing (if it qualifies) to alert the second financial institution of potential illegal activity. See *Section 314(b) Fact Sheet* for more information.<sup>8</sup>

### *Red Flags to Distinguish Priority SARs*

The following red flags indicate that a marijuana-related business may be engaged in activity that implicates one of the Cole Memo priorities or violates state law. These red flags indicate only possible signs of such activity, and also do not constitute an exhaustive list. It is thus important to view any red flag(s) in the context of other indicators and facts, such as the financial institution’s knowledge about the underlying parties obtained through its customer due diligence. Further, the presence of any of these red flags in a given transaction or business arrangement may indicate a need for additional due diligence, which could include seeking information from other involved financial institutions under Section 314(b). These red flags are based primarily upon schemes and typologies described in SARs or identified by our law enforcement and regulatory partners, and may be updated in future guidance.

- A customer appears to be using a state-licensed marijuana-related business as a front or pretext to launder money derived from other criminal activity (i.e., not related to marijuana) or derived from marijuana-related activity not permitted under state law. Relevant indicia could include:
  - The business receives substantially more revenue than may reasonably be expected given the relevant limitations imposed by the state in which it operates.
  - The business receives substantially more revenue than its local competitors or than might be expected given the population demographics.
  - The business is depositing more cash than is commensurate with the amount of marijuana-related revenue it is reporting for federal and state tax purposes.
  - The business is unable to demonstrate that its revenue is derived exclusively from the sale of marijuana in compliance with state law, as opposed to revenue derived from (i) the sale of other illicit drugs, (ii) the sale of marijuana not in compliance with state law, or (iii) other illegal activity.
  - The business makes cash deposits or withdrawals over a short period of time that are excessive relative to local competitors or the expected activity of the business.

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<sup>8</sup> Information Sharing Between Financial Institutions: Section 314(b) Fact Sheet, *available at*: [http://fincen.gov/statutes\\_regs/patriot/pdf/314bfactsheet.pdf](http://fincen.gov/statutes_regs/patriot/pdf/314bfactsheet.pdf).

- Deposits apparently structured to avoid Currency Transaction Report (“CTR”) requirements.
  - Rapid movement of funds, such as cash deposits followed by immediate cash withdrawals.
  - Deposits by third parties with no apparent connection to the accountholder.
  - Excessive commingling of funds with the personal account of the business’s owner(s) or manager(s), or with accounts of seemingly unrelated businesses.
  - Individuals conducting transactions for the business appear to be acting on behalf of other, undisclosed parties of interest.
  - Financial statements provided by the business to the financial institution are inconsistent with actual account activity.
  - A surge in activity by third parties offering goods or services to marijuana-related businesses, such as equipment suppliers or shipping servicers.
- The business is unable to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law.
  - The business is unable to demonstrate the legitimate source of significant outside investments.
  - A customer seeks to conceal or disguise involvement in marijuana-related business activity. For example, the customer may be using a business with a non-descript name (e.g., a “consulting,” “holding,” or “management” company) that purports to engage in commercial activity unrelated to marijuana, but is depositing cash that smells like marijuana.
  - Review of publicly available sources and databases about the business, its owner(s), manager(s), or other related parties, reveal negative information, such as a criminal record, involvement in the illegal purchase or sale of drugs, violence, or other potential connections to illicit activity.
  - The business, its owner(s), manager(s), or other related parties are, or have been, subject to an enforcement action by the state or local authorities responsible for administering or enforcing marijuana-related laws or regulations.
  - A marijuana-related business engages in international or interstate activity, including by receiving cash deposits from locations outside the state in which the business operates, making or receiving frequent or large interstate transfers, or otherwise transacting with persons or entities located in different states or countries.



- The owner(s) or manager(s) of a marijuana-related business reside outside the state in which the business is located.
- A marijuana-related business is located on federal property or the marijuana sold by the business was grown on federal property.
- A marijuana-related business's proximity to a school is not compliant with state law.
- A marijuana-related business purporting to be a "non-profit" is engaged in commercial activity inconsistent with that classification, or is making excessive payments to its manager(s) or employee(s).

### **Currency Transaction Reports and Form 8300's**

Financial institutions and other persons subject to FinCEN's regulations must report currency transactions in connection with marijuana-related businesses the same as they would in any other context, consistent with existing regulations and with the same thresholds that apply. For example, banks and money services businesses would need to file CTRs on the receipt or withdrawal by any person of more than \$10,000 in cash per day. Similarly, any person or entity engaged in a non-financial trade or business would need to report transactions in which they receive more than \$10,000 in cash and other monetary instruments for the purchase of goods or services on FinCEN Form 8300 (Report of Cash Payments Over \$10,000 Received in a Trade or Business). A business engaged in marijuana-related activity may not be treated as a non-listed business under 31 C.F.R. § 1020.315(e)(8), and therefore, is not eligible for consideration for an exemption with respect to a bank's CTR obligations under 31 C.F.R. § 1020.315(b)(6).

\* \* \* \* \*

FinCEN's enforcement priorities in connection with this guidance will focus on matters of systemic or significant failures, and not isolated lapses in technical compliance. Financial institutions with questions about this guidance are encouraged to contact FinCEN's Resource Center at (800) 767-2825, where industry questions can be addressed and monitored for the purpose of providing any necessary additional guidance.

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**ORDINANCE NO. 15-XX**

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF PURSUING PROHIBITION THEREOF

**WHEREAS**, in 2008, the City adopted a regulatory process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which potentially allows medical marijuana dispensaries in the City’s community commercial (CC) and professional and administrative office (PA) zoning districts; and

**WHEREAS**, to date, the City does not have any medical marijuana dispensaries operating within its jurisdiction; and

**WHEREAS**, under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City’s regulatory process for issuance of a permit to operate a medical marijuana dispensary calls for the City’s Police Chief (provided under contract with the Orange County Sheriff’s Department) to approve components of the applicant’s “security plan”, make a determination as to the “acceptability” of the applicant’s background, and make a determination as to the “suitability” of the proposed location of the dispensary; and

**WHEREAS**, in a letter dated August 24, 2015, the Orange County Sheriff’s Department advised the City that it does not believe that the tasks assigned to it under the City’s medical marijuana dispensary permitting ordinance are included within the City’s law enforcement services contract, and except as to limited background investigations specifically called for under such contract, the Orange County Sheriff declines to perform such services, for the reasons stated in the letter; and

**WHEREAS**, the Orange County Sheriff Department’s letter also advised that, in its experience, medical marijuana dispensaries have numerous “adverse secondary effects” on communities, many of which, should they be legitimately ascribed to the presence of medical marijuana dispensaries, would present an immediate threat to public health, safety, or welfare; and

**WHEREAS**, in 2013, the California Supreme Court ruled in *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* that cities can prohibit medical marijuana dispensaries in their jurisdictions as part of their “broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction’s borders” (56 Cal.4th 729, 738); and

**WHEREAS**, the California Supreme Court’s decision in *City of Riverside* did not address the extent to which State and Federal law “forbid[] a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would ‘conflict with the ... laws of ... the United States’” (*Id.*, at 762, fn. 14); and

**WHEREAS**, to date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in its jurisdiction; and

**WHEREAS**, the Governor of California is considering signing three bills into law (collectively titled the “Medical Marijuana Regulation and Safety Act”) that would substantially rework existing State laws relating to medical marijuana (i.e., the Compassionate Use Act [Health and Safety Code Section 11362.5] and the Medical Marijuana Program [Health and Safety Code Section 11362.7]); and

**WHEREAS**, the City is in the process of a broad analysis and updating of its General Plan, zoning, and land use regulations, which has included adoption of a Safety Element, a Climate Adaptation Plan, a Conservation Element, and a Building and Planning Services Fee Schedule. In addition, City Council has included in the Fiscal Year 2015-16 Budget and Work Plan a comprehensive update of the General Plan and Commercial Zoning Code Uses and Parking Standards Update; and assessment of the compatibility of medical marijuana dispensary uses in various zoning districts of the City, or at all, is timely given the revisions and analysis the City is undertaking with respect to other land uses in its jurisdiction; and

**WHEREAS**, in light of the foregoing, among other issues, on September 10, 2015, the City Council adopted Ordinance No. 15-03 as an urgency ordinance imposing a 45-day moratorium to suspend the allowance of medical marijuana dispensaries, and any establishment, location, or operation of any such facility, in order to undertake further investigation and study various issues relating to the potential siting and operation of a medical marijuana dispensary within the city limits of Laguna Woods; and

**WHEREAS**, in Ordinance No. 15-03, the City Council found and declared there is a current and immediate threat to the public health, safety, or welfare that calls for a temporary moratorium on any allowance or permitting of medical marijuana dispensaries within the City’s jurisdiction; and

**WHEREAS**, the moratorium established by adoption of Ordinance No. 15-03 is set to expire on its own terms on October 24, 2015; and

**WHEREAS**, Government Code Section 65858 authorizes the extension of an urgency ordinance by adoption, after a public hearing, of another urgency ordinance to prohibit uses of land which may conflict with a contemplated zoning proposal which the legislative body, planning commission, or planning department is considering or studying, or intends to study, within a reasonable time; and

**WHEREAS**, on October 13, 2015, the City Council held a duly noticed public hearing concerning an extension of the moratorium established by Ordinance No. 15-03; and

**WHEREAS**, on October 13, 2015, the City Council received and considered a report prepared by staff, and as required pursuant to Government Code Section 656858(d), describing the measures that have been taken and progress made to date to alleviate the conditions which led to the imposition of the moratorium by adoption of Ordinance No. 15-03; and

**WHEREAS**, as set forth in the report prepared by staff, which was considered by the City Council, during the period since the adoption of Ordinance No. 15-03, City staff has undertaken a number of investigations related to medical marijuana dispensaries, including reviewing federal law and enforcement policies, examining California’s proposed “Medical Marijuana Regulation & Safety Act,” discussing medical marijuana dispensary experiences and policies with a number of other cities, meeting with the Orange County Sheriff’s Department, meeting with a representative of Law Enforcement Against Prohibition (a non-profit organization that advocates for the regulation and control of marijuana and other drugs), and conducting preliminary research on the availability and types of testing of marijuana products for potential use in medicinal contexts; and

**WHEREAS**, after consideration of all of the information, evidence, and testimony presented at the public hearing held on October 13, 2015, the City Council finds and declares that the current and immediate threat to the public health, safety, or welfare described in the findings adopted pursuant to Ordinance No. 15-03 still

exists and it is therefore necessary to extend the moratorium so that City staff can prepare and the City Council can consider an ordinance that would amend the Zoning Code to prohibit the establishment, location, or operation of medical marijuana dispensaries within the city limits of Laguna Woods.

**THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. In adopting this Ordinance, the City Council finds and determines that each of the recitals to this Ordinance and Ordinance No. 15-03 are true and correct, are adopted herein as findings, and that the adoption of this Ordinance is necessary to protect the public safety, health and welfare, as those terms are defined in Government Code Sections 36937(b) and 65858(a) in at least the following respects:

A. In 1996, California voters approved Proposition 215 (Health and Safety Code section 11362.5, et. seq.), entitled “The Compassionate Use Act of 1996” (“Act”), to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances.

B. In 2003, the State legislature enacted Senate Bill 420 to clarify the provisions of the Act and empower local governments to adopt and enforce regulations consistent with Senate Bill 420 in this field.

C. In 2008, the City adopted a permitting process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which allows medical marijuana dispensaries in the City’s community commercial (CC) and professional and administrative office (PA) zoning districts, subject to the issuance of a regulatory permit.

D. Under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City cannot issue a permit to operate a medical marijuana dispensary unless the Orange County Sheriff’s Department, acting as the City’s Police Chief, has approved components of the applicant’s “security plan”, made a determination as to the “acceptability” of the applicant’s background, and made a determination as to the “suitability” of the proposed location of the dispensary. In a letter dated August 24, 2015, the Orange County Sheriff’s Department advised the City that it “will not review or approve any security plan of a dispensary, and will not determine the ‘acceptability’ of any applicant and the ‘suitability’ of the proposed location.”

E. The Orange County Sheriff Department’s letter also indicated that, in its experience, medical marijuana dispensaries have numerous “adverse secondary effects” on communities.

F. While the City has made a conscientious effort to plan for specific uses within all zone districts and to anticipate conflicts between competing land uses in order to protect the public’s health, safety and welfare, the City Council is concerned that the City’s current permitting process for medical marijuana dispensaries may not be effective without the contemplated participation of the Orange County Sheriff’s Department, and may not provide sufficient development regulations for the establishment, location, or operation of medical marijuana dispensaries.

G. In 2013, the California Supreme Court ruled that cities and counties can *prohibit* medical marijuana dispensaries in their jurisdictions as part of their “broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction’s borders.” (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 738.)

H. The California Supreme Court did not address the extent to which State and Federal law may “*forbid*[] a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would ‘conflict with the ... laws of ... the United States.’” (*City of Riverside, supra*, at 762, fn. 14.)

I. To date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in their jurisdiction.

J. If Governor signs the Medical Marijuana Regulation and Safety Act into law, it would substantially rework existing State laws relating to medical marijuana (i.e., the Compassionate Use Act [Health and Safety Code Section 11362.5] and the Medical Marijuana Program [Health and Safety Code Section 11362.7]).

K. The City Council finds that allowing the establishment, location, and operation of medical marijuana dispensaries without the ability to implement existing security safeguards in the Laguna Woods Municipal Code, and in the face of assertions that permitting such facilities could result in the creation of adverse secondary effects.

L. In order to allow the City consider, study, and adopt any appropriate regulations for medical marijuana dispensaries, it is necessary to continue to suspend the operation and effectiveness of Section 13.26.025 of the Laguna Woods Municipal

Code, and to continue to temporarily prohibit the establishment, location, and operation of medical marijuana dispensaries within the City’s jurisdiction.

M. Extending the moratorium will allow City staff to prepare and the City Council to consider an ordinance that would amend the Zoning Code to prohibit the establishment, location, or operation of medical marijuana dispensaries within the city limits of Laguna Woods.

SECTION 2. The moratorium established by Ordinance No. 15-03 expires on October 24, 2015. Commencing upon the expiration of Ordinance No. 15-03, the moratorium established by Ordinance No. 15-03 is hereby extended and shall continue for a period of the earlier of [A] ten (10) months and fifteen (15) days from and after the expiration of Ordinance No. 15-03, i.e., to September 8, 2016 (unless extended pursuant to Government Code Section 65858), or [B] the effective date of an ordinance adopted by the City Council amending the Zoning Code to address the potential establishment, location, or operation of medical marijuana dispensaries within the city limits of Laguna Woods.

SECTION 3. The City Council hereby directs City staff to prepare a draft of an ordinance that, if adopted, would amend the Zoning Code to prohibit the establishment, location, or operation of medical marijuana dispensaries within the city limits of Laguna Woods. The City Council further directs City staff to present the draft of the ordinance to the City Council within ninety (90) days of the effective date of this Ordinance.

SECTION 4. The penalties that are set forth in the Laguna Woods Municipal Code shall apply to violations of the provisions of this Ordinance.

SECTION 5. This Ordinance is declared to be an urgency ordinance by authority conferred on the City Council of the City of Laguna Woods by Government Code sections 36934, 36937, and 65858, and shall be in full force and effect immediately upon its adoption by a four-fifths vote of the City Council.

SECTION 6. At least ten (10) days prior to the expiration of the moratorium as extended by this Ordinance, staff shall prepare, and the City Council shall consider and receive and file, a written report pursuant to Government Code Section 65858(d) describing the measures taken to alleviate the condition or conditions which led to the adoption of this Ordinance.



SECTION 7. The City Council finds and determines that the adoption of this Ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 8. If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 9. The Deputy City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

PASSED, APPROVED AND ADOPTED this XX day of XX 2015.

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CYNTHIA S. CONNERS, Mayor

ATTEST:

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YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

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DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) ss.  
CITY OF LAGUNA WOODS   )

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do  
HEREBY CERTIFY that the foregoing **Ordinance No. 15-XX** was duly adopted  
and passed at a special meeting of the City Council on the XX day of XX 2015 by  
the following vote to wit:

AYES:       COUNCILMEMBERS:  
NOES:       COUNCILMEMBERS:  
ABSENT:     COUNCILMEMBERS:

\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

**ORDINANCE NO. 15-XX**

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF FURTHER STUDY AND ANALYSIS

**WHEREAS**, in 2008, the City adopted a regulatory process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which potentially allows medical marijuana dispensaries in the City’s community commercial (CC) and professional and administrative office (PA) zoning districts; and

**WHEREAS**, to date, the City does not have any medical marijuana dispensaries operating within its jurisdiction; and

**WHEREAS**, under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City’s regulatory process for issuance of a permit to operate a medical marijuana dispensary calls for the City’s Police Chief (provided under contract with the Orange County Sheriff’s Department) to approve components of the applicant’s “security plan”, make a determination as to the “acceptability” of the applicant’s background, and make a determination as to the “suitability” of the proposed location of the dispensary; and

**WHEREAS**, in a letter dated August 24, 2015, the Orange County Sheriff’s Department advised the City that it does not believe that the tasks assigned to it under the City’s medical marijuana dispensary permitting ordinance are included within the City’s law enforcement services contract, and except as to limited background investigations specifically called for under such contract, the Orange County Sheriff declines to perform such services, for the reasons stated in the letter; and

**WHEREAS**, the Orange County Sheriff Department’s letter also advised that, in its experience, medical marijuana dispensaries have numerous “adverse secondary effects” on communities, many of which, should they be legitimately ascribed to the presence of medical marijuana dispensaries, would present an immediate threat to public health, safety, or welfare; and

**WHEREAS**, in 2013, the California Supreme Court ruled in *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* that cities can prohibit medical marijuana dispensaries in their jurisdictions as part of their “broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction’s borders” (56 Cal.4th 729, 738); and

**WHEREAS**, the California Supreme Court’s decision in *City of Riverside* did not address the extent to which State and Federal law “forbid[] a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would ‘conflict with the ... laws of ... the United States’” (*Id.*, at 762, fn. 14); and

**WHEREAS**, to date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in its jurisdiction; and

**WHEREAS**, the Governor of California is considering signing three bills into law (collectively titled the “Medical Marijuana Regulation and Safety Act”) that would substantially rework existing State laws relating to medical marijuana (i.e., the Compassionate Use Act [Health and Safety Code Section 11362.5] and the Medical Marijuana Program [Health and Safety Code Section 11362.7]); and

**WHEREAS**, the City is in the process of a broad analysis and updating of its General Plan, zoning, and land use regulations, which has included adoption of a Safety Element, a Climate Adaptation Plan, a Conservation Element, and a Building and Planning Services Fee Schedule. In addition, City Council has included in the Fiscal Year 2015-16 Budget and Work Plan a comprehensive update of the General Plan and Commercial Zoning Code Uses and Parking Standards Update; and assessment of the compatibility of medical marijuana dispensary uses in various zoning districts of the City, or at all, is timely given the revisions and analysis the City is undertaking with respect to other land uses in its jurisdiction; and

**WHEREAS**, in light of the foregoing, among other issues, on September 10, 2015, the City Council adopted Ordinance No. 15-03 as an urgency ordinance imposing a 45-day moratorium to suspend the allowance of medical marijuana dispensaries, and any establishment, location, or operation of any such facility, in order to undertake further investigation and study various issues relating to the potential siting and operation of a medical marijuana dispensary within the city limits of Laguna Woods; and

**WHEREAS**, in Ordinance No. 15-03, the City Council found and declared there is a current and immediate threat to the public health, safety, or welfare that calls for a temporary moratorium on any allowance or permitting of medical marijuana dispensaries within the City’s jurisdiction; and

**WHEREAS**, the moratorium established by adoption of Ordinance No. 15-03 is set to expire on its own terms on October 24, 2015; and

**WHEREAS**, Government Code Section 65858 authorizes the extension of an urgency ordinance by adoption, after a public hearing, of another urgency ordinance to prohibit uses of land which may conflict with a contemplated zoning proposal which the legislative body, planning commission, or planning department is considering or studying, or intends to study, within a reasonable time; and

**WHEREAS**, on October 13, 2015, the City Council held a duly noticed public hearing concerning an extension of the moratorium established by Ordinance No. 15-03; and

**WHEREAS**, on October 13, 2015, the City Council received and considered a report prepared by staff, and as required pursuant to Government Code Section 656858(d), describing the measures that have been taken and progress made to date to alleviate the conditions which led to the imposition of the moratorium by adoption of Ordinance No. 15-03; and

**WHEREAS**, as set forth in the report prepared by staff, which was considered by the City Council, during the period since the adoption of Ordinance No. 15-03, City staff has undertaken a number of investigations related to medical marijuana dispensaries, including reviewing federal law and enforcement policies, examining California’s proposed “Medical Marijuana Regulation & Safety Act,” discussing medical marijuana dispensary experiences and policies with a number of other cities, meeting with the Orange County Sheriff’s Department, meeting with a representative of Law Enforcement Against Prohibition (a non-profit organization that advocates for the regulation and control of marijuana and other drugs), and conducting preliminary research on the availability and types of testing of marijuana products for potential use in medicinal contexts; and

**WHEREAS**, City staff needs additional time to investigate many other issues relating to the potential establishment, location, or operation of medical marijuana dispensaries within the city limits of Laguna Woods including, but not limited to, the compatibility of dispensaries relative to zoning districts, financial challenges that

could be posed by increased enforcement activity, and traffic and parking demand; and

**WHEREAS**, after consideration of all of the information, evidence, and testimony presented at the public hearing held on October 13, 2015, the City Council finds and declares that the current and immediate threat to the public health, safety, or welfare described in the findings adopted pursuant to Ordinance No. 15-03 still exists and it is therefore necessary to extend the moratorium as additional time is needed to address the current and immediate threat that prompted the moratorium adopted by Ordinance No. 15-03 and to complete the tasks set forth in the report prepared by staff; and

**WHEREAS**, extension of the moratorium will allow City staff to effectively study, and City staff intends to study in the near future and within a reasonable time, the issues set forth in Ordinance No. 15-03 and the report prepared by staff.

**THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. In adopting this Ordinance, the City Council finds and determines that each of the recitals to this Ordinance and Ordinance No. 15-03 are true and correct, are adopted herein as findings, and that the adoption of this Ordinance is necessary to protect the public safety, health and welfare, as those terms are defined in Government Code Sections 36937(b) and 65858(a) in at least the following respects:

A. In 1996, California voters approved Proposition 215 (Health and Safety Code section 11362.5, et. seq.), entitled “The Compassionate Use Act of 1996” (“Act”), to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances.

B. In 2003, the State legislature enacted Senate Bill 420 to clarify the provisions of the Act and empower local governments to adopt and enforce regulations consistent with Senate Bill 420 in this field.

C. In 2008, the City adopted a permitting process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which allows medical marijuana dispensaries in the City’s community commercial (CC) and professional and administrative office (PA) zoning districts, subject to the issuance of a regulatory permit.

D. Under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City cannot issue a permit to operate a medical marijuana dispensary unless the Orange County Sheriff’s Department, acting as the City’s Police Chief, has approved components of the applicant’s “security plan”, made a determination as to the “acceptability” of the applicant’s background, and made a determination as to the “suitability” of the proposed location of the dispensary. In a letter dated August 24, 2015, the Orange County Sheriff’s Department advised the City that it “will not review or approve any security plan of a dispensary, and will not determine the ‘acceptability’ of any applicant and the ‘suitability’ of the proposed location.”

E. The Orange County Sheriff Department’s letter also indicated that, in its experience, medical marijuana dispensaries have numerous “adverse secondary effects” on communities.

F. While the City has made a conscientious effort to plan for specific uses within all zone districts and to anticipate conflicts between competing land uses in order to protect the public’s health, safety and welfare, the City Council is concerned that the City’s current permitting process for medical marijuana dispensaries may not be effective without the contemplated participation of the Orange County Sheriff’s Department, and may not provide sufficient development regulations for the establishment, location, or operation of medical marijuana dispensaries.

G. In 2013, the California Supreme Court ruled that cities and counties can *prohibit* medical marijuana dispensaries in their jurisdictions as part of their “broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction’s borders.” (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 738.)

H. The California Supreme Court did not address the extent to which State and Federal law may “*forbid*[] a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would ‘conflict with the ... laws of ... the United States.’” (*City of Riverside, supra*, at 762, fn. 14.)

I. To date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in their jurisdiction.

J. If Governor signs the Medical Marijuana Regulation and Safety Act into law, it would substantially rework existing State laws relating to medical marijuana (i.e.,

the Compassionate Use Act [Health and Safety Code Section 11362.5] and the Medical Marijuana Program [Health and Safety Code Section 11362.7]).

K. The City Council finds that allowing the establishment, location, and operation of medical marijuana dispensaries without the ability to implement existing security safeguards in the Laguna Woods Municipal Code, and in the face of assertions that permitting such facilities could result in the creation of adverse secondary effects.

L. Among other issues, City staff needs additional time to continue to study the issues identified in Ordinance No. 15-03 and the report prepared by staff, which include without limitation:

1. Review and thorough analysis of the provisions of the California Medical Marijuana Regulation and Safety Act, if enacted, including monitoring the activities of the departments of Consumer Affairs, Food and Agriculture, Pesticide Regulation, and Public Health, as they develop a more comprehensive statewide scheme for medical marijuana licensing, permitting, and control.
2. Analysis of traffic and parking for operating, permitted medical marijuana dispensaries, to help assess accessibility, parking demand, and traffic flow characteristics, to help staff determine what land use designations, zoning districts, and surrounding uses, would most compatibly allow medical marijuana dispensaries to integrate with the City's existing uses.
3. Review of the zoning designations in which existing permitting jurisdictions permit medical marijuana dispensaries, and their distance requirements from potentially sensitive uses.
4. Gathering of information on the availability and cost of laboratory services for testing the potency and purity of medical marijuana products, and the feasibility, desirability, and effectiveness of limiting permitted medical marijuana dispensaries to the sale of certified or otherwise tested products.
5. Monitoring of developments in federal enforcement practices on medical marijuana dispensaries operating under color of state law.



6. Investigation of the operating hours of medical marijuana dispensaries in other jurisdictions, along with similar medically-related businesses (including pharmacy counters), to help strike a balance between convenient access to medical marijuana and the prevention of sales to minors or recreational users.
7. Completion of a deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly.
8. Negotiation of processes and standards for in-depth background checks of potential medical marijuana dispensaries with the Orange County Sheriff's Department and/or potential private investigative services.
9. Assessment and analysis of the City's ability to implement a business license tax or other charge on medical marijuana dispensaries, at least in part to help fund oversight and enforcement efforts, and the procedural requirements (including potential Proposition 218 voter approval) for same.
10. Development of regulations and fees for City Council consideration, informed by the preceding studies and investigations, and intended to adequately mitigate potential adverse secondary effects resultant of the primarily cash basis of medical marijuana dispensaries, traffic and parking demand, and other public health, safety, and welfare concerns, while preserving quality of life and patient access.

M. In order to allow the City consider, study, and adopt any appropriate regulations for medical marijuana dispensaries, it is necessary to continue to suspend the operation and effectiveness of Section 13.26.025 of the Laguna Woods Municipal Code, and to continue to temporarily prohibit the establishment, location, and operation of medical marijuana dispensaries within the City's jurisdiction.

N. Extending the moratorium will provide the City time to study the effect of medical marijuana dispensaries on the community, and to assess its ability to draft and adopt regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

SECTION 2. The moratorium established by Ordinance No. 15-03 expires on October 24, 2015. Commencing upon the expiration of Ordinance No. 15-03, the moratorium established by Ordinance No. 15-03 is hereby extended and shall continue for a period of the earlier of [A] ten (10) months and fifteen (15) days from and after the expiration of Ordinance No. 15-03, i.e., to September 8, 2016 (unless extended pursuant to Government Code Section 65858), or [B] the effective date of an ordinance adopted by the City Council amending the Zoning Code to address the potential establishment, location, or operation of medical marijuana dispensaries within the city limits of Laguna Woods.

SECTION 3. The penalties that are set forth in the Laguna Woods Municipal Code shall apply to violations of the provisions of this Ordinance.

SECTION 4. This Ordinance is declared to be an urgency ordinance by authority conferred on the City Council of the City of Laguna Woods by Government Code sections 36934, 36937, and 65858, and shall be in full force and effect immediately upon its adoption by a four-fifths vote of the City Council.

SECTION 5. At least ten (10) days prior to the expiration of the moratorium as extended by this Ordinance, staff shall prepare, and the City Council shall consider and receive and file, a written report pursuant to Government Code Section 65858(d) describing the measures taken to alleviate the condition or conditions which led to the adoption of this Ordinance.

SECTION 6. The City Council finds and determines that the adoption of this Ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 7. If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 8. The Deputy City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

PASSED, APPROVED AND ADOPTED this XX day of XX 2015.

\_\_\_\_\_  
CYNTHIA S. CONNERS, Mayor

ATTEST:

\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) ss.  
CITY OF LAGUNA WOODS   )

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Ordinance No. 15-XX** was duly adopted and passed at a special meeting of the City Council on the XX day of XX 2015 by the following vote to wit:

AYES:       COUNCILMEMBERS:  
NOES:       COUNCILMEMBERS:  
ABSENT:     COUNCILMEMBERS:

\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

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8.1

**NORTH ORANGE COUNTY GROUNDWATER  
BASIN CONTAMINATION  
(*AGENDIZED BY COUNCILMEMBER MOORE*)  
(*NO REPORT*)**

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**8.2**  
**GENERAL PLAN COMPREHENSIVE**  
**UPDATE PROJECT**

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# City of Laguna Woods

## Agenda Report

**TO:** Honorable Mayor and City Councilmembers

**FROM:** Christopher Macon, City Manager

**FOR:** October 13, 2015 Special Meeting

**SUBJECT:** General Plan Comprehensive Update Project

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### **Recommendation**

Approve a resident survey to be conducted as a part of the General Plan Comprehensive Update Project and provide related direction to staff.

### **Background**

The City is currently in the process of updating its General Plan to address the seven elements required by State law (circulation, conservation, housing, land use, noise, open space, and safety), as well as economic vitality.

The new economic vitality element will be prepared using the State of California's General Plan Guidelines (2003) for economic/fiscal development elements, which partly describe the rationale and purpose of such elements as follows:

*“The structure of a city’s or county’s economy plays an important role in the physical development of the planning area and the stability of the local tax base. The purpose of adopting an economic/fiscal development element varies by jurisdiction. However, most are based upon a desire to maintain and enhance the economic character of the community while providing for a stable annual budget. An effective element will establish a consistent set of policies that provide general direction to local government on how the community can focus resources to retain local business, attract new industries, support the tax base, and sustain the ability to provide public services for current and future residents.”*

**Discussion**

A resident survey is planned as one of many opportunities for public input in the General Plan Comprehensive Update Project. Due to the addition of an economic vitality element, staff has identified local market issues, including the availability of goods and services, as being a particularly timely focus of the survey.

Today's meeting is an opportunity for City Council discussion and direction, as well as public input, in advance of the finalization and distribution of the resident survey. The proposed resident survey is included as Attachment A. In addition to the content and format of the survey, staff is seeking direction regarding the manner in which the survey should be mailed or otherwise distributed.

**Fiscal Impact**

Sufficient funds to support this project are included in the City's budget.

Attachment: A – Proposed General Plan Resident Survey



# Laguna Woods General Plan Survey – Residents

The City of Laguna Woods is in the process of updating its State-mandated General Plan. The General Plan establishes a long-term vision for the City and addresses topics including economic vitality, housing, land use, natural resource conservation, noise, open space, and safety. This survey is one of many opportunities for resident input on the update of the General Plan and focuses on the availability of high quality goods and services close to home. If you have questions or additional input, or would like more information on the General Plan project, please call City Hall at (949) 639-0500.

<b>1. Which residential community do you currently live in? (select one)</b>			
<input type="checkbox"/>	Laguna Woods Village	<input type="checkbox"/>	Las Palmas
<input type="checkbox"/>	The Regency	<input type="checkbox"/>	San Sebastian
<input type="checkbox"/>	Whispering Fountains		
<b>2. How long have you lived in Laguna Woods? (select one)</b>			
<input type="checkbox"/>	Fewer than 5 years	<input type="checkbox"/>	5 to 10 years
<input type="checkbox"/>	11 to 15 years	<input type="checkbox"/>	16 years or more
<b>3. Why do you choose to live in Laguna Woods? (select top three)</b>			
<input type="checkbox"/>	Affordability of housing	<input type="checkbox"/>	HOA/private community amenities
<input type="checkbox"/>	Air quality	<input type="checkbox"/>	Safety
<input type="checkbox"/>	Close to family/friends	<input type="checkbox"/>	Senior demographics
<input type="checkbox"/>	Close to healthcare/medical	<input type="checkbox"/>	Weather/climate
<input type="checkbox"/>	Close to open space/beach	<input type="checkbox"/>	Other: _____
<b>4.</b>	<b>In what areas do you shop and in what areas do you dine on a regular basis? (select up to three per column)</b>	<b>Shop</b>	<b>Dine</b>
	Home Depot Center (El Toro/west of Moulton; Home Depot, Stater Bros., etc.)	<input type="checkbox"/>	<input type="checkbox"/>
	PS Business Park (Moulton/Ridge Route; Jack in the Box, Subway, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
	Town Centre (El Toro/west of Moulton; Hometown Buffet, Jersey Mike's, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
	Valencia Center (El Toro/Paseo de Valencia; CVS, Mother's Market, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
	Willow Tree Center (Moulton/El Toro; Olive Garden, Vons, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
	Aliso Viejo Town Center (Aliso Creek Road; Edwards Cinemas, Chili's, Lowe's, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
	Arbor/Orchard Centers (El Toro Road east of I-5; Lucille's, Ralphs, Smart & Final, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
	Laguna Hills Mall (El Toro Road; JC Penney, King's Fish House, Macy's, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
	Moulton Plaza (Moulton/Ridge Route; Fresh & Easy, Polly's Pies, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
	Oakbrook Village (Avenida de la Carlota/west of I-5; El Torito, Trader Joe's, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
	Ralphs/Alicia Center (Paseo de Valencia/Alicia; El Pollo Loco, Ralphs, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
	Other: _____	<input type="checkbox"/>	<input type="checkbox"/>

(continued on back of page)

**5. Which of the following types of businesses would you like to see more of in Laguna Woods? (select up to three)**

Please note that the City is interested in promoting the value and availability of goods and services for residents within existing commercial areas and is not considering expanding commercial areas. *Business names are provided as examples only.*

- |  |  |
|--|--|
| <input type="checkbox"/> None – existing businesses are sufficient               | <input type="checkbox"/> Medical Offices<br><i>(e.g., doctors, dentists)</i>         |
| <input type="checkbox"/> Clothing and Department Stores<br><i>(e.g., Kohl's)</i> | <input type="checkbox"/> Pharmacies/drug stores<br><i>(e.g., Rite Aid)</i>           |
| <input type="checkbox"/> Electronics Stores<br><i>(e.g., Best Buy)</i>           | <input type="checkbox"/> Professional Offices<br><i>(e.g., lawyers, accountants)</i> |
| <input type="checkbox"/> Financial Services<br><i>(e.g., banks)</i>              | <input type="checkbox"/> Restaurants, Fast-food or Casual<br><i>(e.g., In-N-Out)</i> |
| <input type="checkbox"/> Gas Stations<br><i>(e.g., Mobil)</i>                    | <input type="checkbox"/> Restaurants, Sit-Down<br><i>(e.g., Olive Garden)</i>        |
| <input type="checkbox"/> Grocery Stores<br><i>(e.g., Stater Bros.)</i>           | <input type="checkbox"/> Thrift Stores<br><i>(e.g., Goodwill)</i>                    |
| <input type="checkbox"/> Hotels<br><i>(e.g., Ayres Hotel)</i>                    | <input type="checkbox"/> Other: _____<br>_____                                       |

**6. Please share any additional thoughts you have on the availability of local goods and services.**

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**THANK YOU FOR YOUR INPUT!**

Postage is prepaid. Every household in Laguna Woods will receive this survey.  
All responses are anonymous.