



## City Council Staff Report

Date: July 3, 2013

LEGISLATION

Subject: URGENCY ORDINANCE ADDING SECTION 6.08.150 TO THE PALM SPRINGS MUNICIPAL CODE PROHIBITING THE OPERATION OF MOBILE MARIJUANA DISPENSARIES IN THE CITY

From: Douglas Holland, City Attorney

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### SUMMARY

This is a proposal to adopt an urgency ordinance that would prohibit marijuana dispensaries and deliveries in the City of Palm Springs.

### RECOMMENDATION:

Waive reading of the full text and adopt Urgency Ordinance No. \_\_\_\_\_, "AN URGENCY ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, PROHIBITING THE OPERATION OF MOBILE MARIJUANA DISPENSARIES IN THE CITY."

### STAFF ANALYSIS:

An unregulated industry of marijuana delivery services is circumventing the City's medical cannabis regulatory program. This industry brings marijuana directly to people's homes, offices and more unconventional locations. In many of these operations, business operators use runners to make deliveries of marijuana in a manner that is outside the guidelines of the Compassionate Use Act and the Medical Marijuana Program Act. These couriers advertise in newspapers and on the internet, and they advertise a wide range of strains and other products, such as brownies and cookies laced with THC, the active ingredient in marijuana. Essentially, these courier operations appear to be efforts to bypass the City's regulatory program.

The exact number of delivery services operating in California is unclear, since the state does not keep a registry of medical marijuana distributors. Several marijuana delivery services advertise direct delivery of marijuana to patients in Palm Springs on "Weedmaps.com", an internet commercial listing service.

ITEM NO. 3A

An increase in mobile dispensaries has been found to coincide with successful enforcement actions involving storefront dispensaries. According to a February 26, 2013 article in the San Diego Union Tribune, many mobile dispensaries sprouted up after federal authorities targeted storefront operations in San Diego and Imperial Counties. According to a DEA Special Agent, many of the shuttered businesses turned to delivery services instead. It is not unreasonable for the City to expect the same in the City of Palm Springs, particularly in light of the recent California Supreme Court decision that upheld the authority of California cities to regulate marijuana dispensaries in their communities.

An Inland Empire attorney who describes himself as one who represents "California dispensary clients battling local government roadblocks" has been advising his marijuana dispensary clients to change their business model as a result of the California Supreme Court decision so that marijuana is distributed from a mobile source. This attorney has represented dispensaries operating in the City of Palm Springs.

Mobile dispensaries have been associated with criminal activity. Delivery drivers, for example, are targets of armed robbers who seek cash and drugs. As a result, many of the drivers reportedly carry weapons or have armed guards as protection. Examples of such criminal activity reported in the media include the following:

- In March of 2013, a West Covina deliveryman was reportedly robbed after making a delivery. The deliveryman told police that he was approached by two subjects in ninja costumes who chased him with batons. He was scared and dropped a bag with some marijuana and money, which was taken by the suspects.
- In February of 2013, a Temecula deliveryman was reportedly robbed of cash outside of a Denny's restaurant, which led to a vehicular chase that continued until the robbers' vehicle eventually crashed on a freeway on ramp.
- In January of 2013, marijuana deliverymen in Imperial Beach were reportedly robbed after being stopped by assailants (one with a brandished semi-automatic handgun) after making a stop.
- In January 2013, a deliveryman in Riverside was reportedly robbed of three ounces of marijuana while making a delivery outside a Carl's Jr. restaurant, and he told police that the suspect may have had a gun.
- In May of 2012, a 23-year-old deliverywoman in La Mesa was reportedly shot in the face with a pellet gun. After running away, the assailants carjacked her vehicle.
- In August of 2011, a medical marijuana deliveryman was reportedly robbed of \$20,000 worth of his marijuana (approximately 9 pounds) and a cellular phone in Fullerton. The driver suffered a head cut.
- In June of 2011, a marijuana delivery from a Los Angeles mobile dispensary turned deadly in Orange County when four individuals reportedly ambushed the mobile dispensary driver and his armed security guard and tried to rob them. One of the suspects approached the delivery vehicle and confronted the driver and a struggle ensued. A second suspect armed with a handgun, approached the security guard, who fired at the suspect hitting him multiple times.
- In April of 2011, a customer reportedly made arrangements for a medical marijuana deliveryman to meet him in a Safeway parking lot in Salinas. The

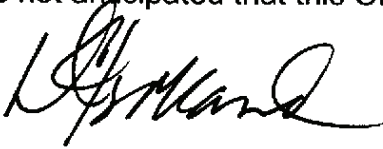
deliveryman had about \$1,000 in cash and 1.5 pounds of marijuana. As the deliveryman began weighing the order, he looked up and saw a silver handgun in his face. The customer stole money and marijuana. The judge sentenced the customer to five years in state prison.

- In May of 2010, a college student who delivers medical marijuana door-to-door was reportedly robbed at gunpoint in Richmond. The assailants took \$1,000 in cash and a pound of marijuana.

It is reasonable to conclude that similar adverse impacts on the public health, safety and welfare will likely occur in the City of Palm Springs if the City fails to take appropriate action. This Office and the Police Chief are of the opinion that the introduction and adoption of this ordinance is an urgent matter necessary for preserving public peace, health and safety. Charter section 312 permits the City Council to adopt this ordinance as an urgency measure for the reasons set forth in the attached ordinance and for it to be immediately effective.

**FISCAL IMPACT:**

It is not anticipated that this Ordinance will have a fiscal impact on the City.



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Douglas Holland, City Attorney

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

**AN URGENCY ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING SECTION 6.08.150 TO THE PALM SPRINGS MUNICIPAL CODE, PROHIBITING THE OPERATION OF MOBILE MARIJUANA DISPENSARIES IN THE CITY. (4/5<sup>THS</sup> Vote Required)**

***City Attorney Summary***

*This Ordinance prohibits mobile marijuana dispensaries from operating in the City. This is an urgency Ordinance that will go into effect upon adoption and requires a 4/5ths vote for passage.*

**THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, FINDS:**

A. In 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana use.

B. The Compassionate Use Act ("CUA"), codified at California Health and Safety ("H&S") Code Section 11362.5, was approved by California voters in 1996 and legalized the use of marijuana for specific medical purposes.

C. California courts have held that the CUA creates a limited exception for criminal liability for seriously ill persons who are in need of medical marijuana for specified medicinal purposes and who obtain and use medical marijuana under limited, specified circumstances.

D. In 2003 the State of California adopted SB 420, the Medical Marijuana Program ("MMP"), codified at California Health and Safety ("H&S") Code Section 11362.7, which clarifies the scope of the Compassionate Use Act and allows local jurisdictions to adopt and enforce rules consistent with SB 420.

E. The CUA expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (H&S Code Section 11362.5.) The MMP similarly anticipates local regulation, providing: "Nothing in this article shall prevent a city . . . from adopting and enforcing . . . local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective . . . civil and criminal enforcement of local ordinances; [and] . . . other laws consistent with this article (H&S Code 11362.83.).

F. The City of Palm Springs has exercised its rights under the law and has adopted an ordinance (PSMC Section 93.23.15) that regulates the location, operation, and establishment of medical cooperatives and collectives in the City.

G. The California Supreme Court in the case of City of Riverside v. Inland Empire

Patients Health and Wellness Center, Inc., 56 Cal. 4th 729 (2013) established that neither the CUA or MMP preempt local regulation of marijuana dispensaries.

H. The exact number of delivery services operating in California and the Coachella Valley is unclear, since the state does not keep a registry of mobile medical marijuana distributors.

I. An increase in mobile dispensaries has been found to coincide with successful enforcement actions involving storefront dispensaries. In other parts of the state, shuttered businesses turned to delivery services instead. There is reason to expect the same in the City of Palm Springs, particularly in light of the City's regulatory program for medical cannabis cooperatives and collectives.

J. An Inland Empire attorney who describes himself as one who represents "California dispensary clients battling local government roadblocks" has been advising his marijuana dispensary clients to change their business model as a result of the California Supreme Court decision so that marijuana is distributed from a mobile source. This attorney has represented dispensaries operating in the City of Palm Springs.

K. Mobile dispensaries have been associated with criminal activity. Delivery drivers, for example, are targets of armed robbers who seek cash and drugs. As a result, many of the drivers reportedly carry weapons or have armed guards as protection. Examples of such criminal activity reported in the media include the following:

1. In March of 2013, a West Covina deliveryman was reportedly robbed after making a delivery. The deliveryman told police that he was approached by two subjects in ninja costumes who chased him with batons. He was scared and dropped a bag with some marijuana and money, which was taken by the suspects.
2. In February of 2013, a Temecula deliveryman was reportedly robbed of cash outside of a Denny's restaurant, which led to a vehicular chase that continued until the robbers' vehicle eventually crashed on a freeway on ramp.
3. In January of 2013, marijuana deliverymen in Imperial Beach were reportedly robbed after being stopped by assailants (one with a brandished semiautomatic handgun) after making a stop.
4. In January 2013, a deliveryman was reportedly robbed of three ounces of marijuana while making a delivery outside a Carl's Jr. restaurant in Riverside, and he told police that the suspect may have had a gun.
5. In May of 2012, a 23-year-old deliverywoman in La Mesa was reportedly shot in the face with a pellet gun. After running away, the assailants carjacked her vehicle.
6. In August of 2011, a medical marijuana deliveryman was reportedly robbed of \$20,000 worth of his marijuana (approximately 9 pounds) and a cellular phone in Fullerton. The driver suffered a head cut during the crime.

7. In June of 2011, a marijuana delivery from a Los Angeles mobile dispensary turned deadly in Orange County when four individuals reportedly ambushed the mobile dispensary driver and his armed security guard and tried to rob them. One of the suspects approached the delivery vehicle and confronted the driver and a struggle ensued. A second suspect armed with a handgun, approached the security guard, who fired at the suspect hitting him multiple times.

8. In April of 2011, a customer reportedly made arrangements for a medical marijuana deliveryman to meet him in a Safeway parking lot in Salinas. The deliveryman had about \$1,000 in cash and 1.5 pounds of marijuana. As the deliveryman began weighing the order, he looked up and saw a silver handgun in his face. The customer stole money and marijuana. The judge sentenced the customer to five years in state prison.

9. In May of 2010, a college student who delivers medical marijuana door-to-door was reportedly robbed at gunpoint in Richmond. The assailants took \$1,000 in cash and a pound of marijuana; and

L. The California Constitution grants charter cities the power to make and enforce all ordinances and regulations with respect to municipal affairs. Article XI, Section 7 of the California Constitution provides a city may make and enforce within its limits all police, sanitary and other ordinances and regulations not in conflict with general laws.

M. The City of Palm Springs, as a charter city, by and through its City Council, has and may exercise all powers necessary to ensure the general welfare of its inhabitants.

N. There exists a current and immediate threat to public health, safety and welfare in the absence of the City adopting an ordinance prohibiting establishment, operation or use of mobile marijuana dispensaries.

O. It is the purpose and intent of this Ordinance prohibiting all mobile marijuana dispensaries to promote health, safety, morals, and general welfare of the residents and businesses within the City, excepting only the three medical cannabis collectives or cooperatives that have received permits in full compliance with the provisions of Section 93.23.15.

P. The failure to prohibit mobile marijuana dispensaries or mobile medical marijuana dispensaries will expose the City to costs related to regulation, enforcement, and the negative secondary effects of mobile dispensaries including an increase in violent crime.

Q. The City Council further determines that there is a high likelihood that mobile marijuana dispensaries will immediately flourish in the City without the adoption of this Ordinance. The City Council finds that this Ordinance is necessary as an emergency measure for preserving the public peace, health, or safety pursuant to Palm Springs City Charter Section 312

**THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ORDAINS:**

SECTION 1. Section 6.08.150 is added to the Palm Springs Municipal Code to read:

**6.08.150 Mobile Marijuana Dispensaries.**

A. Definitions.

The following words and phrases shall, for the purposes of this Section, have the meanings respectively ascribed to them by this Subsection, as follows:

“Mobile Marijuana Dispensary” means any clinic, cooperative, club, business, or group which transports or delivers, or arranges the transportation or delivery, of medical marijuana to a Person.

“Person” means any person, firm, corporation, association, club, society, or other organization. The term Person shall include any owner, manager, proprietor, employee, volunteer, or salesperson.

“Operation” means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet, or assist in the operation of a Mobile Marijuana Dispensary.

B. Mobile Marijuana Dispensaries Prohibited.

Mobile Marijuana Dispensaries are prohibited in the City. No person shall locate, operate, own, suffer, allow to be operated, or aide, abet or assist in the operation of any Mobile Marijuana Dispensary within the City..

C. Marijuana Delivery Prohibited.

1. No Person shall deliver marijuana to any location within the City from a Mobile Marijuana Dispensary, regardless of where the Mobile Marijuana Dispensary is located, or engage in any Operation for this purpose.

2. No Person shall deliver any marijuana-infused product such as tinctures, baked goods, or other consumable products, to any location within the City from a Mobile Marijuana Dispensary, regardless of where the Mobile Marijuana Dispensary is located, or engage in any Operation for this purpose.

D. Public Nuisance Declared.

Operation of any Mobile Marijuana Dispensary within the City in violation of the provisions of this chapter is hereby declared a public nuisance and shall be abated pursuant to all available remedies.

E. Exceptions.

The provisions of this Section shall not apply to any medical cannabis cooperative or collective that has a permit from the City pursuant to, and is operating in full compliance with, Section 93.23.15 of this Code.

PASSED, APPROVED AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL  
THIS 3d DAY OF JULY, 2013.

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STEPHEN P. POUQUET, MAYOR

ATTEST:

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JAMES THOMPSON, CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF PALM SPRINGS )

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, California, do hereby certify that Urgency Ordinance No. \_\_\_\_ is a full, true, and correct copy, and adopted at a regular meeting of the City Council held on the 3<sup>rd</sup> day of July, 2013, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
JAMES THOMPSON, CITY CLERK  
City of Palm Springs, California