



- H. On August 25, 2008, then California Attorney General Edmund G. Brown, issued “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use” (“the Attorney General Guidelines”) which sets forth guidelines intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients; and
- I. The Federal Controlled Substances Act (“Controlled Substances Act” or “CSA”) 21 U.S.C. § 801 *et seq.* provides that the manufacture, cultivation, distribution and dispensing of marijuana is illegal for any purpose, and further provides for criminal penalties for marijuana use; and
- J. The United States Supreme Court held in Gonzales v. Raich, 545 U.S. 1 (2005), that the provisions of the federal Controlled Substances Act apply to the personal medical use of marijuana in California, and more recently the Supreme Court held in Raich v. Gonzalez, 500 F.3d 850 (2007), that the Controlled Substances Act applied to an individual’s personal medical use of marijuana, and upheld the provisions of the Controlled Substance Act criminalizing the manufacture, distribution, or possession of marijuana to growers and users of marijuana for medical purposes; and
- K. An October 19, 2009, memorandum from the U.S. Department of Justice indicated the Department’s intent to not use Federal resources on marijuana prosecution if an individual’s actions are “in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana;” and
- L. The Federal policy shift away from enforcement of the Controlled Substances Act has led to increased interest in the establishment and operation of medical marijuana dispensaries in the City, and has led to an increase in medical marijuana dispensaries throughout the State; and
- M. The Compassionate Use Act provides that persons who are in need of medical marijuana for specified purposes may obtain and use it under limited, specified circumstances. The Act has led to the establishment of medical marijuana dispensaries in various communities throughout California; and
- N. The Attorney General Guidelines provide that cities and counties may adopt regulations that allow qualified patients or primary caregivers to possess more medical marijuana in amounts that exceed the MMPA’s possession guidelines; and
- O. The City Council, in adopting this Urgency Ordinance, takes legislative notice of the following cases that it finds to be relevant to its actions:
  - 1. People v. Mentch, 45 Cal.4th 274 (2008), regarding the California Supreme Court’s analysis of the limited application and scope of the Act and the Program, and its holding that a “primary caregiver” status requires a specified showing of consistently providing care, independent of any assistance in taking medical marijuana, at or before the time of assuming the responsibility of assisting with medical marijuana.

2. People ex rel. Lungren v. Peron, 59 Cal.App.4th 1383 (1997), the California Court of Appeal recognizing the limited scope of the Act and the Program, and holding that filling out a form that designates a commercial enterprise as the qualified patient's "primary caregiver" is insufficient to establish a caregiver status.
  3. Claremont v. Kruse, 177 Cal.App.4th 1153 (2009), California Court of Appeal holding that neither the Act nor the Program expressly or impliedly preempt local exercise of land use and zoning police powers.
  4. People v. Mower, 28 Cal.4th 457 (2002), California Supreme Court holding that the defenses accorded by the Act are limited to "patients and primary caregivers" for the possession and cultivation of marijuana only.
  5. People v. Urziceanu, 132 Cal.App.4th 747 (2005), California Court of Appeal noting that courts consistently have rejected attempts to broaden the scope of the Act and the Program and recognizing that the Act did not create a constitutional right to obtain marijuana.
  6. People v. Hochanadel, 176 Cal.App.4th 997 (2009), California Court of Appeal concluding that the operators of a storefront dispensary which sold marijuana to individuals did not operate within the CUA and the MMPA, and did not constitute a primary caregiver such that it was entitled to protections of the CUA and MMPA.
  7. County of San Diego v. NORML, 165 Cal.App.4th 798 (2008), California Court of Appeal holding that the provisions of the Program requiring California counties to issue identification cards to qualified medical marijuana patients are not preempted by the Federal Controlled Substances Act.
  8. City of Garden Grove v. Superior Court, 157 Cal.App.4th 355 (2007), regarding the California Court of Appeal's limited holding that the return of marijuana to a qualified user is not preempted by the Federal Controlled Substances Act.
  9. City of Lake Forest v. Moen et al. (Case No. 30-2009-0029887-CU-MC-CJC), trial court granted Lake Forest's preliminary injunction and found that a city's power to enact land use or zoning laws, and a city's enforcement of existing local laws is not preempted by the Compassionate Use Act and Medical Marijuana Program.
- P. Health and Safety Code § 11362.765 prohibits the cultivation or distribution of medical marijuana for profit, but neither the Compassionate Use Act nor Medical Marijuana Program impose operational regulations of medical marijuana dispensaries, collectives or cooperatives. Thus, leaving to local governments, such as the City, the imposition of local operational regulations for medical marijuana dispensaries; and

- Q. Article XI, Section 7 of the California Constitution provides a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and
- R. In 2010, the Legislature amended the MMPA to add Health and Safety § 11362.768 which became effective January 1, 2011, and prohibits any “medical marijuana cooperative, collective, dispensary, operator, establishment, or provider” from locating within 600 feet of a school”, which reaffirms the City’s ability to regulate the location of medical marijuana dispensaries; and
- S. In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of Pittsburg staff to study the possible adoption of amendments to the City’s Municipal Code and Zoning Code regarding medical marijuana dispensaries. Staff needs time to study whether to limit such businesses to certain zoning districts, and which zoning districts would be appropriate for such uses. Staff also needs to study the differences among medical marijuana collectives, cooperatives and dispensaries. Finally, staff needs time to study whether there should be a limit on the number of medical marijuana collectives, cooperatives and/or dispensaries in the City, whether the regulations should allow for more than one collective, cooperative and/or dispensary, and if so, whether there should be regulations as to their proximity to each other; and
- T. Other California cities that have permitted the establishment of medical marijuana dispensaries have experienced an increase in crime, such as burglary, robbery and sale of illegal drugs in the areas immediately surrounding such medical marijuana dispensaries, collectives and cooperatives. The City Council is concerned that establishment and operation of medical marijuana dispensaries without adequate regulation will result in an increase in crime; and
- U. In April of 2009, the California Police Chief’s Association issued a “White Paper” which identifies that, throughout California, many violent crimes have been committed that can be traced back to the proliferation of marijuana dispensaries, including armed robberies and murders. Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana collectives, cooperatives and dispensaries; and
- V. Because the City has not adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries, the lack of such controls may lead to the proliferation of such dispensaries and the inability of the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent to and near such businesses, and the patients or clients of such establishments. There is a threat to the public health, safety and welfare of the community if medical marijuana dispensaries locate in the City without proper regulations in place; and
- W. Based on the adverse secondary impacts experienced by other cities and counties, and the lack of any regulatory program in the City regarding the establishment and

operation of medical marijuana dispensaries, it is reasonable to conclude that negative effects on the public, health, safety and welfare may occur in the City as a result of the proliferation of medical marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities; and

- X. Staff needs time to study whether amendments to the City's Codes are necessary to eliminate or minimize the negative secondary side effects resulting from medical marijuana dispensaries identified in the White Paper; and
- Y. California Government Code Section 65858, subdivision (a) provides: that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that the first extension of such measure shall be of no effect ten (10) months and fifteen (15) days from the date of adoption, and the urgency ordinance may be extended a maximum of two times and have a maximum total duration of two (2) years; and
- Z. California Government Code Section 65858, subdivision (c) provides: that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to the public health, safety or welfare; and
- AA. The City Council desires to (1) address the community concerns regarding the establishment and operation of medical marijuana dispensaries, (2) study the potential impacts the medical marijuana dispensaries may have on the public health, safety and welfare, (3) study and determine what local regulations may be appropriate or necessary for medical marijuana dispensaries, (4) study and determine the appropriate zoning and location for medical marijuana dispensaries, and (5) determine appropriate controls for protection of public health, safety and welfare; and
- BB. On April 4, 2011, the City Council adopted Urgency Ordinance No. 11-1345 imposing a forty-five (45) day moratorium on the establishment and operation of medical marijuana dispensaries in Pittsburg; and
- CC. Ordinance No. 11-1345 will, unless extended, expire by its own terms on May 19, 2011; and
- DD. Staff has commenced a study of the potential impacts of medical marijuana dispensaries and possible amendments to the City's Municipal and Zoning Code related to such uses, and this process is still ongoing. Staff needs additional time to study whether to limit such businesses to certain zoning districts and develop clear, consistent and uniform regulations related to the establishment, location and operation of such businesses; and

EE. The City Council has conducted a properly noticed public hearing pursuant to Government Code Section 65090, and has duly considered all written and verbal testimony during the hearing; and

FF. The City Council finds that the current and immediate threat to the public health, safety and welfare, as described in the findings herein, and as set forth in Ordinance No. 22-1345 still exist, and that a moratorium on medical marijuana dispensaries shall remain in effect pending completion of the City's study and adoption of amendments to the City's Municipal and Zoning Code.

## SECTION 2. Moratorium Imposed.

### A. Scope.

In accordance with the authority granted the City of Pittsburg under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this ordinance, no permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, business permit, building permit, conditional use permit, or zoning text amendment shall be approved or issued for the establishment or operation of a medical marijuana dispensary in the City of Pittsburg. Additionally, medical marijuana dispensaries are hereby expressly prohibited in all areas and zoning districts of the City.

### B. Definitions.

1. For purposes of this ordinance, "medical marijuana dispensary" or "dispensary" means (1) any facility, building, structure or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver in strict accordance with California Health and Safety Code Section 11362.5 *et seq.*; or (2) any facility, building, structure or location where qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate to cultivate or distribute marijuana for medical purposes. The terms "primary caregiver," "qualified patient," and "person with an identification card" shall be as defined in California Health and Safety Code Section 11362.5 *et seq.*;

A "medical marijuana dispensary" or "dispensary" also means any not for profit site, facility or location where one or more Qualified Patients and/or Persons with an Identification Card associate, meet or congregate in order collectively or cooperatively, to distribute, sell, dispense, transmit, process, deliver, exchange or give away marijuana for medicinal purposes pursuant to Health and Safety Code Section 11362.5 *et seq.* and organized as a Marijuana Cooperative or Collective as set forth in the Attorney General Guidelines.

2. For purposes of this ordinance, a "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code, a residential care facility for persons with chronic life-

threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, California Health and Safety Code Section 11362.5 *et seq.*

C. Statutory Findings and Purpose

This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council of the City of Pittsburg set forth in the findings, incorporated into Section 1 of this Ordinance.

SECTION 3. Establishment, Operation and Maintenance of a Medical Marijuana Dispensary Declared a Public Nuisance.

The establishment, maintenance or operation of a medical marijuana dispensary as defined herein within the City limits of the City of Pittsburg is a public nuisance. Violations of this ordinance may be enforced by any applicable law, including but not limited to, injunctions, administrative citations, or criminal penalties.

SECTION 4. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Pittsburg hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. CEQA

(1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.

(3) This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2) above, it can be seen

with certainty that there is no possibility that this ordinance will have a significant effect on the environment;

SECTION 6. Effective Date.

This Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall be in effect for ten (10) months and fifteen (15) days there from unless extended by the City in accordance with California Government Code Section 65858.

The foregoing ordinance was introduced and adopted at a meeting of the City Council of the City of Pittsburg held on May 16, 2011, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

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Will Casey, Mayor

ATTEST:

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Alice E. Evenson, City Clerk