

**ITEM NO. 5A**      **REPORT DATE:**      **May 6, 2010**  
**MEETING DATE:**      **May 11, 2010**

**SUBJECT:**      **REGULATING MEDICAL MARIJUANA DISPENSARIES AND ZONING ORDINANCE AMENDMENT APPLICATION NO. 10-001** – A proposal to regulate Medical Marijuana Dispensaries through a new Licensing Ordinance and amending the Zoning Ordinance to allow a Medical Marijuana Dispensary in the M (Light Industrial District) as a Permitted Use with approval of an Operating License.

**CEQA STATUS:**      The Planning Department recommends that this License Ordinance and Zoning Ordinance Amendment are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15061(b)(3) in that there is nothing in its implementation that could foreseeably have any significant effect on the environment.

**SUMMARY:**      Two Medical Marijuana Dispensaries (MMD) have opened in Corte Madera. They are located at 402 Tamal Plaza (dba Going Green) and 200 Tamal Plaza (dba Marin Holistic Solutions). The property is zoned M (Light Industrial District). Both businesses obtained a Town Business License, only after improperly declaring their “business description” on the Business License Application. Presently, the Zoning Ordinance does not allow Medical Marijuana Dispensaries. They are not listed as Permitted or Conditional Uses in any Zoning District and the use is specifically precluded by Section 18.02.110 of the Zoning Ordinance, since such use is in violation of federal law.

**18.02.110 Use violating federal or state laws unlawful.**  
Notwithstanding any other provision of this title, nothing in this title shall permit, enable, endorse, allow, or make lawful any use that is in violation of any lawful federal or state statute or provision of the United States or California Constitution. No permit, entitlement, authorization, application, or approval shall be granted or approved, as the case may be, by any employee, officer or agent of the town for any use of real property that is in violation of any lawful federal or state statute or provision of the United States or California Constitution. Any use of real property located within the jurisdictional boundaries of the town that is conducted or maintained in violation of any lawful federal or state statute or provision of the United States or California Constitution shall constitute a violation of this title and shall be a public nuisance subject to abatement proceedings under this code.

The Town Council has been advised of the two dispensaries at Tamal Plaza and about the historical background of MMD in California. The Town Council has directed the Town Attorney to prepare a License Ordinance for discussion specifying terms and conditions for the issuance of an operating license for approved MMD. The attached Ordinance is a separate Licensing Ordinance for MMD. It is not part of the Town's Zoning Ordinance. If this Ordinance is adopted, MMD would be listed as a Permitted Use in the M District with approval of an Operating License and Section 18.02.110 of the Zoning Ordinance would be repealed. Attachment 1 of this

report includes the Draft Ordinance developed by the Town Attorney to regulate and license MMD.

## **BACKGROUND:**

Proposition 215, entitled the Compassionate Use Act, was adopted by California voters in 1996. It was enacted to ensure that seriously ill patients have the right to use marijuana for medical purposes. It ensured that patients and caregivers, upon a physician's recommendation, would not be subject to criminal prosecution. It did not establish any regulations or guidelines for distribution of medical marijuana (Attachment 2).

Senate Bill 420, the Medical Marijuana Program Act, was adopted by the California Legislature in 2003. The bill developed a voluntary program for the issuance of statewide identification cards to qualified medical marijuana patients. The bill authorized the Attorney General to set forth details concerning possession and cultivation limits and adopt guidelines to ensure that there would be no diversion of medical marijuana to illicit markets (Attachment 3).

In August 2008, the Attorney General adopted the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Purposes. These suggested guidelines and practices were intended for the lawful operation of a Cooperative or Collective to lawfully distribute medical marijuana to qualified patients and patients' primary caregivers (Attachment 4).

## **ANALYSIS:**

A Licensing Ordinance could be adopted that would amend the Municipal Code to allow MMD if it complies with all the new operating provisions. Such an Ordinance would likely be codified in Title 9 of the Municipal Code – Peace, Safety and Morals. The cities of Santa Rosa and Cotati have utilized this option. Both of their enabling Ordinances are codified outside of their Zoning Ordinances. Santa Rosa's Ordinance authorizes the City Manager to approve MMD administratively, while Cotati's Ordinance requires approval by the City Council in a public hearing.

A Licensing Ordinance (outside of the Zoning Ordinance) does provide for more flexibility. For example, appropriate waivers to operating provisions could be approved by the authorizing body and not be subject to strict Variance Findings associated with the Zoning Ordinance. Also, if the licensing of the MMD was through a Conditional Use Permit, the Town would have only limited ability to restrict the transfer of an MMD to another operator.

Staff recommends that a Licensing Ordinance (outside of the Zoning Ordinance) would be the most appropriate mechanism to regulate MMD. Staff also recommends that the Planning Commission be given authority to review and approve MMD licenses with appeal rights to the Town Council.

## Conditions of Approval for LICENSING Medical Marijuana Dispensaries (MMD):

Attachment 1 of this report includes the Draft Ordinance developed by the Town Attorney to regulate and license MMD. Exhibit A of the Draft Ordinance includes the specific operating regulations and application procedures. A summary of the proposed operating regulations is found below and was developed by the Town Attorney by reviewing operational standards from other jurisdiction, SB 420, Attorney General's Guidelines and input from the Twin Cities Police Department.

1. No more than one MMD may locate within the town limits, except that both Going Green and Marin Holistic Solutions will be given the opportunity to apply for an Operating License within 60 days of the adoption date of this Ordinance to determine whether one or both can operate in compliance with these provisions.
2. If either or both of the two dispensaries are granted licenses, no additional licenses shall be issued as long as either dispensary remains in operation.
3. If either or both of the two dispensaries cease operation, the limit of one MMD within the town limits shall be enforced.
4. The license shall be valid for one year. Renewals must be processed in the same way as the initial application. Applications for renewal shall be made at least 45 days before the annual expiration date of the license.
5. A licensee shall not transfer the Town-authorized license to operate a MMD to another person unless and until the transferee obtains an amendment to the license from the authorizing body with all provisions of this chapter.
6. MMD may only locate in the M (Light Industrial Zoning) District.
7. MMD may not locate within 500 feet of any school, youth-oriented facility, church, nursery or public park. Distance shall be measured by path of travel, not a straight line separation.
8. Hours of operation are restricted to 10am to 8pm Monday-Saturday; Noon to 5pm on Sunday; and closed on legal holidays.
9. An MMD shall be limited in floor area to no more than 1,000 sq.ft.
10. A background check will be required to demonstrate that no operator or employee of the MMD shall have been convicted of a felony or of a misdemeanor involving moral turpitude.
11. MMD shall operate as a Cooperative or Collective as outlined in the Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Purposes. MMD shall only purchase marijuana from, or sell to, members of the Cooperative or Collective.
12. MMD may only sell or distribute marijuana to patients or the primary care giver of the patient who possess a valid State of California Medical Marijuana Identification

Card (MMIC) issued by the Marin County Department of Health and Human Services or a valid written recommendation from their physician recommending use of medical marijuana.

13. All patients and care givers must register with the dispensary and the dispensary must keep and maintain a record of each patient and care giver to whom the dispensary has dispensed medical marijuana.
14. A ledger must be maintained of all distribution transactions and contain the following information: quantity dispensed, type and source of medicinal marijuana dispensed; the recommending physician's name, address, phone number and business name; the patient's name; the patient's MMIC number or the patient's verifying identification type and number assigned to the patient by the dispensary; the name of the care giver; and the date and time dispensed. The ledger shall be readily available for inspection by the town and/or Twin Cities Police Authority, with only the patients' names and MMIC numbers (if any) redacted.
15. No more than one visit per patient (or care giver) per day shall be allowed. No more than 1,000 patient and care giver-visits (entrances into the dispensary) per month shall be permitted.
16. Patients or the primary care giver of the patients must pickup the medical marijuana in person at the MMD. There shall be no off-site deliveries of medical marijuana to patients.
17. An MMD may not dispense more than one ounce of dried marijuana per qualified patient or to a qualified primary care giver per visit. An MMD may not dispense baked or cooked goods containing more than one ounce of dried marijuana.
18. Smoking of marijuana cigarettes, or any other mode of ingestion, in and at least 200 feet around the perimeter of the MMD shall be prohibited.
19. Security personnel on site during business hours sufficient for the safety of its employees and clientele shall be required. This requirement for security personnel may be waived if the approval authority finds that on-site surveillance is adequate to provide the requisite level of safety.
20. Twenty-four hour video surveillance recording of the premises is required in order to facilitate the investigation of crimes associated with the MMD. Thirty days surveillance coverage must be maintained for 90 days and must be readily available to the Twin Cities Police Department during business hours.
21. During non-business hours, all medical marijuana shall be stored in a locked vault, safe or other secure structure preventing the easy theft of the medical marijuana.
22. MMD shall provide the Twin Cities Police Department, local Council offices, and all neighbors, including commercial tenants, located within 300 feet of the MMD the name, phone number, an e-mail address, and facsimile number of an on-site community relations staff person whom one can provide notice if there are operating problems associated with the MMD.

23. All litter must be removed from the premises, including the parking lot, sidewalk, and all areas visible to the public within 100 feet of the premises.
24. Any graffiti applied to the property under control of the MMD must be reported to the Twin Cities Police Department and then removed within 24 hours.
25. A prominent and permanent sign stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the dispensary.
26. The MMD operator shall report the number of patients served and provide detailed description of any adjustments and changes to the dispensary operations and identify how the dispensary complies with all operating requirements.
27. The license to operate may be revoked at anytime if it is determined by the Town Manager or his/her designee that the MMD is operating in a manner that violates the provisions of the applicable regulations and conditions. There must be a preponderance of evidence submitted and the submission of neighborhood complaints and other sources of public information are allowed in the determination whether to revoke an MMDs permit.
28. Each MMD shall be liable for all costs associated with the investigation, prosecution, incarceration, booking, medical treatment, and storage and/or destruction of evidence, and all other unspecified costs for failure to comply with the provisions of this ordinance resulting in the arrest of any employees, owners or patrons.

The aerial photo on the next page shows the location of Going Green and Marin Holistic Solutions. Both are located in the Tamal Plaza development. The property is zoned M Light Industrial District. The two establishments do meet the set back requirements from a school (Redwood High School) as measured by path of travel, not a straight line separation. The Twin Cities Police Department has been monitoring the two establishments since they began operation. No service calls or other problems have been reported. See Twin Cities' written response in Attachment 5.

Attachments 6 and 7 are from the attorneys of Going Green and Marin Holistic Solutions. They include responses/comments to the Town Attorney's original Draft License Ordinance. Attachment 8 is MEMORANDUM from the Town Attorney in response to Attachments 6 and 7. Consequently, the Town Attorney has slightly revised the original Draft License Ordinance in response to Attachments 6 and 7. Those revisions are shown with ~~strikeouts~~ and new language is shown in red text. See Attachment 1 Draft MMD License Ordinance.



**PROCEDURE:** The Planning Commission shall make a recommendation to the Town Council who has the authority to amend the Municipal Code and the Zoning Ordinance.

Section 18.36.090 of the Zoning Ordinance states that the Planning Commission shall make a specific finding as to whether the amendment to the Zoning Ordinance is consistent with the objectives of the Zoning Ordinance and with adopted General Plan of the town. If the Planning commission finds that the change is consistent, it shall transmit a report in writing to the Town Council recommending that the proposal be adopted. If the Planning Commission finds that the change is not consistent, it shall transmit a written report of its action to the Town Council.

In the case of an addition of a Permitted Use or a Conditional Use, the Planning Commission may recommend that a use be added to the list of permitted uses or conditional uses prescribed for any zoning district; provided, that all of the following findings are made:

- (1) Addition of the use to the list will be consistent with the general plan and will be in accord with the purposes of the district in which it is proposed to be added.
- (2) The use will be an appropriate addition to the list because it has the same basic characteristics as other uses listed in the regulations.
- (3) The use will not be detrimental to the public health, safety or welfare.
- (4) The use will not adversely affect the character of any district in which it is proposed.
- (5) The use will not create more vehicular traffic than the volume created by

the uses presently on the list.

(6) The use will not create more odor, dust, dirt, smoke, noise, vibration, illumination, glare, unsightliness or any other objectionable influence than the amount created by the uses presently on the list.

**RECOMMENDED  
COMMISSION ACTION:**

Staff recommends that the Planning Commission discuss the proposed MMD Licensing regulations and the associated Zoning Ordinance Amendments that would allow MMD in the M Light Industrial District in Corte Madera with approval of an operating license.

If the Commission favors recommending that the Town Council approve the Draft MMD Ordinance and the Zoning Ordinance Amendments, a report shall be transmitted that includes the necessary Findings per Section 18.36.090. The report could also include feedback and recommendations regarding the proposed terms and conditions for the issuance of an MMD operating license. Staff will draft the necessary report in the form of a Resolution and it shall be presented to the Planning Commission Chairman for signature.

If the Commission favors recommending that the Town Council not approve the Draft MMD Ordinance and not approve the Zoning Ordinance Amendments, a report shall be transmitted that includes the necessary Findings per Section 18.36.090. Staff will draft the necessary report in the form of a Resolution and it shall be presented to the Planning Commission Chairman for signature.

ATTACHMENTS: 1. Draft Medical Marijuana Dispensaries (MMD) License Ordinance  
2. Proposition 215, Compassionate Use Act  
3. Senate Bill 420, Medical Marijuana Program Act  
4. AG Guidelines, Security and Non-Diversion of Marijuana Grown for Medical Purposes  
5. Twin Cities Police Department Written Response  
6. Responses/comments to Draft MMD Ordinance from Going Green  
7. Responses/comments to Draft MMD Ordinance from Marin Holistic Solutions  
8. Town Attorney's MEMORANDUM