



City of Camarillo

AGENDA REPORT

Date: March 24, 2010
To: Honorable Mayor and Councilmembers
From: Jerry Bankston, City Manager *[Signature]*
Submitted by: Brian Pierik, City Attorney
Subject: **Proposed Ordinance Prohibiting Medical Marijuana Facilities**

SUMMARY

The City Council adopted Ordinance Nos. 1026, 1031, and 1036 adopting and extending a moratorium on the establishment and operation of medical marijuana dispensaries. The moratorium will expire in June of 2010. Consider introducing an ordinance which will prohibit medical marijuana facilities within the City of Camarillo.

DISCUSSION

"The Compassionate Use Act of 1996" -- also known as Proposition 215

In 1996, the voters of California approved by initiative "The Compassionate Use Act of 1996," also known as Proposition 215. The purpose of Proposition 215 was to allow seriously ill Californians to obtain and use medical marijuana under certain specified circumstances. In 2003, the Legislature approved SB 420, which provided additional statutory guidance for those involved with medical marijuana use and also authorized cities to enact rules and regulations with regard to medical marijuana consistent with California law.

Research Regarding Federal Law

Currently, the sale, possession, cultivation and distribution of cannabis is prohibited by federal law, specifically 21 U.S.C. sections 812 and 841, part of the Controlled Substances Act. Marijuana continues to be a prohibited Schedule I drug for which there is no legally accepted medical use. The U.S. Drug Enforcement Administration ("DEA") has raided several medical marijuana dispensaries in various California cities, despite the State's passage of the Compassionate Use Act. The DEA's Office of Chief Counsel's Opinion Letter, dated, March 31, 2006, provides that "the knowing or intentional manufacture, possession, or distribution of marijuana, or aiding and abetting

or participating in conspiracy to engage in such conduct, violates federal law regardless of any state law authorizing such conduct.” (Reference Material 1, pg. 2)

Despite the passage of Proposition 215, the United States Supreme Court in *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, held that the Federal Controlled Substances Act continues to prohibit marijuana use, distribution, and possession, and that no medical necessity exceptions exist to those prohibitions. And in 2005, the United States Supreme Court held that federal laws which ban the use of marijuana for medical purposes are constitutional in the case of *Gonzales v. Raich* (2005) 545 U.S. 1.

Secondary Effects of Medical Marijuana Facilities

Beyond the legal issues involved with medical marijuana, several California cities that have permitted the establishment of medical marijuana dispensaries have found that such medical marijuana dispensaries have resulted in negative secondary effects, including increases in illegal drug activity, illegal drug sales, robbery of persons leaving dispensaries, loitering around dispensaries, falsely obtaining "identification cards" to qualify for medical marijuana, and other increases in criminal activity as well as significant increases in traffic and noise. (Reference Materials 2 pg. 1-19; 3, pg. 8-14; 4, pg. 7-8; 13, pg. 1-28; and 15, pg. 3)

For example, there have been several reports of serious criminal activity, such as robberies, assaults, burglaries, the sale of illegal drugs, murder and attempted murder. Moreover, “[i]ncreased 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 dispensaries, as well as drug-related offenses in the vicinity . . .” (Reference Material 3, pg. 9)

The California Police Chief’s Association has also documented other secondary impacts in the immediate vicinity of dispensaries, such as street dealers lurking about dispensaries to offer a lower price for marijuana, marijuana smoking in public and in front of children, loitering and increased crime. (Reference Material 3, pg. 11)

Moreover, the California Police Chief’s Association has reported adverse secondary impacts in the community at large, such as unjustified and fictitious physician recommendations, the proliferation of grow houses, increased gang activities, exposures of minors to marijuana, impaired public health, and decreased quality of life in deteriorating neighborhoods. (Reference Material 3, pg. 11-14)

“Of equal concern are the secondary effects of these dispensaries and store-front cooperatives. Throughout the state, many violent crimes have been committed that can be traced to their proliferation.” (Reference Material 4, pg. 7)

Municipal Liability

A city or county that allows the establishment and operation of dispensaries faces potential liability because they are arguably aiding and abetting in criminal violations of federal law. (Reference Materials 3, pg. 18-19 and 4, pg. 8) Although we are not aware of any cities or counties that have been prosecuted for aiding and abetting, this is a risk that needs to be recognized in evaluating the City's options.

California Attorney General Guidelines

According to the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, unless they meet stringent requirements, dispensaries cannot reasonably claim to be cooperatives or collectives. (Reference Materials 3, pg. 5 and 5, pg. 9-11) "Although medical marijuana dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law . . . a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but dispensaries that do not substantially comply with the guidelines set forth . . . above are likely operating outside the protections of [the Compassionate Use Act] and the [Medical Marijuana Program], and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law." (Reference Material 5, pg. 11)

The exemption for state criminal prosecution only apply to three categories of persons: (a) qualified patients; (b) persons with valid identification cards, and (c) the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes. CA Health & Safety Code § 11362.775. Moreover, the Medical Marijuana Program Act specifies that collectives, cooperatives or other groups shall not profit from the sale of marijuana.

Legally recognized cooperatives generally possess the following features: "control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members." (Reference Material 3, pg. 5)

The Attorney General's Guidelines provide that "cooperatives should not purchase marijuana from, or sell to, non-members; instead they should only provide a means for facilitating or coordinating transactions between members." (Reference Material 5, pg. 8) However, several reports have found that "it is doubtful that any of the storefront

marijuana businesses currently existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.” (Reference Material 3, pg. 6-7)

Actions of Other Cities

Many cities in California have adopted ordinances prohibiting medical marijuana facilities. In 2009, there was a survey conducted by the City of Redding of several cities regarding their ordinances on medical marijuana dispensaries. See Reference Material 6. As noted in the survey, many of cities surveyed report that they have ordinances which ban medical marijuana dispensaries.

For further illustration, we note the experience of the City of El Cerrito and the City of Norwalk.

The City of El Cerrito, in Contra Costa County, has studied medical marijuana dispensaries and its secondary effects. Over the past couple of years, the El Cerrito Police Department has studied the secondary effects of medical marijuana dispensaries, including criminal activity. (Reference Material 7, pg. 1-28)

As a result of the negative secondary effects of medical marijuana dispensaries, the City of El Cerrito adopted a prohibition on medical marijuana dispensaries on July 17, 2006. (Reference Material 8)

The City of Norwalk, in Los Angeles County, has also studied medical marijuana and its negative secondary effects. In its Staff Report of June 3, 2008, the City of Norwalk noted secondary impacts, including (Reference Material 9, pg. 3):

1. Street level dealers trying to sell to those going to the dispensary at a lower price;
2. People smoking marijuana in public around the facility;
3. People coming into the community from out of town to obtain marijuana;
4. Marijuana DUI by people who have obtained it from the dispensary;
5. Burglary attempts into the dispensary building;
6. Criminal element drawn to the dispensary location;
7. Marijuana dealers who have a doctor's recommendation are purchasing from the dispensary and then conducting illegal street sales to those who do not have a doctor's recommendation;
8. Street criminals in search of the drugs are robbing medical use patients for their marijuana as they leave the dispensary;
9. Thefts and robberies around the location occur to support the illegal and legal drug commerce;

10. Businesses next door to the facilities are negatively affected because of the concentration of criminals that sometimes associate with the dispensary; and
11. Complaints of other illegal drugs that are being sold inside dispensaries.

Given the concerns from the secondary effects of medical marijuana dispensaries, the City of Norwalk adopted an ordinance prohibiting medical marijuana dispensaries in all zones in the city on June 17, 2008. (Reference Material 10).

Planning Commission Action

At its meeting on March 2, 2010, the Planning Commission voted unanimously to recommend that the City Council adopt the proposed ordinance prohibiting the establishment and operation of medical marijuana facilities in the City.

Conclusion

Due to the conflict between federal law and California law, as well as the community and statewide concerns regarding the negative effects that follow the establishment of medical marijuana dispensaries, it is recommended that the City Council adopt an ordinance prohibiting the establishment and operation of medical marijuana facilities in the City. A copy of the Proposed Ordinance is attached.

BUDGET IMPACT

None. This item does not require an expenditure of funds.

SUGGESTED ACTION

A motion to waive further reading and introduce an Ordinance prohibiting the establishment and operation of medical marijuana facilities in the City.

ATTACHMENTS

Proposed Ordinance

REFERENCE MATERIALS – AVAILABLE FOR REVIEW AT CITY HALL

1. U.S. Department of Justice, Drug Enforcement Administration, Office of Chief Counsel's Opinion Letter. March 31, 2006.
2. Medical Marijuana Dispensaries and Associated Issues. Presented to the California Police Chiefs Association. September to December 2007.
3. White Paper on Marijuana Dispensaries. California Police Chiefs Association's Task Force on Marijuana Dispensaries. 2009.
4. White Paper on Medical Marijuana: History and Current Complications. Riverside County District Attorney's Office. September 2006.

5. California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use. August 2008.
6. Medical Marijuana Dispensaries Listserve Survey Results, Conducted by City of Redding and Received October 1, 2009
7. El Cerrito Police Department Memorandum on Marijuana Information. April 18, 2007.
8. City of El Cerrito, Ord. No. 2006-8 (2006). July 17, 2006.
9. City of Norwalk City Council Agenda Report on Medical Marijuana Dispensaries. June 3, 2008.
10. City of Norwalk, Ord. No. 08-1610. June 17, 2008.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAMARILLO, CALIFORNIA, ADDING CHAPTER 19.55 TO THE MUNICIPAL CODE, TO PROHIBIT MEDICAL MARIJUANA FACILITIES

The City Council of the City of Camarillo ordains as follows:

SECTION 1: The City Council of the City of Camarillo finds as follows:

A. In 1996 the voters of the State of California passed the "Compassionate Use of Marijuana Law" which allows for the use of marijuana for medical purposes; and

B. In 2003, the Legislature approved SB 420, which provided additional statutory guidance for those involved with medical marijuana use, and also authorized cities to enact rules and regulations with regard to medical marijuana consistent with California law; and

C. The United States Supreme Court in *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, held that the Federal Controlled Substances Act continues to prohibit marijuana use, distribution, and possession, and that no medical necessity exceptions exist to those prohibitions; and

D. The United States Supreme Court held that federal laws which ban the use of marijuana for medical purposes are constitutional in the case of *Gonzales v. Raich* (2005) 545 U.S. 1; and

E. The City Council has reviewed and considered the Agenda Report prepared by the City Attorney's Office for the City Council meeting of March 24, 2010, and supporting documents, regarding the secondary effects of medical marijuana dispensaries, including reports of criminal activity, such as robberies, assaults, burglaries, and the sale of illegal drugs, murder and attempted murder, which is contrary to policies that are intended to promote and maintain the public's health, safety, and welfare; and

F. In some counties, medical marijuana delivery services are currently provided, which is not permitted by either state or federal law; and

G. A "qualified patient," as defined in subsection (f) of section 11362.7 of the California Health & Safety Code, and a "primary caregiver," as defined in subsection (d) of section 11362.7, is permitted to possess an amount of marijuana consistent with the patient's needs, and state law does not expressly prohibit qualified patients from growing marijuana in an amount consistent with the patient's needs; and

H. At its meeting on May 13, 2009, the City Council adopted Ordinance No.1036, which imposed a moratorium on the establishment and operation of medical marijuana facilities within the City until June 12, 2010; and

I. At its meeting of March 2, 2010, the Planning Commission found the proposed ordinance prohibiting medical marijuana facilities consistent with the General Plan and the Planning Commission voted unanimously to recommend that the City Council adopt this proposed ordinance; and

J. This ordinance is categorically exempt from environmental review pursuant to the California Environmental Quality Act ("CEQA") Guidelines Section 15061(b)(3).

K. This ordinance is consistent with the City's General Plan.

L. On March 24, 2010, the City Council conducted a public hearing on this ordinance, considered the recommendation from the Planning Commission, and introduced this ordinance.

SECTION 2: The City Council of the City of Camarillo does hereby ordain as follows:

A. The foregoing recitals are true and correct.

B. At its meeting on March 2, 2010, the Planning Commission reviewed this proposed ordinance and recommended to the City Council that this proposed ordinance be adopted by the City.

C. The prohibition of medical marijuana facilities and delivery of medical marijuana in the City is consistent with federal law. The sale, possession, cultivation and distribution of cannabis is prohibited by federal law, specifically 21 U.S.C. sections 812 and 841, part of the Controlled Substances Act, and marijuana continues to be a prohibited Schedule I drug for which there is no legally accepted medical use.

D. The impacts associated with medical marijuana facilities are detrimental to the health, safety and welfare of the citizens such that no area of the City is an acceptable area in which to introduce those types of impacts.

E. This draft ordinance is categorically exempt from environmental review pursuant to the California Environmental Quality Act ("CEQA") Guidelines Section 15061(b)(3).

F. On March 24, 2010, the City Council conducted a public hearing on this proposed ordinance, considered the recommendation from the Planning Commission, and introduced this proposed ordinance.

SECTION 3. Addition of Chapter 19.55. Chapter 19.55 is hereby added to Title 19 of the Camarillo Municipal Code and shall read as follows:

“Chapter 19.55

MEDICAL MARIJUANA FACILITIES

19.55.010 Definition.

19.55.020 Purpose and intent.

19.55.030 Prohibited on Medical Marijuana Facilities.

19.55.040 Violation - Separate Offense.

19.55.050 Penalties.

19.55.060 Civil Injunction.

19.55.010 Definition.

A. A medical marijuana dispensary, cooperative or collective (hereafter “Medical Marijuana Facility”) means any facility or location, whether fixed or mobile, where medical marijuana is made available to and/or distributed by or to one or more of the following: a “primary caregiver,” “a qualified patient,” or a person with an “identification card,” as these terms are defined in California Health and Safety Code section 11362.5 and following.

B. A Medical Marijuana Facility does not include the following facilities (“facilities”), or delivery of marijuana to such facilities, as long as such facilities are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the 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 Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code section 11362.5 and following.

19.55.020 Purpose and intent.

The purpose and intent of this Chapter is to prohibit any Medical Marijuana Facility, as defined above, within the City limits. It is recognized that it is a Federal violation under the Controlled Substances Act to possess or distribute marijuana even if for medical purposes. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with a Medical Marijuana Facility, which is contrary to policies that are intended to promote and maintain the public’s health, safety, and welfare.

19.55.030 Prohibition on Medical Marijuana Facilities.

A. The establishment or operation of a Medical Marijuana Facility as defined in this chapter is prohibited within the city limits.

B. The delivery of medical marijuana to any person, except as provided in Section 19.55.010(B), is prohibited within the city limits."

19.55.040 Violation - Separate Offense.

Any person who violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

19.55.050 Penalties.

Violation of any provision of this Chapter is a misdemeanor unless the city attorney authorizes issuance of an infraction citation or files a complaint charging the offense as an infraction or the court upon the prosecutorial recommendation of the city attorney determines that the offense is an infraction.

19.55.060 Civil Injunction.

The violation of section 19.55.030 shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief."

SECTION 4. This Ordinance is consistent with protection of the public interest, health, safety, convenience, and welfare of the City. This ordinance is hereby found to be categorically exempt from environmental review pursuant to the California Environmental Quality Act ("CEQA") Guidelines Section 15061(b)(3).

SECTION 5. Publication. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Section 65090 of the Government Code.

SECTION 6. Severability. If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

PASSED, APPROVED, AND ADOPTED on the ____ day of _____, 2010.

Mayor

ATTEST:

City Clerk