



Report and Recommendations
Reviewed and Approved

Carol Martin

City Manager

AGENDA ITEM City Council Meeting

TO: Carol Martin, City Manager

FROM: Carla L. Thompson, AICP, Development Services Director

DATE: August 25, 2009

SUBJECT: Urgency Ordinance Imposing Temporary Moratorium on the Establishment of Medical Marijuana Dispensaries

FILE: P-110-995-100 (New)

RECOMMENDATION:

Staff recommends adoption of the attached Urgency Ordinance imposing a temporary moratorium on the establishment of medical marijuana dispensaries in the City of Shasta Lake in order for staff to review and consider options for the regulation of medical marijuana dispensaries in the City.

Staff is not proposing to ban medical marijuana dispensaries in the City but rather to establish guidelines including, but not necessarily limited to:

- Location/appropriate zoning districts for dispensaries;
- Permit requirements;
- Hours of operation;
- Requirements for security cameras and alarm systems;
- Prohibiting use of medical marijuana on-site;
- Signage;
- Parking requirements; and
- Separation distances from schools, public parks and other dispensaries;

Government Code Section 65858 provides that an urgency ordinance may be adopted without prior public notice by a four-fifths vote of the City Council. The urgency ordinance would be effective for 45 days following its date of adoption. Government Code Section 65858(a) further provides that the urgency ordinance may be extended for 10 months and 15 days beyond the original 45-day period, with no more than two extensions allowed.

BACKGROUND:

In 1996 the voters of the State of California approved Proposition 215 which was codified as Health and Safety Code Section 11362.5, *et seq.* and entitled "The Compassionate Use Act of 1996." The intent of the Act was to enable seriously ill persons to obtain, use and cultivate marijuana for medical use under limited, specified circumstances. On January 1, 2004, Senate Bill 420 became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Compassionate Use Act.

The City has had several recent inquiries regarding the establishment of medical marijuana dispensaries in the City. One dispensary has been approved on Shasta Dam Boulevard and the City has received applications for two other locations on Shasta Dam Boulevard.

Currently, staff reviews requests for marijuana dispensaries in the same manner as a review for a retail pharmacy. A pharmacy is allowed outright in the Community Commercial (C-2), Village Commercial (VC), and with a Use Permit in the City Center (CC) district. The majority of C-2 zoning districts include a Design Review overlay zone, and a use permit would be required for new construction in this zone. However, a use permit would not be required for an existing building that met all City development standards, including parking.

With a lack of guidelines, it is feasible that several dispensaries could locate to existing buildings along Shasta Dam Boulevard. With an absence of adopted guidelines, and without the authority to impose conditions, it is possible that a proliferation of dispensaries could operate 24 hours per day, 7 days per week.

The proposed interim urgency ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Title 14, California Code of Regulations, Sections 15060(c)(2) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment, directly or indirectly.

FISCAL IMPACTS:

No fiscal impacts would result from this action.

ATTACHMENTS:

August 10, 2009 memo from John Kenny, City Attorney.

DISTRIBUTION:

City Council, Planning Commission

ORDINANCE CC 09-

AN UNCODIFIED INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHASTA LAKE IMPOSING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY FOR A PERIOD OF 45 DAYS TO ALLOW THE CITY COUNCIL TIME TO STUDY AND CONSIDER ENACTMENT OF ZONING REGULATIONS, AND DECLARING THE URGENCY THEREOF.

WHEREAS, in 1996 the voters of the State of California approved Proposition 215 which was codified as Health and Safety Code Section 11362.5, et seq. and entitled "The Compassionate Use Act of 1996" ("the Act"); and

WHEREAS, the intent of the Act was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, one medical marijuana dispensary has been approved in the City of Shasta Lake in August 2009; and

WHEREAS, City staff has received inquiries nearly daily from individuals as to the possibility of establishing medical marijuana dispensaries throughout the City and is currently reviewing two applications for such dispensaries; and

WHEREAS, on June 6, 2005, the United States Supreme Court found in *Gonzales v. Raich*, 125 S. Ct. 2195 (2005) there to be no legally recognizable medical necessity exception under Federal Law to the prohibition of possession, use, manufacture or distribution of marijuana under federal law; and

WHEREAS, in October 2005, the state Board of Equalization instituted a policy that allows medical marijuana dispensaries to obtain a seller's permit thus enabling the state to collect sales tax on medical marijuana sales; and

WHEREAS, in February 2009, the U.S. Attorney General stated that federal law enforcement officials would ease enforcement at California medical marijuana facilities; and

WHEREAS, concerns have been raised by several community members regarding the lack of current regulations to address the increasing number of permit applications and the impact that a proliferation/overconcentration of medical marijuana dispensaries and production houses within the City may have on the community as a whole; and

WHEREAS, while the experiences in the regulation and policing of medical marijuana dispensaries have varied from city to city, several California cities have reported an increase in crime and environmental impacts such as burglary, robbery, odor, loitering around the dispensaries, an increase in vehicular traffic and noise in the vicinity of dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries; and

WHEREAS, citizens of Shasta County have a desire to receive adequate medical marijuana opportunities provided the facilities are designed and located to minimize the concerns described above; and

WHEREAS, the City of Shasta Lake has not adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries and the lack of such controls may lead to an establishment of dispensaries and the inability for the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent and near such businesses, and the patients or clients of such establishments; and

WHEREAS, based on the lack of any consistent experience of cities statewide and in the absence of any regulatory program in the City, regarding the review of the establishment and operation of medical dispensaries, the City should consider whether negative effects on the public health, safety, and welfare may occur in the City as a result of the operation of medical marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities; and

WHEREAS, in order to allow time for the City to consider and study possible enactment of zoning regulations, it is necessary to suspend the approval of medicinal marijuana dispensaries that may be in conflict with the development standards and regulations the City intends to consider or study within a reasonable time.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Shasta Lake as follows:

SECTION 1. The City Council finds and determines as follows:

- A. The above recitals are true and correct and are incorporated herein as if set forth in full and are relied upon independently by the City Council for its adoption of this urgency ordinance; and
- B. For purposes of this ordinance, “medical marijuana dispensary” means any for profit or not-for-profit facility or location, whether permanent or temporary, where the owner(s) or operator(s) intends to or does possess and distribute marijuana for any purpose. A “medical marijuana dispensary” includes a marijuana club as described in *People v. Peron* (1997) 59 Cal.App.4th 1383, and further includes medical marijuana cooperatives. A “medical marijuana dispensary” shall not include the following uses, as long as the location of such uses are otherwise regulated by the City’s Municipal Code: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & 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 & Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice; or a home health agency licensed pursuant to Chapter 8 of the Health & Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.5 et seq.
- C. This interim ordinance is urgently needed in that the establishment of, or the issuance or approval of any permit, certificate of occupancy, or other entitlement for the legal establishment of a medical marijuana dispensary in the City of Shasta Lake will result in an immediate and actual threat to public health, safety and welfare in that the Shasta Lake Municipal Code does not currently regulate the location and operation of medical marijuana dispensaries and does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical dispensaries in the City; and
- D. There is no feasible alternative to enactment of this interim moratorium that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect; and

- E. In order to ensure the effective implementation of the City's land use objectives and policies, a temporary moratorium on approval of medicinal marijuana dispensaries is necessary.
- F. This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) (Title 14, of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated Municipal Code review.

SECTION 2. Imposition of Moratorium.

- A. In accordance with Government Code Section 65858 *et seq.*, for the period of this ordinance, or any extension thereof, a medical marijuana dispensary shall be considered a prohibited use in any zoning district of the City, even if located within an otherwise permitted use. No permits or authorizations, including but not limited to issuance of a business license, shall be approved or issued for the establishment or operation of a medical marijuana dispensary while this ordinance is in effect.

SECTION 3. WRITTEN REPORT

Ten days prior to the expiration of this interim ordinance or any extension thereof, the City Council shall issue a written report describing the measures taken to alleviate the threat to public health, safety and welfare that led to the adoption of the ordinance.

SECTION 4. SEVERABILITY

If any provision of this ordinance or the applications thereof to any person or circumstances is held invalid, the remainder of the ordinance and the applications of such provision will remain in effect to the extent permitted by law.

SECTION 5. EFFECTIVE DATE AND TERM

This interim urgency ordinance shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council. This interim urgency ordinance shall continue in effect for forty-five (45) days from the date of its adoption and shall thereafter be of no further force and effect unless, after notice pursuant to California Government Code Section 65090 and a public hearing, the City Council extends this interim urgency ordinance for an additional period of time pursuant to California Government Code Section 65858.

PASSED, APPROVED AND ADOPTED this 1st day of September 2009 by the following vote:

AYES:
NOES:
ABSENT:

GRACIOUS A. PALMER, Mayor

ATTEST:

TONI M. COATES, City Clerk

KENNY, SNOWDEN & NORINE

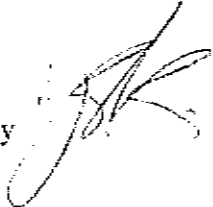
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MARGARET ENGELHARDT LONG
LINDA R. SCHAAF
PETER M. GOLDEN

MEMORANDUM

TO: City Council
CITY OF SHASTA LAKE

FROM: John Sullivan Kenny, City Attorney 

DATE: August 10, 2009

RE: Medical Marijuana Dispensaries
Overview of Current Laws, Options

ISSUE

An inquiry has been made with Development Services regarding opening a marijuana dispensary in the City of Shasta Lake. The City presently has no regulations regarding dispensaries. Generally, the matters involving possession, use and dispensing of marijuana have been criminal matters under the purview of the law enforcement agencies. There are, however, some possible land use and city regulation implications.

BACKGROUND

In the general election of 1996, the California Electorate added Initiative Measure 252 "the Compassionate Use Act." Since that time there has been almost continuous litigation stemming from the adoption of the Act. There have been many problems not in the least of which the state has also added implementing legislation.

LAWS

Compassionate Use Act – Proposition 215

The Compassionate Use Act is codified in Health and Safety Code § 11362.5. It has three express purposes: 1) To "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes"; 2) To "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction"; and 3) To "encourage the federal and state governments to implement a plan for the safe and affordable distribution of marijuana to all patients in medical need of marijuana".

Subdivision (c) provides that "Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

Subdivision (d) exempts patients or their primary caregivers who possess or cultivate marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician from Health and Safety Code §§ 11357 (relating to the possession of marijuana) and 11358 (relating to the cultivation of marijuana).

Subdivision (e) defines "primary caregiver" as "the individual designated by the person exempted under this act who has consistently assumed responsibility for the housing, health or safety of that person.

Medical Marijuana Program Act – SB 420 (2003)

SB 420, added Article 2.5 (commencing with Section 11362.7) to Chapter 6 of Division 10 of the Health and Safety Code, relating to controlled substances.

These statutes establish provisions for exempting individuals and groups from criminal liability for medical marijuana cultivation, possession, and use, and for establishing regulations regarding the provision of identification cards. With respect to the issue of medical marijuana dispensaries, only two of the sections apply.

a) Dispensaries - Section 11362.765 – States in part nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, **nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.**"
Emphasis added.

b) "Collectives" or "Cooperatives" - Section 11362.775 – **"Qualified patients, persons with valid identification cards, and 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, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11348, 11359, 11360, 11366, 11366.5, or 11570."**

c) Quantities - A qualified patient or primary caregiver may possess up to eight ounces of dried marijuana per qualified patient. A qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient. Section 11362.77 (a). However, counties and cities may enact guidelines to allow amounts in excess of these limits. Section 11362.77(c).

Federal Law

The Federal Controlled Substances Act makes it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 USC §801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The Federal Government has determined that marijuana is a drug with “no currently accepted medical use.” (21 USC §812(b)(1). Therefore, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (21 USC §§841(a)(1), 844(a).)

Federal regulation supersedes any state’s regulation of marijuana. *Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) The 9th Circuit Court of Appeal found there is no fundamental right under the United States Constitution to even use medical marijuana. *Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.

However, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the ne Obama Administration, the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.

Tax Law

The California State Board of Equalization has a policy of taxing medical marijuana transactions and requires that businesses engaging in such transactions hold a Seller’s Permit. The Seller’s Permit provides a way to remit any sales and use taxes due, but does not authorize unlawful sales.

HOW DISPENSARIES OPERATE

Since the Compassionate Use Act was passed, a numerous of storefront marijuana businesses have opened in California. These businesses operate under a number of titles, though many do not comply with either the letter or the spirit of the law. Many act as pharmacies and offer a number of different types and grades of marijuana.

As summarized in the 2009 White Paper on Marijuana Dispensaries by the California Police Chiefs Association’s Task Force on Marijuana Dispensaries,

“A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their ‘primary caregiver’ (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the ‘contribution’ will be for the product. The California Health and Safety Code specifically prohibits the sale of marijuana to a patient, so ‘contributions’ are made to

reimburse the dispensary for its time and care in making 'product' available. However, if a calculation is made based on the available evidence, it is clear that these 'contributions' can easily add up to millions of dollars per year. That is a very large cash flow for a 'non-profit' organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers." (p. 7)

Business License

It is unlawful to engage in business in the City of Shasta Lake without having a business license (Municipal Code § 5.04.030). This applies to businesses "carried on for profit where the gross income exceeds three hundred dollars (\$300) per quarter." (Section 5.04.020.) Marijuana cannot be dispensed for profit. (Health & Safety Code § 11362.765.) As a result a business license would not be required for a "dispensary," "collective," or "cooperative."

CONCERNS

According to the 2009 White Paper on Marijuana Dispensaries by the California Police Chiefs Association's Task Force on Marijuana Dispensaries, these medical marijuana dispensaries create the potential for adverse secondary effects, such as ancillary crimes (armed robberies and murders; burglaries; traffic, noise and drug dealing; organized crime, money laundering, and firearms violations; and poisonings) and secondary adverse impacts in the community at large (unjustified and fictitious physician recommendations; proliferation of grow houses in residential areas; life safety hazards created by grow houses; increased gang activities; exposure of minors to marijuana; impaired public health; loss of business tax revenue; decreased quality of life in deteriorating neighborhoods, both business and residential). The establishment of dispensaries has not always led to these results. The extent to which any of these ancillary effects occur in rural communities as opposed to metropolitan areas, or the extent to which any of these ancillary effects may or may not occur in the City of Shasta Lake are unknown.

OPTIONS

Cities considering these issues have taken one of four actions:

1. Adopting ordinances banning medical marijuana dispensaries without limiting the rights of individuals to collectively or cooperatively cultivate marijuana for medical purposes.
2. Adopting ordinances that regulate the establishment of medical marijuana businesses. Regulations can include designating specific zoning districts where the facilities are allowed, requiring discretionary review of proposed facilities through a use permit process, prohibiting

establishment within a specified distance from sensitive uses such as schools, operating hours, security requirements, and requiring background checks for operators.

3. Remaining silent on the issue by opting not to adopt any ordinance or governing regulations for these establishments.

4. Adopting interim urgency ordinances imposing a moratorium on the establishment of medical marijuana dispensaries to allow for further review of the issues. A number of cities have started with the 45-day moratorium and have extended the moratorium an additional 10 to 12 months.

CONCLUSION

At present there is no prohibition to operating a dispensary in the City of Shasta Lake. A dispensary would be allowed in an appropriate zone.

c: Carol Martin
Carla Thompson