



Meeting Date: 5/15/07

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Res. No(s).	<input type="checkbox"/> Report
<input type="checkbox"/> Ord. No(s).	<input type="checkbox"/> Public Hearing
<input checked="" type="checkbox"/> Other	<input checked="" type="checkbox"/> Other: Study Session

Prepared By: Stephanie Diaz *SD*

Agenda Item No. R-1

Reviewed By: City Manager *[Signature]*

City Attorney *[Signature]*

Finance *SW* N/A

City Clerk

DATE: May 15, 2007

TO: City Council

FROM: James Rupp, City Attorney *[Signature]*
Susan L. Martin, AICP, Planning and Environmental Services Manager *[Signature]*

SUBJECT: Medical Marijuana Dispensaries in the City.

RECOMMENDATION

That the City Council consider this report on medical marijuana dispensaries and provide direction to the Planning and Environmental Services Manager regarding a medical marijuana dispensary ordinance.

DISCUSSION

On November 15, 2005, the City Council adopted Interim Urgency Ordinance No. 2706 prohibiting medical marijuana dispensaries for 45 days to allow staff to research zoning issues. On December 20, 2005, the City Council adopted Ordinance No. 2712 extending the interim ordinance until November 14, 2006 as staff was in the midst of researching issues and there were conflicts between State and Federal laws on this matter. On October 17, 2006, the City Council adopted Ordinance No. 2725 extending the Interim Urgency Ordinance until November 14, 2007 as more time was needed to address issues and to follow case law pertaining to this matter. The City Council requested that staff return to the Council with a study session to review issues related to medical marijuana dispensaries prior to the November 14, 2007 Urgency Ordinance expiration date.

Background

The State of California's Compassionate Use Act and Senate Bill 420 allow a patient, a primary caregiver, or a member of a legal cooperative to possess a specified amount of marijuana with a doctor's recommendation. However, the United States Supreme Court has held that the Federal Controlled Substances Act, which prohibits the possession of marijuana, may be enforced in California. Several legal cases are pending that deal with the jurisdiction issue, but there has been no recent case law on this subject. In June 2005, the California Attorney General's office

issued a bulletin to California law enforcement agencies advising officers to neither arrest nor prosecute "individuals within the legal scope of California's Compassionate Use Act." However, anyone who does not qualify for the protected status under State law and possesses, grows or sells marijuana is considered to be involved in an illegal activity.

Additionally, the County of Ventura has not established a medical marijuana identification card program as provided for in Senate Bill 420. Without an identification card for County residents, it is difficult to determine if a person is truly a "patient" with a valid doctor's recommendation. According to the Ventura County Counsel, the County is taking a "wait and see" approach until case law clarifies the jurisdictional issue.

According to an April 2006 Livermore Police Department survey of 42 California cities, 10 cities permit dispensaries, 17 have adopted ordinances to prohibit such land use, and 15 have enacted a moratorium prohibiting the use while further study is conducted. Currently there are no known medical marijuana dispensaries operating in the City of Oxnard. However, staff is aware of at least six inquires from the public in the last few years to establish such a business.

Pros and Cons of Permitting Medical Marijuana Dispensaries

Staff research has revealed that there are both pros and cons to permitting medical marijuana dispensaries in the City. The following list highlights issues on both sides associated with adopting an ordinance regarding dispensaries:

Pros

1. An ordinance, with proper restrictions, that permits dispensaries could be consistent with California law (the Compassionate Use Act and Senate Bill 420).
2. Allowing dispensaries (with a special use permit) may protect the City from lawsuits by citizens that claim the City has denied their rights under the Compassionate Use Act and Senate Bill 420.
3. Dispensaries may fulfill a need for some City or County residents with medical issues.
4. The dispensing of medical marijuana could be highly regulated and controlled through ordinance restrictions, the permit process and conditions of approval. See Attachment 1, an ordinance recently adopted by the City of Albany, California that permits one highly regulated dispensary in the City.
5. Entitled patients could procure medical marijuana through a legitimate source.

Cons

1. There are many accounts of increased crime associated with the medical marijuana facilities including robbery, assault and murder involving dispensary operators and patients. See

Attachment 2 from the City of El Cerrito Police Department that provides a report of crimes throughout the State that are associated with dispensaries.

2. A City ordinance permitting medical marijuana dispensaries would be inconsistent with Federal drug laws.
3. The County of Ventura has no identification card program.
4. It would be difficult and labor intensive for City Police to verify that a doctor's letter was legitimate.
5. To be consistent with State law, a medical marijuana dispensary must be a legal "cooperative" where the operator is designated as the "primary caregiver" for the entitled patients. To be a primary caregiver, an operator must "consistently assume responsibility for the housing, health or safety of a patient." The patient and caregiver must reside in the same city or county. It is questionable whether a store-front medical marijuana dispensary would meet the definition of a "primary caregiver." Constant monitoring by the Police Department would be required to assure that the business was a true cooperative, providing marijuana only to entitled patients, that had designated the cooperative as their primary caregiver. Inquires would also be needed to assure that patients and the caregiver reside in Ventura County. These activities would be very labor intensive.
6. Only patients, primary caregivers and legal cooperatives are allowed to possess marijuana and only in regulated amounts. Under the statute, no more than 8 ounces of dried marijuana can be possessed by a patient or caregiver. In addition, either 6 mature or 12 immature plants may be possessed by an individual. It is questionable where the marijuana supplies for the dispensary would come from. A newspaper reported on a case in San Francisco involving a store-front dispensary that had many people illegally bringing backpacks full of marijuana to sell to the dispensary. This source for marijuana is illegal because it is not in the possession of a patient or primary caregiver. The City would need to audit a dispensary to ensure that the amount of marijuana on-site and provided to entitled patients was consistent with the State law limitations. There is also the issue of growing marijuana for the cooperative. If the operator claims to be a primary caregiver for 30 patients and therefore is entitled to grow and possess the amount of marijuana legally allowable for 30 patients, there is no legal or legitimate source for seed stock. The operator would need to buy seeds from an illegal source that may have gang connections or involvement with drug dealing cartels.
7. According to State law, cooperatives are not intended to be for-profit businesses. They may accept "monetary contributions" to support the cooperative in exchange for medical marijuana. Newspapers have reported cases where store-front dispensaries were making \$20,000.00 to \$45,000.00 a day in marijuana sales. The City would need to regularly audit the dispensary (which is typically a cash business) to determine if the non-profit status was being abused. Auditing would be a labor-intensive activity.

In accordance with State law, the City should be discussing medical marijuana “cooperatives,” not “dispensaries” as only legal cooperatives that serve as a primary caregiver to patients are allowed in California. Given the issues presented in this report, the City Council should discuss whether an ordinance should be developed that would restrict the location and operation of medical marijuana cooperatives in the City (similar to restrictions on adult businesses) or if an ordinance prohibiting such uses in the City should be prepared.

A staff report prepared for the City Council in April 2006 provided an outline for an ordinance that would permit medical marijuana sales facilities. The potential restrictions listed in that report included requiring a special use permit, a 1,000 foot separation from sensitive uses such as schools, parks and residential zones, limiting hours of operation, security provisions, prohibition of on-site growing, and a requirement for dispensing only to qualified patients.

FINANCIAL IMPACT

Costs will be associated with staff work on monitoring Federal, State and County legal cases and actions as well as preparing zoning ordinance text to either conditionally permit medical marijuana cooperatives or to prohibit the use. Additionally costs will be associated with enforcement of an ordinance that allows the use.

Attachment 1 - City of Albany Ordinance

Attachment 2 - Crime Report prepared by City of El Cerrito Police Department.

Note: Attachment 1 and Attachment 2 have been provided to the City Council under separate cover. Copies are available for review at the Circulation Desk in the Library after 6:00 p.m. on the Thursday prior to the Council meeting and at the City Clerk's Office after 8:00 a.m. on Friday May 11, 2007.