



Meeting Date: 10/9/07

| 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 checked="" type="checkbox"/> Ord. No(s). | <input checked="" type="checkbox"/> Public Hearing |
| <input type="checkbox"/> Other | <input type="checkbox"/> Other: Study Session |

Prepared By: Stephanie Diaz *SLD*

Agenda Item No. L-2

Reviewed By: City Manager *JRB*

City Attorney *[Signature]*

Finance *SW*

City Clerk

DATE: October 9, 2007

TO: City Council

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

SUBJECT: Prohibition on the Sale of Medical Marijuana in the City.

RECOMMENDATION

That the City Council approve the first reading by title only and subsequent adoption of an ordinance prohibiting the sale of medical marijuana in the City.

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. Staff returned to the City Council with a study session on May 15, 2007 to review issues related to medical marijuana dispensaries prior to the Urgency Ordinance expiration date. Council member requested additional information on the State and Federal law conflicts and the identification card program. The Urgency Ordinance is due to expire on November 14, 2007. On October 4, 2007, the Planning Commission reviewed the draft ordinance and adopted a resolution recommending that the City Council approve the ordinance.

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.

Under federal law, marijuana is considered a controlled substance and it is illegal to possess, grow or sell the plant. Regardless of California's Compassionate Use Act, federal agents continue to raid medical marijuana dispensaries in California and arrest the operators. The United States Supreme Court declared that despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug (*Gonzales v. Raich* 2005, 125 S.Ct.2195). Therefore, there are no exceptions to its legality. In reaching its decision, the Supreme Court invoked the United States Supremacy Clause declaring that all laws made in pursuance of the Constitution shall be the "supreme law of the land" and shall be legally superior to any conflicting provision of a state constitution or law. Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.

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.

Issues Regarding Medical Marijuana Dispensaries

Staff research has revealed that there are major issues associated with medical marijuana dispensaries. The following list outlines these issues that have led to a staff recommendation to prohibit the use in the City.

The main issue involves Federal law:

1. A City ordinance permitting medical marijuana dispensaries would be inconsistent with Federal drug laws. All store-front medical marijuana businesses are subject to search and closure since they violate Federal law. Therefore, they have no right to exist or operate and arguably cities and counties in California have no authority to sanction them. The Supreme Court's ruling indicates that following California law will not protect a person from prosecution under Federal laws. The Court's decision also supports a jurisdiction's decision

to prohibit such centers since allowing them would require "permitting" a venture which the U. S. Supreme Court has ruled violates Federal law.

Other issues involve the sale of medical marijuana:

2. 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.
3. The County of Ventura still 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, who 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 according to State law. 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.

Given the seven issues presented in this report, Staff has concerns that the permitting of a medical marijuana dispensary or cooperative would be problematic for the City. The main issue, as presented in No.1 above, is that medical marijuana dispensaries/cooperatives are not permitted under Federal law. Staff cannot support a use that violates Federal law.

Environmental Review

The California Environmental Quality Act (CEQA) contains provisions for “nonprojects” which are governmental activities that are not subject to CEQA because they do not fall within the meaning of the term “project.” As adopting this ordinance will not result in a direct or indirect physical change in the environment, it is not a project and therefore, CEQA does not apply.

FINANCIAL IMPACT

Costs will be associated with enforcement of an ordinance that prohibits the sale of medical marijuana. There are sufficient funds in the current budget to cover these incremental costs.

Attachment 1 - Draft Ordinance

Attachment 2 - Planning Commission Resolution

Attachment 3 – Planning Commission Staff Report

Note: Attachment 3 has 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 Monday October 8, 2007.

ATTACHMENT 1

ORDINANCE OF THE CITY OF OXNARD

ORDINANCE NO. _____

AN UNCODIFIED ORDINANCE OF THE CITY OF OXNARD PROHIBITING THE SALE, SUPPLY, OR PROVISION OF MEDICAL MARIJUANA WITHIN THE CITY

WHEREAS, on November 15, 2005, the City Council adopted Ordinance No. 2706, imposing an urgency interim prohibition of medical marijuana dispensaries pending study by the Planning Manager of the Development Services Department of a zoning proposal to address the prohibition or location and regulation of such businesses; and

WHEREAS, on December 20, 2005, the City Council adopted Ordinance No. 2712, extending the effective period of Ordinance No. 2706 and the urgency interim prohibition of medical marijuana dispensaries pending study by the Planning Manager of a zoning proposal to address the prohibition or location and regulation of such businesses; and

WHEREAS, on October 17, 2006, the City Council adopted Ordinance No. 2725, extending the effective period of Ordinance No. 2712 and the urgency interim prohibition of medical marijuana dispensaries pending study by the Planning Manager of a zoning proposal to address the prohibition or location and regulation of such businesses.

The City Council of the City of Oxnard makes the following findings:

1. In 1996 Proposition 215, the Compassionate Use Act ("the Act"), was adopted by the voters of the State of California. The Act authorized the use of marijuana for medical purposes within California. The Act also allowed care givers to provide medical marijuana to eligible persons.
2. In 2005, the United States Supreme Court issued its decision in Gonzales v. Raich (545 U.S. 1). The Supreme Court held that the regulation of marijuana under the federal Controlled Substances Act was within the power of Congress.
3. In accordance with the Supreme Court's decision in Gonzales v. Raich, the sale, supply, or provision of medical marijuana pursuant to the Act is in violation of and prohibited by the Controlled Substances Act.
4. Until the conflict between the Act and the Controlled Substances Act is resolved, the sale, supply, or provision of medical marijuana is illegal under federal law.
5. California Government Code section 37100 authorizes a city to "pass ordinances not in conflict with the Constitution and laws of the State or the United States."

NOW, THEREFORE, the City Council of the City of Oxnard does ordain as follows:

000063

ATTACHMENT 1

PAGE 1 OF 2

Part 1. Since the United States Supreme Court decided in Gonzales v. Raich (545 U.S. 1) that the sale, supply, or provision of marijuana continues to be a violation of the Controlled Substances Act notwithstanding state law to the contrary, no license or permit shall be issued for the sale, supply, or provision of marijuana within the City and the City Code shall not be interpreted as allowing or authorizing the sale, supply, or provision of marijuana within the City.

Part 2. Within 15 days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation with the City. Ordinance No. _____ was first read on _____, 2007 and finally adopted on _____, 2007, to become effective thirty days thereafter.

AYES:

NOES:

ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

APPROVED AS TO FORM:

Daniel Martinez, City Clerk


Gary L. Gillig, City Attorney

000064

ATTACHMENT 1

PAGE 2 OF 2

DRAFT

RESOLUTION NO. 2007-[PZ 07-630-2]

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
OXNARD RECOMMENDING THAT CITY COUNCIL ADOPT AN
UNCODIFIED ORDINANCE PROHIBITING THE SALE, SUPPLY OR
PROVISION OF MARIJUANA WITHIN THE CITY**

WHEREAS, the Planning Commission of the City of Oxnard has considered at a public hearing a proposed uncodified ordinance prohibiting the sale, supply or provision of marijuana within the City; and

WHEREAS, such ordinance is not a project for the purposes of the California Environmental Quality Act; and

WHEREAS, the Planning Commission has considered the conflict between the Compassionate Use Act adopted by the voters of the State of California and the Controlled Substances Act enacted by the Congress of the United States; and

WHEREAS, the Planning Commission has also considered that the United States Supreme Court decided in Gonzales v. Raich (545 U.S. 1) that a violation of the Controlled Substances Act is punishable in California notwithstanding the Compassionate Use Act; and

WHEREAS, the sale, supply, or provision of marijuana for medical purposes is illegal under the Controlled Substances Act.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard recommends to the City Council approval of an uncodified ordinance as shown in Exhibit A, attached hereto.

PASSED and ADOPTED by the Planning Commission of the City of Oxnard on this ___ day of October, 2007 by the following vote:

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

Dr. Sonny Okada, Chairman

ATTEST: _____
Susan L. Martin, Secretary

000065