

Item No. 1
October 25, 2006
4:00 P.M.

STAFF REPORT

APPLICATION: PRJ06-00362, LRP06-00011

APPLICANT: CITY OF FULLERTON
303 W. COMMONWEALTH AVEUNE
FULLERTON, CA 92832

PROPERTY OWNER: CITY OF FULLERTON

REQUEST: A Zoning Amendment to consider a modification to Title 15 of the Fullerton Municipal Code prohibiting medical marijuana dispensaries in the City of Fullerton.

LOCATION: CITYWIDE

This item had been scheduled to be heard by the Planning Commission on September 27, 2006. However, the Planning Commission continued the item to October 25, 2006 to allow for further discussion and public comment. The original staff report and the supporting attachments have been included with this memo.

The Zoning Amendment is to consider prohibiting medical marijuana dispensaries in the City of Fullerton. The Planning Commission, prior to the item being continued, expressed concern on available statistical data which would support such a prohibition. Staff has researched this matter in response to the Planning Commission discussion. Research has indicated medical marijuana dispensaries have a potential for negative impacts on neighborhoods. Staff has attached recent articles to further provide information on the relationship between the operation of a medical marijuana dispensary and associate crime (**Attachments 1 and 2**).

Further, the City Attorney has provided information from the Narcotics Division of the Los Angeles Police Department which accumulated data indicating the changes of crime patterns in districts that have operating medical marijuana dispensaries. The table in **Attachment 3** indicates area districts with this type of land use have seen significant negative impacts on the immediate communities. Further, it may also be noted that the County of Riverside and the City of Cypress have recently created ordinances prohibiting medical marijuana dispensaries (**Attachments 4 & 5**)

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council adopt the attached Ordinance to prohibit medical marijuana dispensaries within the City of Fullerton.

Prepared by:

Approved by:

Bob St. Paul, Senior Planner

Joel W. Rosen, AICP Acting Director,
Director of Community Development

Additional Attachments:

1. Santa Barbara Article
2. San Francisco Article
3. Los Angeles Narcotics Crime Table
4. Cypress Ordinance Hearing Article
5. County of Riverside Ordinance Article

Item No. 3
September 27, 2006
4:00 P.M.

STAFF REPORT

APPLICATION: PRJ06-00362, LRP06-00011

APPLICANT: CITY OF FULLERTON
303 W. COMMONWEALTH AVEUNE
FULLERTON, CA 92832

PROPERTY OWNER: CITY OF FULLERTON

REQUEST: A Zoning Amendment to consider a modification to Title 15 of the Fullerton Municipal Code prohibiting medical marijuana dispensaries in the City of Fullerton.

LOCATION: CITYWIDE

BACKGROUND:

1. In 1996, California voters approved Proposition 215 (the Compassionate Use Act), which ensures that seriously ill Californians have the right to obtain and use marijuana for medical purposes without violating other state laws prohibiting use, possession or cultivation of marijuana. This act allowed for the use and cultivation of marijuana where medical use is deemed appropriate and has been recommended by a physician (Health and Safety Code 11362.5 (A) (Attachment 1).
2. The state law does not clearly provide for, or prohibit the establishment of medical marijuana dispensaries or similar facilities. Some qualified patients are not able to cultivate marijuana for medical purposes as allowed under the law. In response to this need, several cities within California and Orange County have adopted provisions to enable "qualified patients" and "primary caregivers" as defined in the state law (Health and Safety Code 11362.5 (2)(e)), to obtain marijuana for medical purposes from permitted dispensaries. The provisions of this state law have been used as a basis for establishing such dispensaries.
3. In respect to the federal law, in May 2001, the United States Supreme Court rendered an opinion that the federal Controlled Substances Act prohibits the manufacture and distribution of various drugs, including marijuana, (*United States v Oakland Cannabis Buyers' Cooperative and Jeffrey Jones*). Furthermore, the United States Supreme Court issued a ruling on the case of Raich v. Ashcroft that the federal government has the authority to prohibit the cultivation and possession of marijuana for personal medical use, regardless of state laws that may allow it.

4. To date, the City of Fullerton has had an increase in the number of inquiries to operate such facilities including e-mail (Attachment 2). Currently, the City's Zoning Code is "silent" in respect to this type of land use. A survey of cities within Orange County has indicated a wide range of actions taken in response to this issue.
5. Although State law permits the use of marijuana where medical use is deemed appropriate and when recommended by a physician, recent Supreme Court decisions dictate that federal law prohibits the manufacture, or distribution and use of various drugs, including marijuana. Due to this "conflict", staff has concluded that it was imperative to amend the zoning code to address medical marijuana dispensaries.
6. On August 9, the Planning Commission adopted Resolution No. PC-06-28 declaring its intention to amend Title 15 of the Fullerton Municipal Code to prohibit the establishment of medical marijuana dispensaries in the City of Fullerton.

ANALYSIS:

1. Research has indicated that several California cities that have medical marijuana dispensaries in their jurisdictions have experienced an increase in crime associated with the dispensaries. Such crimes range from the resale of medical marijuana to individuals who do not have physician recommendations for marijuana use to robberies of the dispensaries themselves.
2. The Fullerton Police Department has recommended the prohibition of medical marijuana dispensaries. In a memo from the Police Department, dated September 5, 2006 (Attachment 3), research of other cities with medical marijuana dispensaries has indicated that these secondary effects may cause a drain on police resources.
3. The establishment of medical marijuana dispensaries has been linked to adverse secondary effects in other communities. These include the creation of the potential security risks to the site and its occupants from burglary or theft, the congregating of users in the vicinity, and an increase in the potential for marijuana to be unlawfully distributed to non-qualified patients and for non-medical purposes.
4. Of particular concern is the fact that crime is not being consistently reported by dispensaries and users because they do not jeopardize the status of the dispensaries. Based on experiences of other cities, the Police department is concerned that marijuana dispensaries may have significant negative effects that adversely affect the areas in which these establishments may be located.
5. This is complicated by the fact that there are no state or county enforcement or identification programs or regulatory controls currently in place that oversee the dispensing of medical marijuana, leaving regulation, oversight, and enforcement if any to local municipalities. The City has limited staff and resources to provide enforcement of regulations on such facilities.
6. In view of the fact that the City's zoning ordinance currently does not specifically address or regulate the operation medical marijuana dispensaries, staff recommends amending

the Zoning Code by adding the following definition for medical marijuana dispensaries to Section 15.04.040:

“Medical Marijuana Dispensaries A facility or location where medical marijuana is cultivated or by any other means made available to and/or distributed by or to one or more of the following: a primary caregiver, qualified patient, or a person with an identification card in strict accordance with State Health and Safety Code sections 11362.5 et seq and 11362.7 et seq.”

City Survey:

1. With respect to Orange County, several cities, including Fullerton, currently do not have zoning or other regulations specifically allowing the operation of medical marijuana dispensaries. A recent survey of Orange County cities, to which 12 cities responded, five cities have taken no action, seven cities presently have moratoriums, and four cities prohibit medical marijuana dispensaries (Attachement 4).

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council adopt the attached Ordinance to prohibit medical marijuana dispensaries within the City of Fullerton (See Draft Ordinance, Attachment 5).

CEQA DETERMINATION

These code amendments have been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, have been found to be exempt.

DATED: September 27, 2006

Prepared by:

Approved by:

Bob St. Paul, Senior Planner

Joel W. Rosen, AICP Acting Director,
Director of Community Development

Attachments:

1. Health and Safety Code 11362.5
2. E-mail regarding Medical Marijuana Dispensaries
3. City of Fullerton Police Department Memo
4. Orange County Survey Table
5. Draft Ordinance