

Staff Report

August 27, 2004

TO: City Council

FROM: Steven Pierce, Captain, Davis P.D.

SUBJECT: Report on Medical Marijuana Dispensaries Moratorium

Recommendation

1. Hold Public Hearing.
2. Request direction to staff.
3. Adopt attached Urgency Ordinance extending the moratorium for an additional 10 months and 15 days (to 12:00 am, August 1, 2005).

Fiscal Impact

This report is provided for informational purposes and therefore does not result in any immediate fiscal impact. However, the issues presented in this report may lead to future Council action with potentially minor/major fiscal impact.

Background and Analysis

The voters of the State of California approved Proposition 215, codified as Health and Safety Code section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" (the "Compassionate Use Act"). The purpose of this Act was to allow patients suffering from a number of serious illnesses an opportunity to find relief through the use of doctor recommended marijuana.

Additionally, in January 2004 the State enacted SB 420 to clarify the scope of the Compassionate Use Act and allows cities to adopt and enforce rules and regulations consistent with SB 420. This includes controlling sites where medical marijuana is dispensed to primary caregivers and patients. Other provisions of SB 420 include:

- Recognizes the right of patients and caregivers to associate collectively or cooperatively to cultivate medical marijuana.
- Requires the State Department of Health, working with county health departments, to set up a voluntary statewide identification program to protect qualified patients and their primary caregiver from arrest and prosecution of certain marijuana related crimes.
- Disallows marijuana smoking in no smoking zones, within 1000 feet of a school or youth center except in private residences, on school buses, in a motor vehicle that is being operated, or while operating a boat..
- Protects patients and caregivers from arrest for transportation and other miscellaneous charges not covered in 215.

- Allows probationers, parolees, and prisoners to apply for permission to use medical marijuana; however, such permission may be refused at the discretion of the authorities.
- Makes it a crime to fraudulently provide misinformation to obtain a card, to steal or misuse the card of another, to counterfeit a card, or to breach the confidentiality of patient records in the card program.

On August 2, 2004, City Council approved a moratorium on medical marijuana dispensaries in the City of Davis. The moratorium allowed staff and Council an opportunity to research and review the options and impacts of allowing a dispensary somewhere within the city limits. This report represents that research.

There are three possible approaches to this issue: 1) do nothing, 2) ban them outright, or 3) allow dispensaries, but develop a variety of regulations controlling them.

Option #1 - Do nothing

The existing City zoning regulations do not provide for the location and/or regulation of medical marijuana dispensaries and such uses might be permissible in any zone that allows retail uses, drug stores, or medical uses. Since there are no current regulations specifically dealing with medical marijuana dispensaries, if medical marijuana dispensaries were allowed to be established without appropriate regulation, such uses might be established in areas that would conflict with the requirements of the General Plan, be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare; and if such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding medical marijuana dispensaries.

Option #2 - Banning

There is still an ongoing legal controversy between those states which permit medical use of marijuana and the federal government, as a result of the federal law which still prohibits the use and/or possession of marijuana for any purpose. It is the position of, for example, the Rocklin City Attorney that a city can prohibit the operation of such an enterprise for a variety of reasons, not the least of which is that it violates federal laws. Medical marijuana dispensaries violate federal law. For that reason, the City of Rocklin has moved to ban the facilities in the community. If you wish to deny a permit to such enterprises, it is would be easier to defend if ordinances are already in place and justification is articulated.

Option #3 - Regulation

The City of Davis could move to regulate dispensaries. For example, the City could, by establishing clear zoning requirements and a new ordinance, regulate location, hours of operation, on site activities (e.g., no alcohol sales), age of people allowed on site, and the registering of employees and background checks on those employees. Additionally, regulating the enterprise gives the City a process by which a facility's permit can be discontinued or modified if it becomes a public nuisance. It also gives the operator a process to appeal the denial or cancellation of a permit.

Other Jurisdictions' Experiences

Police departments who have had dispensaries in their jurisdiction for some time were polled. The following are the comments received from those agencies:

City of Arcata

- There are two dispensaries in town that share a building.
- The two dispensaries have an ongoing disagreement with each other that has resulted in numerous calls for police services to settle disputes.
- The facilities do not have the correct electrical support and continuously blow out the electricity in the area. They have not complied with upgrading their electrical systems or responded to fire department concerns regarding proper exits and signage.
- There have been numerous instances where people have purchased marijuana at the dispensary and then resold it at a nearby park.
- A doctor has come to the dispensaries and, for a fee, will provide a medicinal marijuana recommendation for just about any complaint the patient makes.

City of Roseville:

- They currently have one dispensary in town. This dispensary was established prior to their current regulations and was grandfathered in.
- Street level dealers are trying to sell to those going to the dispensary at a lower price.
- People are smoking marijuana in public around the facility.
- People are coming to the community from out of town and out of state to obtain marijuana (Nevada State and San Joaquin County, etc).
- Marijuana DUI by people who have obtained marijuana from dispensary.
- There has been at least one burglary attempt into the dispensary building.

City of Oakland

- They had more than 15 in Oakland, now limited to four by ordinance but control is not very strong. The fines are too small to control a lucrative business.
- Large criminal element drawn to the dispensary location.
- 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 the recommendation.
- Street criminals in search of the drugs are robbing medical marijuana use patients of their marijuana as they leave the dispensary.
- Thefts and robberies around the location are occurring to support the illegal and legal (by State law) drug commerce.
- The Police Chief mentioned that a shoe repair business next door to a dispensary has been severely impacted because of the concentration of criminals associated with the dispensary. The shoe repair business owner is considering shutting down his business.
- Most of the crime goes unreported because the users do not want to bring negative publicity to the dispensary.
- The dispensaries have an underground culture associated with them.

- At least one of the dispensaries had a doctor on the premises giving recommendations on site for a fee.
- One location was a combination coffee shop and dispensary and marijuana was sold in baked goods and for smoking.
- Dispensary management has told police that they cannot keep the criminal element out.

City of Hayward:

- Hayward has three dispensaries, two legal under local ordinance and one illegal.
- They have had robberies outside the dispensaries.
- They have noticed more and more people hanging around the park next to one of the dispensaries and learned that they were users in between purchases.
- They have problems with user recommendation cards – not uniform, anyone can get them.
- One illegal dispensary sold coffee, marijuana and hashish – DA would prosecute the hashish sales and possession violations after arrests were made.
- They have received complaints that other illegal drugs are being sold inside the dispensaries.
- The dispensaries are purchasing marijuana from growers that they will not disclose.
- The Police Chief believes the dispensaries do not report problems or illicit drug dealers around their establishments because they do not want the police around.
- Hayward Police arrested a parolee attempting to sell three pounds of marijuana to one of the dispensaries.
- Hayward has recently passed an ordinance that will make marijuana dispensaries illegal under zoning law in 2006.

Lake County:

- Lake County has one marijuana dispensary in Upper Lake.
- The biggest problem is the doctor close by the dispensary who is known across the state for being liberal in his recommendations to use marijuana for a fee of \$175.
- Many “patients” come from hours away and even out of state, Oregon specifically, to get a marijuana recommendation from the doctor.
- Upper Lake has been impacted by the type of people coming from the marijuana doctor and dispensary. Citizens report to the Sheriff that the people coming to Upper Lake for marijuana look like drug users (“dopers”).
- One quilt shop owner has told the Sheriff that she does not feel safe anymore because of the type of people drawn to the marijuana doctor and the dispensary, which are located close together in a very small town.
- They also have a notorious marijuana grower who beat prosecution for cultivation by make a medical claim. Law enforcement has taken a hands-off approach even though he is blatantly violating the law.
- The marijuana grower has recently claimed to be a church to avoid paying taxes.

City of Fairfax:

- Fairfax has one marijuana dispensary.

- Fairfax has had some problems with patients selling to non-patients.
- They have had problems with purchasers from dispensary congregating at a baseball field to smoke their marijuana.
- Fairfax police arrested one person who purchased marijuana at the dispensary and then took it to a nearby park where he tried to give it to a minor for sex.
- Very small town and low crime rate.

Berkeley

- Has four facilities operating in the City currently (last 3-4 years).
- There have been several take over robberies of the dispensaries.
- There have been arrests where legitimate purchasers have resold marijuana on the street to well individuals.
- Obvious young people entering and purchasing marijuana from the dispensary.
- Recommended that if we did not currently have the dispensaries, we should not allow them.
- Police department has been given explicit instructions by their City Council not to take any kind of enforcement action against the dispensaries or people going in or out of the facility.
- Facilities will accept any Health Department cards, even those obviously forged or faked.

Below is a list of other California cities that do not have dispensaries and what they have or have not done on the issue.

MEDICAL MARIJUANA			
City	Approach	Action	Follow-up/Details
Chico	Have a marijuana dispensary that is trying to establish itself	Town researched and found no legal precedent for such operation and plans to shut down establishment	
Chowchilla	Have not been approached		
Clovis	Have not been approached		Will probably adopt an ordinance banning facilities similar to Rocklin's
Dixon	Have not had any formal application, but did have telephone inquiries	As a result of the phone calls, Town adopted an emergency ordinance similar to Roseville	
El Cerrito	Two groups (who were kicked out by Oakland) requested info about process of opening clinics	Town had no formal guidelines in book, so they passed a 45-day emergency ordinance	Chief plans to push a total ban with Council; does realize he has to be open for required study to take place

Gridley	A Grow & Distribution Center approached city	After approach, PD department contacted cities about possible ordinances	City decided to use Placerville's ordinance as a model
Jackson	Was approached about clinics	Has an ordinance regulating clubs	
Los Gatos	Telephone inquiries	Surveying cities to discuss issue with Council	
Palo Alto	Received 2 calls	Actually had an emergency ordinance adopted a few years ago	Plan to prevent establishments through zoning ordinances
Paso Robles	Have not been approached		Plan to implement an ordinance to prevent establishment of clinics
Oroville	Have not been approached		No immediate plans to do anything on the issue. Will wait until inquiries are made.
Placerville	Received 4 inquiries and one formal application for a clinic	Application was denied due to zoning and security issues.	Town's ordinance has been in place since June 22, 2004
Redding	Have not had any inquiries		City is considering taking some preventative actions
Rocklin	Was approached about clinics	Enacted urgency ordinance July of 2004 banning clubs	
Sacramento	Several inquiries, but no effort to actually open one		City Attorney is reviewing the law to advise the City
San Luis Obispo	Have not been approached	Considering taking some action, but no idea what that will be	
West Sacramento	Had one application in last month	Denied application based on federal law violation, no ordinance enacted	
Woodland	Was approached by parties during the same time as other cities	In response, city enacted an emergency ordinance setting zoning and CUP regulations for any possible club	

In summary, the experiences of other cities that already have dispensaries are bad. Dispensaries have experienced robberies themselves; legitimate patients have been robbed of their marijuana as they leave the facility; people purchasing marijuana at the dispensaries have been caught reselling the marijuana nearby; street level dealers have begun selling marijuana and other drugs nearby in an effort to undersell the dispensary; some dispensaries have doctors present in their

facility who will recommend marijuana as a course of treatment for just about any patient complaint; and many dispensaries do not take serious steps to ensure they are selling only to legitimate patients or their caregivers. When asked, many of the police departments that already have facilities in their cities said that if Davis did not already have a dispensary, we should take steps to prohibit one from opening in the city.

Yolo District Attorney's Opinion

The District Attorney for Yolo County feels dispensaries violate federal law. He is unwilling to enter into any discussion about regulating dispensaries. As they are illegal, discussions about regulation give the impression that the DA's office endorses violating federal law.

Yolo County Health Department

SB420 requires the State of California Department of Health to work with the counties to develop a statewide voluntary identification system for patients and their caregivers. According to the Yolo County Health Department, the State has not made contact with the counties to resolve this issue. Yolo County is waiting for the State. They have no plans on creating their own identification system as some counties have already done.

Patients' Rights Groups

Two patients' rights advocacy groups were contacted in developing this staff report: Americans for Safe Access and Compassionate Friends. Both groups applaud the City's consideration of this issue. They feel that marijuana provides a unique relief that other medications cannot. They are supportive of providing reasonable regulations on the business and the owners/employees.

Representatives stated that patients who receive recommendations from physicians to use marijuana to relieve pain and suffering fall into two categories. There are those who will be unable or unwilling to purchase marijuana because there is no dispensary near them to purchase it legally. And, there are those who will take other measures to get marijuana despite the lack of a readily available dispensary.

Those who will seek out marijuana without a legal dispensary nearby have several choices. First, the patient or their caregivers will drive long distances to a legal dispensary. This can be problematic since the patient may be suffering in a way that may prohibit driving long distances. Second, they may attempt to purchase marijuana from level dealers. With this decision comes the danger inherent with any street purchase, specifically, physical danger from the dealer or his/her cohorts and not knowing the quality of the product purchased. Finally, the patient/caregiver may attempt to grow the marijuana themselves. Again, the patient may not be well enough to grow their own. Also, there are inherent fire dangers with some of the grow lights. Furthermore, many renters run into disputes with their landlords when they grow medicinal marijuana in a rented house/apartment. For these reasons patients' rights advocates feel it is important to have a safe, credible and legal dispensary nearby for patients and their caregivers.

When asked if a patients' rights group would be willing to open and operate a dispensary, both groups said they knew their group would not be willing to and they doubted any legitimate advocacy agencies would. As long as the federal government is willing to prosecute dispensary

owners, patients' rights groups would not run a dispensary. They feel that if they are in prison they would be unable to do their primary function, advocate for the sick.

Moratorium Extension

On August 2, 2004, City Council approved a moratorium on medical marijuana dispensaries in the City of Davis. The moratorium allowed staff and Council an opportunity to research and review the options and impacts of allowing a dispensary somewhere within the city limits.

Staff has outlined various options for Council's consideration. The current moratorium is due to expire on September 17, 2004. That timeline does not leave Council sufficient time to take any action on this item. Therefore, staff is recommending an extension of the moratorium for an additional 10 months and 15 days (to 12:00 am, August 1, 2005), which is allowed under state law. The City Council may repeal the moratorium ordinance prior to its expiration. See the attachment for Ordinance language.