

Prepared by: Susan Jones, Chief of Police

TITLE: RECEIVE PRESENTATION REGARDING MEDICAL MARIJUANA DISPENSARIES AND PROVIDE DIRECTION TO STAFF TO DRAFT ORDINANCE EXCLUDING MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY

INTRODUCTION: On August 15, 2005, the City Council adopted an urgency ordinance to prohibit the establishment of medical marijuana dispensaries (“MMDS”), and on September 26, 2005, the Council voted to extend the moratorium for an additional 10 months and 15 days beyond the initial 45-day period. Based on staff’s request for additional time to study the City’s options with respect to MMDS, the Council extended the moratorium for an additional year. That moratorium is set to expire on August 16, 2007, and no further extensions are permitted under the law.

BACKGROUND:

The Compassionate Use Act (CUA)¹ was enacted by voter initiative in 1996 (Proposition 215). It permits patients and their primary caregivers to possess and cultivate marijuana for medical purposes where medical use has been recommended by a physician. Although an initial goal of the CUA was to encourage cooperation between state and federal officials, the federal Drug Enforcement Agency (DEA) has enforced the Controlled Substances Act² against dispensary operators and others who help supply patients in California with medical marijuana. The Controlled Substances Act states that cultivation, distribution or possession of marijuana is illegal for any purposes, including medical use. Moreover, the U.S. Supreme Court and lower federal courts have upheld these enforcement actions, thus placing California state and local officials in the difficult position of implementing the CUA in direct opposition to federal law.

Additionally, from the time of its enactment, enforcement has been a challenge for municipalities throughout the state. As enacted, the CUA did not define how much a patient could legally possess or cultivate. And the definition of “primary caregiver” was vague, resulting in the creation of numerous marijuana dispensaries operating with no standards or local control. In response to these issues, the California legislature enacted SB 420, known as the Medical Marijuana Program or MMP, which did the following (among other things):

- Refined the definition of “primary caregiver”;
- Clarified the expenses for which a primary caregiver could be reimbursed;
- Set out a maximum amount of marijuana a patient or caregiver could possess and cultivate (8 oz. of marijuana plus 6 mature or 12 immature plants);
- Extended protection from criminal prosecution beyond possession and cultivation to related activities (e.g., transportation, delivery, storage for qualified patients and their primary caregivers);

¹ Health and Safety (H&S) Code § 11362.5.

² 21U.S.C. § 841.

- Permitted patients and primary caregivers to collectively or cooperatively cultivate marijuana for medical purposes;
- Prohibited the use of marijuana near schools or recreation centers, on school buses, while in an operating car, or while operating a boat; and
- Allowed cities to adopt and enforce laws consistent with the MMP.

The MMP requires that the primary caregiver and the patient live in the same city or county if the primary caregiver has more than one patient. Conversely, if the primary caregiver and patient do not live in the same city or county, the primary caregiver may only have one qualified patient.

Although qualified patients and their primary caregivers may collectively or cooperatively cultivate marijuana for medical purposes, the MMP is silent as to dispensaries, neither permitting nor forbidding them. What constitutes a cop-op or collective, which is permitted, versus a dispensary, and whether a dispensary would be considered a co-op/collective or a store under the MMP remain unclear. Nor have the courts provided much guidance on that issue. To staff's knowledge, no local agency has been sued for regulating the location and/or operation of the MMDS. Healdsburg currently has no regulations or procedures addressing the establishment, location or operation of MMDS nor any specific guidelines to control such dispensaries.

Secondary Impacts from Medical Marijuana Dispensaries

Law enforcement agencies in Sonoma County and elsewhere have identified certain secondary impacts from medical marijuana dispensaries, such as:

- People openly smoking marijuana in public;
- Marijuana DUI by persons who have obtained marijuana from a dispensary;
- Resale of marijuana obtained in the dispensary;
- Loitering;
- Vandalism;
- Inadequate property maintenance;
- Robbery (of persons obtaining marijuana, employees of the dispensary);
- Complaints from surrounding businesses regarding the operation; and
- Complaints from residential neighbors regarding the smell, late-night hours, and increased traffic.

Where medical marijuana dispensaries are permitted, the law enforcement agencies typically experience an increase in patrols of the property and increased crime. This presents a particular difficulty for Healdsburg because the Police Department is not sufficiently staffed to handle increased patrols that a medical marijuana dispensary would require. Moreover, the Santa Rosa City Police Chief indicated that containing the dispensaries in and around Santa Rosa will make enforcement easier on a regional basis.

Lack of Need for Medical Marijuana Dispensary in Healdsburg

Santa Rosa currently has two medical marijuana dispensaries, one on Dutton Avenue, and the other at Summerfield and Montgomery. Both of these facilities are approximately 20 miles from Healdsburg and are accessible via public transportation.

The County has two dispensaries as well. One is in Guerneville, which is approximately 18 miles from Healdsburg, and the other is at the south end of Cotati, which is approximately 23 miles away. Public transportation accesses both sites.

For medical marijuana patients who are too ill to travel, there is a medical marijuana delivery service that serves much of Sonoma County, including Healdsburg. They guarantee delivery within two hours and are open every day.

Not only are there several viable options for obtaining medical marijuana currently available to Healdsburg residents, but the City has no pending applications for a medical marijuana dispensary. Consequently, there is no current need for medical marijuana dispensaries in Healdsburg.

OPTIONS FOR COUNCIL DIRECTION

Discussed below are the primary options for regulating medical marijuana dispensaries in the City and the advantages, disadvantages, and staff recommendations with respect to each approach. The options are broken down by type and include: (1) do nothing after the moratorium expires; (2) allow dispensaries to operate under the current zoning ordinance; (3) amend the zoning ordinance to conditionally permit medical marijuana dispensaries; (4) adopt a zoning ordinance that includes not only location restrictions on medical marijuana dispensaries, but also operational conditions; or (5) ban all dispensaries.

1. Do Nothing After the Moratorium Expires

The City can simply do nothing after the current moratorium expires in August 2007. Although the advantage of this approach is avoiding lawsuits from medical marijuana advocacy groups, this option is **not recommended** because the City has no control over the MMDS should any be opened. Cities that have chosen to do nothing have had to deal with MMDS being operated in residential areas, with no restriction on the hours, on-site consumption, etc. Moreover, if the City chooses to do nothing now, but later decides to regulate the dispensaries, anyone operating a dispensary at the time the regulations are enacted can argue that they have a vested right in the existing use and remain outside of the City's regulatory powers.

2. Allow Dispensaries to Operate under the Current Zoning Ordinance

The City may choose to allow MMDS to operate in the City under current zoning regulations. Although the zoning ordinance does not presently include MMDS as a defined use, a dispensary could be treated as a use that is already permitted or conditionally permitted within one of the City's established zoning districts (e.g., "medical clinic"). This option is **not recommended** because a dispensary would receive all of the same entitlements as the primary designated use, and the City would lose the ability to further regulate the dispensary except through a conditional use permit (CUP), as discussed in more detail below.

3. Amend the Zoning Ordinance

The zoning ordinance can be amended to include MMDS, in which case a definition of MMDS would need to be added to the zoning ordinance. If this approach is taken, the City should require some collective or cooperative effort among those who use and operate the dispensary. The location

of MMDS may also be regulated by limiting the use to certain zoning districts. And, the zoning ordinance can be amended to require a conditional use permit to operate the MMDS.

A conditional use permit would allow the City to review and approve the proposed facility subject to conditions that would regulate the operation of the facility. If a dispensary did not follow the conditions of approval, the City could initiate a public hearing to revoke the permit. This option is **not recommended** because the City would be subject to the secondary impacts, such as increased vandalism and noise, that other communities have experienced, and patrolling the dispensaries to minimize the secondary impacts would severely strain limited law enforcement resources. Regulating the use also raises the issue of whether the City is aiding and abetting a violation of federal law. Moreover, this approach will require oversight of the conditions of the CUP by the Planning Department, and revocation of a permit is often difficult, time consuming and expensive for the City.

If the City does choose this option, some of the conditions that could be added to the CUP include:

- Limiting the amount of marijuana that can be kept in the facility;
- Limiting the number of people the facility can serve in a month;
- Limiting the age of persons allowed to be on the site;
- Requiring the dispensary to have a safety and security plan;
- Limiting permitted hours of operation;
- Requiring the business operator and employees to regularly check the property and remove litter as necessary;
- Banning consumption of marijuana on the premises and in the parking lot, common areas or sidewalks surrounding the property;
- Prohibiting loitering around the dispensary and the parking lot; and
- Limiting cultivation (i.e., no outdoor cultivation).

4. Amend the Zoning Ordinance and Adopt a Regulatory Ordinance

The City can regulate MMDS by both amending the zoning ordinance to address the location of medical marijuana dispensaries and adopting a regulatory ordinance governing the operation of MMDS. The conditions that might otherwise be incorporated as part of a CUP could be included in the regulatory ordinance to apply to all dispensaries. As part of a regulatory ordinance for MMDS, and in addition to requiring a business license, the City can require a special permit from the Police Chief, just as the City currently requires a special permit for businesses such as adult entertainment businesses under Chapter 13A of the Municipal Code. This approach is **not recommended** for reasons similar to #3, namely the secondary impacts, strain on limited law enforcement resources, and the potential violation of federal law.

If the City chooses this option, the City may consider imposing permit conditions that have not been tested by the courts with respect to medical marijuana dispensaries. For example, the City might require MMD transactions to be done by credit card or personal check only—no cash transactions. The no-cash requirement would reduce the risk of theft and crime associated with medical marijuana dispensaries. Although dispensary operators might argue federal or state law preempts the requirement, sale of marijuana for any purpose remains illegal under both state and federal law. Thus, the City is merely limiting the form of donations or reimbursement.

The City could require surveillance at the medical marijuana dispensary to protect the inventory and reduce the risk of theft. Some municipalities have imposed each of the above requirements, and none have yet been challenged in court. Thus far, the medical marijuana advocacy groups have focused their attention on municipalities that have completely banned MMDS, but that is not to say they might not challenge specific requirements in the future.

5. Ban All MMDS as an Activity that Is Not a Permitted Use

The City may choose to enact an ordinance that prohibits MMDS within the City limits as not being a permitted use. Several cities have done so, including Rohnert Park. Municipalities justify banning the MMDS based on the prohibitions of federal law and because of the secondary effects of dispensaries. Discussions with local law enforcement agencies and anecdotal evidence have identified numerous harmful secondary effects, such as increased crime and vandalism, resale of marijuana on the secondary market, and creation of nuisance conditions that adversely impact surrounding properties.³ Rohnert Park also based its proposed ban on the lack of need. Given the regionally-documented secondary impacts of medical marijuana dispensaries, the lack of a need for such facilities in Healdsburg, and the lack of adequate law enforcement, banning the dispensaries is the **recommended** approach.

It should be noted that Americans for Safe Access, a medical marijuana advocacy group, has sued some of the cities that have banned MMDS. In all of the suits, the Americans for Safe Access has alleged that MMDS are a matter of “pressing statewide concern,” and that state law preempts local law regarding medical marijuana. The suits seek a declaration that the ordinances are unlawful and unconstitutional, as well as preliminary and permanent injunctions against the ordinances and attorneys’ fees. Of the currently-pending cases, none has been brought to trial. Two were dismissed when the city sought a demurrer; one is pending but no parties have been served; and one is still “live.”

FISCAL ANALYSIS: There is no budget impact from this item.

RECOMMENDATION: Staff recommends providing direction to staff regarding medical marijuana dispensaries within the City based on the lack of need and insufficient law enforcement staff to patrol the facilities to ensure the safety of the patients, dispensary employees, and occupants of the surrounding properties.

ATTACHMENTS: _____

Approved for Transmittal: _____
Chet Wysteppek, City Manager

958231

³ But see memorandum by El Cerrito Police Department documenting secondary effects, available at http://www.californiapolicechiefs.org/nav_files/research/pdfs_orcs/el_cerrito_ord_03.pdf.