



CITY COUNCIL AGENDA REPORT

DATE: May 8, 2006

TO: Honorable Mayor and City Council

FROM: Marc Roberts, Community Development Director
Stephen Krull, Police Chief
John Pomidor, City Attorney

SUBJECT: Update on the Medical Marijuana Dispensary Moratorium

RECOMMENDED ACTION

No action is required at this time. The purpose of this report is to update the Council on recent developments pertaining to medical marijuana dispensaries.

SUMMARY

Last fall City Council approved a moratorium on medical marijuana dispensaries. Since the adoption of the moratorium, there have been several recent developments, including pending court cases and new policies adopted by other jurisdictions. However, State law and federal law continue to be in conflict and a clear approach to regulating dispensaries remains elusive. The current moratorium ends on September 11, 2006, by which time the Council can extend the moratorium another year, adopt regulations on dispensaries or permit the moratorium to end without adopting regulations. Staff will return in late July or August with additional analysis and a recommendation to Council.

DISCUSSION

On September 12, 2005, City Council adopted an urgency ordinance establishing a temporary moratorium on medical marijuana dispensaries for a period of 45 days. On October 10, 2005, City Council adopted an urgency ordinance extending the moratorium for 10 months and 15 days. The current moratorium will end on September 11, 2006, at which time the Council will have the option of extending the moratorium for an additional year. The maximum permitted total period of the moratorium is two years.

MEETING DATE:

5-8-06

AGENDA ITEM:

The purpose of this update is to keep Council informed of the latest developments on the medical marijuana dispensary issue. No action is required of the Council at this time.

Legal Update

At this time, California State law still allows the use of marijuana for medical purposes under specified conditions. Federal law still prohibits this use. State and federal law continue to be in conflict.

There are several cases pending in California (both State and federal courts) that, when decided, may offer direction to cities regarding the status of the laws regarding medical marijuana. Brief descriptions of pending cases are as follows:

- Americans for Safe Access (ASA), the largest national grassroots coalition working solely to protect the rights of patients and doctors to use marijuana for medical purposes, has filed suit against the following cities who adopted ordinances banning medical marijuana dispensaries: Concord, Fresno, Susanville, Placerville and Pasadena. ASA claims that an outright ban conflicts with State law, which allows medical marijuana use for medicinal purposes under the California Compassionate Use Act. Several cities have countered that federal law, which makes marijuana use illegal in all circumstances, preempts the Compassionate Use Act. Concord's case was recently voluntarily dismissed, but the other cases are still pending.
- West Hollywood is still battling the federal government in the Ninth U.S. Circuit Court of Appeals. In 2001, federal agents raided a local medical marijuana clinic and seized the property which is owned by the City of West Hollywood. In this case, the federal government claims that the City should have taken steps to take over the property and prohibit the cannabis club because it was operating in violation of federal law.
- In late March 2006, the Ninth U.S. Circuit Court heard oral arguments in a case filed on behalf of an ill California woman (who suffers from scoliosis and a brain tumor), whose doctor says that marijuana is the only medicine keeping her alive. The argument under the "right-to-life" theory asserts that marijuana should be allowed if it is the only viable option to keep a patient alive or free from excruciating pain.
- The counties of San Diego and San Bernardino have filed a lawsuit against the State alleging the State law (California Compassionate Use Act) is unconstitutional because it is preempted by federal law.

Definitive rulings on these cases are not imminent.

Actions by Other Jurisdictions

California cities have reacted differently to the conflicting laws. Based on the best available information, a large number of California cities (approximately 56) have adopted moratoriums on medical marijuana dispensaries. A smaller number of cities (approximately 23) have established ordinances regulating dispensaries. Almost an equal number of cities (approximately 19) have adopted bans on dispensaries.

East Bay cities that have adopted moratoriums include Dublin, Pleasanton, Fremont and San Leandro. The cities of Berkeley and Oakland have established ordinances regulating medical marijuana dispensaries. Alameda County also has an established ordinance regulating dispensaries, with a maximum limit of three dispensaries on unincorporated land, distributed in three distinct districts. One of the districts includes Castro Valley, where one currently operating dispensary is located. The dispensary in Castro Valley is the closest one to Livermore. The County also established a permit application process for dispensaries. There are an estimated 7,000 to 12,000 medical marijuana users in Alameda County, according to the OCB Cooperative Inc., a contractor responsible for issuing identification cards for eligible applicants. The County's regulations do not affect incorporated cities.

There are no East Bay cities that have adopted an explicit ban on medical marijuana dispensaries.

Union City, whose temporary moratorium expires this July, recently adopted an ordinance that requires any use, entitlement, authorization, license or permit allowed or issued by the city to be consistent with State and federal law. As temporary moratoriums expire for early adopters in the coming months, it is expected these cities will establish a more permanent policy on dispensaries. Albany, Antioch, El Cerrito and Pinole are in their second year of the moratorium.

Enforcement Issues

The Police Department has identified several enforcement issues associated with medical marijuana dispensaries. The following negative impacts have been associated with dispensaries:

- Street dealers selling at lower prices to entice patients from dispensaries.
- Non-residents coming into the city to purchase marijuana.
- Marijuana-related Driving Under the Influence (DUI) infractions by people who have obtained the marijuana from a dispensary.
- Neighboring businesses have experienced a loss of customers.
- Increase in unreported crime to avoid negative publicity to the dispensary.

- Problem of patients selling to non-patients (similar to providing alcohol to a juvenile waiting outside a store).
- Documented cases of robbery outside of marijuana dispensaries.
- Dispensaries create alternative methods to sell products—such as food items called Buddhafingers, Munchy Way, Rasta Reeces and Puff-a-Mint Pattie.
- Complaints from patients that other, illegal drugs are sold in dispensaries.
- Marijuana dispensaries perpetuate a subculture that openly supports behavior consistent with criminal activity and publishes instructional material on the web. Examples include:
 - “Assume you are under surveillance if you are in any way involved in providing medical marijuana.”
 - “Do not discuss sensitive matters on the telephone, through the mail, by e-mail, or in your home, car, dispensing collectives, or office.”
 - “Don’t gossip, brag or ask for compromising or unnecessary information about medical marijuana operation and activities.”
 - “You should be cautious of theft. Many patients and care providers have been robbed because of the wrong person knowing sensitive information.”
- Management from an established dispensary told police that they cannot keep the criminal element out.

Next Step

The current City moratorium on medical marijuana dispensaries will expire September 11, 2006. Staff plans to provide Council with additional information on the subject and recommendations in late July or August. Legal, governmental and enforcement issues regarding medical marijuana dispensaries continue to develop at a fast pace. Staff will continue to monitor these developments and engage in further study of the issue in preparation of a policy recommendation to the Council.

ATTACHMENTS

1. Urgency Ordinance No. _____
2. Staff report of 10/10/05
3. Staff report of 9/22/05

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