



City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: September 1, 2009

SUBJECT: Urgency Ordinance Establishing Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries and Other Illegal Uses

Report in Brief

In 2004, the Woodland City Council adopted an interim ordinance regulating the operation of medical marijuana dispensaries. That interim ordinance expired in 2006, and the Woodland Municipal Code currently does not have any provisions that specifically refer to medical marijuana dispensaries. Adoption of a temporary moratorium regarding on the establishment and operation of medical marijuana dispensaries, cooperatives and collectives, and other businesses and land uses that violate state or federal law will give the City time to study how best to regulate dispensaries and other land uses that are illegal under state or federal law.

Staff recommends that the City Council approve and adopt Urgency Ordinance No. ____ to establish a temporary moratorium on the establishment and operation of medical marijuana dispensaries, cooperatives and collectives, and other businesses and land uses that violate state or federal law.

Background

Since the City's previous interim ordinance regulating medical marijuana dispensaries expired in 2006, the Woodland Municipal Code has not contained any provisions that specifically address medical marijuana dispensaries. Since dispensaries (which are also sometimes called "cooperatives" or "collectives") do not fit into any of the City's existing land use categories, they are currently prohibited, but the lack of an explicit prohibition has caused some confusion in the community, and the City has received one application for a business registration to open a dispensary.

Discussion

Cities in California have not adopted uniform approaches for dealing with medical marijuana. Definitive numbers are difficult to find; however in conferring with city attorneys across the state it appears that perhaps 30 cities and several counties allow medical marijuana dispensaries, a greater number of cities and a handful of counties currently have moratoria in place that temporarily prohibit

dispensaries, and more than 100 cities and several counties have adopted permanent bans on dispensaries. Several studies and papers have been published examining the secondary effects of medical marijuana dispensaries, including papers by the California Police Chiefs Association and the Riverside County District Attorney's office. These papers have found increased crime in the vicinity of dispensaries, and instances of robberies of purchasers of medical marijuana, burglaries of dispensaries, resale of marijuana to persons not qualified to possess it under California law, use of dispensaries by large-scale drug traffickers as distribution centers, and widespread noncompliance by dispensaries with the operating requirements established by California law.

The strategies adopted by various California cities have been the subject of legal challenges although none has ever been struck down by a court. As of this writing, the City of Anaheim's total ban on dispensaries is the subject of ongoing litigation. Anaheim successfully defended its ordinance in the trial court, and is now defending the ordinance as part of the would-be dispensary operator's appeal of the trial court decision. A decision in that case is expected by the end of 2009.

The apparent confusion in the community regarding the legality of medical marijuana dispensaries in Woodland, and the ongoing evolution of the interpretation of California law on this subject, suggests that the City Council should consider adopting a moratorium to temporarily prohibit medical marijuana dispensaries and other land uses and businesses that are illegal under state or federal law. The moratorium will last 45 days initially, and can be extended for 10 months and 15 days, and again for up to one year. While the moratorium is in effect, City staff can study how best to regulate dispensaries and other uses that may be illegal, and develop recommendations for the City Council's consideration.

Fiscal Impact

There is no direct impact on City funds in association with the recommended action.

Public Contact

Posting of the City Council agenda.

Alternative Courses of Action

1. Approve and adopt Urgency Ordinance No. ____ to establish a temporary moratorium on the establishment and operation of medical marijuana dispensaries, cooperatives and collectives, and other businesses and land uses that violate state or federal law.
2. Provide alternative direction to staff.
3. Take no action.

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ITEM:

Recommendation for Action

Staff recommends that the City Council approve Alternative No. 1

Prepared by: Andrew Morris
City Attorney

Mark G. Deven
City Manager

Attachments

Proposed urgency ordinance establishing moratorium on establishment and operation of medical marijuana dispensaries, collectives, and cooperatives

ORDINANCE NO. _____

AN INTERIM URGENCY ORDINANCE OF THE CITY OF WOODLAND ESTABLISHING A MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES AND OTHER USES ILLEGAL UNDER STATE OR FEDERAL LAW PURSUANT TO GOVERNMENT CODE SECTION 65858

WHEREAS, the voters of the State of California approved Proposition 215, entitled the Compassionate Use Act of 1996 (“the Act”), the intent of which was to enable persons in need of medical marijuana for medicinal purposes to obtain and use it under limited, specified circumstances; and

WHEREAS, on January 1, 2004, SB 420 went into effect and was enacted to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, the City of Woodland has previously adopted an interim urgency ordinance pursuant to Government Code section 65858 regulating the operation of medical marijuana dispensaries, which ordinance was adopted on July 27, 2004 and expired on March 7, 2006; and

WHEREAS, Government Code section 65858(f) permits the City of Woodland, following termination of a previous interim urgency ordinance, to adopt another interim urgency ordinance to protect the public safety, health, and welfare from an event, occurrence or set of circumstances different from the event, occurrence or set of circumstances that led to the adoption of the prior interim urgency ordinance; and

WHEREAS, there continues to be legal uncertainty regarding the relationship between federal laws and California laws regarding medical marijuana dispensaries, as the City of Anaheim is currently involved in litigation challenging its total ban on medical marijuana dispensaries, with the City of Anaheim’s ban having been upheld by the trial court and a decision in the appellate case expected before the end of 2009; and

WHEREAS, the City’s previous interim urgency ordinance regulating medical marijuana dispensaries was adopted at a time when there was considerable uncertainty regarding cities’ authority to regulate medical marijuana dispensaries and cities had very little experience with regulating medical marijuana dispensaries and observing the effects of the operation of dispensaries on neighborhoods and communities; and

WHEREAS, California cities and counties have subsequently gained considerable experience with regulating medical marijuana dispensaries and observing the effects created by dispensaries in the communities where they have been permitted to operate, and legal developments since the passage of Prop. 215 have helped clarify the scope of cities’ regulatory authority with respect to medical marijuana dispensaries and dealing in general with marijuana used for medical purposes, and

WHEREAS, some California cities that have permitted the establishment of medical marijuana dispensaries have witnessed an increase in crime, such as burglaries, robberies, and sales of illegal drugs in the areas immediately surrounding such dispensaries, as shown in the studies and reports from the California Police Chiefs Association, the Riverside County District Attorney's Office, the City of Rocklin, and reports of various news agencies; and

WHEREAS, the United States Department of Justice's California Medical Marijuana Information report has advised that large-scale drug traffickers have been posing as "caregivers" to obtain and sell marijuana; and

WHEREAS, in May 2001, the United States Supreme Court issued its decision in United States v. Oakland Buyers' Cooperative (2001) 532 U.S. 483, holding that distribution of medical marijuana is illegal under the Federal Controlled Substances Act and there is no medical necessity defense allowed under federal law; and

WHEREAS, on June 6, 2005, the United State Supreme Court issued its decision in Gonzales v. Raich (2005) 545 U.S. 1, which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and, under the Federal Controlled Substances Act, 21 U.S.C. section 841, the power to prohibit local cultivation and use of marijuana even though it would be in compliance with California law; and

WHEREAS, the changes in circumstances since the adoption in 2004 of the City of Woodland's original interim ordinance described in the foregoing recitals constitute an event, occurrence or set of circumstances different from the event, occurrence or set of circumstances that led to the adoption of the prior interim urgency ordinance, allowing the City of Woodland to adopt a second interim urgency ordinance regulating medical marijuana dispensaries and other illegal land uses and businesses; and

WHEREAS, the City of Woodland wishes to study its options for regulating the establishment and operation of medical marijuana dispensaries, and wishes to adopt an interim ordinance prohibiting dispensaries and other land uses and businesses that are illegal under state or federal law, while the City of Woodland studies its options and waits for further clarification from the courts regarding the scope of the City's ability to regulate such uses and businesses;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODLAND DOES ORDAIN AS FOLLOWS:

Section 1. The purpose of this interim urgency ordinance is to establish a forty-five day moratorium on the approval or issuance of any use permit, variance, building permit, business license or other applicable entitlement for the establishment or operation in the City of Woodland of a medical marijuana dispensary, collective or cooperative, or any other business or land use that cannot be or is not carried on without violating applicable state or federal laws, for the immediate preservation of the public health, safety and welfare, and to otherwise prohibit the establishment or operation of any medical marijuana dispensary, collective or cooperative, or such other business or land use.

Section 2. For purposes of this ordinance, the terms defined below shall have the following meanings:

A. “Medical marijuana dispensary, collective or cooperative” shall mean any facility or location where a primary caregiver intends to or does make available, sell, transmit, give or otherwise provide medical marijuana to two or more of the following: a qualified patient, a person with an identification card or a primary caregiver.

B. “Primary caregiver,” “qualified patient” and “identification card” shall have the meanings set forth in Health and Safety Code Section 11362.7.

Section 3. The City Council hereby enacts this interim urgency ordinance by not less than a four-fifths vote, and in light of the findings set forth in Section 4, under the authority granted to it by Article XI, Section 7 of the California Constitution and Section 65858(a) of the California Government Code, which allows the City to adopt an interim urgency ordinance, in order to protect the public safety, health, and welfare, prohibiting any uses that may be in conflict with a zoning proposal that the City Council, planning commission or the planning department is considering or studying or intends to study within a reasonable time.

Section 4. The City Council hereby finds and determines as follows:

1. The recitals set forth above are hereby adopted and incorporated herein as a portion of the City Council’s findings in support of the adoption of this ordinance.

2. California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries and sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries.

3. Numerous cities in the State of California have adopted ordinances prohibiting or heavily regulating such dispensaries. As a significant number of cities, including cities in Northern California, have prohibited or heavily regulated medical marijuana dispensaries, there is a substantially increased likelihood that such establishments will seek to locate in the City of Woodland.

4. The City has recently been approached by an individual seeking to open a medical marijuana dispensary in Woodland, indicating that the possibility of a medical marijuana dispensary seeking to locate in Woodland is a real one.

5. The United States Supreme Court addressed marijuana use in California in *United States v. Oakland Cannabis Buyers’ Cooperative*, (2001) 532 U.S. 483. The Supreme Court held that the federal Controlled Substances Act continues to prohibit marijuana use, distribution and possession and that no medical necessity exception exists to these prohibitions. Further, the Supreme Court held in *Gonzales v. Raich* (2005) 545 U.S. 1, that the federal Controlled Substances Act prohibits local cultivation and use of marijuana under all circumstances. The City of Anaheim has previously adopted an ordinance prohibiting medical marijuana dispensaries, partially on the basis of the continuing illegality of such businesses under federal law, and the Anaheim is currently the subject of a legal challenge contending that the ordinance is preempted by California law. Therefore, it appears there is currently a conflict between federal laws and California laws regarding the legality of medical marijuana dispensaries.

6. To address the apparent conflict in laws, as well as the community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of Woodland to study the potential impacts such facilities may have on the public health, safety and welfare.

7. Based on the foregoing, the City Council finds that issuing permits, business licenses or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, collectives and cooperatives, and other uses and businesses which cannot be or are not conducted without violating applicable state or federal law, prior to the completion of the City of Woodland's study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety and welfare and that therefore a temporary moratorium on the issuance of such permits, licenses and entitlements is necessary.

Section 5. The City Council hereby directs the Community Development Department to consider and study possible means of regulating or prohibiting medical marijuana dispensaries, including zoning-based regulations and other regulations.

Section 6. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 7. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 8. This ordinance shall become effective immediately upon adoption if adopted by at least a four-fifths vote of the City Council and shall be in effect for forty-five days from the date of adoption unless extended by the City Council as provided for in Government Code Section 65858.

Section 9. The City Clerk shall certify to the passage of this Ordinance and cause the same or a summary thereof to be published within fifteen (15) days after adoption in a newspaper of general circulation, printed and published in Woodland, California.

PASSED AND ADOPTED this _____ day of _____, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marlin H. Davies
Mayor

ATTEST:

Sue Vannucci
City Clerk

APPROVED AS TO FORM:

Andrew J. Morris
City Attorney

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