



City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: October 6, 2009

SUBJECT: Extension of Interim Urgency Ordinance Related to Medical Marijuana
Dispensaries and Other Illegal Uses

Report in Brief

On September 1, 2009, the Woodland City Council adopted an Urgency Ordinance Establishing a Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries and Other Illegal Uses. The adoption of the 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 gave 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 receive and issue a report on the measures taken to study the regulation of dispensaries and other illegal uses during the moratorium, and extend by four-fifths roll call vote, the Medical Marijuana Dispensaries and Other Illegal Uses Interim Urgency Ordinance that was adopted on September 1, 2009 for an additional 10 months and 15 days (See Attachment B - Ordinance extending Interim Urgency Ordinance).

Background

The City Council approved the Urgency Ordinance establishing a moratorium on Medical Marijuana Dispensaries and other illegal uses on September 1, 2009. State law allows a city which adopts a moratorium to extend that ordinance. California Government Code Section 65858 (b) reads in part, "After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted."

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 extending the current moratorium to temporarily prohibit medical marijuana dispensaries and other land uses and businesses that are illegal under state or federal law. The present moratorium can be extended for 10 months and 15 days, and again for up to one year. While the moratorium is in effect, City staff continues to study how best to regulate dispensaries and other uses that may be illegal, and develop recommendations for the City Council's consideration (See attachment A - report dated October 6, 2009).

Public Contact

Posting of the City Council agenda.

Alternative Courses of Action

1. Receive and issue report on measures taken to study the regulation of dispensaries and other illegal uses during the moratorium, and extend by four-fifths roll call vote, the Medical Marijuana Dispensaries and Other Illegal Uses Interim Urgency Ordinance that was adopted on September 1, 2009 for an additional 10 months and 15 days.
2. Provide alternative direction to staff.
3. Take no action.

Recommendation for Action

Staff recommends that the City Council approve Alternative No. 1.

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Reviewed by: Andy Morris
City Attorney

Reviewed by: Paul Siegel
Deputy Director CDD

Mark G. Deven
City Manager

Attachments:

- A. Report on Measures Taken to Alleviate the Conditions, which led to the Adoption of Ordinance No. 12324, Establishing An Interim Moratorium On The Establishment Of Medical Marijuana Dispensaries, Collectives Or Cooperatives And Other Uses Illegal Under State Or Federal Law.
- B. An Interim Urgency Ordinance Of The City Of Woodland Pursuant To Government Code Section 65858 Extending Interim Urgency Ordinance No. **1508** For An Additional Ten Months And Fifteen Days And Continuing For This Period The Temporary Prohibition Against Establishment And Operation Of Medical Marijuana Dispensaries, Collectives Or Cooperatives And Other Uses Illegal Under State Or Federal Law.

DATE: OCTOBER 6, 2009

FROM: CITY COUNCIL

SUBJECT: REPORT ON MEASURES TAKEN TO ALLEVIATE THE CONDITIONS WHICH LED TO THE ADOPTION OF ORDINANCE NO. 1508, ESTABLISHING AN INTERIM MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES, COLLECTIVES OR COOPERATIVES AND OTHER USES ILLEGAL UNDER STATE OR FEDERAL LAW

On September 1, 2009, after public notice and a public hearing, the Woodland City Council adopted Ordinance No. 1508, an interim urgency ordinance, which imposed a moratorium on the establishment of medical marijuana dispensaries, collectives and cooperatives, and other land uses that are illegal under state or federal law. Ordinance No. 1508 was adopted pursuant to Government Code Section 65858, which provides that an interim moratorium expires 45 days from the date of its adoption, unless the ordinance is extended by the Woodland City Council after additional notice and public hearing. The moratorium is set to expire on October 16, 2009.

Government Code Section 65858(d) requires that 10 days prior to the expiration of the moratorium, the Woodland City Council must issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance. The conditions that led to the adoption of the interim moratorium were listed in Ordinance No. 1508, and are still extant as of the date of this report. The following is a report of the measures and actions that have been taken by the City and other governmental agencies, since September 1, 2009, to alleviate the conditions set forth in Ordinance No. 1508:

- During the course of the moratorium, City staff has continued to study the issue of regulation of medical marijuana dispensaries, collectives, and cooperatives. These efforts have included studying how other cities have opted to regulate such uses, exchanging correspondence with an advocate of legal access to medical marijuana, and reviewing an ordinance proposed by this advocate which would legalize the sale of medical marijuana in Woodland and establish price caps.
- The City Council has directed City staff to continue studying the issue of regulation of dispensaries, and to present additional options for the City Council's consideration.
- The City Attorney's office has continued to monitor legal developments concerning the operation and regulation of dispensaries, collectives and cooperatives, including pending legal actions that may help address the scope of the City's ability to regulate such uses.

ORDINANCE NO. _____

AN INTERIM URGENCY ORDINANCE OF THE CITY OF WOODLAND PURSUANT TO GOVERNMENT CODE SECTION 65858 EXTENDING INTERIM URGENCY ORDINANCE NO. 1508 FOR AN ADDITIONAL TEN MONTHS AND FIFTEEN DAYS AND CONTINUE FOR THIS PERIOD THE TEMPORARY PROHIBITION AGAINST ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES, COLLECTIVES OR COOPERATIVES AND OTHER USES ILLEGAL UNDER STATE OR FEDERAL LAW

WHEREAS, on September 1, 2009, pursuant to section 65858 of the California Government Code, after public notice and a public hearing, the City Council of the City of Woodland adopted Ordinance No. 1508, an interim urgency ordinance, which temporarily prohibits the establishment and operation of medical marijuana dispensaries, collectives, and cooperatives in all locations in the City of Woodland; and

WHEREAS, Section 65858(a) of the California Government Code provides that Ordinance No. 1508 shall expire and be of no further force and effect forty-five (45) days from its date of adoption; and

WHEREAS, Section 65858(a) of the California Government Code provides that prior to the expiration of Ordinance No. 1508, the City Council may extend Ordinance No. 1508 for up to an additional ten (10) months and fifteen (15) days after giving notice pursuant to Section 65090 of the California Government Code and conducting a public hearing; and

WHEREAS, following this hearing, the City Council authorized the issuance of a written report describing the measures and actions taken by the City to alleviate the circumstances and conditions which led to the adoption of the Ordinance No. 1508 since its adoption on September 1, 2009, as required by Government Code section 65858(d) ("Council Report"); and

WHEREAS, based on the Council Report, the City Council has determined that the circumstances and conditions that led to the adoption of Ordinance No. 1508, which are set forth in the recitals of Ordinance No. 1508 and are fully incorporated herein by this reference, have not been alleviated as of the date of this Ordinance and continue to create the concerns described in Ordinance No. 1508; and

WHEREAS, the City Council now seeks to extend the temporary prohibition 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, as currently authorized under Ordinance No. 1508, to continue studying possible amendments to the City's zoning regulations and business registration regulations to help ensure that medical marijuana

dispensaries, collectives and cooperatives and other land uses and businesses that are illegal under state or federal law are regulated in a way that protects the community and complies with applicable law; and

WHEREAS, the purpose of extending Ordinance No. **1508** is to avoid the potentially significant adverse impacts to the public's health, safety, and welfare described in Ordinance No. **1508**;

WHEREAS, the City Council has determined there is a need to extend Ordinance No. **1508** for an additional ten (10) months and fifteen (15) days as authorized under section 65858(a) of the California Government Code, so that the extension expires at 12:00 am on August 31, 2010; and

WHEREAS, the notice and public hearing required by section 65858(a) of the California Government Code for the extension of Ordinance No. **1508** has been provided in accordance with applicable law;

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

Section 1. Adoption of this urgency interim ordinance ("Ordinance") shall constitute an extension of Ordinance No. **1508** pursuant to section 65858 of the California Government Code.

Section 2. During the time this Ordinance is in effect, the City shall not issue any use permit, variance, building permit, business license or other applicable entitlement for the establishment or operation in Woodland of a medical marijuana dispensary, collective, or cooperative, or other uses and businesses which cannot be or are not conducted without violating applicable state or federal law.

Section 3. 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, qualified patient, or person with an identification card 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 4. 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 5. The City Council hereby finds and determines that 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, and that the adoption of this Ordinance and the extension of Ordinance No. 1508 is necessary for the current and immediate protection of the public health, safety, and welfare of the City and its residents for all the reasons set forth in the recitals above, the recitals of Ordinance No. 1508, the Council Report, and the agenda report prepared in connection with this Ordinance, which are hereby expressly incorporated as though fully set forth herein, and the following additional reasons:

A. The City continues to study the issue of regulation of medical marijuana dispensaries, collectives, or cooperatives and other land uses and businesses that are illegal under state or federal law, including engaging in correspondence with advocates of access to medical marijuana and reviewing various possible means of regulating the distribution of medical marijuana.

B. Establishment and/or operation of medical marijuana dispensaries, collectives, or cooperatives under existing zoning and development standards will have a detrimental effect because the existing standards do not consider the unique impacts created by such uses or businesses, which would create the potential for severe land use incompatibilities, with associated impacts to adjacent residents and businesses. These adverse impacts on the public health, safety, and welfare can be avoided through careful study and proper planning for the regulation of medical marijuana dispensaries, collectives, and cooperatives.

Section 6. The City Council hereby directs the Community Development Department to continue considering and studying possible means of regulating or prohibiting medical marijuana dispensaries, collectives and cooperatives, including zoning-based regulations and other regulations.

Section 7. Ten days prior to the expiration of this Ordinance, the City Council shall issue a written report describing the measures which the City has taken to alleviate the conditions which led to the adoption of this Ordinance.

Section 8. 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 9. 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 10. 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 11. 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