

MEETING DATE: July 8, 2009

ITEM # 9

SUBJECT:
**PUBLIC HEARING ON URGENCY INTERIM ORDINANCE 09-14 MAKING FINDINGS AND ESTABLISHING
 A TEMPORARY MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES
 IN THE CITY OF WEST SACRAMENTO**

INITIATED OR REQUESTED BY:

REPORT COORDINATED OR PREPARED BY:

Steve Rikala, City Planner

Council Staff
 Other



Tina Gontarski, Director Community Development
 Department

ATTACHMENT Yes No Information Direction Action

OBJECTIVE

The objective of tonight's meeting is to discuss and adopt an urgency, interim ordinance on the establishment and operation of medical marijuana dispensaries.

RECOMMENDED ACTION

It is respectfully recommended that the City Council:

- 1) Staff recommends that that the Council open the public hearing and take public comment;
- 2) Staff respectfully recommends that the City Council adopt Ordinance 09-14 establishing a forty-five day moratorium on medical marijuana dispensaries; and,
- 3) Find that the ordinance is not subject to CEQA pursuant to Section 15060 (c)(2).

BACKGROUND

The Compassionate Use Act (CUA) was adopted 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 Act against dispensary operators and others who help supply patients in California with medical marijuana. The Controlled Substances Act (CSA) states that the manufacture (including cultivation), distribution and dispensing of marijuana are illegal for any purposes, including medical use.

The State of California also adopted SB 420 in 2004 additional legislation known as the Medical Marijuana Program (MMP). The MMP deals with many issues that were not addressed in the CUA. However most importantly for this discussion it allows cities to consider rules consistent with the CUA including sites where medical marijuana may be distributed to primary caregivers and its patients.

ANALYSIS

There have been an increased number of inquiries recently regarding potential medical marijuana dispensary locations in the City. No dispensaries are currently operating in the City. An incomplete application for a dispensary at an unspecified location has been filed with the City. The City's zoning ordinance does not identify "medical marijuana dispensary" as a separate use on the zoning matrix. The City's Zoning Ordinance provides that a use not identified in the zoning ordinance (unless otherwise prohibited) is considered to require a conditional use permit in all zones (Municipal Code Section 17.23.016).

Given that there are no current zoning regulations specifically identifying and or 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 policies of the General Plan, be inconsistent with surrounding uses, or located in a matter to be detrimental to the public health, safety and welfare. As the City Council knows, the City is currently in the process of updating its

General Plan. With such uncertainty regarding this use, staff are recommending a moratorium. This will give staff and Council an opportunity to consider all aspects of this issue prior to imposing any regulations, if it is determined necessary. Adoption will not allow the City to receive an application(s) for the opening of a medical marijuana dispensary during the term of the moratorium.

Passage of a moratorium requires four-fifths vote of the City Council. If enacted tonight the moratorium will run for forty five days until August 22, 2009. State law allows for the moratorium to be extended for up to an additional twenty two months and fifteen days after a noticed public hearing (California Government Code Section 65858). The moratorium if adopted goes into effect immediately.

Strategic Plan Integration

Adoption of this moratorium will allow the City to continue to provide vibrant neighborhoods while limiting potential incompatible land uses that may affect public health and welfare.

Alternatives

Staff is recommending that the City Council adopt a moratorium on medical marijuana dispensaries. This approach has been utilized recently by the Cities of Vacaville, Fairfield, Davis and Nevada City along close to 100 other California cities at some time.

Should the Council not wish to adopt a moratorium there are three other alternatives. The City Council could amend the zoning ordinance to outright ban medical marijuana dispensaries. The cities of Folsom, Fresno and Pasadena have taken this approach. This approach is not recommended because it does not allow for an investigation of how to regulate the use. A second alternative would be to direct staff to prepare amendments to the zoning ordinance to limit the locations, signage and hours of operation of dispensaries. However this approach is not recommended because it is a lengthy process and does not allow for rules of how to deal with applications for dispensaries in the interim. A final alternative is to do nothing which staff recommends against given the number of inquiries the City has recently received.

Coordination and Review

The preparation of this report has been coordinated with the Police Department, City Managers Office and the City Attorney.

Budget/Cost Impact

The fiscal impact of this item will be additional costs incurred by the Planning Unit, Police Department and City Attorney's Office in reviewing alternatives to how to deal with the medical marijuana dispensary issue.

ATTACHMENT

- 1) Urgency Interim Ordinance 09-14

ATTACHMENT 1

ORDINANCE NO. 09-14

**AN UNCODIFIED URGENCY INTERIM ORDINANCE OF THE
CITY COUNCIL OF THE CITY OF WEST SACRAMENTO
MAKING FINDINGS AND ESTABLISHING A TEMPORARY
MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES IN
THE CITY OF WEST SACRAMENTO**

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, *et seq.* and entitled the Compassionate Use Act of 1996 (“the Act”); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specified circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 became effective 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, under the U.S. Controlled Substances Act, marijuana is classified as a Schedule 1 drug, meaning it has no accepted medical use; and

WHEREAS, the City of West Sacramento (the “City”) has recently received inquiries from members of the public as to the permitting process and zoning regulations for operating medical marijuana dispensaries within the City; and

WHEREAS, medical marijuana dispensaries raise issues of first impression for the City, which currently does not specifically address or regulate medical marijuana dispensaries in its Municipal Code; and

WHEREAS, based on recent trends, the City believes that it may receive a growing number of inquiries for such businesses, including an application in the immediate future; and

WHEREAS, other California cities that have permitted the establishment of medical marijuana dispensaries have witnessed an increase in crime, such as burglaries, robberies, and the sale of illegal drugs in the areas immediately surrounding such dispensaries; and

WHEREAS, the City must study and analyze concerns about the potential negative impacts on the public health, safety, and welfare arising from medical marijuana dispensaries, including, but not limited to, criminal incidents, loitering, disturbing the peace, and property damage; and

WHEREAS, the City must study the scope of the City’s police power and draft the necessary municipal code provisions; and

WHEREAS, the City is currently in the process of reviewing and updating its General Plan, one or more of its existing Specific Plans, and its zoning code (Title 17); and

WHEREAS, if medical marijuana dispensaries were allowed to be established in the City without appropriate regulation, such uses might: i) be established in areas that would conflict with the General Plan and/or Specific Plans as they now exist or as they may be revised through the current update in progress; ii) be inconsistent with surrounding uses or be detrimental to the public health, safety, and welfare; and iii) conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding medical marijuana dispensaries; and

WHEREAS, the issuing of permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to the completion of the City's study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety, and welfare, and therefore a temporary moratorium on the issuance of such permits, licenses, and entitlements is necessary; and

WHEREAS, this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 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 and in fact prevents changes in the environment pending the completion of the contemplated General Plan adoption and zoning ordinance review; and

WHEREAS, California Government Code §65858 authorizes cities to adopt moratoriums on land use entitlements in order to study any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal; and

WHEREAS, for the protection of the public's health, safety, and general welfare, the City desires to adopt this moratorium to maintain the current status quo and to provide time for the City to study applicable law, and to determine whether to allow medical marijuana dispensaries to operate within the City and if so, to consider a permit or licensing procedure, the appropriate zoning districts for such uses, and to adopt regulatory standards and conditions to be imposed on such operations; and

WHEREAS, the City desires that such moratorium take effect immediately upon its adoption in accordance with §36934 of the California Government Code; and

WHEREAS, notice of the public hearing at which this ordinance was considered was published in the Sacramento Bee, a newspaper of general circulation within the City of West Sacramento, in accordance with the requirements of California Government Code §§65858(b) and 65090.

NOW, THEREFORE, BE IT ORDAINED BY THE WEST SACRAMENTO CITY COUNCIL AS FOLLOWS:

Section 1. Imposition of Moratorium.

A. In accordance with Government Code Section 65858, from and after the date of this Ordinance, no use permit, variance, building permit, business license, or other applicable entitlement for use shall be approved or issued for the establishment or operation of a medical marijuana dispensary within the City for a period of forty-five (45) days.

B. For purposes of this Ordinance, “medical marijuana dispensary” 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. For purposes of this ordinance, the terms “primary caregiver,” “qualified patient,” and “identification card” shall have the same meaning as that set forth in Health and Safety Code Section 11362.7, *et seq.*

C. For purposes of this Ordinance, a medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and as long as such use complies strictly with applicable law, including, but not limited to, Health and Safety Code Section 11362.7, *et seq.*: (1) a clinic, licensed pursuant to Chapter 1, Division 2 of the Health and Safety Code (commencing with §1200); (2) a health care facility, licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code (commencing with §1250); (3) a residential care facility for persons with chronic life-threatening illness, licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code (commencing with §1568.01); (4) a residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code (commencing with §1569); or (5) a hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code (commencing with §1725), the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

D. This Ordinance is an interim urgency ordinance adopted pursuant to the authority granted to the City of West Sacramento by Government Code Section 65858 and is for the immediate preservation of the public health, safety, and welfare. The City Council of the City of West Sacramento hereby finds and declares that there is a need to enact an urgency interim ordinance establishing a moratorium on medical marijuana dispensaries, based upon the following findings:

- (1) California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have 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. This potential for increased risk of crime and violence presents a clear and immediate danger to the public health, safety and welfare of the residents of the City of West Sacramento; and
- (2) The City has recently received inquiries from members of the public as to the permitting process and zoning regulations for operating medical marijuana dispensaries within the City; and
- (3) The City does not currently have standards in its Municipal Code relating to the location, operation, and concentration of medical marijuana dispensaries within the City; and
- (4) If medical marijuana dispensaries were allowed to be established without appropriate review of location and operational criteria and standards, such uses: i) might be established in areas that would conflict with the General Plan, Specific Plan(s), and zoning code revisions under consideration by the Planning Commission and the City Council; ii) be

