



REPORT TO COUNCIL City of Sacramento

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Public Hearing
June 1, 2010

**Honorable Mayor and
Members of the City Council**

Title: Extension of Medical Marijuana Dispensaries Moratorium

Location/Council District: Citywide

Recommendation: Conduct a public hearing and on conclusion adopt an ordinance to extend the existing moratorium on medical marijuana dispensaries in the City of Sacramento for one additional year (requires a 4/5 vote).

Contact: Michelle Heppner, Special Projects Manager, 808-1226

Presenters: Michelle Heppner, Special Projects Manager

Department: City Manager's Office

Division: Government Affairs

Organization No: 09100

Description/Analysis

Issue: On August 25, 2009, the City Council adopted Ordinance No. 2009-041, an emergency measure extending a 45-day moratorium prohibiting new medical marijuana dispensaries from opening and prohibiting existing dispensaries from modifying or expanding their current operations for an additional ten months and 15 days. Unless extended again, the emergency ordinance will expire by its own terms on July 13, 2010.

Since the last moratorium extension on August 25, 2009, staff has met with stakeholders and community groups to explore various alternatives for a permanent ordinance. In December 2009, staff presented several policy concerns to the Law and Legislation Committee asking for direction. Based on the committee's direction, staff again presented key concepts and recommendations to the Law and Legislation Committee on April 6, 2010. These key concepts included compliance with state law, number of dispensaries allowed, location requirements, sensitive use areas, special conditions, enforcement options, permit requirements, fees, and violations of the ordinance. The Law and Legislation Committee approved the

majority of staff's recommendations but asked staff to research opportunities to locate dispensaries in the downtown area due to the accessibility to public transit. In addition, the Law and Legislation Committee forwarded the matter to the full council for further policy direction.

To fully explore alternatives with the city council, additional time is necessary to continue the public process, and determine the cumulative impacts of the ordinance upon the public's safety, health, and welfare. Staff recommends that the term of Ordinance No. 2009-041 be extended for an additional one year, the maximum extension period allowed by California Government Code Section 65858. No additional extensions can be made under this code section.

Policy Considerations: The City's zoning code does not recognize or allow medical marijuana dispensaries to operate in the City. Pursuant to the extension rights under California Government Code Section 65858, extending the emergency ordinance is consistent with providing staff time to continue a public process to research and develop a long-term solution for the City.

Environmental Considerations:

California Environmental Quality Act (CEQA): Under the California Environmental Quality Act (CEQA) guidelines, continuing administrative activities do not constitute a project and are therefore exempt from review.

Sustainability Considerations: None.

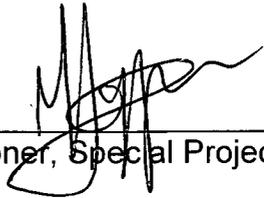
Commission/Committee Action: The City Council voted unanimously in favor of amending the urgency ordinance extending the moratorium on August 25, 2009.

Rationale for Recommendation: The extension of the emergency ordinance to prohibit the establishment of new medical marijuana dispensaries and prohibit the expansion or modification of existing dispensaries will allow the necessary time to further research the impacts of public safety and zoning regulations.

Since the adoption of the emergency ordinance establishing the moratorium, staff has continued research on any potential negative effects of medical marijuana dispensaries as well as undertaken efforts to ascertain whether zoning regulations might be of use in regulating the number of dispensaries currently operating within the City. During the extension, staff will continue to work on a permanent ordinance regulating medical marijuana dispensaries in the City of Sacramento.

Financial Considerations: None.

Emerging Small Business Development (ESBD): None

Respectfully Submitted by: 
Michelle Heppner, Special Projects Manager

Recommendation Approved:


Gus Vina
Interim City Manager

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Attachment 1

BACKGROUND

City Council initially requested staff investigate a moratorium on the opening of new medical marijuana dispensaries and prohibiting the expansion or modification of existing dispensaries due to an increase in the number of dispensaries operating within the City of Sacramento. The purpose of the emergency ordinance was to allow time to gather data and develop a long-term solution to regulate dispensaries within city neighborhoods and communities.

Presently, the City does not allow medical marijuana dispensaries under the current zoning code nor are there any regulations in place governing the safe operation of these facilities.

Since the last moratorium extension on August 25, 2009, staff has met with stakeholders and community groups to explore various alternatives for a permanent ordinance. In December 2009, staff presented several policy concerns to the Law and Legislation Committee asking for direction. Based on the committee's direction, staff again presented key concepts and recommendations to the Law and Legislation Committee on April 6, 2010. These key concepts included compliance with state law, number of dispensaries allowed, location (zoning) requirements, sensitive use areas, special conditions, enforcement options, permit requirements, fees, and violations of the ordinance. The Law and Legislation Committee approved the majority of staff's recommendations but asked staff to research opportunities to locate dispensaries in the downtown area due to the accessibility to public transit. In addition, the Law and Legislation Committee forwarded the matter to the full council for further policy direction.

To fully explore alternatives with the city council, additional time is necessary to continue the public process, research the committee's requests, and determine the cumulative impacts of the ordinance upon the public's safety, health, and welfare. Staff recommends that the term of Ordinance No. 2009-041 be extended for an additional one year, the maximum extension period allowed by California Government Code Section 65858. No additional extensions can be made under this code section.

ORDINANCE NO. _____

Adopted by the Sacramento City Council

Date Adopted

AMENDING ORDINANCE NO. 2009-033 TO EXTEND THE TERM OF A MORATORIUM ON NEW MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF SACRAMENTO FOR AN ADDITIONAL TWELVE MONTHS AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

The City Council of the City of Sacramento finds and declares as follows:

A. General Findings

1. In 1996 California voters approved Proposition 215, entitled "The Compassionate Use Act" that was later codified at Health and Safety Code section 11362.5. The Compassionate Use Act ensures that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. In 2003 the state enacted Senate Bill 420, known as the Medical Marijuana Program and codified at Health and Safety Code sections 11362.7 et seq.). The Medical Marijuana Program was intended to supplement, clarify, give guidance and give effect to the intent of the Compassionate Use Act and to allow cities to adopt and enforce rules and regulations consistent with the Medical Marijuana Program.

2. The Compassionate Use Act does not legalize marijuana dispensaries that are "for profit" or which do not operate under the Health and Safety Code definition of a "primary caregiver." The Medical Marijuana Program has been interpreted by at least one court as contemplating the formation and operation of medical marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana. (People v. Urziceanu (2005) 132 Cal.App.4th 747.)

3. According to the State's Attorney General, "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law....[T]he only recognized group entities are cooperatives and collectives." (California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use – 2008.)

4. Several California cities that have permitted the establishment of medical marijuana dispensaries have experienced negative secondary effects on public health, safety, and welfare, including an increase in crime such as burglary, robbery, and the sale of illegal drugs, in the areas immediately surrounding medical marijuana dispensaries.

5. There appears to be a proliferation throughout the state of medical marijuana dispensaries that do not comply with The Compassionate Use Act, the Medical Marijuana Program or the Attorney General's Guidelines.

6. Under the current provisions of Title 17 of the Sacramento City Code ("Zoning Code"), medical marijuana dispensaries are not an expressly permitted use or a use permitted subject to a special permit in any zoning district in the City.

7. Notwithstanding Section 6 above, medical marijuana dispensaries have been known to operate and advertise in the City of Sacramento, disguised as permitted retail or commercial establishments. These medical marijuana dispensaries are operating without having obtained any City discretionary or regulatory review, approvals or permits and the City has not adopted conditions or regulations governing such operations.

B. On July 14, 2009, Ordinance No. 2009-033, establishing a forty-five (45) day moratorium on prohibiting the establishment of new medical marijuana dispensaries or expansion or modification of established medical marijuana dispensaries in the City of Sacramento was enacted as an emergency ordinance to take effect immediately. The purpose of Ordinance No. 2009-033 is to protect the public health, safety, and welfare by prohibiting the establishment of new medical marijuana dispensaries or expansion or modification of established medical marijuana dispensaries while the City studies and enacts new land use conditions and regulations to address the potential negative secondary effects as detailed above in Subsection (A). Allowing the establishment of new, and the expansion of existing, medical marijuana dispensaries pending the development and enactment of the needed land use regulations would frustrate and interfere with the efforts to protect the City's neighborhoods from the continuing proliferation of these uses and their associated impacts.

C. Ordinance No. 2009-033 was due to expire on its own terms on August 28, 2009, unless extended by City Council pursuant to Government Code section 65858.

D. On August 25, 2009, Ordinance No. 2009-041, extending the term of Ordinance No. 2009-033 for an additional ten (10) month and fifteen (15) days and continuing the moratorium on prohibiting the establishment of new medical marijuana dispensaries or expansion or modification of established medical marijuana dispensaries in the City of Sacramento, was enacted as an emergency ordinance to take effect immediately.

E. Unless otherwise extended pursuant to Government Code section 65858, the terms of the moratorium are due to expire on July 13, 2010. The City Council

determines that additional time is needed for staff to continue to research and develop appropriate zoning regulations to address the effect and impact of medical marijuana dispensaries, to identify all community and industry stakeholders, and to conduct stakeholder outreach to ensure appropriate input from and involvement of all concerned and affected parties in the development of the needed zoning regulations.

F. Pursuant to Government Code section 65858, this is an urgency measure to protect against the current and immediate threat to the public health, safety, and welfare that unregulated medical marijuana dispensaries can pose to the City as described above. It is appropriate that this Ordinance take effect immediately to ensure that new medical marijuana dispensaries are not established and that established operations of medical marijuana dispensaries are not modified or expanded while the City Council conducts its review.

SECTION 2. Extension of Moratorium on New Medical Marijuana Dispensaries

Ordinance No. 2009-041, extending the initial moratorium on medical marijuana dispensaries, is amended by extending the ten (10) month and fifteen (15) day term for an additional twelve (12) months as provided in Government Code section 65858. As amended by this ordinance, Ordinance No. 2009-033 shall be effective from the date of enactment through July 13, 2011, and shall thereafter expire as no further extensions are authorized pursuant to Government Code section 65858.

SECTION 3. Declaration of Emergency

This Ordinance is declared to be an emergency ordinance to take effect immediately upon adoption by the City Council pursuant to Sacramento City Charter Section 32(g)(2). The facts constituting the emergency are set forth in Section 1 of this Ordinance, all of which are incorporated into this section as facts supporting the emergency nature of this Ordinance so that the City Council may conduct a review of what impact medical marijuana dispensaries have upon the safety and welfare of the public as well as to determine what zoning regulations might need to be developed.