

**May 25, 2010**

SUBJECT: 2010-7279 Urgency Interim Zoning Ordinance - Moratorium Affecting the Sale and Distribution of Marijuana for Medical Purposes

REPORT IN BRIEF

Staff is requesting the City Council approve an urgency interim zoning ordinance establishing a moratorium on the establishment of any medical marijuana dispensary or place of distribution, which would occur immediately, from May 25, 2010, through and including July 9, 2010 (Attachment A). The moratorium would be in effect for 45 days; it may be extended at a noticed public hearing for up to 10 months and 15 days, with an additional one-year extension permissible. If less time is required to complete a study, the urgency interim ordinance could be terminated. The interim ordinance provides a time period for the City to study the issue of zoning for medical marijuana dispensaries.

Staff recommends an urgency interim ordinance because it would take effect immediately and provide a clear statement that medical marijuana dispensaries are not permitted during this interim period. The CDD Director response to the pending request to interpret the Code would benefit from a full discussion by the City Council. Staff believes that a moratorium would allow sufficient time to further research the topic, allow for public testimony, explore options and consider the outcome of pending court decisions.

BACKGROUND

Through Proposition 215 (Compassionate Use Act of 1996) the voters of the State of California legalized medical use of marijuana under limited and specified circumstances. In 2003, the State Legislature enacted SB 420 to clarify the scope of Proposition 215, and to allow cities to adopt and enforce rules and regulations consistent with SB 420.

In the last year, the City has had numerous requests for information regarding medical marijuana dispensaries. The Sunnyvale Municipal Code contains no provisions expressly permitting or prohibiting the operation of a medical marijuana dispensary. The Municipal Code provides that if a land use is not specifically permitted, it is prohibited. The code allows the Community Development Director to consider whether a use is similar to and has similar impacts as another permitted use. Staff has consistently interpreted that the

zoning code does not permit medical marijuana dispensaries in the City of Sunnyvale.

In January 2010, the City Council selected and ranked a study issue titled “Framework for Permitting and Regulating Medical Marijuana Dispensaries” (Attachment B). This study issue fell below the line as part of the Community Development Department’s 2010 work plan and is not currently scheduled for consideration. A copy of the study issue summary is located in Attachment B.

The Department of Justice recently announced that it would not pursue medical marijuana clubs that are legally established under state law. As a result, Sunnyvale and many other cities have seen an increase in inquiries about the possibility of opening medical marijuana dispensaries.

On April 4, 2010, the Sunnyvale Cooperative Association (SCOA) made a formal request of the Community Development Director to make the determination that their “Medical Cannabis Cooperative is similar to and not more objectionable or intensive than other uses permitted in the same zoning districts” in which they are seeking to locate to operate. Several other groups have also expressed interest in opening a marijuana dispensary in Sunnyvale.

EXISTING POLICY

LAND USE AND TRANSPORTATION ELEMENT

Goal N1: Preserve and enhance the quality character of Sunnyvale’s industrial, commercial, and residential neighborhoods by promoting land use patterns and related transportation opportunities that are supportive of the neighborhood concept.

Policy N1.1: Protect the integrity of the City’s neighborhoods; whether residential, industrial or commercial.

Action Statement N1.1.1: Limit the intrusion of incompatible uses and inappropriate development into city neighborhoods.

Action Statement N1.1.4: Anticipate and avoid whenever practical the incompatibility that can arise between dissimilar uses.

Policy N1.6: Safeguard industry’s ability to operate effectively, by limiting the establishment of incompatible uses in industrial areas.

Policy N1.14: Support the provision of a full service spectrum of public and quasi-public services (e.g. parks, day care, group living, recreation centers, religious institutions) that are appropriately located in residential, commercial, and industrial neighborhoods and ensure that they have beneficial effects on the surrounding area.

SOCIO-ECONOMIC ELEMENT

Goal 5.1.A: Preserve and enhance the physical and social environment and facilitate positive relations and a sense of well-being among all community members, including residents, workers and businesses.

Goal 5.1G: Enhance the provisions of health and social services to Sunnyvale residents by providing opportunities for the private marketplace to meet the health and social service needs of City residents.

Goal 5.1H: Identify pressing health and social needs of the Sunnyvale community, encouraging appropriate agencies to address these needs in an adequate and timely manner.

Policy 5.1H.10: Encourage adequate provision of health care services to Sunnyvale residents.

ZONING CODE

The Municipal Code states:

19.98.220. Exclusionary zoning.

When a use is not specifically listed as a primary or conditional use, it shall be assumed that such use is prohibited unless it is determined by the director of community development that the use is similar to and not more objectionable or intensive than the uses listed. Uses are permitted and conditions of use are established within each district in conformance with Section 19.98.090. Requests for determinations for specific uses shall be submitted to the department of community development in writing with a detailed description of the proposed use, its proposed location, and intended hours of operation. Additional information may be required by the director of community development in order to prepare the determination for individual uses. Any decision by the director of community development regarding a requested determination shall be in writing and shall be final.

CALIFORNIA GOVERNMENT CODE – Interim Urgency Ordinance

CA Government Code Section 65858 provides that a local legislature:

“to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. 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.”

In order for the City Council to adopt an interim urgency ordinance, which shall be effective immediately, a four-fifths vote is required (i.e. six of the seven council members must vote in favor of the ordinance).

DISCUSSION

The study of whether medical marijuana dispensaries should be permitted in Sunnyvale was deferred when the proposed study issue did not rank high enough for consideration in 2010. Staff had recommended deferring the discussion due to pending court decisions.

During the study issues workshop in January 2010, staff recommended deferring the study issue until the following year until several pertinent court decisions were rendered. The additional time would also allow staff to further monitor the operational history of marijuana dispensaries that have recently been permitted in other communities. Since that time, however, the inquiries and expressed interest to establish such a facility in Sunnyvale have increased. Staff now believes that the issue should be moved up in study priority and that an urgency interim ordinance to establish a moratorium on considering individual proposals is necessary. The moratorium does not change the current interpretation of the municipal code regarding such uses (i.e. not a permitted use), but would place all individual requests on hold until a full study is completed. The moratorium includes the pending SCOA request for a determination.

The discussion regarding the placement of medical marijuana dispensaries is complex and passionate. The analysis would consider the legal and operational issues, the potential land use and public safety impacts, and the municipal costs as well as fiscal benefits. Several options would be evaluated including maintaining a prohibition of the use to permitting the use in limited locations with conditions, restrictions and operating requirements. Staff anticipates that a full study can be completed within a year; however, the study length may be affected by the timing of legal decisions. The study would involve staff from the Departments of Public Safety and Community Development and the Office of the City Attorney.

An urgency interim ordinance, which would place a moratorium on accepting any applications, can be adopted with a minimum 72-hour notice, for a period of 45 days. At the end of 45 days, a 10-month 15-day extension can be approved after a noticed public hearing. An additional 12-month extension can be approved at the end of that period. Staff believes that proposed new policies

and regulations can be completed for City Council review before the 10-month 15-day extension period elapses.

FISCAL IMPACT

No fiscal impact.

PUBLIC CONTACT

Public contact was made through, posting of the Council agenda on the City's official notice bulletin board, posting of the agenda and report on the City's web page, and the availability of the report in the City Clerk's office and Library. The SCOA and other interested parties were contacted to advise them that the City Council would be considering the matter.

ALTERNATIVES

1. Adopt the Urgency Interim Zoning Ordinance.
2. Direct staff to place on a future agenda a public hearing and action item to consider a "regular" interim ordinance.
3. Deny the Urgency Interim Zoning Ordinance and continue the current interpretation of the Zoning Code.

RECOMMENDATION

Alternative 1, adopt the Urgency Interim Zoning Ordinance.

Given the interest in this issue, the timing of a comparable legal case, and the need for a clear regulatory statement to the community on this issue, it is appropriate that an urgency ordinance is passed to enact a moratorium on allowing medical marijuana dispensaries in the City. By doing so, it gives the City the opportunity to properly study the land use, public safety, and legal aspects of the issue in an appropriate timeframe. It also would allow for expanded input from the public.

Staff will need to return to the City Council before July 9, 2010 to extend the moratorium. An extension can be considered at the City Council meeting of June 29, 2010.

Reviewed by:

Hanson Hom, Director, Community Development
Reviewed by: Trudi Ryan, Planning Officer
Prepared by: Andrew Miner, Principal Planner

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Interim Ordinance
- B. Study Issue Paper

ORDINANCE NO. _____

AN UNCODIFIED URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE IMPOSING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF SUNNYVALE FOR A PERIOD OF 45 DAYS PENDING A STUDY OF ZONING REGULATIONS THAT ARE NEEDED TO ALLEVIATE A CURRENT AND ACTUAL THREAT TO THE PUBLIC HEALTH, SAFETY AND WELFARE

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 the Act was to enable seriously ill persons to obtain, use and cultivate marijuana for medical use 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, as a result of Proposition 215, individuals have established medical marijuana dispensaries in various cities in California, and

WHEREAS, while the experiences in the regulation and policing of medical marijuana dispensaries have varied from city to city, several California cities have experienced an increase in crime, such as burglary, robbery, odor, loitering around the dispensaries, an increase in vehicular traffic and noise in the vicinity of dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries, and

WHEREAS, several cities in Santa Clara County have adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries, and

WHEREAS, Santa Clara County permits the establishment and operation of medical marijuana dispensaries in certain unincorporated areas and therefore, reasonable access to medical marijuana dispensaries for persons with a legal necessity for medical marijuana is available, and

WHEREAS, The City of Sunnyvale has not adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries and the lack of such controls may lead to an establishment of dispensaries and the inability for the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent and near such businesses, and the patients or clients of such establishments, and

WHEREAS, based on the lack of any consistent experience of cities statewide in the absence of any regulatory program in the City, regarding the review of the establishment and operation of medical dispensaries; it is reasonable to conclude that negative effects on the public health, safety, and welfare may occur in the City of Sunnyvale as a result of the operation of medical

marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities, and

WHEREAS, on June 6, 2005, the United States Supreme Court found in *Gonzales v. Raich*, 125 S. Ct. 2195 (2005) there to be no legally recognizable medical necessity exception under Federal Law to the prohibition of possession, use, manufacture or distribution of marijuana under federal law, and

WHEREAS, in February 2009 the U.S. Attorney General stated that federal law enforcement officials would ease enforcement at medical marijuana dispensaries, and

WHEREAS, the establishment of, or the issuance or approval of any permit, certificate of occupancy, or other entitlement for the legal establishment of a medical marijuana dispensary in the City of Sunnyvale will result in an immediate and actual threat to public health, safety and welfare in that the Sunnyvale Municipal Code does not currently regulate the location and operation of medical marijuana dispensaries and does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical dispensaries in the City, and

WHEREAS, there is no feasible alternative to satisfactorily study the potential impact identified above as well or better than the adoption of this interim urgency moratorium ordinance.

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

SECTION 1. For purposes of this ordinance, "medical marijuana dispensary" means any for profit or not-for-profit facility or location, whether permanent or temporary, where the owner(s) or operator(s) intends to or does possess and distribute marijuana for any purpose.

SECTION 2. For the period of this ordinance, or any extension thereof, a medical marijuana dispensary shall be considered a prohibited use in any zoning district of the City, even if the dispensary is located within an otherwise permitted use. No permits or authorizations for a medical marijuana dispensary shall issue while this ordinance is in effect.

SECTION 3. The City Council finds that there is a current and immediate threat to public health, safety, or welfare and the operation of medical marijuana dispensaries, prior to the completion of the City's study of the potential impact of such facilities, would result in a threat to the public health, safety, or welfare as discussed above.

SECTION 4. The City Manager or his designees shall: (1) review and consider options for the regulation of medical marijuana dispensaries in the City, including, but not limited to the development of appropriate rules and regulations governing the location and operation of such establishments in the City; (2) meet with medical patients, advocates, law enforcement representatives, and other interested parties; and (3) shall file a written report describing the measures which the City has taken to address the conditions which led to the adoption of this ordinance with the City Council ten (10) days prior to the expiration of this interim urgency ordinance, or any extension thereof, and such report shall be made available to the public.

SECTION 5. This interim urgency ordinance is also adopted pursuant to Section 65858 of the California Government Code.

SECTION 6. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 7. CEQA EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that the Planning Division may file a Notice of Exemption with the Santa Clara County Clerk in accordance with the Sunnyvale Guidelines for the implementation of CEQA adopted by Resolution No. 118-04.

SECTION 8. EFFECTIVE DATE. This interim urgency ordinance shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council. This interim urgency ordinance shall continue in effect for forty-five (45) days from the date of its adoption and shall thereafter be of no further force and effect unless, after notice pursuant to California Government Code Section 65090 and a public hearing, the City Council extends this interim urgency ordinance for an additional period of time pursuant to California Government Code Section 65858.

SECTION 9. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2010, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2010, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

ATTACHMENT B

Proposed 2010 Council Study Issue

CDD 10-03 Framework for Permitting and Regulating Medical Marijuana Dispensaries

Lead Department	Community Development		
Element or Sub-element	Socio-economic Element		
New or Previous	New		
Status	Pending	History	1 year ago None 2 years ago None

1. What are the key elements of the issue? What precipitated it?

In recent years, City staff has received inquiries from individuals about whether medicinal marijuana can be sold from businesses in the city. There is currently no express provision for this type of use in the Zoning Code, which has the effect of not allowing them in the City. As a result, these businesses have not been able to locate in the city, and individuals desiring this type of medical assistance have had to travel to other cities for this service.

This study issue would consider the possible framework for permitting and regulating marijuana dispensaries in the city. The staff analysis would evaluate the legal issues related to a dispensary for medical marijuana, including State and Federal laws and applicable case law. Additionally, staff would research how other cities are regulating marijuana dispensaries where such uses are allowed. Staff recognizes the problems other cities have had with regulating and compliance of these uses, and will bring these to the Council's attention as part of this study.

The study would consider the appropriateness and desirability of the use in Sunnyvale. The study would also explore zoning options for appropriate locations for these dispensaries and would define operational limitations, standards of review, and standard conditions of approval.

The study issue would include significant input from the City Attorney's Office and Department of Public Safety.

2. How does this relate to the General Plan or existing City Policy?

Socio-economic Element

Goal 5.1A: Preserve and enhance the physical and social environment and facilitate positive relations and a sense of well-being among all community members, including residents, workers and businesses.

Goal 5.1G: Enhance the provisions of health and social services to Sunnyvale residents by providing opportunities for the private marketplace to meet the health and social service needs of City residents.

Goal 5.1H: Identify pressing health and social needs of the Sunnyvale community, encouraging appropriate agencies to address these needs in an adequate and timely manner.

Policy 5.1H.10: Encourage adequate provision of health care services to Sunnyvale residents.

3. Origin of issue

Council Member(s) Whittum, Hamilton and Spitaleri
General Plan
City Staff
Public
Board or Commission none

4. Multiple Year Project? No Planned Completion Year 2010

5. Expected participation involved in the study issue process?

Does Council need to approve a work plan? No
Does this issue require review by a Board/Commission? Yes
If so, which?
Planning Commission
Is a Council Study Session anticipated? No
What is the public participation process?
Outreach to specific types of businesses, neighborhood groups and the Chamber of Commerce. Public hearings with the Planning Commission and City Council.

6. Cost of Study

Operating Budget Program covering costs
242- Land Use Planning
Project Budget covering costs
Budget modification \$ amount needed for study
Explain below what the additional funding will be used for

7. Potential fiscal impact to implement recommendations in the Study approved by Council

Capital expenditure range None
Operating expenditure range None
New revenues/savings range None
Explain impact briefly

8. Staff Recommendation

Staff Recommendation Against Study

If 'For Study' or 'Against Study', explain

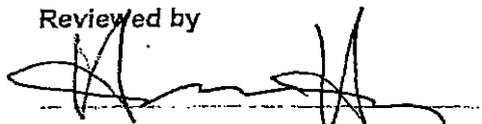
Staff is concerned about the number of issues and potential problems associated with these types of uses in the City. These include concerns about how the local rules relate to State and Federal laws pertaining to the issue. Additionally, there is a significant concern about enforcement issues with these uses. Other cities have reported concerns with the unauthorized sale of the product and increased crime rates as a result of the facilities. Staff does not support the study issue because of these significant concerns.

9. Estimated consultant hours for completion of the study issue

Managers	Role	Manager	Hours			
	Lead	Ryan, Trudi	Mgr CY1:	30	Mgr CY2:	0
			Staff CY1:	240	Staff CY2:	0
	Interdep	Berry, Kathryn	Mgr CY1:	60	Mgr CY2:	0
			Staff CY1:	0	Staff CY2:	0
	Interdep	Fitzgerald, Kelly	Mgr CY1:	60	Mgr CY2:	0
			Staff CY1:	0	Staff CY2:	0
Total Hours CY1:			390			
Total Hours CY2:			0			

Note: If staff's recommendation is 'For Study' or 'Against Study', the Director should note the relative importance of this Study to other major projects that the Department is currently working on or that are soon to begin, and the impact on existing services/priorities.

Reviewed by

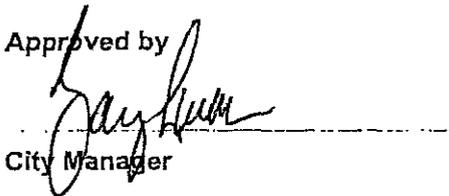


Department Director

10/15/09

Date

Approved by



City Manager

10/16/09

Date

ATTACHMENT B

Addendum

A. Board / Commission Recommendation

Issue Created Too Late for B/C Ranking

Board or Commission	Rank	Rank
	1 year ago	2 years ago
Arts Commission		
Bicycle and Pedestrian Advisory Committee		
Board of Building Code Appeals		
Board of Library Trustees		
Child Care Advisory Board		
Heritage Preservation Commission		
Housing and Human Services Commission		
Parks and Recreation Commission		
Personnel Board		
Planning Commission		
Board or Commission ranking comments		

B. Council

Council Rank	(no rank yet)
Start Date	(blank)
Work Plan Review Date	(blank)
Study Session Date	(blank)
RTC Date	(blank)
Actual Complete Date	(blank)
Staff Contact	