

**Council Meeting: June 29, 2010**

**SUBJECT: 2010-7279** Consideration of an Urgency Interim Ordinance to Extend the Temporary Moratorium Affecting the Sale and Distribution of Marijuana for Medical Purposes

**REPORT IN BRIEF**

On May 25, 2010, the City Council enacted an urgency interim zoning ordinance placing a 45-day moratorium on the establishment of any medical marijuana collective, cooperative or place of distribution. Staff now recommends a 10-month 15-day extension of the moratorium so that City policy may be established for such uses through a Study Issue currently scheduled for completion by December, 2010. Although the request would extend the moratorium to May 24, 2011, it is intended that the moratorium would be terminated as soon as the City Council adopts a policy with possible amendments to the Municipal Code following completion of the Study Issue. Staff has included a Work Plan for completion of the study (Attachment A).

**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 collectives, cooperatives and dispensaries. The Sunnyvale Municipal Code contains no provisions expressly permitting or prohibiting the operation of a place of distribution for medical marijuana. 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 collectives, cooperatives or 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". 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 collectives or cooperatives 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 facilities to distribute medical marijuana.

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.

On May 25, 2010, the City Council adopted an urgency interim zoning ordinance for a moratorium on the establishment of any medical marijuana collective, cooperative or place of distribution.

## **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 extend the previously adopted urgency interim ordinance, a four-fifths vote is required (i.e. six of the seven council members must vote in favor of the ordinance). The subject ordinance will take effect on August 9, 2010, when the prior 45-day urgency ordinance expires, and will terminate on May 24, 2011.

## **DISCUSSION**

### **Moratorium Extension**

The urgency ordinance that was adopted by Council on May 25, 2010 went into effect immediately upon adoption and placed a moratorium on the establishment of any place of distribution of medical marijuana for a period of 45 days. The moratorium expires at the end of 45 days (July 9, 2010) unless an extension is approved. Staff is requesting a 10-month 15-day extension to allow time to complete the study.

At the May 25, 2010 Council meeting, there was concern that the study should not take up to two years to complete. As seen in the attached Work Plan (Attachment A), it is the intent of staff to return to Council with a completed study by December 15, 2010. Although a shorter extension may be all that is needed, it cannot be predicted with certainty that the study will be completed by that date. Enacting the full 10-month 15-day moratorium extension will ensure the City has adequate time to complete a study of the impact of these uses and develop new policy and related procedures and regulations. Extending the moratorium will ensure that there is time to make the appropriate decisions on the subject. If the study is completed prior to end of the 10-month extension, the moratorium could be rescinded at that time.

City staff has spent the time since the May 25, 2010 Council meeting researching this issue, monitoring other cities actions, and preparing a work plan. Staff has received material from interested parties such as the Sunnyvale Cooperative Association (SCOA) and the Americans for Safe Access (ASA) Silicon Valley Chapter, and is reviewing the information.

Requests have been made by two groups to allow a facility to open as a “beta” test. There are many questions and concerns that need to be considered before a facility can open in Sunnyvale. Further, other medical marijuana facilities in

nearby cities can provide suitable beta testing for Sunnyvale. Therefore, staff does not recommend a “beta” test during the interim ordinance period.

### **Preliminary Options**

The discussion regarding the placement of medical marijuana distribution facilities is complex. The full study will consider legal and operational issues, potential land use and public safety impacts, and the municipal costs as well as fiscal benefits.

Two main options would be evaluated, including:

1. Maintain a prohibition of the use, or
2. Permit the use with specific conditions, restrictions and operations and location requirements.

The main goal to consider with this issue is how to safely and appropriately provide compassionate care for those in need of assistance through the use of medical marijuana. Staff will provide general and specific guideline options when study returns in December, and may include the following:

- Strict interpretation of the California Attorney General guidelines for these facilities,
- Ensure compatibility with surrounding land uses,
- Meets the primary goal of providing medical marijuana for those in need,
- Limit the negative impact to the community as a result of the facilities,
- Avoiding crime, public safety and other negative impacts.

Possible restrictions and requirements could include, but not limited to:

- Limiting the number of facilities allowed in the city;
- Allowing only collectives or cooperatives as defined in the State Attorney General’s guidelines, not storefront dispensaries;
- Controlling the source of the marijuana (on-site growing versus supplied by distributor);
- Limiting the size of the facility and prohibiting secondary uses associated with the facility (such as retail sales);
- Controlling operations, such as transactions, deliveries, audits, residency requirements, and regular permit reviews;
- Developing location criteria to determine suitable areas in the City to place the facilities (appropriate zoning areas, distance from residential, schools, etc.);

Staff anticipates that a full study can be completed by the end of the 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.

This report is prepared in conformance with Government Code Section 65858(d) which requires a City to “issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance” ten days prior to expiration of an interim urgency ordinance.

**FISCAL IMPACT**

No fiscal impact.

**PUBLIC CONTACT**

Public contact was made by publishing in the Sun newspaper, posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site. Notice has also been sent to interested parties, similar to that done for the May 25, 2010 Council meeting.

This level of notification for a minimum of 10 days prior to the hearing date is required by State law for a 10-month 15-day extension to the original 45-day moratorium.

**ALTERNATIVES**

1. Introduce an ordinance to extend the Urgency Interim Zoning Ordinance for an additional 10 months and 15 days (Attachment B).
2. Introduce an ordinance to extend the Urgency Interim Zoning Ordinance for a period of time less than 10 months and 15 days (modify Attachment B).
3. Deny the extension of the Urgency Interim Zoning Ordinance.

**RECOMMENDATION**

Alternative 1. Based on preliminary analysis, staff recommends that the Council extend the Urgency Interim Zoning Ordinance for an additional 10 months and 15 days as allowed by Government Code 65858. The ordinance could be rescinded before the expiration date of May 24, 2011 when Council adopts a policy and regulations governing marijuana collectives, cooperatives, or places of distribution.

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. Work Plan to Complete the Study

B. Interim Ordinance

## **Medical Marijuana Dispensary Study Issue**

*Draft Work Plan prepared June 2010*

1. **Research**- June 2010
  - a. Information provided by interested parties
  - b. On-line information
  - c. State Attorney General guidelines
  - d. Court cases
  - e. Other cities
  - f. Law enforcement groups
  
2. **Internal Meeting to Discuss Options**- June 2010
  - a. Discuss/brainstorm possible alternatives
  - b. Make preliminary decisions on recommendation
  - c. Review zoning options:
    - i. Distances from specific uses and each other
    - ii. Standards of review
    - iii. Performance standards: max size, limit to numbers in City,
    - iv. Compatibility
    - v. Final decision options
  - d. Direction to complete study
  
3. **Public Outreach**- August 2010
  - a. Use various options to provide public with information and ability to provide feedback
    - i. Web site
    - ii. Outreach meetings
    - iii. Quarterly report
    - iv. Newspaper articles
    - v. Newspaper ads
    - vi. Mailings to neighborhood groups, business groups, interested parties
    - vii. Other
  
4. **Planning Commission/City Council Study Session**- September 2010
  
5. **Planning Commission Hearing**- November 2010
  - a. Provide recommendation to City Council
  - b. Decision based on zoning regulations: use, distances, standards of review, siting, conditions of approval, etc.
  
6. **City Council Hearing**- December 2010
  - a. Final decision

## ORDINANCE NO. \_\_\_-10

**AN UNCODIFIED URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE EXTENDING THE TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF SUNNYVALE FOR A PERIOD OF TEN MONTHS AND 15 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 and 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, on May 25, 2010, the Sunnyvale City Council imposed a 45-day moratorium on the sale and distribution of medical marijuana for medical purposes; and

WHEREAS, staff requires additional time to evaluate relevant safety issues and develop guidance for legally appropriate regulation, as detailed in the "Consideration of an Ordinance to Extend Temporary Moratorium Affecting the Sale and Distribution of Marijuana for Medical Purposes"; 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, in that the City does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical marijuana dispensaries in the City.

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. Pursuant to Section 65858 of the California Government Code, a written report has been issued by the City of Sunnyvale describing the measures that have been taken thus far to alleviate the condition which led to the adoption of the interim urgency ordinance.

SECTION 6. This interim urgency ordinance is also adopted pursuant to Section 65858 of the California Government Code.

SECTION 7. 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 8. 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 9. EFFECTIVE DATE. Upon its adoption by a four-fifths (4/5) vote of the City Council, this extension of the interim urgency ordinance shall take effect on July 9, 2010, which is the expiration of the original 45-day interim urgency ordinance, and shall remain in effect for ten months and fifteen (15) days. Unless extended or repealed by the City Council, the ordinance shall expire on May 24, 2011.

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 and adopted as an urgency 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