

PLANNING COMMISSION MINUTES OF NOVEMBER 22, 2010**2010-7279 - Medical Marijuana Distribution Facilities (Study Issue) AM**

Andrew Miner, Principal Planner, presented the staff report. He said Don Johnson, Director of Public Safety, Carl Rushmeyer, Lieutenant with Public Safety, and Hanson Hom, Director of Community Developments are present this evening. Mr. Miner said comments from the Medical Marijuana Survey on the City website have been provided on the dais. He said staff recommends that the Planning Commission recommend to City Council to introduce an ordinance to prohibit MMDs (Medical Marijuana Distribution Facilities) in the City (Attachment B, draft ordinance).

Comm. Larsson discussed with staff that the Commission could provide input this evening on conditions for MMDs (Attachment M) in case the City Council decides to allow the MMDs, even if the Commission recommends the City Council prohibit MMDs.

Vice Chair Hendricks asked **Kathryn Berry**, Senior Assistant City Attorney, whether the Planning Commission has legal protection if they were to recommend MMDs be allowed. Ms. Berry discussed the question and said that the Commission would have no personal exposure liability. Ms. Berry discussed recent case law that found there is not a conflict between state and federal law regarding this issue adding that the Attorney General's "Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use", in Attachment F is helpful to determine what is allowed and not allowed in CA. Vice Chair Hendricks discussed with staff the Attorney General guidelines and making changes to Attachment M.

Chair Travis opened the public hearing.

Stan Hendryx, a Sunnyvale resident, said he supports the staff recommendation to prohibit MMDs in Sunnyvale. He said MMDs would not be good for the community, that regulation would be an undue burden on the City, and that there are alternative ways to get medication to those who need it including Marinol.

Paul Stewart, representing the Medicinal Cannabis Collective Coalition, said he was dismayed at the staff recommendation. He said it ignores the will of CA voters, needs of patients, and that traditional pharmacies do not work. He said he would have liked to have seen a draft ordinance to allow MMDs in the report. He discussed cost recovery, federal law, medical value, crime, and safe access and encouraged the Commission to not ban MMDs.

Comm. Hungerford discussed with Mr. Stewart sources of the cannabis, how membership in a collective is established, how collectives operate ethically, and that any excess product grown within the collective can only be sold to members.

Alesha Boyd discussed Proposition 215, the Compassionate Use Act. She said she thinks that Sunnyvale should allow safe places for people to obtain medical cannabis that are legally permitted. She said she thinks the City should adopt an ordinance to allow MMDs.

Stephen Zyskiewicz spoke in support of allowing MMDs. He said he prefers a 600 foot buffer from residential, park, school, and daycare uses, and would like dispensaries to be in convenient locations and open on Sundays. He commented that Marinol is more expensive than medical marijuana.

Carlos Plazola, representing a client who would like to open a facility in Sunnyvale, discussed his experience with MMDs in Oakland addressing crime and safety issues. He said passing an ordinance with clear regulations would assure a broad delivery of compassionate care services. He said this issue is important for every jurisdiction, and affects all of us.

Laura Blair, Land Use Attorney and former Deputy City Attorney with the City of Oakland, spoke in support of establishing an ordinance to allow MMDs. She said it is important to create a clear ordinance to address issues to ensure compatibility in the City and urged the Commission to recommend to City Council to direct staff to create an ordinance that would allow MMDs in Sunnyvale.

Steve Karmann spoke in support of an upcoming speaker, Bryce Berryessa, and said he hopes the City will allow Mr. Berryessa to have an MMD in Sunnyvale.

Bryce Berryessa said he works in the psychiatric care industry, and thinks that medical marijuana works where pharmaceuticals have failed. He said many people cannot afford their medication and medical marijuana is something a patient can provide for themselves. He said allowing MMDs in a city is a very complex issue and encouraged the Commission to look at dispensaries that operate as non-profits, as they contribute to the community and the distribution is based on compassion.

Lauren Vazquez, Director of the Silicon Valley Chapter of Americans for Safe Access (ASA), which is a volunteer non-profit organization dedicated to protecting the rights of medical cannabis patients and providers in the South Bay. She said she is also a land use attorney and a medical cannabis patient. She said currently no cities in the South Bay allow dispensaries, and Sunnyvale would be providing a great service to the residents. She said other cities have created regulations successfully and Sunnyvale would be able to set the rules to prevent secondary impacts. She said medical cannabis users need the dispensaries, and she hopes the Commission will vote to allow MMDs.

Batzi Kuburovich, listed his affiliations including the Chairman of the Standards Committee of the MC3, which is the Medicinal Cannabis Collective Coalition, and a collectives operator. He discussed his personal experience regarding medical cannabis, and said he applied for a dispensary permit in February 2010 and was denied. He asked the Commission to recommend that MMDs be allowed for the responsible operator who can show responsibility from seed to consumption. He discussed what he does to guarantee transparency and said vendors will be transparent if they know that their operation is legal and that the government will not arrest them.

Mei-Ling Stefan, a Sunnyvale resident, said she agrees with the staff recommendation to prohibit MMDs. She said she thinks proper control would be nearly impossible, discussing her concerns. She discussed the limited benefits and health concerns regarding medical marijuana, and suggested alternatives. She said she is concerned about our schools and how the City would handle this issue.

Patrick Goggin, an attorney working on this issue in Northern California, urged the Commission to vote against the staff recommendation. He addressed concerns about crime, and patients' access. He suggested Sunnyvale look at Stockton and Napa as they have created ordinances allowing facilities. He said Sunnyvale could regulate MMDs, capturing cost recovery, sales tax, and the creation of jobs.

Comm. Larsson asked Mr. Goggin what he thought some of the key regulations have been in communities where MMDs have been successfully allowed. Mr. Goggin said proximity requirements to other defined uses, limitations on where the facilities can operate, strong security requirements, audit requirements, and to make sure the facilities are operating as non-profits. Comm. Larsson further discussed audits and confidentiality concerns with Mr. Goggin.

Brian David, Executive Director of the Shoreline Wellness Collective, said he feels that the community is ready for medical cannabis. He said the on-line survey results indicated more support for medical cannabis than against. He discussed compassion to the community with safe and secure access, and strict compliance to local ordinances. He said he thinks the pros to allow MMDs outweigh the cons and the general consensus is to allow MMDs as long as the facilities are regulated and taxed. He urged the Commission to look beyond the ignorance of a few and in support of many by providing safe and affordable access to medical cannabis and to send a compassion ordinance to the City Council for approval.

Comm. Hungerford asked Mr. David about the supply side of the cannabis with Mr. David explaining how his collective works regarding supply, including that some of the supply comes from the Humboldt County, CA area. Mr. David said they only grow the amount they are allowed to grow based on the number of members in the collective.

Vice Chair Hendricks discussed his concern with cannabis grown as far away as Humboldt County. Mr. David said where the product is grown should not matter, however it is easier to grow the product outdoors in Humboldt County. He said the product could be grown locally in green houses if required.

Jonathan Lustig, affiliated with ASA, discussed the history, negative impacts, and misinformation related to the prohibition of medical cannabis. He urged the Commission to allow MMDs in Sunnyvale.

James Anthony, a former Oakland City Attorney, said he went into private practice to address medical cannabis land use issues, and now does policy consulting for a group called Cannbe. He discussed communities, e.g. Sebastopol and Napa, that have passed dispensary and cultivation ordinances. He said the Commission has an opportunity to look at how Sunnyvale could regulate medical cannabis, discussing other options available. He said some communities have a competitive process which requires the applicants to submit a detailed business plan including how they will return services and benefits to the community as a non-profit organization. He said he hopes the Commission will recommend to City Council to follow through with regulations to allow MMDs.

Jonathan Steigman, affiliated with ASA, spoke in support of allowing MMDs in Sunnyvale and encouraged the Commission to not be swayed by red herring arguments. He suggested allowing MMDs to be located in more populated areas, and said the Commission has the opportunity to be courageous and compassionate or cowardly and cruel to the patients in Sunnyvale and not play into the hands of a longtime propaganda campaign.

George Bell, a Sunnyvale resident, said he thinks that missing from conversation tonight is the negative aspects of medical marijuana use. He discussed marijuana-caused or marijuana-complicated psychiatric problems, the problems with teenage use, and long-term affects of marijuana. He said Marinol is available by prescription as an option. He discussed the problems of physicians providing medical marijuana recommendations for mild complaints that could be treated with other options and said he supports the staff recommendation to prohibit MMDs in Sunnyvale.

Chair Travis closed the public hearing.

Vice Chair Hendricks discussed with Lt. Rushmeyer minors and medical marijuana usage and cards. Lt. Carl Rushmeyer said that a minor can obtain a medical marijuana card with parental approval, however dispensaries can decide whether to honor the cards. Lt. Rushmeyer said minors do bring the cards to school, minors do go to parks, but it is illegal to smoke marijuana in public and minors would be cited for possession of marijuana. Vice Chair Hendricks and Lt. Rushmeyer discussed that anyone with a

medical marijuana card can possess marijuana in a park, however they cannot smoke it in a park, with Lt. Rushmeyer adding that he does not believe marijuana is allowed on school campuses.

Chair Travis discussed with Lt. Rushmeyer that a person with a recommendation can go to any and as many dispensaries as they want to and obtain cards for multiple dispensaries.

Comm. Hungerford discussed with Ms. Berry the recommendation cards. Ms. Berry said one of the issues with medical marijuana is that it is not overseen by a state office, like alcohol, and it is available to minors. Persons with cards can go to multiple collectives. Mr. Miner clarified that a doctor provides a recommendation and the dispensaries issue the cards. Mr. Miner said there are also county-issued cards. Ms. Berry said that the State Department of Health Services established a voluntary program for the issuance of identification cards to qualifying patients, and the counties are obligated to implement the program, clarifying that there are two kinds of cards, the dispensary cards, and the county cards.

Vice Chair Hendricks moved Alternative 2 to recommend to City Council to direct staff to return with a draft ordinance by the end of January 2011 for the purpose of determining the appropriateness of MMDs in Sunnyvale. The ordinance should include new procedures, processes, regulations, and fees to allow MMDs in the City with direction on appropriate options (options listed in Attachment M). Vice Chair Hendricks said he has some changes to request for Attachment M with Chair Travis suggesting a second motion be made for the changes. **Comm. Larsson seconded the motion.**

Vice Chair Hendricks thanked the public for their input tonight and at the previous outreach meetings. He said he finds it difficult to make zoning decisions on this issue without seeing what the regulations might be and whether the City can deal with all the constituents' concerns. He discussed his concerns and said he acknowledges the difficulty of oversight by the City if MMDs are allowed. He said, in general, he is more inclined toward personal freedoms and fewer regulations, however he does not think this issue fits into the "all things being equal" category. He said federal and state governments have left the managing and regulating up to the cities. He said a key provision for him would be to have the ability to immediately revoke any permit that has broken a regulation.

Comm. Larsson agreed with Vice Chair Hendricks. He said he is seconding the motion as he would like to continue to study this issue further. He said there are aspects that he has concern with, especially the burden on the City to regulate the dispensaries. He said this is a controversial issue and he hopes with careful oversight that there is a way to make this work.

Comm. Hungerford said he would not be supporting the motion as he is uncomfortable voting for the motion, and working the conditions out later. He said he has no problem with true cooperatives, however he thinks it would be difficult to make sure all dispensaries were operating within those guidelines. He said he thinks there are still too many loose ends that need to be addressed. He said his preference would be for this to be a true study issue determining whether conditions could be made for true cooperatives.

Comm. Travis confirmed that the motion was not to approve MMDs in the City, but to have an ordinance brought back in January 2011. Mr. Miner confirmed that the motion is to recommend Alternative 2 and then give guidance to the City Council on what is contained in Attachment M. Staff noted that the Commission could still recommend banning MMDs.

Comm. Chang said he concurs with Comm. Hungerford, that there are too many loose ends on the supply side, and that the City is not prepared or experienced to manage this issue. He said Sunnyvale would be the first city in the County to allow this.

Vice Chair Hendricks clarified that his intent for the motion is to go ahead and create a definitive document for consideration and then decide if MMDs should be allowed in Sunnyvale.

Comm. Dohadwala said she would not be supporting the motion as she agrees that there are too many loose ends. She said it would be difficult for a City to affectively condition and enforce regulations regarding MMDs and she would like the state to do something about this issue rather than the individual cities. She said her other concern is there is not enough research being done on the drug itself and it is difficult to understand the benefits versus the consequences.

Comm. Sulser said he would reluctantly support the motion. He said he has a lot of concerns whether the City can create a regime that would not become onerous to the City and the MMDs. He said he would like to see the fine print before he makes a final decision.

Chair Travis said he would be supporting the motion, though he has serious concerns, agreeing that there are loose ends. He said he would like to see a proposed ordinance as he does not feel like he can say no right now.

The motion passed 4-3 with Comm. Chang, Comm. Dohadwala, and Comm. Hungerford dissenting.

Vice Chair Hendricks made a second motion, recommending multiple changes to Attachment M. The motion died for lack of a second.

Mr. Miner clarified that Attachment M is a condensed version of a sample ordinance and many of Vice Chair Hendricks' suggested changes were considered. Mr. Miner said the Commission may want to provide guidance on what should be included in an ordinance.

Comm. Larsson confirmed with the Chair that the Commission could breakdown suggested changes into multiple motions. Comm. Larsson said the points that he thinks are key are the appropriate location and the number of locations. **Comm. Larsson moved that the Commission recommend to City Council that MMDs be located no less than 1000 feet from residential, parks, schools, daycare uses, and places of assembly. Comm. Hungerford seconded the motion** due to the land use issues.

Comm. Larsson said that he thinks it is important that the Commission make a recommendation on location, and that while locating an MMD on El Camino Real near public transit has some value, that he is not sure the community is ready for that. He said at the outreach meetings it seemed that more people wanted a 1000 foot buffer rather than a than 600 foot buffer.

Comm. Hungerford said that there is some attractiveness to allowing an MMD on El Camino Real which could allow the location to be monitored easily. He said the location of the dispensary versus where the marijuana is grown should be separate. He said it is probably better to have the dispensary located at the north end of the City to try it out and see how it works.

Comm. Dohadwala said she would not be supporting the motion. She said if the City is going to allow MMDs based on compassionate grounds then the dispensaries should be located where they are accessible.

Vice Chair Hendricks said he would not be supporting the motion and that if the intent is for compassionate use for those who are ill, then people should be able to access the location. He said he does not necessarily think the dispensaries are the best idea, however he thinks the Commission should be open to what is good for the community and not what we think as individuals.

Chair Travis offered a Friendly Amendment that the motion include an allowance that if a natural barrier (i.e. freeway, creek) exists between an MMD and a residential, park, school, daycare, and place of assembly use that that the 1,000 foot distance limitation be reduced. The Friendly Amendment was acceptable to the maker and seconder of the motion.

The motion passed 5-2 with Vice Chair Hendricks and Comm. Dohadwala dissenting.

Mr. Miner confirmed with the Commission their previous motion.

Comm. Larsson moved to recommend to City Council that the number of dispensaries allowed in the first year is limited to one and that there is an immediate revocation process. **Vice Chair Hendricks seconded the motion.**

Ms. Berry explained that a dispensary would require a Use Permit (UP) to operate and a UP is a vested right, so there cannot be an immediate revocation without a hearing process. She said one of the items in Attachment M is that the City follow the appeal process in Title 19 which is an administrative process. She said that the only way to revoke a UP is that it goes to City Council. Ms. Berry said what the Planning Commission may want to consider is to vest with the Planning Commission the authority to revoke, modify or reaffirm. She said the Planning Commission could condition a one-year permit that would expire automatically.

Chair Travis clarified with Ms. Berry her comments and asked if a violation occurred could the Planning Commission stipulate the item be on the next agenda. Ms. Berry said you would need to have some time to prepare a case.

Comm. Larsson said he would like to include in the motion what Ms. Berry suggested, as he thinks it is important to have an appeal process, and it is the right of people to be heard before a permit is revoked. Ms. Ryan clarified that what she thinks the Planning Commission is trying to accomplish is the need for a quick review process and staff can include this.

Vice Chair Hendricks said if the City is going to allow a permit for a dispensary there needs to be timely mechanism to deal with any issues especially with this first location. Ms. Berry said staff can come back to the Commission with something to accomplish this or the permit could be for one year. She said if everything is going fine after one year, then no hearing would be necessary. If there are issues, then there could be an automatic hearing at one year.

Comm. Larsson clarified that the motion is to recommend allowing a single MMDs and request staff come up with a timely process for reviewing and renewing. **The seconder agreed. Comm. Larsson** said he sees this as an experiment.

The motion passed unanimously, 7-0.

Comm. Dohadwala discussed with staff that Attachment M would be further expanded by staff with many of the concerns discussed this evening, taken into consideration.

Motion one.

ACTION: Vice Chair Hendricks made a motion on 2010-7279 to recommend to City Council to direct staff to return with a draft ordinance by the end of January 2011 for the purpose of determining the appropriateness of MMDs in Sunnyvale. The ordinance should include new procedures, processes, regulations, and fees to allow MMDs in the City with direction on appropriate options (options listed in Attachment M). Comm. Larsson seconded. Motion carried 4-3, with Comm. Chang, Comm. Dohadwala and Comm. Hungerford dissenting.

APPEAL OPTIONS: This item is scheduled to be considered by City Council at the December 14, 2010 meeting.

Motion two.

ACTION: Comm. Larsson made a motion on 2010-7279 to recommend to City Council that MMDs be located a minimum distance of 1000 feet from residential, park, school, daycare, and places of assembly uses with an allowance to have the 1,000 foot distance limitation reduced if a natural barrier (e.g. freeway, creek) exists that effectively separates the uses. Comm. Hungerford seconded. Motion carried 5-2, with Vice Chair Hendricks and Comm. Dohadwala dissenting.

APPEAL OPTIONS: This item is scheduled to be considered by City Council at the December 14, 2010 meeting.

Motion three.

ACTION: Comm. Larsson made a motion on 2010-7279 to recommend to City Council that the number of dispensaries allowed in the first year be limited to one and that staff come up with a timely process for reviewing and renewing Use Permits related MMDs. Vice Chair Hendricks seconded. Motion carried 7-0.

APPEAL OPTIONS: This item is scheduled to be considered by City Council at the December 14, 2010 meeting.