

# Agenda Report

**TO:** CITY COUNCIL **DATE:** MARCH 21, 2005  
**FROM:** CITY MANAGER  
**SUBJECT:** RECOMMENDATION FOR AN AMENDMENT TO THE ZONING CODE  
TO PROHIBIT MEDICAL MARIJUANA DISPENSARIES

## **RECOMMENDATION**

It is recommended that the City Council, following a public hearing:

1. Find that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b) (3);
2. Find that the proposed amendment as contained in this report is consistent with the General Plan;
3. Approve the recommendation to amend the Zoning Code to define medical marijuana dispensaries and prohibit this use within the City of Pasadena; and
4. Direct the City Attorney to prepare an ordinance amending Title 17.

## **PLANNING COMMISSION'S RECOMMENDATION**

The Commission voted to recommend that the City Council approve the amendment as recommended by staff and that the Pasadena Public Health Department monitor changes in State and Federal laws and policies regarding the use of medical marijuana and return at an appropriate time to evaluate the prohibition on medical marijuana dispensaries. The Planning Commission considered this amendment on January 26, 2005.

## **BACKGROUND**

In 1995, the California voters approved Proposition 215, known as the "Compassionate Use Act of 1996." The intent of this proposition was to enable persons needing marijuana for medical purposes to obtain and use it without fear of criminal prosecution

under limited, specific circumstances. Recently, the Governor signed a bill approved by the California legislature to clarify the scope of the Compassionate Use Act of 1996 and allow local governing bodies to adopt and enforce rules and regulations regarding medical marijuana dispensaries. However, the State has not adopted any rules to effectively regulate distribution of medical marijuana. In response, some cities have adopted ordinances that allow medical marijuana dispensaries under restrictive rules while others have prohibited such uses. The cities that have approved medical marijuana dispensaries indicate that there have been problems.

Under Section 17.16.010 of the Zoning Code, the zoning administrator has the authority to determine whether a specific use shall be deemed to be within one or more use classifications or not within any classification. The zoning administrator may determine that a specific use is not within any use classification if its characteristics are substantially incompatible with those typical of uses named within the classification. The zoning administrator has determined the medical marijuana dispensaries are not within a specific use within the Zoning Code and that the characteristics of this use are substantially incompatible with similar uses. This interpretation is contained in Attachment A and the proposed amendment would codify the zoning administrator's interpretation.

## **ANALYSIS**

Because of the Compassionate Use Act of 1996, medical marijuana dispensaries operate separately from the standard prescription drug system. Prescription drugs are controlled by the Federal Food and Drug Administration. For legal medications such as morphine, tight regulations have been established in the prescription and control of these medications that allow for tracking and verification of legitimate use. No such standards exist for medical marijuana. Marijuana is still categorized as a Schedule I drug under the Controlled Substance Act; meaning that under Federal law, the use, possession, transportation, and distribution of marijuana (even for medical purposes) is illegal. A pharmacy cannot distribute medical marijuana without running afoul of Federal laws. There is a conflict between Federal and State regulations. With no formal standards, medical marijuana dispensaries would operate as businesses with little support and governance through existing legislation. In addition, the current limited regulatory and enforcement systems in place do not adequately address fraud and abuse associated with marijuana dispensing businesses.

While this proposed amendment will codify the zoning administrator's interpretation to prohibit medical marijuana dispensaries, consideration was also given to amending the Zoning Code to conditionally permit this use and establish standards for the operation of such uses. Consideration was also given to the issue as to where Pasadena residents will obtain medical marijuana. Currently, there are no medical marijuana dispensaries in the San Gabriel and San Fernando Valleys. The closest distributors are West Hollywood where there are three. There are also distributors in Inglewood, Los Angeles (south of Downtown Los Angeles), and Long Beach.

There does not appear to be a high demand for a medical marijuana dispensary locally. A survey of several medical providers at local institutions such as the Huntington Hospital Phil Simon HIV Clinic, the Huntington Hospital Oncology Department, Hospice of Pasadena, the Andrew Escajeda HIV/AIDS Clinic and the Community Health Alliance of Pasadena found no physicians that currently prescribe medical marijuana.

The recommendation to prohibit the use was the result of discussions with the Police and Public Health Departments as well as a review of secondary impacts of the use in other cities. The City of Rocklin, California is one that has recently prohibited medical marijuana dispensaries. Rocklin's Police Chief wrote a memo regarding the secondary impacts found to be associated with the operation of such facilities in other communities. The communities reviewed in this memo included: Roseville, Oakland, Hayward, Lake County, and Fairfax. This information is included in Attachment B. The memo illustrates the secondary impacts of this use.

The Police Department and the Public Health Department for Pasadena have expressed concern about the location of a dispensary in the City. The Public Health Department contacted other health departments throughout the state and confirmed reports of negative secondary impacts in locations surrounding dispensaries. It is possible that over time issues associated with this use may become minimized as the State sets up programs and establishes operational criteria and/or restrictions. For example, a State operated 24/7 medical marijuana verification card system should be operational by the end of the year, which would allow cardholders and law enforcement to have a mechanism to verify legitimate use. Because of the conflict in State and Federal law, the U. S. Supreme Court has recently taken up this issue and should provide a decision this year. Their decision most likely will impact the use of medical marijuana.

## **CONCLUSION**

Because of a lack of a state-wide uniform management system and the potential for secondary impacts, it is recommended that medical marijuana dispensaries be prohibited in the City at this time. This issue will need to be revisited as the State develops a uniform management system for dispensaries. The Public Health and Planning staff will track any new developments in this regard and return to the Planning Commission within a year. At that time reconsideration can be given to the prohibition of medical marijuana dispensaries.

The Zoning Code will be amended by adding the following definition:

**Medical Marijuana Dispensary.** A medical marijuana dispensary is a facility or location where medical marijuana is made available to and/or distributed by or to the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health and Safety Code Section 11362.5 et seq.

**CONSISTENCY WITH THE GENERAL PLAN**

The proposed amendment to prohibit medical marijuana dispensaries is consistent with the City's General Plan related to alcohol and drug abuse.

Objective 16 – Alcohol and Drug Abuse – Reduce the impact of alcohol and other drug related problems in Pasadena.

**ENVIRONMENTAL DETERMINATION**

The State CEQA Guidelines Article 5 under review for exemption (Section 15061 (b) (3) describes what is known as the "general rule." The general rule states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. In this case, an amendment to the Zoning Code to prohibit medical marijuana dispensaries does not a significant effect on the environment.

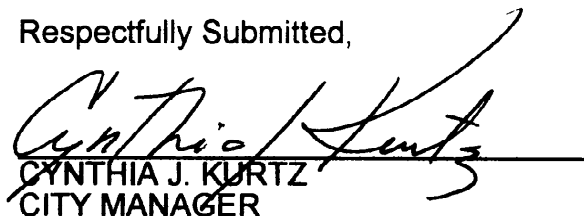
**CHILDREN, YOUTH AND FAMILY IMPACT**

The proposed Zoning Code Amendment will result in prohibiting medical marijuana dispensaries in the City. This will ensure that potential secondary impacts of this use will not have an impact on children, youths and families.


**FISCAL IMPACT**

There will be no fiscal impacts associated with the proposed code amendment.

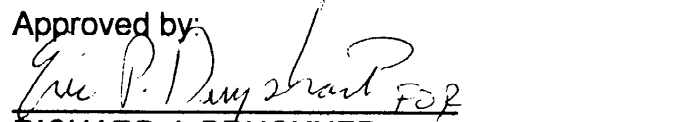
Respectfully Submitted,

  
CYNTHIA J. KURTZ  
CITY MANAGER


Prepared by:

  
DENVER E. MILLER  
PRINCIPAL PLANNER

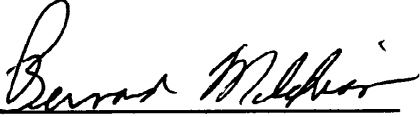
Approved by:

  
RICHARD J. BRUCKNER  
DIRECTOR PLANNING AND DEVELOPMENT

Concurrence:



WILMA ALLEN  
DIRECTOR OF PUBLIC HEALTH DEPARTMENT



BERNARD MELEKIAN  
CHIEF OF POLICE

## **LIST OF ATTACHMENTS**

ATTACHMENT A – December 17, 2004 Zoning Administrator Interpretation

ATTACHMENT B – Memo from the City of Rocklin Police Chief

## ZONING ADMINISTRATOR INTERPRETATION

ATTACHMENT A

**DATE:** December 17, 2004

**CODE SECTION:** 17.16.010

**QUESTION NEEDING INTERPRETATION:** What use does a medical marijuana dispensary fall into?

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### INTERPRETATION:

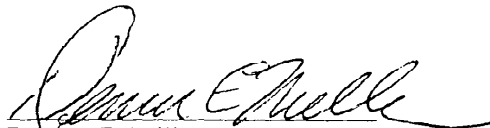
A medical marijuana dispensary is a use where medical marijuana is made available to or distributed to a primary caregiver, qualified patient, or a person with an identification card in compliance with California Health and Safety Code Section 11362.5 et seq. Currently the Pasadena Zoning Code does not have a specific use classification for this use.

Under 17.16.010, the Zoning Administrator is permitted to determine whether a specific use shall be deemed to be within one or more use classifications or not within any classification in the Zoning Code. The Zoning Administrator may determine that a specific use is not within a use classification if its characteristics are substantially incompatible with those typical of uses named within the classification.

A medical marijuana dispensary does not fit perfectly into a specific land use category. However, it is similar to a pharmacy which is classified as a retail sales use. In further researching this, I have found that medical marijuana facilities in other California communities have had secondary impacts on the health, safety, and welfare of the community. The City of Rocklin's Police Chief has researched this issue by speaking to other cities about this use. In his research he contacted the police departments for Roseville, Oakland, Hayward, Fairfax, and Lake County. His memo was included in a report to the Rocklin City Council and was dated July 13, 2004. It enumerates various issues that show that the characteristics of a medical marijuana dispensary are not compatible with the use, retail sales. These issues included:

- Street level dealers trying to sell to those going to the dispensary at a lower price;
- People smoking marijuana in public around the facility;
- Complaints of illegal drugs being sold inside the dispensaries;
- Street criminals in search of drugs are robbing medical use patients for their marijuana; and
- Thefts and robberies around the location drug commerce.

These impacts are not ones commonly associated with pharmacies or retail sales. Therefore, it is my interpretation that this use does not fall into any use classification within the Zoning Code and is not an allowed use within the City.



Denver E. Miller  
Zoning Administrator



# CITY OF ROCKLIN

## MEMORANDUM

DATE: July 13, 2004

TO: Honorable Mayor and Members of the City Council

FROM: Mark Siemens, Chief of Police

RE: Medical Marijuana Dispensaries

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### SUMMARY AND RECOMMENDATION:

California voters approved Proposition 215, which codified into the California Health and Safety Code the "The Compassionate Use Act of 1996". The intent of Proposition 215 was to enable people in need of marijuana for medical purposes the ability to obtain and use it without fear of criminal prosecution under limited, specific circumstances.

Some entrepreneurial types have used the situation to spawn commercial endeavors to distribute marijuana to those who qualify under "The Compassionate Use Act of 1996". Unfortunately, the proposition is unclear about the details of doctor recommendation and how the substance is distributed. The act was specifically developed far enough away from traditional prescriptive drug distribution systems and activities to be distinguishable from them. This was done purposefully as prescription medicines are controlled by the Federal Food and Drug Administration and in Federal law the use, possession, transportation and distribution of marijuana is specifically illegal. At any rate, the use of marijuana under "The Compassionate Use Act of 1996" is not the issue before the Commission. At issue here is the location of commercial distribution of marijuana businesses and the potential impacts to the public health, safety and welfare of our community.

**RECOMMENDATION:** The City of Rocklin is now addressing how the issue of commercial marijuana distribution under the guise of Proposition 215 will be allowed to impact our community. Staff has given the Council three options as discussed in the Planning Department Staff Report for consideration. As the Police Chief, I recommend the change to zoning law, specifically the approval of the Ordinance adding Section 17.04.348 and adding Subpart D to Section 17.64.030 of the Rocklin Municipal Code regarding medical marijuana dispensaries to avoid the impacts experienced in other communities.



## **DISCUSSION:**

The City of Rocklin has not experienced the impacts of medical marijuana dispensaries but other communities have. I contacted some of the law enforcement leaders where marijuana dispensaries were located and learned the following:

I spoke with Joel Neves, Chief of Police of Roseville, about the impacts from the dispensary there. Chief Neves related the following impact based on his observations and discussions with involved parties including the owner/operator of the marijuana dispensary.

### **CITY OF ROSEVILLE IMPACTS:**

- Street level dealers trying to sell to those going to the dispensary at a lower price
- People are smoking marijuana in public around the facility
- People coming to the community from out of town and out of state to obtain Marijuana (Nevada State, San Joaquin County, etc)
- Marijuana DUI by people who have obtained from dispensary
- At least one burglary attempt into building

I also spoke with Rich Word, the Chief of Police for the City of Oakland about the impacts of Marijuana Dispensaries in his city. Chief Word has extensive experience with marijuana dispensaries.

### **CITY OF OAKLAND IMPACTS:**

- Large criminal element drawn to the dispensary location
  - Marijuana dealers who have a doctor recommendation are purchasing from the dispensary and then conducting illegal street sales to those who do not have a recommendation.
  - Street criminals in search of the drugs are robbing medical use patients for their marijuana as they leave the dispensary.
  - Thefts and robberies around the location are occurring to support the illegal and legal (by State law) drug commerce.
- Chief Word mentioned that a shoe repair business next door to a dispensary has been severely impacted because of the concentration of criminals associated with the dispensary. The shoe repair business owner is considering shutting down his business.
- They had more than 15 total in city, now limited to four by ordinance but control is not very strong. The fines are too small to control a lucrative business.
- Most of the crime goes unreported because the users do not want to bring negative publicity to the dispensary.
- The dispensaries have an underground culture associated with them.
- At least one of the dispensaries had a doctor on the premises giving recommendations on site for a fee.

- One location was a combination coffee shop and dispensary and marijuana was sold in baked goods and for smoking.
- Dispensary management has told the police that they cannot keep the criminal element out.

During early July, I was also able to contact several other law enforcement agencies that had experience with marijuana dispensaries. I received the following information:

#### CITY OF HAYWARD IMPACTS:

In conversation with Acting Chief Lloyd Lowe, I learned the following:

- Hayward has three dispensaries total, two legal under local ordinance and one illegal.
- They have had robberies outside the dispensaries
- They have noticed more and more people hanging around the park next to one of the dispensaries and learned that they were users in between purchases
- They have problems with user recommendation cards – not uniform, anyone can get them
- One illegal dispensary sold coffee, marijuana and hashish – DA would prosecute the hashish sales and possession violations after arrests were made
- They have received complaints that other illegal drugs are being sold inside of dispensaries
- The dispensaries are purchasing marijuana from growers that they will not disclose
- Chief Lowe believes that the dispensaries do not report problems or illicit drug dealers around their establishments because they do not want the police around
- Hayward Police arrested a parolee attempting to sell three pounds of marijuana to one of the dispensaries
- Hayward has recently passed an ordinance that will make marijuana dispensaries illegal under zoning law in 2006

#### LAKE COUNTY IMPACTS

In conversation with Sheriff Rod Mitchell, I learned the following:

- Lake County has one marijuana dispensary in Upper Lake
- The biggest problem is the doctor, close by the dispensary who is known across the state for being liberal in his recommendations to use marijuana for a fee of \$175
- Many “patients” come from hours away and even out of state, Oregon specifically, to get a marijuana recommendation from the doctor
- Upper Lake has been impacted by the type of people coming for the marijuana doctor and dispensary. Citizens report to the Sheriff that the people coming to Upper Lake for marijuana look like drug users (“dopers”).