



Town of Moraga	AGENDA ITEM
PUBLIC HEARINGS	VII. A.

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Meeting Date: February 10, 2010

TOWN OF MORAGA

STAFF REPORT

To: Honorable Mayor and Council Members

From: Robert Priebe, Chief of Police

Subject: An Interim Urgency Ordinance of the Town Council of the Town of Moraga Adopting a Temporary Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries

Request

Staff recommends the Town Council adopt the proposed interim urgency ordinance placing a moratorium in the establishment and operation of medical marijuana dispensaries within the Town of Moraga in order to provide the Town with sufficient time to determine whether to adopt an ordinance regulating the location or operation of medical marijuana dispensaries within Town jurisdiction.

Background

Town staff has received recent inquiries about establishing medical marijuana dispensaries within the Town of Moraga. No formal applications have been received, but current Town ordinances do not specifically regulate the location or operation of medical marijuana dispensaries. The law associated with medical marijuana is conflicting and evolving. The proposed moratorium is intended to provide sufficient time to study the issues as they relate to Town zoning.

Discussion

In November 1996, California voters enacted "The Compassionate Use Act (CUA) of 1996," also known as Proposition 215, codified in Health and Safety Code section 11362.5 et seq. Proposition 215 allows a "seriously ill" person to use medical marijuana for medical purposes with a doctor's recommendation and provides an affirmative defense against prosecution regarding the possession, cultivation, and distribution of marijuana for the patients, physicians, and primary

1 caregivers, but does not grant immunity from arrest. A primary caregiver is
2 defined in the CUA as the individual designated by the person exempted under
3 the CUA “who has consistently assumed responsibility for the housing, health, or
4 safety of that person.” In October 2003, the State Legislature adopted Senate Bill
5 420 (Vasconcellos) known as the “Medical Marijuana Program Act (MMPA),”
6 which established an identification card program that does provide immunity from
7 arrest for participants. The MMPA also quantified allowable limits of marijuana for
8 personal possession and cultivation and provided for collective and cooperative
9 cultivation of medical marijuana. These regulations became effective on January
10 1, 2004, and have led to the interest in, and establishment of, medical marijuana
11 dispensaries. The MMPA allowable limits of marijuana for personal possession
12 and cultivation was declared unconstitutional by the California Supreme Court
13 last month, on the legal ground that the MMPA unconstitutionally amended the
14 Compassionate Use Act.

15
16 At the federal level, the United States Supreme Court has confirmed that the
17 Controlled Substances Act (CSA), which criminalizes the possession and use of
18 marijuana, is constitutional and because federal law preempts any conflicting
19 state law, the Controlled Substances Act may be enforced by federal authorities
20 against persons possessing, cultivating or using marijuana, regardless of the
21 protections offered in California’s Compassionate Use Act and Medical Marijuana
22 Program. In 2001, the United States Supreme Court held there is no “medical
23 necessity defense” to the CSA’s prohibition on manufacturing and distributing
24 marijuana. The Supreme Court reasoned that by classifying marijuana as a
25 Schedule I drug, Congress had already determined that marijuana has no
26 medical benefits thereby precluding the use of this defense. The current United
27 States Attorney General has indicated he would no longer raid medical marijuana
28 dispensaries, but it is still a federal felony to cultivate or distribute marijuana.

29
30 As described above, there are conflicting state and federal laws regarding
31 medical marijuana. This conflict puts local governments and law enforcement in a
32 dilemma regarding medical marijuana dispensaries. A dispensary is a facility that
33 dispenses medical marijuana to qualified patients when use has been
34 recommended for medical purposes by a physician. Medical marijuana
35 dispensaries violate federal law as previously stated, and are not explicitly
36 authorized by California state law. In an August, 2009 Fourth District Court of
37 Appeal opinion in the case of *People vs. Hochanadel*, the court ruled that a
38 medical marijuana dispensary must qualify as a “primary caregiver” to be
39 afforded protection under the CUA or MMPA. The *Hochanadel* court also cited
40 Attorney General Guidelines which state, “while dispensaries, as such, are not
41 recognized under law, a properly organized and operated collective or
42 cooperative that dispenses medical marijuana through a storefront may be lawful
43 under California law, but dispensaries that do not substantially comply with the
44 guidelines [covering collectives and cooperatives] are likely operating outside the
45 protections of the CUA and the MMPA.”

46
47 In addition to the confusion surrounding the laws pertaining to medical marijuana,
48 is the public safety dimension that warrants study. Other agencies where medical
49 marijuana dispensaries are allowed have reported increases in illegal drug
50 activity, illegal drug sales, loitering, complaints from surrounding businesses,

1 vandalism, robberies, assaults, and burglaries. Given the limited staff and
2 resources of our police department, medical marijuana dispensaries could create
3 a negative public safety impact.

4
5 Based upon recent California case law, existing state and federal law, and the
6 U.S. Attorney General's stated policy, and available information on other
7 agencies experiences, we recommend that the Town Council adopt a urgency
8 moratorium on medical marijuana dispensaries to allow the Town to properly
9 study this evolving issue and develop an appropriate position for the Town of
10 Moraga.

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12 The Town of Moraga Municipal Code does not specifically address the regulation
13 or location of medical marijuana dispensaries. Until recently, there has been no
14 interest shown in Moraga as a medical marijuana dispensary location, and it has
15 not been an issue. Facing similar interests, other municipalities and counties
16 have utilized similar urgency ordinances and extensions to provide time to study
17 the issues. Also, any qualified patient has access to medical marijuana
18 elsewhere in the East Bay area, and would not be unduly denied access to
19 medical marijuana during the time of the study.

20
21 Government Code section 65858 provides that the Town,
22 "to protect the public safety, health, and welfare, may adopt as an urgency
23 measure an interim ordinance prohibiting any uses that may be in conflict with a
24 contemplated general plan, specific plan, or zoning proposal that the legislative
25 body, planning commission, or the planning department is considering or
26 studying or intends to study within a reasonable time." The urgency measure
27 requires a four-fifths vote for adoption and shall expire 45 days from adoption.
28 The Council may then, after public notice and hearing, extend the interim
29 ordinance for 10 months and 15 days and subsequently extend the interim
30 ordinance for one year. Ten days prior to the expiration of the interim ordinance,
31 the Town Council is required to issue a written report describing the measures
32 taken to alleviate the conditions which led to the adoption of the ordinance.

33
34 The proposed moratorium ordinance does not require review from the California
35 Environmental Quality Act (CEQA), pursuant to section 15601(b)(3) because the
36 temporary prohibition of medical marijuana dispensaries does not have the
37 potential to significantly impact the environment.

38 39 **Fiscal Impact**

40 The proposed study will require significant staff time. No additional funding is
41 required, but staff will have to adjust its priorities in working on other issues and
42 in meeting mandated deadlines for study completion. Failure to adopt a
43 moratorium could result in costs associated with additional police resources
44 associated with marijuana dispensaries (should one or more locate in Moraga).

45 46 **Alternative(s)**

47 Take no action.
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1 **Recommendation(s)**

2 Staff recommends adoption of the proposed urgency ordinance adopting a
3 temporary moratorium on medical marijuana dispensaries in the Town of
4 Moraga.

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6 **Report reviewed by: Town Manager**

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8 **Attachments:**

9 **A. Proposed Ordinance**

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Agenda Packets\Staff Report Template