

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda date: 5/2/05

Reviewed by: _____

SUBJECT: Proposed Interim Urgency Ordinance regarding Medical Marijuana Dispensaries

FROM: Dave Dowswell, Planning Manager
Ann Chaney, Community Development Director

STAFF RECOMMENDATION

That the City Council adopt Ordinance #05-03, an interim urgency ordinance to establish a forty-five (45) day moratorium restricting applications for medical marijuana dispensaries. Such moratorium is intended to provide time for staff to prepare a draft amendment to the Zoning Ordinance for review by the Planning and Zoning Commission, with ultimate review and approval by the City Council.

BACKGROUND

In 1996 the voters of California approved Proposition 215 (The Compassionate Use Act), which allowed ill Californians to obtain marijuana for medical purposes where deemed appropriate by a physician. In 2003 the state legislature approved SB420, which provided additional statutory guidance for those involved with medical marijuana use. One of the sections added to state law by this bill is California Health and Safety code section 11362.83, which provides “nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.”

The City has received inquiries from individuals wanting to open a medical marijuana dispensary in Albany. Two individuals, Fritz Sholten and Danny Sun, have asked for information on what type of application would be required to open such a facility. A letter from Mr. Sun is included (Attachment A).

Currently, the Zoning Ordinance does not specifically list medical marijuana dispensaries as a permitted use in any zoning district. Section 20.16.060 of the Zoning Code states that for uses not classified “*The Community Development Director shall determine whether a specific use shall be deemed to be within one or more land use classifications or not within any classification in this chapter. A new use may be incorporated into the ordinance by amending Chapter 20, Planning and Zoning (a zoning text amendment) that adds a new use classification or modifies an existing use classification.*”

DISCUSSION

Staff has researched how other cities have handled medical marijuana dispensaries. Some cities (Oakland, San Francisco, Rocklin, Campbell, Sunnyvale and Mountain View) have adopted ordinances to regulate this type of use. Other cities (Livermore and Belmont) have taken the position that this use is not allowed because Federal law prohibits the possession and sale of marijuana.

Based on discussions with the City Attorney, it is recommended that the Council adopt an interim urgency ordinance similar to the action Council took on wireless telecommunication facilities. This moratorium is important for a number of reasons. For example, it would allow staff more time to research how other cities have addressed this matter and prepare draft language. It would also give the Planning and Zoning Commission, the City Council, and the public an opportunity to determine the appropriateness of such facilities within the City of Albany, including but not limited to evaluating the legal authority to establish such facilities, the desirability of such facilities, and the extent of regulatory controls (e.g., location and operational controls), should such facilities be thought appropriate

Attached is a draft interim urgency ordinance prepared by the City Attorney that establishes a forty-five (45) day moratorium on City approvals of medical marijuana dispensaries. The ordinance anticipates adoption of an amendment to the Zoning Ordinance within 45 days that addresses medical marijuana dispensaries. The ordinance may be extended, with public notice, a public hearing and a four-fifths vote of the Council, for an additional 10 months and fifteen days, and thereafter, through the same process, for an additional year if needed. During discussion on this matter, the City Council may wish to offer policy direction to staff prior to preparation of any Zoning Ordinance amendment language.

Attachments

- Draft Interim Urgency Ordinance #05-03
- Letter from Danny Sun dated received March 31, 2005