



Agenda Item # _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Ward and Members of the City Council

FROM: Robert V. Wadden Jr., City Attorney

DATE: August 15, 2006

SUBJECT: Adoption of Ordinance No. 2088 An Urgency Ordinance Extending A Moratorium on Medical Marijuana Dispensaries

RECOMMENDATION:

Staff recommends that the City Council adopt urgency ordinance No. 2088 extending a previously approved moratorium on medical marijuana dispensaries.

FISCAL IMPLICATION:

There is no fiscal impact from adoption of this ordinance.

BACKGROUND:

On July 18, 2006 the Manhattan Beach City Council adopted Ordinance 2086 which established a moratorium on medical marijuana dispensaries effective for 45 days pursuant to Government Code section 68858. This section provides that the initial moratorium may be for no more than 45 days but that a subsequent ordinance may extend the moratorium for up to an additional 22 months 15 days. The proposed ordinance accomplishes this extension. An extension is necessary since adequate study of the impacts of medical marijuana dispensaries cannot be accomplished in 45 days.

DISCUSSION:

At its 2006 Workplan meeting the City Council directed Staff to review and make recommendations concerning regulation of medical marijuana dispensaries in the City. Although there are no applications pending for such facilities at the present time a dispensary has been recently opened in Torrance (which is currently struggling with finding a method to regulate or limit such uses) and Manhattan Beach has received three inquiries about how the City regulates them. In fact, the Municipal Code does not presently make provision for such facilities. The necessity to study the impacts of and options to regulate medical marijuana dispensaries makes it prudent to impose a moratorium on such facilities until a scheme of regulation appropriate to their impacts can be developed and adopted.

The City of Manhattan Beach has no land use or other ordinances which deal directly with medical marijuana distribution points. They are neither prohibited nor permitted explicitly under the City Code.

State law permits prescribing and distributing marijuana for medical purposes. (Health and Safety Code section 11362.5.) While a recent Supreme Court decision has ruled that such laws are preempted by Federal drug laws it appears that within the State law enforcement agencies will continue to acknowledge State law permitting use and distribution of marijuana for “medical” purposes.

One concern is that State law contains no definition of “medical” and prescriptions for marijuana use are often easily obtained for a wide variety of reasons. Many cities in Northern California have experienced the opening of marijuana dispensaries with a very high volume of sales activity. Secondary effects from such high volume dispensaries such as loitering, crime, traffic and secondary drug dealing can impact surrounding neighborhoods.

Cities have taken three approaches to dealing with regulating medical marijuana dispensaries. One approach is to amend zoning ordinances to ban outright medical marijuana dispensaries. Nineteen California cities and two California counties have tried this approach. Among these are the cities of Concord, Fresno, Pasadena and Susanville each of which has been sued by marijuana advocacy groups.

The second approach is to amend zoning codes to limit the locations, signage, hours of operation and other aspects of operation of medical marijuana dispensaries. Twenty-three California cities and three California Counties have tried this approach. So far none has been sued. However developing such an ordinance takes staff time and study to determine the parameters of regulation.

The third course of action is to adopt a moratorium on medical marijuana dispensaries. At least 58 California cities and 6 California counties have already done so. These include the cities of Hermosa Beach and Lawndale. Redondo Beach and El Segundo are considering doing so in the near future.

The proposed ordinance adopts this third approach. Government Code section 65858 specifically provides that a city may enact a moratorium of a particular land use while its staff studies the appropriate way to regulate it. Because medical marijuana dispensaries appear to have significant negative secondary impacts, because it is unclear whether a city may permanently ban the use (the pending litigation may ultimately clarify this issue) and because there appears to be a conflict between Federal and State law it would appear that adopting a moratorium while staff studies the best way to permanently regulate the use is the most prudent course.

Government code 65858 permits a moratorium for up to two years. However, the statute requires that the initial moratorium be for no more than 45 days. Subsequently it may be extended for up to an additional 22 months and 15 days. Passage of a moratorium must be by a four fifths majority of the legislative body. The ordinance is authorized as an urgency ordinance and goes into effect immediately. Presently there are no applications pending to establish a medical marijuana dispensary in the City.

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Attachments: Ordinance No. 2088.

cc: Geoff Dolan, City Manager
Rod Uyeda, Chief of Police

ORDINANCE NO. 2088

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MANHATTAN BEACH, CALIFORNIA EXTENDING THE MORATORIUM
ON MEDICAL MARIJUANA DISPENSARIES IN THE CITY

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES
ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

- A. In order to protect the public health, safety and welfare, pursuant to Government Code Section 36937 the City may adopt urgency ordinances and pursuant to Government Code section 65858 of the City may adopt as an urgency measure an interim ordinance prohibiting land uses that may be in conflict with a contemplated General Plan, Specific Plan, or Zoning proposal that the City Council, Planning Commission, or Planning Divisions is considering studying or intends to study within a reasonable period of time;
- B. In 1996 the voters of California adopted the "Compassionate Use Act" which legalized possession, cultivation and sale of marijuana for medical purposes;
- C. Based on the U.S. Supreme Court's decisions in *U.S. v. Oakland Cannabis Buyers' Cooperative* 532 U.S. 483 (9th Cir., CA 2001) and *Gonzales v. Raich* 545 U.S. 1 (9th Cir., CA 2005) the "Compassionate Use Act" may be preempted by Federal Law;
- D. As a consequence of the passage of the "Compassionate Use Act" (although such facilities are not specifically authorized by the Act) medical marijuana dispensaries, which sell marijuana to those with prescriptions have begun to appear in cities throughout California;
- E. There is some indication from other California cities which have operating medical marijuana dispensaries that those facilities may have secondary impacts on surrounding neighborhoods. These include the cities of Atascadero, San Marcos, Concord and Willets. Such secondary effects included a higher incidence of crime including burglary and loitering;
- F. The City of Manhattan Beach currently has no regulations or provisions of any kind with regard to medical marijuana dispensaries and City staff has not studied the impacts or secondary effects of such establishments;
- G. Prior to permitting any medical marijuana dispensaries in the City of Manhattan Beach staff would like to have the opportunity to study the effects of such establishments and to develop appropriate regulations to mitigate any such effects;
- H. There is a current and immediate threat to the public health, safety or welfare by allowing medical marijuana dispensaries to locate in the City of Manhattan Beach in that: (1) such establishments appear to have negative impacts on surrounding neighborhoods which could affect the public health safety and welfare unless properly mitigated by appropriate regulations; (2) no such regulations presently exist; (3) staff requires time in order to adequately study the impacts of medical marijuana dispensaries and develop such regulations; (4) allowing medical marijuana dispensaries prior to these actions occurring could result in serious negative impacts;
- I. This interim urgency ordinance is necessary to mitigate or avoid the specific, adverse impact identified in "H" above;
- J. There is no feasible alternative to satisfactorily mitigate or avoid the specific adverse impact identified above as well or better with a less burdensome or restrictive effect than the adoption of this interim urgency ordinance;
- K. Based on the foregoing it is in the best interest of public health, safety and welfare to allow adequate study of the impacts resulting from operation of medical marijuana dispensaries and the development of regulations to mitigate any such impacts.
- L. On July 18, 2006 the Manhattan Beach City Council unanimously adopted Ordinance no. 2086 as an urgency ordinance which immediately imposed a moratorium on medical marijuana dispensaries effective for 45 days. Said moratorium is due to expire on September 1, 2006.
- M. The staff report submitted to City Council with this ordinance shall serve as the report required by Government Code section 65858(d).

SECTION 2. The City Council of the City of Manhattan Beach hereby extends the moratorium against the establishment of medical marijuana dispensaries or any similar or related use any where within the City established by Ordinance 2086 on July 18, 2006 pending further study by City staff

and development of appropriate regulations for an additional 22 months 15 days beyond the expiration of the moratorium established by Ordinance 2086. This moratorium shall apply to any application for such a use which has not yet obtained substantial vested rights as defined by the California Supreme Court in *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785.

SECTION 3. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other Ordinance of the City, to the extent that they are inconsistent with this Ordinance, and no further, are hereby repealed.

SECTION 5. This Ordinance shall go into effect and be in full force and operation immediately.

SECTION 6. This Ordinance shall be effective for 22 months, 15 days from the expiration date (i.e. September 1) of the moratorium established by Ordinance 2086.

SECTION 7. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate, posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 15th day of August, 2006.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk