



Agenda Item

DATE: July 13, 2010

TO: Board of Supervisors

FROM: Margaret Mims, Sheriff *M. Mims*
 Alan Weaver, Director *Alan Weaver*
 Department of Public Works and Planning

SUBJECT: Regulation of Medical Cannabis (Marijuana) Dispensaries

RECOMMENDED ACTION:

1. Consider and adopt Resolution of Intention initiating amendments to various sections of the Fresno County Zoning Ordinance addressing operation of medical cannabis dispensaries in the unincorporated areas of Fresno County; and
2. Consider and adopt Interim Urgency Ordinance pursuant to Government Code Section 65858 establishing a moratorium on the operation of medical cannabis dispensaries in the unincorporated areas of Fresno County (4/5 vote required).

The Sheriff and the Department of Public Works and Planning have determined that it is prudent to clarify the County's position relative to medical cannabis (marijuana) dispensaries while reviewing the County's Zoning Ordinance for possible revision. Adoption of the recommended action would initiate the Amendment to Text review process necessary to accomplish this and temporarily prohibit the establishment of marijuana dispensaries in the unincorporated areas of Fresno County.

ALTERNATIVE ACTION:

Determine that initiation of the proposed Amendment to Text process is not necessary and determine that the specific findings cannot be made pursuant to Government Code Section 65858 and take no action on the proposed Agenda Item.

ADMINISTRATIVE OFFICE REVIEW *Brandi Orth* Page 1 of 9
 BOARD ACTION: DATE July 13, 2010 APPROVED AS RECOMMENDED X OTHER X



Official Action of
 Board of Supervisors
 Deputy

APPROVED AS RECOMMENDED WITH UNDERSTANDING THAT EXISTING DISPENSARIES WILL BE EVALUATED BY STAFF ON A CASE-BY-CASE BASIS TO DETERMINE NEED FOR COMPLIANCE WITH INTERIM URGENCY ORDINANCE; STAFF TO WORK WITH INDUSTRY AND LOOK INTO POSSIBLE BUSINESS LICENSE REQUIREMENTS

UNANIMOUS _____ ANDERSON Absent CASE Aye LARSON Aye PEREA Aye POCHIGIAN Aye

FISCAL IMPACT:

Approval of the recommended action represents a net County cost of approximately \$8,000.00, which would be absorbed within the Department's existing budget in Org. No. 43600200. This cost would, however, defer or displace other current overall workload activities budgeted in this account.

IMPACTS ON JOB CREATION:

Approval of the recommended action would not affect the efforts to create jobs in Fresno County.

BACKGROUND / DISCUSSION:

In 1996, the voters passed Proposition 215, The Compassionate Use Act, permitting seriously ill persons to use medical marijuana providing they first obtain a doctor's recommendation. Proposition 215 also provided a defense for doctors against professional or legal sanctions for recommending marijuana.

In 2004, the Legislature clarified The Compassionate Use Act with the adoption of SB 420 (Medical Marijuana Program). The intent of SB 420 is to:

1. Clarify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers; and
2. Promote uniform and consistent application of the act among the counties within the state; and
3. Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

In 2008, the Attorney General issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* (Guidelines). The Guidelines note that although medical marijuana "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law. The only recognized entities are cooperatives and collectives operating substantially in compliance with the Guidelines. It is the opinion of the Office of the Attorney General that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines are likely operating outside the protection of Proposition 215 and the Medical Marijuana Program.

In 2009, the California Court of Appeal for the Second Appellate District issued its opinion in *City of Claremont v. Kruse*. Kruse opened a medical marijuana dispensary within the City of Claremont without obtaining the proper land use permits. Upon learning of the dispensary, the City Council adopted an Urgency Ordinance similar to the one before your Board barring medical marijuana dispensaries from the City. Kruse challenged the City's actions and the trial court upheld the City's Ordinance. Kruse appealed the trial courts decision. On appeal, the court upheld the City's Ordinance and held that neither the California Medical Marijuana Program nor The Compassionate Use Act requires a city to establish local regulations to accommodate medical marijuana dispensaries.

The Court of Appeal of California, Fourth Appellate District, is currently considering similar questions relating to The Compassionate Use Act and local zoning control in *Qualified Patients Association v. City of Anaheim, Case No G040077*. The court has not released a decision in that case.

Since the adoption of SB 420, many California jurisdictions have experienced the proliferation of medical marijuana dispensaries located in a variety of locations with insufficient regard for public health, safety, welfare, or land use compatibility. Dispensaries operating illegally could result in excessive amounts of marijuana or cash, weapons, or illicit drugs. Other legal concerns include the payment of applicable taxes, purchases from, or sales or distribution to, non-members, distribution outside of California, and illegal gang or organized crime activity. Land use issues include loitering, trespass, and compatibility with schools, parks and other places where children are present.

To date, the Department of Public Works and Planning has received approximately 15 to 20 inquiries regarding the establishment of marijuana dispensaries in Fresno County. Initially the Department classified the dispensaries as pharmacies and similar types of uses and communicated this to members of the public. Pharmacies and similar types of uses are permitted "by-right" in the County's commercial zoning districts and permitted by a Conditional Use Permit in the County's Planned Urban Village and Rural Settlement Districts, and in Agricultural Commercial Centers. Department staff is aware of four existing dispensaries, two of which are not located in zoning districts where pharmacies are permitted and as a result, zoning violations were initiated and are currently in process.

In order to adopt an Interim Urgency Ordinance, your Board must make specific findings pursuant to Government Code Section 65858 as follows:

1. That there is a current and immediate threat to the public health, or welfare; and
2. That the approval of additional entitlements for the land use would result in that threat to public health, safety, or welfare.

If adopted, the Interim Urgency Ordinance would be in effect for 45 days and could be extended once for 22 months and 15 days for a period not to exceed two years. It is anticipated that the additional extension will be needed in order to allow adequate time to process and prepare and complete processing of the Amendment to Text Application.