



City Council Agenda Report

To: Honorable Mayor and City Council
From: Chief Mark Wright, Murrieta Police Department
Date: February 15, 2005
Subject: Medical Marijuana Dispensary Municipal Ordinance.

RECOMMENDATION

Introduce an ordinance which prohibits Medical Marijuana Dispensaries within all zoning districts in the City of Murrieta.

BACKGROUND

The City Council of Murrieta has stated in its goals and objectives to create local ordinances which would positively affect the quality of life of the business and residents of the city. Currently there have been no applicants who have applied to open a medical marijuana dispensary in Murrieta; however an inquiry was made to a neighboring city within the past year, and there is no current ordinance in the Murrieta Municipal Code to regulate this type of activity within the city limits.

Current state law allows for qualified patients to obtain and use marijuana since the voter approved "Compassionate Use Act of 1996", otherwise known as Proposition 215, was passed. This statute is defined in Health and Safety code sections 11362.5 et seq. However, nothing in this section authorizes or condones any medical marijuana dispensaries to facilitate dispensing marijuana.

Prior to being recalled by voters in 2003, Governor Gray Davis signed Senate Bill 420, enacting the Health and Safety Code sections 11362.7 et seq. This legislation authorized the personal possession, cultivation, consumption, transportation and delivery of marijuana for qualified patients by the patients and their primary caregivers. These persons are exempt from arrest and prosecution if they have been issued a medical marijuana use identification card issued by the County Health Department. Serious Medical Conditions for which medical marijuana has been allowed include: AIDs, Anorexia, Arthritis, Cancer, Chronic pain, Glaucoma, Migraine Headaches, Severe Nausea, and "Any Chronic Condition" that substantially limits a person to conduct one or more major life activities as defined in the American with Disabilities Act of 1990. These regulations and definitions are loosely interpreted.

The Health and Safety Code sections relevant to any medical marijuana use do not expressly authorize or allow for medical marijuana dispensaries. This issue has been left to local government regulation. In addition, they do not require that employers or government agencies accommodate the medical use of marijuana during any hours of employment, or on the property of any employer. Nothing in the Health and Safety Code authorizes the use of marijuana where smoking is prohibited by law, in or within 1,000 feet of the grounds of a school, recreation center, youth center, school bus, or while operating a motor vehicle. Yet, it is possible that without any regulation in place, a person designated as a "care giver" could attempt to operate a marijuana medical dispensary without limit on how many people have designated this person as their "caregiver". Although it is apparent that this recently enacted statute is in direct conflict with current federal law that prohibits all types of marijuana possession, even for medical reasons, this is a conflict between state and federal law that will be

ultimately have to be resolved by the U.S. Supreme Court. Until that conflicting legal issue is resolved, the City should create an ordinance which could regulate and prevent dispensaries from operation.

In response to persons or organizations who are attempting to violate federal and conflicting state laws by opening medical marijuana dispensaries, cities have begun to draft ordinances to prevent them. Therefore, in keeping with the council's goals and objectives, this ordinance would pro-actively regulate medical marijuana dispensaries within the City of Murrieta in order to eliminate or minimize problems other jurisdictions have already experienced.

As growth continues in Murrieta, it is only a matter of time before someone applies for a medical marijuana dispensary business license within the City of Murrieta, or opens a dispensary without a city business license in any zone within the city. They would cite their legal ability to open a dispensary under current state law unless the city prevents it.

The City Attorney and Counsel for the California Police Chief's Association recommend having an ordinance in place prior to any applicant filing for a medical marijuana dispensary business license. This proposed ordinance would make the denial of such a license request defensible in the courts.

ENVIRONMENTAL DETERMINATION

Staff finds that the proposed code amendment is exempt from review under Section 15061(b) (3) of the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that the proposed code amendments may have a significant effect on the environment."

BUDGET IMPACT _____

None.

ATTACHMENTS

Medical Marijuana Dispensary Ordinance

ORDINANCE NO. 05 - _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MURRIETA ADDING CHAPTER 5.17 OF THE MURRIETA MUNICIPAL CODE TO REGULATE MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF MURRIETA.

The City Council of the City of Murrieta does ordain as follows:

CHAPTER 1: Chapter 5.17 is added to Title 5 of the Murrieta Municipal Code entitled:
as follows:

5.17.010 Prohibition:

The City Council of the City of Murrieta finds and determines that:

Prohibition: Medical Marijuana Dispensaries are prohibited within all zoning Districts within the City of Murrieta.

15.17.020. “Medical Marijuana Dispensary” or “Dispensary” shall mean any location, structure, facility, vehicle utilized in full or in part, as a place at or in which medical marijuana is made available, sold, traded, exchanged or bartered for in any way with or without consideration, made available, located, stored, placed, cultivated and/or distributed.

15.17.030 A “Medical Marijuana Dispensary” shall not include the following uses, as long as the locations of such uses are otherwise regulated by this Code or applicable law:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code,
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code,
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code,
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code,
5. A residential hospice, or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

CHAPTER 4. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days from the date of its adoption.

CHAPTER 5. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this ordinance are declared to be severable.

ADOPTED by the City Council and signed by the Mayor and attested by the City Clerk this _____ day of _____, 2005.

MAYOR
City of Murrieta

ATTEST:

CITY CLERK
City of Murrieta

APPROVED AS TO FORM:

CITY ATTORNEY
City of Murrieta

I, A. Kay Vinson, City Clerk of the City of Murrieta, California, hereby certify that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the _____ of _____, 2005, and that thereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the _____ day of _____, 2005, by the following vote,

Ayes:
Noes:
Absent:

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of the City of Murrieta, California, this _____ day of _____, 2005.

City Clerk of the City of Murrieta