

CITY OF LARKSPUR  
Staff Report

May 2, 2012 Council Meeting

DATE: April 26, 2012

TO: Honorable Mayor Rifkind and Members of the City Council

FROM: Neal Toft, Senior Planner  
Sky Woodruff, City Attorney

SUBJECT: ESTABLISHING A MORATORIUM ON MEDICAL MARIJUANA  
DISPENSARIES

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**ACTION REQUESTED**

Adopt the attached urgency ordinance that would extend the temporary moratorium on medical marijuana dispensaries for a period of 10 months and 15 days.

**SUMMARY**

On April 4, 2012, the City Council adopted Urgency Ordinance No. 986, establishing a 45-day moratorium on marijuana dispensaries.

As discussed at that time, Chapter 18.90 of the Larkspur Municipal Code prohibits medical marijuana dispensaries in all districts of the City, and also prohibits medical marijuana dispensaries as a home occupation use. Since the adoption of this Chapter of the Code, however, the California Supreme Court has granted review of four court of appeals decisions regarding the authority of localities to regulate medical marijuana dispensaries. Thus, these appellate court cases are no longer cited as controlling law. To further complicate the issue, the Fourth District Court of Appeals recently found that a city may regulate medical marijuana dispensaries, but may not ban them by declaring the dispensaries to be a "nuisance per se", despite the fact that the California Supreme Court is reviewing this issue. It is therefore uncertain what potential impacts the Supreme Court's decision will have on the ever changing developments in medical marijuana regulation. Since the City's Code currently bans medical marijuana dispensaries, the Staff recommends establishing a

moratorium on medical marijuana until the California Supreme Court has weighed in on this issue.

Pursuant to Government Code Section 65858, the City may establish a moratorium prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body or the planning department is considering or studying or intends to study within a reasonable time. The City may adopt a moratorium on an urgency basis provided that the City finds that there exists a threat to the public health, safety and welfare. If public notice is provided, the City may extend the moratorium for a period of up to 10 Months and 15 Days.

This Ordinance will become effective immediately upon passage if adopted by at least a four-fifths (4/5) vote of the City Council. The moratorium may be extended for one additional year by state law.

## **FISCAL IMPACT**

None.

## **DISCUSSION AND ANALYSIS**

Our previous staff report on the matter provided a detailed analysis of the recent legal developments regarding this issue, including court cases and Attorney General Guidelines. Staff recommends that the Council adopt a moratorium on any permits issued for medical marijuana establishments in order to give staff time to determine the effect of these cases on the City's Municipal Code, as well as to ensure that the existing ban remains in place until the Supreme Court has had an opportunity to decide the pending appeals.

Staff and the City Attorney have prepared the attached urgency ordinance for the City Council's consideration. As described in more detail below, this urgency ordinance would establish a temporary moratorium on business licenses, use permits, building permits and any other land use approvals for medical marijuana dispensaries. The moratorium would not prohibit individual, personal cultivation or possession of marijuana for medical purposes in accordance with State law.

Previously, staff cited a concern with other jurisdictions having reported experiencing criminal activity at or near these dispensaries. Although much of this criminal activity may be more often linked to urban centers or high-crime areas, it should be noted that an armed robbery recently occurred in a marijuana dispensary in Marin County (see attached). Accordingly, establishment of medical marijuana dispensaries in the City at this time, before the City can adopt regulations or determine how best to address potential secondary criminal effects of these types of uses, presents a current and immediate threat to the public health, safety, and welfare.

Therefore, Staff and the City Attorney recommend adoption of the urgency ordinance in order to avoid this potential current and immediate threat to the public health, safety, and welfare.

The City Council also requested that Staff provide information as to what regulations are in place in other Marin County jurisdictions. Staff has determined that all but one city in Marin County either does not permit or specifically prohibit marijuana dispensaries at this time. Two other jurisdictions currently have moratoriums in place:

Jurisdiction	Permitted & Regulated	Banned by Ordinance	Not Permitted*	Moratorium
County of Marin			X	
Sausalito		X		
Mill Valley		X		
Tiburon			X	
Belvedere			X	
Corte Madera				X
Ross			X	
San Anselmo			X	
Fairfax	X			
San Rafael		X		
Novato				X

\* Denotes that use is not listed as permitted use and/or Code prohibits uses that are prohibited Federal or State Law.

In order to ensure that the City’s zoning provisions are adequate, or that medical marijuana dispensaries will be located and regulated in a manner that protects the public and satisfies the policies, goals and objectives of the General Plan, the City Attorney will be closely monitoring the outcome of the California Supreme Court’s review of these cases, and if need be will recommend to the Council that staff commence a study to determine what Municipal Code amendments and regulations are necessary in order to protect against any potential impacts of medical marijuana dispensaries on the community.

## **RECOMMENDATION**

It is recommended that the Council approve the attached Ordinance establishing a moratorium on medical marijuana dispensaries in all districts of the City for a continuing period of 10 months and 15 days.

Respectfully Submitted,

Neal Toft, Senior Planner  
Sky Woodruff, City Attorney

### Attachments

1. Urgency Ordinance No. 987
2. Marin IJ Article, April 19, 2012