

CITY OF LARKSPUR
Staff Report

April 4, 2012 Council Meeting

DATE: March 28, 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

ACTION REQUESTED

Adopt attached urgency ordinance that would establish a temporary, 45-day moratorium on medical marijuana dispensaries.

SUMMARY

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, 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.

This ordinance will become effective immediately upon passage if adopted by at least a four-fifths (4/5) vote of the City Council and shall be in place for a period of forty-five (45) days. A moratorium may be extended for a total effective period of up to two years by state law.

FISCAL IMPACT

None.

DISCUSSION AND ANALYSIS

Local regulation of medical marijuana dispensaries has been the subject of many legal developments, including court cases and Attorney General Guidelines. Recently, the California Supreme Court accepted four cases for review, including two cases just a month ago. In light of the Supreme Court's granting of review of these cases, any cases that the City previously relied upon regarding its regulation of medical marijuana establishments are no longer cited as controlling law, and it is uncertain what potential impacts the Supreme Court's decision will have on the ever changing developments in medical marijuana regulation.

To further complicate the issue, and notwithstanding the California Supreme Court's review of these four appellate cases regarding medical marijuana, in the recent case *City of Lake Forest v. Evergreen Holistic Collective*, the Fourth District Court of Appeals issued a decision which is counter to the four appellate cases that the Supreme Court is currently reviewing. In *City of Lake Forest*, the court found that a city may regulate medical marijuana dispensaries, but may *not* ban them by declaring the dispensaries to be a "nuisance per se".

Therefore, 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.

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.

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.

Some jurisdictions that have approved medical marijuana dispensaries have reported experiencing criminal activity at or near these dispensaries. 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.

In order to ensure that the City's zoning provisions are adequate, or that medicinal 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 medicinal marijuana dispensaries on the community.

This Ordinance would approve a 45-day moratorium on the establishment of medical marijuana dispensaries in the City upon a 4/5 vote of the Council. The moratorium may be extended up to twice for an additional period of up to 22 months and 15 days. This moratorium is needed in order to wait for the California Supreme Court's review on this issue and if needed, study how best to address the potential threats to public safety, health and welfare resulting from medicinal marijuana dispensaries.

RECOMMENDATION

It is recommended that the Council approve the attached resolution establishing a moratorium on medical marijuana dispensaries in all districts of the City.

Respectfully Submitted,

Neal Toft, Senior Planner
Sky Woodruff, City Attorney

Attachments

1. Ordinance

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF LARKSPUR ESTABLISHING A TEMPORARY MORATORIUM
ON THE ESTABLISHMENT AND OPERATION OF MEDICAL
MARIJUANA DISPENSARIES, TO BECOME EFFECTIVE
IMMEDIATELY**

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