

CITY OF NEEDLES

STAFF REPORT

DATE: JUNE 9, 2009

TO: CITY COUNCIL

FROM: CITY ATTORNEY

SUBJECT: REQUEST FOR ADOPTION OF A 45-DAY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES

RECOMMENDED ACTION:

It is recommended that the Needles City Council approve, by not less than a four-fifths (4/5) vote as required by state law, the attached Interim Urgency Ordinance, making findings and establishing a moratorium on the establishment of medical marijuana dispensaries in the City.

BACKGROUND:

State Law

In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, *et seq.*, and entitled the Compassionate Use Act of 1996 ("the Act"). The intent of the Act was to enable persons who are in need of medical marijuana for medical purposes to obtain and use it under limited, specified circumstances.

In 2003, the California Legislature enacted Senate Bill 420 ("SB 420"), which added Article 2.5 ("Medical Marijuana Program") to Division 10, Chapter 3, of the California Health and Safety Code, to clarify the scope of the Act. SB 420 created a state approved voluntary medical marijuana identification card program, established the quantity of marijuana that a qualified patient or primary caregiver may possess, and provided for additional immunities from state marijuana laws. SB 420 also allows cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420.

Federal Law

The Federal Controlled Substances Act (21 USC §§801, *et seq.*) classifies marijuana as a "Schedule I Drug," which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for its use under medical supervision. Further, Section 841 the Federal Controlled Substances Act (21 USC §841) makes it unlawful for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense marijuana. The Controlled Substances Act contains no statutory exemption for the possession of marijuana for medical purposes.

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In *United States v. Oakland Cannabis Buyers' Cooperative*, (2001) 532 US 483, the United States Supreme Court addressed marijuana use in California and held that the federal Controlled Substances Act continues to prohibit marijuana use, distribution, and possession, and that no medical necessity exception exists to these prohibitions. Further, according to the U.S. Supreme Court's decision in *Raich v. Ashcroft*, (2003) 545 US 1, federal law presently prohibits the use of medical marijuana. However, since the U.S. Supreme Court was not presented with and did not address the issue of whether federal law preempts state law with respect to medical marijuana dispensaries, it did not resolve the conflict between federal laws and California laws regarding the legality of medical marijuana dispensaries.

DISCUSSION:

Although medical marijuana dispensaries are not permitted uses in any zone in the City and are therefore deemed a prohibited use, this is not specifically addressed in the Needles Municipal Code, including the Needles Zoning Code. As such, there is a likelihood that the City of Needles would receive, and in fact did receive, an application for a business license for a medical marijuana dispensary before it could properly evaluate potential impacts and/or put into place satisfactory regulations to protect against the adverse impacts that typically accompany such establishments. Based on the experiences of other cities, the primary adverse impacts could include increased crime, an increase in driving under the influence of marijuana, illegal drug trafficking near the dispensaries, and thefts, burglaries, and/or robberies at or near the dispensaries.

In addition, the U.S. Supreme Court held in *Gonzales v. Raich*, held that local cultivation and/or use of marijuana is prohibited under federal law. Consequently, there is a conflict between state laws and federal laws on this subject. Several cities and counties have recently filed lawsuits against, and requested legal opinions from, the State Attorney General based upon the apparent conflict.

Based on the foregoing, it is recommended that the City approve the attached Interim Urgency Ordinance which would establish a temporary moratorium on the issuance of permits, licenses and entitlements for medical marijuana dispensaries, as defined therein, prior to, (1) fully analyzing the conflict between state and federal law; (2) the City's completion of a study of the potential impact of such dispensaries; and (3) reviewing, reevaluating and resolving any zoning conflicts based on the fact that no zoning currently exists in the City for such dispensaries, would pose a current and immediate threat to the public health, safety, and welfare of the City of Needles and its residents.

FINANCIAL REVIEW:

There are no anticipated fiscal impacts at this time. Long-term fiscal impact unknown.

Submitted By: Reviewed and concur:

Best Best & Krieger, City Attorney William Way, City Manager

List of Attachments: A. Interim Urgency Ordinance

ORDINANCE NO. 511-AC

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF NEEDLES,
CALIFORNIA, MAKING FINDINGS AND ESTABLISHING A TEMPORARY
MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL
MARIJUANA DISPENSARIES**

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, *et seq.*, and entitled the Compassionate Use Act of 1996 (“the Act”); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of medical marijuana for medical purposes to obtain and use it under limited, specified circumstances; and

WHEREAS, SB 420, which went into effect on January 1, 2004, was enacted by the Legislature to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, the Federal Controlled Substances Act (21 USC §§801, *et seq.*) classifies marijuana as a “Schedule I Drug,” which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for its use under medical supervision; and

WHEREAS, Section 841 the Federal Controlled Substances Act (21 USC §841) makes it unlawful for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense marijuana. The Controlled Substances Act contains no statutory exemption for the possession of marijuana for medical purposes; and

WHEREAS, in *United States v. Oakland Cannabis Buyers' Cooperative*, (2001) 532 US 483, the United States Supreme Court addressed marijuana use in California and held that the federal Controlled Substances Act continues to prohibit marijuana use, distribution, and possession, and that no medical necessity exception exists to these prohibitions. Further, according to the U.S. Supreme Court's decision in *Raich v. Ashcroft*, (2003) 545 US 1, federal law presently prohibits the use of medical marijuana. However, since the U.S. Supreme Court was not presented with and did not address the issue of whether federal law preempts state law with respect to medical marijuana dispensaries, it did not resolve the conflict between federal laws and California laws regarding the legality of medical marijuana dispensaries; and

WHEREAS, although medical marijuana dispensaries are not permitted uses in any zone in the City and are therefore deemed a prohibited use, this is not specifically addressed in the Needles Municipal Code, including the Needles Zoning Code, creating a likelihood that the City of Needles would receive, and in fact did receive, an application for a

business license for a medical marijuana dispensary before it could properly evaluate potential impacts and/or put into place satisfactory regulations to protect against the adverse impacts that typically accompany such establishments.

WHEREAS, after receiving inquiries from persons interested in establishing medical marijuana dispensaries, numerous other cities in the State of California have adopted ordinances prohibiting or heavily regulating such dispensaries; and

WHEREAS, because a significant number of cities have prohibited or heavily regulated medical marijuana dispensaries, there is a substantially increased likelihood that such establishments will seek to locate in the City Needles unless this issue is specifically addressed; and

WHEREAS, other California cities that have permitted the establishment of medical marijuana dispensaries have witnessed an increase in crime, such as burglaries, robberies, and sales of illegal drugs in the areas immediately surrounding such dispensaries; and

WHEREAS, to address the apparent conflict in laws, as well as the community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of Needles to study the potential impacts such dispensaries may have on the public health, safety, and welfare; and

WHEREAS, based on the foregoing, the City Council finds that issuing permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, as defined herein, prior to, (1) fully analyzing the conflict between state and federal law; (2) the City's completion of a study of the potential impact of such dispensaries; and (3) reviewing, reevaluating and resolving any zoning conflicts based on the fact that no zoning currently exists in the City for such dispensaries, would pose a current and immediate threat to the public health, safety, and welfare, and that a temporary moratorium on the issuance of such permits, licenses, and entitlements is thus necessary.

NOW, THEREFORE, the City Council of the City of Needles, California, does hereby ordain as follows:

SECTION 1. Imposition of Moratorium

A. In accordance with the authority granted to the City of Needles under Government Code Section 65858, from and after the date of this Ordinance, no use permit, variance, building permit, business license or other applicable entitlement for use shall be approved or issued for the establishment or operation of a medical marijuana dispensary for a period of forty-five (45) days.

B. For purposes of this Ordinance, "medical marijuana dispensary" shall mean any facility or location where a primary caregiver intends to or does make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of the following: a

qualified patient, a person with an identification card, or a primary caregiver. For purposes of this ordinance, the terms “primary caregiver,” “qualified patient,” and “person with an identification card” shall have the same meaning as that set forth in Health and Safety Code Section 11362.5, et seq.

C. For purposes of this Ordinance, a medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and as long as such use complies strictly with applicable law, including, but not limited to, Health and Safety Code Section 11362.5, et seq.: (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; or (5) a residential hospice or home health agency, licensed pursuant to Chapter 8 of the Health and Safety Code.

D. This Ordinance is an interim urgency ordinance adopted pursuant to the authority granted to the City of Needles by Government Code Section 65858, and is for the immediate preservation of the public health, safety, and welfare. The facts constituting the urgency are:

(1) California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries, and sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries;

(2) after receiving inquiries from persons interested in establishing medical marijuana dispensaries, numerous other cities in California, have adopted ordinances prohibiting or heavily regulating such dispensaries, and because a significant portion of the region has prohibited or heavily regulated medical marijuana dispensaries, there is a substantially increased likelihood that such establishments will seek to locate in the City of Needles;

(3) although medical marijuana dispensaries are not permitted uses in any zone in the City and therefore deemed a prohibited use, the City of Needles Municipal and Zoning Code do not specifically address medical marijuana dispensaries thus creating a likelihood that the City would receive, and in fact did receive, an application for a business license for a medical marijuana dispensary before it could properly evaluate potential impacts and/or put into place satisfactory regulations to protect against the adverse impacts that typically accompany such establishments;

(4) absent the adoption of this interim urgency ordinance, the establishment and operation of medical marijuana dispensaries in the City of Needles would result in the negative and harmful secondary effects other cities have experienced, as identified above;

(5) currently the state and federal laws relating to medical marijuana dispensaries appear to be in conflict; and

(6) as a result of the conflict in state and federal laws on the matter, coupled with negative and harmful secondary effects associated with medical marijuana dispensaries, the current and immediate threat such secondary effects pose to the public health, safety, and welfare, and the zoning conflicts that would be created by the establishment and operation of a medical marijuana dispensary, it is necessary to establish a temporary, forty-five (45) day moratorium on the establishment and operation of medical marijuana dispensaries in the City, pending resolution of the conflict between state and federal law, completion of the City's study of the potential impacts of medical marijuana dispensaries, and possible amendments to the City's zoning ordinances.

SECTION 2. Compliance with California Environmental Quality Act

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated municipal code review.

SECTION 3. Severability

If any section, subsection, sentence, clause phrase or word of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Needles hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

SECTION 4. Effective Date

This Ordinance shall become effective immediately upon adoption if adopted by at least four-fifths (4/5) vote of the City Council and shall be in effect for forty-five (45) days from the date of adoption unless extended by the City Council as provided for in the Government Code.

SECTION 5. Publication

The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once in a newspaper of general circulation printed and published within the City of Needles.

PASSED, APPROVED and ADOPTED this 9th day of June, 2009, by the City Council of the City of Needles, California by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor Jeff Williams

ATTEST:

City Clerk Dale Jones

APPROVED AS TO FORM:

Best Best & Krieger LLP

City Attorney

CERTIFICATION STATEMENT

I, Dale Jones, City Clerk of the City of Needles, do hereby certify that the foregoing ordinance is a true and correct copy of Interim Urgency Ordinance No. 511-AC, passed by the people of the City of Needles, as declared by the City Council on the day and year set forth above, and published pursuant to law.

Dale Jones, CMC

City Clerk