



Staff Report

Date: April 9, 2015
To: Mayor and Ross Town Council
From: Greg Stepanicich, Town Attorney
Amanda Charne, Assistant Town Attorney
Subject: Medical Marijuana Dispensary Ban

Recommendation

Adopt Ordinance No. 662 to adopt an interim zoning ordinance banning medical marijuana dispensaries within the Town of Ross.

Background and discussion

At the Town Council meeting on March 12, 2015, the question was asked whether a medical marijuana dispensary would be allowable as a type of medical office. Most dispensaries operate as storefronts to distribute medical marijuana to members of a patient cooperative. Medical marijuana dispensaries typically do not employ licensed medical doctors. Therefore, the dispensaries would not fall within the medical office use category. Nevertheless, the Town Council directed the Town Attorney to prepare an ordinance to clarify that medical marijuana dispensaries are not a permitted use within any zone in the Town of Ross.

In City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc., 56 Cal.4th 729 (2013), the California Supreme Court ruled unanimously that the Compassionate Use Act (Proposition 215) and the Medical Marijuana Program Act (Health & Safety Code § 11362.7 *et seq.*) do not preempt local ordinances that completely and permanently ban medical marijuana dispensaries. In reaching this conclusion, our state Supreme Court recognized that the local police power, which derives from Cal. Const., art XI, §7, "includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders...." 56 Cal.4th at 738.

In accordance with the Town Council's direction, we have prepared an interim zoning ordinance amendment to clarify that medical marijuana dispensaries are not a permitted use within any zone in the Town of Ross. This interim ordinance will go into effect immediately while permanent regulations are publicly noticed and prepared. The interim ordinance will be in effect for only 45 days and will need to be extended after a public hearing at the May meeting.

Fiscal, resource and timeline impacts

The matter has involved time by the Town Attorney to prepare the ordinances. Enforcement of the zoning ordinance may incur staff time in the future.

Alternative actions

Not adopt the ordinance.

Environmental review (if applicable)

No environmental review is required because this action will not result in any physical change to the environment.

Attachments

- Ordinance No. 662

TOWN OF ROSS

ORDINANCE NO. 662

AN INTERIM ORDINANCE OF TOWN OF ROSS ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 PROHIBITING MEDICAL MARIJUANA DISPENSARIES IN ALL ZONING DISTRICTS AND PROHIBITING THE ISSUANCE OF BUILDING PERMITS AND OTHER LAND USE ENTITLEMENTS THAT WOULD ALLOW THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES IN ANY ZONE DURING THE PENDENCY OF THE TOWN'S REVIEW AND ADOPTION OF PERMANENT ZONING REGULATIONS FOR SUCH USES AND DECLARING THE URGENCY THEREOF

The Town Council of the Town of Ross does ordain as follows:

SECTION 1: Moratorium established. The Town of Ross hereby establishes an interim moratorium on medical marijuana dispensaries in all zoning districts in the Town. For purposes of this Ordinance, the term "medical marijuana dispensary" shall mean any location, structure, vehicle, store, co-op, residence, or similar facility used, in full or in part, as a place at or in which marijuana is sold, traded, exchanged, bartered for in any way. "Medical marijuana dispensary" shall include but not be limited to facilities which make available and/or distribute marijuana in accordance with California Health and Safety Code Section 11362.5 et seq. "Medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a pharmacy regulated by Chapter 9, Division 2 of the Business and Professions Code and/or the Federal Controlled Substances Act of 1970 and its implementing regulations, a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice licensed pursuant to Chapter 8.5 of Division 2 of the Health & Safety Code, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code, as long as any such use complies strictly with applicable law, including, but not limited to, Health & Safety Code Sections 11362.5 et seq.

SECTION 2: Moratorium defined. Notwithstanding any other ordinance or provision of the Ross Municipal Code, no person shall establish a medical marijuana dispensary and no application for a building permit, conditional use permit, or any other entitlement for the establishment of a medical marijuana dispensary shall be approved during the term of the moratorium established in Section 1 above.

SECTION 3. Moratorium term. This Ordinance shall expire, and the moratorium established hereby shall terminate, forty-five (45) days after the date of adoption unless extended by the

Town Council, at a regularly noticed public hearing, pursuant to California Government Code Section 65858.

SECTION 4. CEQA Finding. The Town Council hereby finds that it can be seen with certainty that there is no possibility the adoption of the Ordinance may have a significant effect on the environment, because the moratorium will impose greater limitations on development in the Town, and will thereby serve to reduce potential significant adverse environmental impacts. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

SECTION 5. Legislative Findings.

A. The Town is responsible for adopting and implementing land use regulations within its boundaries.

B. In 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 ("the Act"). The Act was implemented and augmented by the State Legislature in 2004 and codified as Health and Safety Code § 11362.5, et seq. as the Medical Marijuana Program (the "MMP"). The Act decriminalized the use of marijuana for medical purposes under State law. Neither the Act nor the MMP authorizes medical marijuana dispensaries, or mobile medical marijuana dispensaries, nor requires the Town to provide for medical marijuana dispensaries or mobile medical marijuana dispensaries.

C. On May 6, 2013, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court determined that cities and counties have the authority to ban or limit medical marijuana dispensaries, and that California's medical marijuana statutes do not expressly or impliedly preempt the authority of California cities and counties to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana. The California Supreme Court stated that the CUA and MMP remove State-level criminal and civil sanctions from specified medical marijuana activities, but these laws do not establish a comprehensive State system of legalized medical marijuana, do not override the zoning, licensing, and police powers of local jurisdictions, and do not mandate or prohibit local accommodation of medical marijuana cooperatives, collectives, or dispensaries.

D. Some California cities that have permitted the establishment of businesses, facilities or persons cultivating, selling or distributing medical marijuana have witnessed an increase in crime, such as burglaries, robberies, and sales of illegal drugs in the areas immediately surrounding such dispensaries, as shown in the studies and reports from the California Chiefs of Police Association, the Riverside County District Attorney's Office, and reports of various news agencies.

E. The United States Department of Justice's California Medical Marijuana Information report has advised that large-scale drug traffickers have been posing as "caregivers" to obtain and sell marijuana. Concerns about non-medical marijuana use in connection with medical marijuana distribution operations have also been recognized by federal and State courts. One

example is *People v. Leal* (2012) 210 Cal.App.4th 829, 838-839, in which the appellate court stated:

“Not surprisingly, it seems that the enhanced protection from arrest has proven irresistible to those illegally trafficking marijuana, for if there is even rough accuracy in the anecdotal estimate by the arresting detective in this case — that nearly 90 percent of those arrested for marijuana sales possess either a CUA recommendation or a card — then there is obviously widespread abuse of the CUA and the MMP identification card scheme by illicit sellers of marijuana. Ninety percent far exceeds the proportion of legitimate medical marijuana users one would expect to find in the populace at large. For this and other reasons, it is impossible for us not to recognize that many citizens, judges undoubtedly among them, believe the CUA has become a charade enabling the use of marijuana much more commonly for recreational than for genuine medical uses.”

F. Local prohibition of businesses or facilities selling or distributing medical marijuana has also led some California cities to experience a proliferation of mobile medical marijuana dispensaries, in which shuttered businesses turn to delivery services. Like storefront operations, mobile dispensaries have also been associated with criminal activities. Anecdotal evidence from other cities, such as the City of Riverside, reflects that delivery drivers are often the targets of armed robbers who seek cash and drugs. As a result, many of the drivers reportedly carry weapons or have armed guards as protection. For this reason, it is essential that medical marijuana dispensaries conducted either at fixed location or as mobile delivery services be prohibited.

G. The commercial downtown area of Ross is located in close proximity to the Ross School, consisting of grades K through 8. The establishment of a medical marijuana dispensary in the commercial area of Ross would adversely affect the public school and pose unreasonable and unacceptable risks to its students.

H. The Town staff is preparing medical marijuana dispensary regulations consistent with the California Supreme Court decision in *City of Riverside v. Inland Empire Patients Health and Wellness center, Inc.* Prior to the completion of these regulations and adoption, it is possible that medical marijuana dispensaries could attempt to locate in the Town of Ross with the related crime, public safety and other adverse impacts described above.

I. For the reasons set forth in these findings, this Ordinance is necessary for the immediate preservation of the public peace, health and safety of the Town and is not in conflict with the general laws. The Ordinance is urgently necessary due to the immediate potential for medical marijuana dispensaries being established or mobile medical marijuana dispensaries commencing operations contrary to the permanent regulations that will be considered by the Town Council.

SECTION 7. A summary of this ordinance shall, within fifteen (15) days after passage, be posted in accordance with Section 36933 of the Government Code of the State of California with the names of the Town Councilmembers voting for and against it.

PASSED AND ADOPTED this 9th day of April, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Elizabeth Brekhus, Mayor

ATTEST:

Linda Lopez, Town Clerk