



CITY COUNCIL AGENDA REPORT

DATE: April 20, 2010

AGENDA OF: April 27, 2010

DEPARTMENT: Planning and Community Development

SUBJECT: Ordinance Amendment A09-0003 City-wide
Introduction of an ordinance to Amend Title 6 of the Santa Cruz Municipal
Code modifying standards for Personal Medical Marijuana Use.

RECOMMENDATION: Introduction of an Ordinance for Publication amending Title 6 of the Santa Cruz Municipal Code modifying standards for Personal Medical Marijuana Use.

BACKGROUND: On March 9, 2010 the City Council heard the proposed ordinance amendments to Title 24 of the Santa Cruz Municipal Code modifying standards for Medical Marijuana Dispensaries and Title 6 of the Santa Cruz Municipal Code modifying standards for Personal Medical Marijuana Use. At that hearing the City Council approved the proposed ordinance revisions to Title 24 concerning Medical Marijuana Dispensaries but continued the proposed revisions to Title 6.

The proposed revision to Title 6 of the Santa Cruz Municipal Code, Personal Medical Marijuana Use included an annual report requirement that would allow City staff to verify that the dispensaries are operating in compliance with State Law and the Municipal Code. Council members felt the language could be simplified and continued that portion of the of the ordinance amendments to allow a subcommittee to modify the requirements of the annual report.

The second reading of the proposed ordinance changes of Title 24 modifying standards for Medical Marijuana Dispensaries was heard on March 23, 2010. At that time the subcommittee had not finalized the language for the report requirements so the City Council continued the item to the April 13, 2010 agenda. The subcommittee had made progress on the ordinance revision but had not finalized the language by the April 13th agenda and the item was continued to the April 27, 2010 agenda.

SUMMARY: The proposed ordinance amendment clarifies the operational characteristics of medical marijuana dispensaries within the City of Santa Cruz. Staff recommends that the City Council adopt the proposed ordinance amendments.

Prepared by:

Submitted by:

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Planning and Community Development

Attachment: Proposed Ordinance Amendment Title 6, Personal Medical Marijuana Use

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AN ORDINANCE OF THE CITY OF SANTA CRUZ AMENDING SECTION 6.90.020 OF, AND ADDING SECTION 6.90.085 TO, THE SANTA CRUZ MUNICIPAL CODE PERTAINING TO MEDICAL MARIJUANA PROVIDER ASSOCIATIONS

BE IT ORDAINED By the City Of Santa Cruz As Follows:

Section 1. Chapter 6.90.020 of the Santa Cruz Municipal Code as follows:

6.90.020 RECOGNIZED STATUS OF MEDICAL MARIJUANA PROVIDER ASSOCIATIONS, QUALIFIED PATIENTS AND PRIMARY CAREGIVERS.

1. The City of Santa Cruz shall recognize the status of an individual as a qualified patient when he/she is in possession of a California licensed physician's written recommendation for medical marijuana or where he/she is in possession of a California licensed physician's written declaration or confirmation that he/she is currently under the physician's care for any of those certain medical conditions listed under the definition of "qualified patient" in accordance with the Compassionate Use Act of 1996 and for which the use of medical marijuana has been approved by the physician. The individual's possession of a certified valid identification card issued pursuant to subsection (2) of this section shall presumptively establish the existence of the requisite written physician's recommendation or diagnosis and the individual's right to acquire medical marijuana from a medical marijuana provider association.
2. In order to ensure that qualified patients are not subject to criminal prosecution or sanction, recognized medical marijuana provider associations may issue valid identification cards to qualified patients and primary caregivers upon receipt of a physician's written recommendation for medical marijuana or upon the physician's written declaration or confirmation that the qualified patient is under the physician's care for any of those certain medical conditions listed under the definition of "qualified patient" and for which the use of medical marijuana has been approved by the physician. The city of Santa Cruz shall also recognize verified medical marijuana identification cards issued by local and state governmental agencies to qualified patients and primary caregivers.
3. The City of Santa Cruz shall recognize valid "growing certificates" issued by recognized medical marijuana provider associations. The possession of a validly issued growing certificate shall evidence the determination by the recognized medical marijuana provider association that the cultivator in possession of the certificate is cultivating marijuana solely for medical marijuana purposes, at no profit to the cultivator and in quantities that correspond directly to the medical needs of the qualified patient(s) to whom the medical marijuana will be provided. Notwithstanding the foregoing the cultivator may be entitled to require compensation for the medical marijuana produced by the cultivator in the amount necessary for the cultivator to recover the cultivator's marijuana production costs including reasonable hourly cost of labor. A cultivator's marijuana cultivation permitted under this section may not in any manner be associated with the illicit or illegal cultivation of other marijuana. A qualified patient or the qualified patient's primary caregiver shall only be entitled to cultivate and produce medical marijuana for the qualified patient's use.

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4. The city of Santa Cruz shall recognize the status of a medical marijuana provider association when that association:

- (a) Provides proof that its cultivators and client/participants provide, possess or cultivate medical marijuana at no cost (except to recover production costs) solely for personal medical use of qualified patients upon the written recommendation of a physician or the written declaration of a physician that the qualified patient is under the physician's care for any of those certain medical conditions listed under this chapter's definition of "qualified patient" and for which the use of medical marijuana has been approved by the physician;
- (b) Issues identification cards and/or growing certificates to qualified patients, primary caregivers and cultivators in order to ensure that valid identification cardholders are not subject to criminal prosecution or sanctions;
- (c) Has procedural safeguards in place to assure that all medical information to which it becomes privy concerning its qualified patients is maintained in confidence;
- (d) Has procedural safeguards in place to assure that the identity of all qualified patients, primary caregivers, cultivators and physicians with whom it associates is maintained in confidence;
- (e) Does not predicate participation by qualified patients on financial capability or any other ability to pay for association services or medical marijuana; however, the medical marijuana provider association may request that qualified patients provide, on an "ability to pay" basis, reimbursement for the actual costs of service provided to the qualified patient by the association or for the actual production cost of medical marijuana provided through the association;
- (f) Requires qualified patients, primary caregivers and cultivators to produce valid proof of identification and California residency by way of either a valid California driver's license, passport or legally cognizable identification card;
- (g) Allows persons under the age of eighteen to participate as qualified patients only with the written consent of a parent or guardian and a physician's recommendation;
- (h) Strictly prohibits qualified patients from selling or distributing the medical marijuana which they receive pursuant to their participation in the association;
- (i) Strictly prohibits primary caregivers and cultivators from selling the medical marijuana they receive or produce pursuant to their participation in the association, or from using the medical marijuana themselves, or from providing or distributing the medical marijuana to any person other than qualified patients;
- (j) Has regulations in place which require the immediate termination of participation by a qualified patient, primary caregiver or cultivator in the association if that qualified patient, primary caregiver or cultivator misuses the services of the association, misrepresents his/her

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qualifications for participation in the association or otherwise violates association rules and regulations, guidelines and/or protocols;

(k) Has regulations in place limiting attendance at medical marijuana provision sites to qualified patients, primary caregivers and cultivators only;

(l) Has regulations in place prohibiting attendance at association meetings by persons other than qualified patients, primary caregivers and cultivators absent advance approval prior to the association meeting;

(m) Has regulations in place requiring its qualified patients, primary caregivers and cultivators to participate solely in conjunction with the association for medical marijuana-related services and prohibiting its qualified patients, primary caregivers and cultivators from participating in any other medical marijuana provider associations or medical marijuana buyers clubs;

(n) Has procedures and regulations in place to assure that the allotment of medical marijuana to which a qualified patient is entitled corresponds to the quantity needed to address that qualified patient's medical symptoms and no more, and also has procedures in place to assure that said allotments are accordingly readjusted in conjunction with the improvement or deterioration of the qualified patient's medical condition;

(o) Has procedures and regulations in place to assure that association members, be they qualified patients, primary caregivers or cultivators, are not discriminated against, and do not themselves discriminate, on the basis of race, color, creed, religion, national origin, ancestry, disability, marital status, sex, gender, sexual orientation, height, weight or physical characteristic.

(p) Has articles of incorporation and by-laws in place: specifying its non-profit operation; specifying criteria and procedures for election of board members and officers; establishing terms of office for members and officers; specifying procedures for changes to by-laws; containing a provision for an annual membership meeting; and containing provisions facilitating communication and participation by members of the medical marijuana provider association.

(q) Has a bylaw requiring a majority of the members of the board of directors to consist of individuals who are not compensated by the medical marijuana provider association, and who are not family-members of compensated board members.

5. A qualified patient, primary caregiver or cultivator can claim qualified status when he/she possesses a valid identification card and/or growing certificate issued by a qualified medical marijuana provider association.

6. The City of Santa Cruz shall recognize as valid verified valid identification cards and growing certificates issued by recognized medical marijuana provider associations. The city of Santa Cruz shall recognize as valid a medical marijuana recommendation issued by a physician licensed to practice medicine in the state of California.

7. Identification cards and growing certificates issued in accordance with this chapter shall not identify the physician whose medical marijuana recommendation results in the possession,

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transportation or cultivation of medical marijuana; nor shall identification cards and growing certificates disclose the medical condition of any particular qualified patient.

Section 2. Section 6.90.085 is hereby added to the Santa Cruz Municipal Code to read as follows:

6.90.085 ANNUAL REPORTS

Report Requirements/Contents of Report. Each medical marijuana provider association dispensary operating in the City shall, on an annual basis, submit a report to the City Manager. Reports shall be on a calendar year basis and shall be submitted no later than May 31 following the calendar year to which the report pertains. (For example, a dispensary's 2010 annual report will be submitted to the City Manager no later than May 31, 2011). The report shall document the dispensary's compliance with the requirements of the Compassionate Use Act (California Health and Safety Code Section 11357 et seq.), the Medical Marijuana Practices Act (California Health and Safety Code Sections 11362.7 et seq.), California Attorney General Guidelines promulgated pursuant to California Health and Safety Code Section 11362.81(d), and this chapter as those statutes, guidelines and ordinances currently read or may hereafter be amended.

In addition to verifying legal compliance, the annual reports shall be used by the City to periodically assess the adequacy and level of medical marijuana service available in the City for qualified patients who live in the City.

At a minimum, the annual report shall provide the following information for the calendar year to which the report pertains:

1. SERVICE/PRODUCT STATISTICS:

- (a) The number of medical marijuana product sales transacted by the dispensary during the calendar year sorted by postal zip code, allowing for consolidation of zip codes outside Santa Cruz County.
- (b) The number of medical marijuana product sales transactions in which the price of the product was discounted to account for the qualified patient's inability to pay the regular sales price, sorted by postal zip code, allowing for consolidation of zip codes outside Santa Cruz County.
- (c) The number of medical marijuana product sale transactions that were conducted on a non-cash or non-credit/debit card basis and an explanation of the consideration provided by the qualified patient or primary caregiver in lieu of cash or credit/debit card.
- (d) A listing of the medical marijuana products sold by the dispensary during the calendar year.
- (e) The number of marijuana plants and clones cultivated by the dispensary during the calendar year, if any.
- (f) A listing of the other (non-marijuana product) income-producing products and services offered by the dispensary during the calendar year.

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2. Copies of the following State of California documents:

- (a) Articles of Incorporation with seal from the Secretary of State's office
- (b) Secretary of State Form SI 100 (Statement of Information) signed by the appropriate officer
- (c) Seller's Permit
- (d) The dispensary's California Corporation Franchise or Income Tax Return (Form 100) signed by the appropriate officer

3. Copies of the following organization governance documents

- (a) By-laws of the nonprofit entity operating the dispensary specifying: its non-profit operation; criteria and procedures for election of board members and officers; terms of office for members and officers providing for a board of directors comprised of at least five board members; procedures for changes to by-laws; provisions for an annual membership meeting; and communication and participation by association members; and provisions requiring a majority of the board of directors to consist of individuals who are not compensated by the medical marijuana provider association and who are not family-members of compensated board members
- (b) A list of current board members including each board member's name and address, date of election, length of term, and term limit if any.
- (c) Mission statement adopted by the Board of Directors, if any.

4. A description of how the medical marijuana provider association provides members with access to information concerning its operations, and explaining the opportunities for association membership's evaluation and feedback on association policies and operations through a variety of means including, at a minimum, an annual report to association members and an annual meeting publicized in a timely fashion to which all association members are invited. The annual report to association members shall notify association membership of the association's annual meeting and shall report pertinent service statistics, financial information and educational activities. At the annual meeting, association members shall be given the opportunity to discuss the full range of the association's services and practices.

5. A description of how the dispensary's revenues are used for the general welfare of association members and explaining how and why those revenues are allocated to the association's general operations budget, capital improvements budget, or reserve accounts; or, alternatively explaining how these revenues are to be equitably distributed to the dispensary's members in the form of cash, property, credit or services.

6. A description explaining how the dispensary ensures that it obtains its marijuana and marijuana products exclusively from dispensary members.

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B. Verification. Upon receipt of an annual report called for by this Section, the City Manager shall have the authority to require the dispensary submitting the report to produce any documentation in the dispensary's possession upon which the dispensary bases any of the information set forth in the report. Upon review of the documentation and verification of the information in the report for which the documentation was submitted, the City Manager shall return all such documentation to the dispensary and shall not maintain copies of any such documents in City files. The City Manager, at his/her sole discretion, may require the dispensary to produce an audited financial statement if he/she determines that the accuracy of the financial information in the annual report requires additional verification.

C. Penalty of Perjury. All annual reports, submitted pursuant to this Section shall be signed by an officer, director or owner of the dispensary for which the report was submitted under penalty of perjury verifying that the information set forth in the report is true, correct and complete.

D. City Manager. As used in this Section the term City Manager shall refer to the City Manager or the person designated by the City Manager to perform the duties of the City Manager specified in this Section.

Section 3. This ordinance shall be in force and take effect thirty (30) days after final adoption.

PASSED FOR PUBLICATION this 27th day of April, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

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PASSED FOR FINAL ADOPTION this day of , 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

This is to certify that the above and foregoing document is the original of Ordinance No. 2010- and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

City Clerk