

MEMORANDUM

DATE: November 22, 2011

FROM: Elizabeth Dunn AICP, Planning Manager

SUBJECT: REPORT REQUIRED UNDER CAL. GOVT. CODE
SECTION 65858 REGARDING CONDITIONS LEADING TO
MORATORIUM



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Background

On December 6, 2010, the City Council unanimously adopted an interim urgency ordinance (Novato Ordinance No.1558) placing a moratorium on the issuance of any approval, permit, license, or entitlement for the establishment and operation of medical marijuana dispensaries in Novato. The urgency ordinance prohibits the establishment and operation of medical marijuana dispensaries (MMD's) in all zoning districts of the City of Novato.

The City Council adopted the urgency ordinance pursuant to California Government Code Section 65858, based on recitals of fact justifying its adoption to protect public health, safety, and welfare. These facts include:

- a) The federal Controlled Substances Act criminalizes the possession, use, sale and distribution of marijuana, whereas California's Compassionate Use Act (CUA) and Medical Marijuana Program Act (MMPA) decriminalize the medical use of marijuana;
- b) Much litigation has been spawned by virtue of the adoption of the CUA and MMPA and the interpretation and scope of said legislation continues to be litigated and the courts are handing down differing opinions concerning such matters;
- c) Although the City's zoning code prohibits MMD's two MMD's have opened in Novato and are currently operating illegally, and individuals continue to inquire about and express the desire to establish and operate MMD's in the City's limits;
- d) The operations of some MMD's in other California jurisdictions have resulted in reported increases in illegal drug activity, illegal drug sales, robbery, loitering around some MMD's, and other increases in criminal activity;
- e) The City is considering how to most effectively address zoning regulations applicable to MMD's in the City in order to prevent the potential impacts such facilities may have on the public health, safety and/or welfare, and particularly the impact they may have on the City's youth; and

- f) Were MMD's to open in the City because the moratorium was not in place while the City was studying whether to adopt policies, restrictions, ordinances and regulations, those policies, restrictions, ordinances and regulations, if enacted, would be rendered ineffective and the purpose of conducting such studies would be defeated.

Duration of Moratorium

The first urgency ordinance was initially valid for a period of 45-days On January 11, 2011, the City Council voted to extend the urgency ordinance (per Ordinance No. 1559), for 10 months, and 15 days, until December 4, 2011. A moratorium can be extended two times, with a total duration of 2-years, consistent with the procedures established in California Government Code Section 65858. On November 28, 2011, the City Council will consider extending this moratorium for an additional one year period. This second and final extension would end on December 4, 2012. A four-fifths vote is required to extend an urgency ordinance.

Pursuant to Government Code Section 65858 a local legislative body is required to issue a written report describing the measures being taken to alleviate the conditions which led to the adoption of the urgency ordinance. This report must be issued ten days prior to the expiration of the interim urgency ordinance or any subsequent extension. The following discussion represents the City's report to satisfy the reporting requirements of Government Code Section 65858.

Actions Taken to Alleviate the Conditions Leading to Moratorium

The facts and conditions giving rise to the adoption of Novato's urgency ordinances continue to exist at the present time. These facts and conditions are described in Novato Ordinance No. 1559 which is attached for reference. Moreover, the threat of additional MMD's establishing themselves in the City continues as other surrounding cities, such as the Town of Corte Madera and Town of Fairfax, have adopted moratoriums on the establishment and operation of MMD's, which may drive operators of MMD's to seek other nearby municipalities within which to establish operations. Those desiring to operate MMD's continue to open such establishments in zoning districts and cities where they are not permitted or allowed. For example, two marijuana dispensaries have illegally established operation in the City of Novato despite the fact the Novato Municipal Code does not permit the establishment or operation of MMD's.

City staff has been examining various legislative and other options that may be available to the City by which the City could regulate and/or restrict the establishment and operation of MMD's. That examination is on-going, but City staff is not ready to submit to the City Planning Commission and/or Council any proposed regulations or restrictions and needs additional time for that purpose. The adoption of such regulations or restrictions intersects with an increasing body of case and statutory law, all of which must be analyzed and understood in order to fashion and propose policies and laws that the City can apply and enforce in a pragmatic and effective manner. For example, effective January 1, 2011, no "storefront" MMD or mobile retail outlet that sells medical marijuana may be located within 600 feet of a private or public school. In August 2011, legislation was signed by the Governor that expressly authorizes cities to adopt ordinances regulating the location, operation and establishment of MMD's.

On the other hand, the complexities involved in analyzing and proposing regulatory structures that will meet legal muster have been exacerbated by the recent (Oct. 4, 2011) decision of a court

of appeal in the case of *Pack v. City of Long Beach* wherein the court ruled that Long Beach's MMD permit scheme was pre-empted by the federal Controlled Substances Act, striking that scheme down. On November 9, 2011, another court, in the *Riverside v. Inland Empire Patient's* case ruled that Riverside was authorized to ban all MMD's from locating in the City of Riverside.

ATTACHMENTS

1. City of Novato Ordinance 1559