

MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

PUBLIC HEARING: AMENDMENT NO. A-159-11
APPLICANT: CITY OF GARDEN GROVE
LOCATION: CITYWIDE
DATE: APRIL 21, 2011

REQUEST: To amend Title 9 of the Garden Grove Municipal Code, Section 9.16.020.100, to allow medical marijuana dispensaries to be located in the C-2 (Community Commercial) zone, subject to special standards, and to make conforming changes to the City's Land Use Matrix.

Staff report was read and recommended approval. Staff also noted that two documents available for review and included as part of the record were the White Paper on the Marijuana Dispensaries, prepared by the California Police Chief's Association Task Force on Marijuana Dispensaries, and the staff report and ordinance prohibiting the establishment and operation of medical marijuana dispensaries, adopted by the City on September 23rd, 2008.

Police Chief Kevin Raney stated that the Police Department was involved with the Staff discussion and was supportive of the Title 9 recommendation in regard to medical marijuana dispensaries in the C-2 zones and the 1000 foot distance separation requirement; that even though the City has a ban on dispensaries, the number of dispensaries continues to grow; and that Staff needs to regulate the situation and still be in support of Proposition 215 of the State of California.

Commissioner Dovich asked Staff if the existing dispensaries needed to be monitored by the police. Staff responded that there have been nine police calls for service for theft, burglary alarms, and neighboring tenant disputes; that neighboring cities have an increase in crimes; and that the City of Garden Grove has been fortunate.

Commissioner Brietigam asked Staff to clarify police enforcement. Staff responded that Title 8, which would go to City Council, would include the mechanisms for law enforcement; that the Title 9 Staff recommendations would limit the location and impose special distance limitations from sensitive uses; that current dispensaries are out of compliance; that the medical dispensary issue may result in litigation; that Garden Grove was involved in a Proposition 215 lawsuit that involved the return of medical marijuana to a patient, with the issue being taken to the Supreme Court level; and that there are concerns about the potential for additional litigation.

Commissioner Brietigam asked how the adoption of the ordinance would improve the situation. Staff replied that the issue of the medical marijuana ban was being litigated in cities and there was no definitive court direction; that research suggests success in Santa Rosa and Oakland; that the City would be in compliance with Proposition 215; and that although the City would allow medical marijuana availability, the approval of the proposed ordinance would be an attempt to have less impact on the community.

Commissioner Cabral mentioned that the ban in 2008 was due to adverse effects on the City and asked Staff to clarify why there were now no adverse effects in 2011. Staff replied that in 2008, documented incidents showed more evidence relating to marijuana dispensaries and the region had positive evidence of calls for service that involved robberies, homicides, assaults, crimes of violence and property crimes; and that Garden Grove was an exception to those experiences as surrounding cities were experiencing secondary effects.

Chair Beard clarified that the Planning Commission's responsibility was to review the land use element and zoning, however, there were overflow questions of Title 8.

Staff added that the outlined areas on the map include current dispensary locations, identification of C-2 zones, and the availability of sites in the C-2 zones that would meet the 1,000-foot distance separation.

Chair Beard reiterated that any Title 8 related issues and details would go before the City Council and not the Planning Commission.

Staff added that elements of Title 8 were still open for discussion and that the Planning Commission discussion on the topic should be minimized.

Chair Beard asked Staff to describe a typical C-2 location with regard to dispensaries. Staff responded that C-2 locations would be the most appropriate areas as they were the furthest commercial zones from single-family neighborhoods; and that the C-2 zone has the most 'use' flexibility and could accommodate a greater number of uses.

Commissioner Cabral asked Staff to clarify why the proposed Title 9 amendments limit the dispensary locations along Harbor Boulevard. Staff replied that the intent and goal of the Harbor Corridor district was for tourist and entertainment uses.

Commissioner Cabral asked Staff to describe the City of Anaheim's current dispensary policies. Staff replied that the City was in litigation over its ordinance and that the case was in the Superior Court; and that the Anaheim ordinance was similar to Garden Grove's with an absolute ban.

Vice Chair Bui asked Staff to clarify the indoor marijuana cultivation paragraph on Page 9, Item (h) (1). Staff responded that this was a Title 8 issue and that cultivation must occur indoors.

Chair Beard asked Staff to clarify what would happen if a new business, such as a school or learning center, came into the pre-established 1,000-foot distance area. Staff responded that, for example, if a tutoring business came in 300 feet from the dispensary, if the business did not require a City permit other than a business license, the City might not be aware of the new business's location; and that the City would not prohibit, for example, a nursery opening near a permitted dispensary.

Commissioner Dovich asked Staff if the City foresees challenges to the C-2 zones, for example, lawsuits from the current businesses that would not be a part of the five lottery businesses. Staff replied that the possibility could not be discounted.

Commissioner Brietigam remarked that a lottery system would create a civil liability and asked if other cities had similar lawsuits. Staff replied that there are many lawsuits over different ordinances throughout the State and that, generally, the City would be in a better position if some dispensaries were allowed pursuant to a

regulatory ordinance, rather than pursuant to a complete ban; and that a court may be sympathetic to a city that allows some dispensaries and does not ban all dispensaries, as implied per the fourth district Court of Appeals most recent decision on the Anaheim ordinance.

Chair Beard added that if regulations were added there would be more control to promote public interest, health, safety and welfare of the community.

Staff added that the intent would be that rules on paper would help to enforce the City's authority.

Commissioner Brietigam summarized that the City would be on a better legal footing; however, the non-approved dispensaries could cause additional lawsuits.

Staff reiterated that the proposed caps for medical marijuana dispensaries were for Title 8 discussion and that the legal issues before the Planning Commission were the C-2 zones and the distance requirements.

Commissioner Brietigam countered that the Planning Commission must find that the Amendment was consistent with the goals and objectives of the elements of the City's General Plan.

Staff added that there were no caps in the General Plan and that Titles 8 and 9 belong to the Municipal Code, not the General Plan; that Title 8 was out of the purview of the Planning Commission, and only under the purview of the City Council; that the lottery and caps were draft concepts that would ultimately go to the City Council, and, that Staff had met a member of a collective who shared the ordinances of successful cities such as Sacramento, and who also used C-2 zones and the 1,000-foot distance requirements.

Chair Beard asked Staff if there had been a lawsuit in a C-2 zone with regard to this type of use. Staff responded that currently, there were lawsuits against cities that have adopted regulatory ordinances that do allow, but regulate, medical marijuana dispensaries.

Commissioner Cabral added that a separation of Titles 8 and 9 was difficult; that the Title 9 decision would be contingent upon Title 8 variables; that the City does have controls, that is, the ban; and that if approved, more regulatory efforts could be placed on the dispensaries.

Commissioner Cabral then asked Staff if other cities or county regions had buffers larger than 1,000 feet. Staff responded that distances were as close as 600 feet and up to 1,000 feet.

Commissioner Cabral also asked if any dispensaries were financially responsible for local school outreach, as research suggests that drug use in schools increases with dispensaries located near schools. Staff responded that they were not aware of an ordinance or regulatory controls that require dispensaries to donate money or provide drug training.

Vice Chair Bui referred to Page 4 of the Ordinance, Item (C-1) and asked for clarification of a smoke shop and paraphernalia. Staff explained that a smoke shop has paraphernalia, such as pipes, bong, and water pipes to smoke or ingest marijuana, and that smoke shops were not convenience stores at which pipe tobacco would be sold.

Chair Beard opened the public hearing to receive testimony in favor of or in opposition to the request.

Mr. Jeff Byrne, who represented six collectives in Costa Mesa, approached the Commission and stated that the collectives have three lawsuits pending; that the staff report was on track; that there were good clubs and bad clubs; that the City could work with a business owner with several thousand patients who need medicine; that City regulations could dictate what a business could have such as funneling and tracking medications via lab testing and point of sales systems; that clubs were collectives and dispensaries, and one has to become a member; and that he was the president of a collective of collectives.

Chair Beard asked Mr. Byrne if he was familiar with the locations of surrounding area clinics. Mr. Byrne replied yes and that the clinics were located all over; that the business is nonprofit; that Costa Mesa has one building with five collectives with different grades and packaging of marijuana; that certain age groups buy from certain collectives; that the concerns were more important than the zoning; and that the fear would be from the professional dispensaries that run their businesses properly rather than the poor dispensaries.

Commissioner Dovich asked Mr. Byrne if he foresaw hardship for his collectives in Garden Grove if the ordinance would be implemented.

Mr. Byrne responded that problems would increase for the dispensaries not in the C-2 zone; that location would be the most important factor, especially with the retail near a major center; that signage would not be necessary as customers find the dispensaries on the web and by word of mouth; that he would attempt to make the C-2 zone work; and that another land use issue would be to have sufficient parking.

Mr. Robert Martinez approached the Commission and stated that he runs a dispensary in Garden Grove in the C-2 zone on Monarch Street; that the medicine helps people; and that he was in an industrial complex with no signage.

Commissioner Dovich also asked Mr. Martinez if the C-2 zone location was a hardship. Mr. Martinez replied that he has no problem with the location; that he does very little advertising and that the veterans support the business.

Commissioner Dovich asked Mr. Martinez that if the ordinance passed, would he cooperate. Mr. Martinez replied yes, however, if the ordinance was denied, he would fight the City with the veterans supporting the issue.

Mr. James Brian approached the Commission and expressed his concerns regarding cultivation; that lower power rates in an industrial area would likely increase the amount of plant growth; that the number of plants per patient could be an issue; that armed security would be important; that the chemical impacts on smaller farms, for example, in Santa Rosa, were not fully known; that dispensaries should be spread out evenly without distancing the dispensaries from tourist areas such as Harbor Boulevard; that dispensaries should be in a public and professional environment and

not hidden; that authorities other than the City Manager should approve the applications; that if a person was a caregiver, would the marijuana be allowed to be grown off-site, or would the caregiver be restricted that a certain facility only; that high grades of marijuana were available to teenage boys and girls and that control was important; that he was not opposed to marijuana, however, the matter needed more research; and the City could benefit.

Chair Beard asked if cultivation was allowed in the C-2 zone. Staff responded that cultivation would not be allowed outside the dispensary itself.

Mr. Todd Winter approached the Commission and stated that he was an attorney involved in working with cities and municipalities to develop ordinances throughout the state; that some clients were in Garden Grove; that being proactive was good; that in other cities, the ban was considered an unconstitutional act; that medical marijuana was allowed at the State level even if not in cities; that proceeding with an ordinance would be a positive move by determining what would work for the community, by limiting lawsuits, and benefiting the communities and public at large; that implementations have been to allow dispensaries to comply with a current ordinance; that a software tracking system would help to alleviate children getting marijuana; that his clients were passionate people; that the California standard number of plants per patient is a 'reasonable amount', which has yet to be determined; that on-site cultivation would not be enough for patients; and in time, the market would dictate that the strong would survive.

Commissioner Dovinh asked Mr. Winter for a suggestion as to how to limit the cultivation growth of marijuana and the increasing number of patients. Mr. Winter replied that because there are so few ordinances, other cities may look to Garden Grove; and that one limitation could be one off-site location per dispensary, as on-site cultivation only would not be realistic.

Commissioner Cabral asked Mr. Martinez for the number of patients per dispensary. Mr. Martinez replied that he had approximately 3,000 members for one dispensary; and that members visit twice a week.

Mr. Byrne remarked that Costa Mesa has approximately seven clubs; that the largest has approximately 7,000 members; that his club has 3,000 members; that cultivation was local, which equated to 20-30 different houses or an empty warehouse space; that a heavy user visits twice per week with an average patient visiting once a month.

Vice Chair Bui asked Mr. Byrne to clarify the number of plants per patient. Mr. Byrne replied that previously, six mature plants were allowed, however, 18 plants were needed for different stages of maturity; that now, the amount of medication was between patient and doctor; that ten years ago all marijuana came from Mexico and Canada; that there would be a market for lab testing; and that in Costa Mesa with 30 dispensaries, the demand was there and crime was down.

Vice Chair Bui asked Mr. Byrne how many plants would a dispensary need for 3,000 members. Mr. Byrne replied 10,000 to 15,000 square feet of gross space and that the majority of plants would have to be grown off-site.

There being no further comments, the public portion of the hearing was closed.

Commissioner Cabral asked Staff if there had been a dispensary closure by Garden Grove law enforcement. Staff replied no, that the dispensary closure could have been due to market pressure; and that Staff was not aware that a ban on medical marijuana was unconstitutional. Also, that the ban has not been enforced in Garden Grove in order to not expose the City to unnecessary costs as the issue was full of litigation on both sides of the argument; that other cities were ahead of Garden Grove in litigation and that Garden Grove was instituting a 'wait and see' approach to make a better informed decision, however, the courts were not providing direction yet.

Commissioner Cabral asked Staff, that if the recommendation was approved, why would the number of dispensaries allowed by lottery want to pay any fees to the City, when the City would not enforce regulations on any dispensaries beyond the specified number?

Staff replied that if the ordinance were approved then law enforcement could comply with the provisions of the ordinance.

Commissioner Cabral asked for confirmation that if a specified number of dispensaries were allowed, law enforcement would act upon those dispensaries that were not in compliance; and, that if the ordinance was not approved, law enforcement would continue to not act on the ban of dispensaries.

Staff agreed and stated that if the recommendation were not approved, the recommendation of the Planning Commission would still move forward to City Council.

Commissioner Cabral asked if the ordinance initiative was Staff or City Council driven. Staff replied that the initiative was collaborative; that discussion had been an on-going dialogue; and that City Council recognized the problem and would like to see resolution.

Chair Beard asked if the Police Department supported the C-2 zones. Staff replied yes, as the recommendation relates to Title 9.

Commissioner Brietigam expressed that the findings needed to meet the goals of the General Plan; that Harbor Boulevard was exempted and did not conform to the General Plan; and that security and other issues need to be looked into, therefore he could not support the recommendation.

Commissioner Dovich thanked the speakers and Staff and commented that he would support the recommendation, as this would create a record; that the City would support and benefit from the business; and that more research needs to be done, especially in regard to working in conjunction with the experts.

Vice Chair Bui commended Staff and stated that the City needs an ordinance to regulate medical marijuana, which would be a benefit to the patients and community; that there were issues regarding zoning, cultivation space, and chemical effects; and that considering the ordinance was the right approach.

Commissioner Cabral commended the Staff and speakers and expressed that she could not support the recommendation; that the real issues were the business operation, hours of operation, and space allowances; that there were too many variables; and that she would not support bringing in drugs without knowing the full range of complications.

Chair Beard moved to reopen the public hearing and continue the case to the next regular Planning Commission meeting on Thursday, May 5th, 2011, seconded by Vice Chair Bui, in order for additional Commissioners to be present. The motion carried with the following vote:

AYES:	COMMISSIONERS:	BEARD, BUI, DOVINH,
NOES:	COMMISSIONERS:	BRIETIGAM, CABRAL
ABSENT:	COMMISSIONERS:	ELLSWORTH, PAK