



AGENDA REPORT

Meeting Date: March 1, 2011
Item Number: F-4
To: Honorable Mayor & City Council
From: City Attorney
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING THE ESTABLISHMENT OF MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATIONS IN ANY ZONING DISTRICT OR OVERLAY ZONING DISTRICT WITHIN THE CITY
Attachments: 1. Ordinance

RECOMMENDATION

It is recommended that the proposed ordinance be adopted.

INTRODUCTION

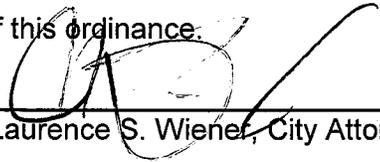
This ordinance amends the Municipal Code to prohibit medical marijuana cultivation and dispensaries.

DISCUSSION

At the meeting of February 15, 2011 the City Council conducted a first reading of this ordinance.

FISCAL IMPACT

There is no fiscal impact anticipated from adoption of this ordinance.



Laurence S. Wiener, City Attorney

Attachment 1

ORDINANCE NO. 11-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING THE ESTABLISHMENT OF MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATIONS IN ANY ZONING DISTRICT OR OVERLAY ZONING DISTRICT WITHIN THE CITY

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. In 1996, California voters adopted Proposition 215, the Compassionate Care Act (“Prop 215”), decriminalizing the use of marijuana for medical purposes. Prop 215 was later augmented by the state legislature and codified as section 11362.5 *et seq.* of the California Health and Safety Code. The establishment of marijuana dispensaries in neighboring jurisdictions however has been somewhat problematic. Legitimately operated businesses have been the scene of crimes, including robberies and homicides. Other issues have been associated with marijuana dispensaries that were not operated in a legitimate manner, including allowing access to marijuana to persons who would not qualify under State law.

Section 2. The City Council hereby amends Article 100 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code by deleting the current definition of “MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATION” and replacing it with the following definition:

“MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATION:

A business or other person or entity, including any location, structure, facility, residence,

or similar enclosure for the same, used, in full or in part, as a place at or in which marijuana is sold, traded, exchanged, bartered for in any way, made available, located, stored, placed, planted, cultivated, or processed, including, without limitation, any location, structure, facility, residence or similar enclosure if used in connection with the delivery of marijuana; except that cultivation or storage by a patient or that patient's caregiver, at the residence of the patient and incidental to a residential use by such patient, and for the sole use of the patient who resides there, shall not be considered a dispensary.”

Section 3. The City Council hereby re-adopts Section 10-3-2761 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code, which was initially adopted as an interim ordinance, as a permanent ordinance, to read as follows:

“10-3-2761: MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATION PROHIBITED: No person shall establish or conduct any "marijuana dispensary, store, co-op or cultivation operation", as defined in section 10-3-100 of this chapter, in any zone or overlay zone.”

Section 4. CEQA Findings.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of the proposed Ordinance may have a significant effect on the environment. The Ordinance makes express a prohibition on Marijuana Dispensaries, Stores, Co-Ops, Or Cultivation Operations (“Dispensaries”) that already exists because such Dispensaries are not listed as a permitted use in any zone, and thus are currently considered prohibited. Therefore, this Ordinance does not change the current de facto

prohibition on establishment of Dispensaries, but merely codifies an express prohibition. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 5. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 6. Publication.

The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 7. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

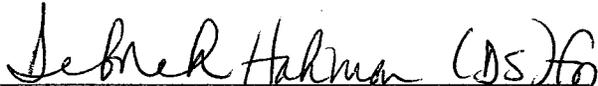
ADOPTED:

JIMMY DELSHAD
Mayor of the City of Beverly Hills,
California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager



SUSAN HEALY KEENE, AICP
Director of Community Development