



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 11/14/06
AGENDA ITEM _____
WORK SESSION ITEM WS#3

TO: Mayor and City Council
FROM: City Manager
SUBJECT: Medicinal Marijuana

RECOMMENDATION:

It is recommended that the City Council review and comment on this report.

DISCUSSION:

In 2003, the City Council considered requests from the Local Patients Cooperative (Cooperative) and the Hayward Patients Resource Center (Center) that they be allowed to dispense medicinal marijuana from their sites on Foothill Boulevard. Because of the conflict between Federal and State laws on this issue, and because zoning regulations do not expressly allow such uses, the Council did not formally authorize the operations. Instead, the City Council authorized execution of an agreement whereby the City agreed to withhold enforcement action for non-compliance with the zoning ordinance provided certain conditions were fulfilled. Among other things, the agreement stipulated that no more than three pounds of marijuana be on site at any one time. (A copy of an executed agreement is attached. Although two agreements are in effect today, only one copy is attached as the documents are identical.) The agreement contains an expiration date of December 31, 2006.

Recently, both operators requested that consideration be given to extending the term of the agreement, and potential relocation of the facilities. Anticipating such a request and as provided in the agreement, police personnel inspected both facilities to determine compliance with the provisions of the agreement.

The Center was deemed to be in compliance, although a total of 3.1 pounds of marijuana were observed on the premises. In contrast, the Cooperative was found to have 30 pounds (ten times the limit) on the premises in September. According to police personnel, some 200 pounds were observed during a subsequent visit in October. The operator disputes this quantity, but acknowledges that at least 30 pounds were on the premises during this second visit.

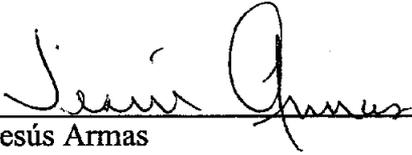
Because of the substantial amount of marijuana present on site, I recently met with the owner of the Cooperative and informed him of his violation of the agreement. As a result of such violations, I informed him that, pursuant to paragraph seven of the agreement, he must cease all operations by December 31, 2006.

While it has never been appropriate, under the City's zoning ordinance, for a medicinal marijuana facility to be located downtown, the City's recent and substantial investment in the Cinema Place project, and the expected increase in pedestrian traffic in the area, serve as compelling examples of the reasons for eliminating the use. Whether a suitable substitute location exists elsewhere in the City cannot be determined at this time.

Should the Council be receptive to extending the current agreement with the Center, staff should be directed to address the matter of location and place the item on a future evening agenda for public input, and action by the Council. Should the agreement be extended, staff suggests that certain provisions be added to a new agreement, including:

- Establishing hours of operations of 11:00 AM to 7:00 PM.
- Causing termination of the agreement should sales of marijuana occur outside of the building.
- Requiring that security be provided by a licensed security company acceptable to the City, and that on-duty security personnel wear appropriate attire.

The Council is asked to provide direction to staff.



Jesús Armas
City Manager

Attachment

Operating Memorandum
Medical Marijuana Establishments
Local Patients' Cooperative

WHEREAS, the City of Hayward has determined that Medical Cannabis Distribution Establishments are not authorized in the Central City Commercial zone; and

WHEREAS, several such establishments are now located in said zone in the downtown area; and

WHEREAS, the City Council has determined that due to the conflict in State and Federal law it is not in a position to regulate Cannabis Establishments (hereafter Establishments); and

WHEREAS, the Establishments acknowledge the lack of existing zoning regulations that would authorize their existence; and

WHEREAS, the undersigned represent and warrant that they have the unlimited authority to enter into this Memorandum; and

WHEREAS, this Memorandum shall be binding on the successors, heirs, assigns and/or all future Operators of the Establishment; and

WHEREAS, the City Council has acknowledged that taking immediate action to close the Establishments may be premature considering the conflict of laws.

NOW THEREFORE, the undersigned agree as follows:

1. As long as the hereafter set forth conditions are fully complied with, no action for violation of Hayward's Zoning Regulations, for conducting an illegal business, will be pursued against the Local Patients' Cooperative for a period of three years commencing January 1, 2004 and ending December 31, 2006.

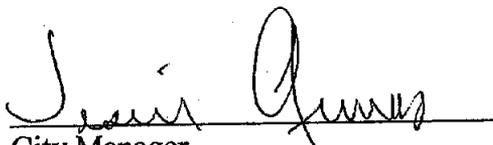
2. Operators must manage facilities to ensure that they are safe, sanitary, and do not create a public nuisance detrimental to the health or safety of the surrounding businesses or neighborhood. Facilities shall be managed to ensure that they do not create a demand for police services.

3. Operators shall actively discourage their patients/patrons from smoking or gathering on the sidewalk or other public rights-of-way. Smoking on the premises shall be discouraged except for extraordinary cases arising from physical necessity.

4. Operators shall not advertise their marijuana distribution services.
5. Operators shall have no more than three (3) pounds of marijuana on site at any one time.
6. Police personnel will periodically make unannounced visits to confirm that the Establishments are safe, sanitary and in compliance with all of the provisions of these conditions.
7. If the quantity of allowed marijuana is exceeded or if the demand for police services becomes excessive, the City Manager, in his sole discretion, may order the establishment to be closed. Such establishment shall close and vacate the premises within thirty (30) days of receipt of such notice.
8. The current location of Operator's Establishment (Local Patients' Cooperative) is 22630 Foothill Boulevard, Second Floor, Hayward, California. Said Establishment shall not be relocated to any other site within the corporate limits of the City of Hayward.
9. If there is any sale, exchange, or change of ownership of the Establishment, Operator shall disclose this Memorandum and the time limits applicable to the Establishment to any and all successors in interest and assure that such successors execute a copy of the same and deliver it to the City of Hayward.
10. Establishment shall close and vacate the premises at the end of the period set forth in paragraph 1 of this Memorandum.
11. Operators shall comply with all City of Hayward laws, rules and regulations during the time period covered by this Memorandum.

Executed at this 18 day of December, 2003 at Hayward California.

By:



City Manager

By:



Establishment Owner