



CITY COUNCIL AGENDA REPORT

DATE: October 19, 2005

AGENDA OF: October 25, 2005
DEPARTMENT: City Council
SUBJECT: ORDINANCE ESTABLISHING THE MEDICAL MARIJUANA -
OFFICE OF COMPASSIONATE USE

RECOMMENDATION: That the Council introduce for publication an ordinance adding Chapter 6.92, "Medical Marijuana - Office of Compassionate Use" to the City of Santa Cruz Municipal Code

DISCUSSION: The City of Santa Cruz recognizes the proven therapeutic value of medical marijuana for patients suffering from serious illnesses and supports the availability of medical marijuana for qualified individuals. However, the City also wishes to protect the safety and health of all citizens and harbors concerns regarding the potential for abuses of the medical marijuana system and the development of a black market for illegal marijuana.

To address the issues of providing medical marijuana for individuals in need and protecting the safety and health of City residents, the City proposes to establish an Office of Compassionate Use (OCU). The OCU will primarily function to provide medical marijuana to qualified patients, thereby ensuring that seriously ill individuals receive safe medical marijuana. The OCU will only be established if a final court order has found its activities legal under Federal law and the order is not under review or appeal.

FISCAL IMPACT: The Office of Compassionate Use is anticipated to be revenue neutral and self-sustaining through participation fees.

Submitted by:

Mike Rotkin
Mayor

Emily Reilly
Councilmember

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Attachment: Office of Compassionate Use Ordinance

ORDINANCE NO. 2005-__

AN ORDINANCE OF THE CITY OF SANTA CRUZ ADDING CHAPTER 6.9Z TO THE SANTA CRUZ MUNICIPAL CODE AND CREATING A COMPASSIONATE USE PROGRAM TO ENSURE THAT THE SERIOUSLY ILL CITIZENS OF SANTA CRUZ HAVE ACCESS TO MEDICAL MARIJUANA

FINDINGS AND PURPOSE

I. Findings.

A. Government Findings On The Medicinal Use Of Marijuana. An 1894 report commissioned by the British Government concluded that marijuana had therapeutic uses in the treatment of a number of illnesses. A 1976 Report of the United States Department of Health, Education and Welfare concluded that marijuana had therapeutic uses in the treatment of certain illnesses. In 1938, after a two-year inquiry, an Administrative Law Judge of the United States Drug Enforcement Administration concluded that marijuana had compelling medical benefits. In 1999, at the request of the White House Office of National Drug Control Policy, the National Institute of Medicine of the National Academy of Sciences commenced a year long study of regarding the therapeutic use of marijuana for patients with such illnesses as metastatic cancer, HIV/AIDS, multiple sclerosis, spinal cord injuries, concluding that "scientific data indicate the potential therapeutic value of cannabinoid drugs, primarily THC, for pain relief, control of nausea and vomiting and appetite stimulation." In 1997, the British House of Lords convened public hearings on the medical benefits of marijuana and concluded that because marijuana had "genuine medical applications," patients should be permitted to obtain it on the recommendation of a doctor. In 2001, Canada concluded its study of the available evidence and issued regulations which permits patients who are suffering severe pain to obtain marijuana on the recommendation of a doctor.

B. The Legislative Response. In light of increased awareness of the medical uses of marijuana, six states have passed resolutions urging the federal government to make marijuana medically available. Thirteen states have therapeutic research program laws which allow patients to use medical marijuana through state-run therapeutic research programs. Since 1996, eleven states (including California) have enacted legislation specifically permitting the medical use of marijuana when recommended by a doctor. In 1996, the voters of California adopted by initiative the Compassionate Use Act of 1996, codified as Health and Safety Code section 11362.5. The stated intent of this act is to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a doctor. In 2003, the California legislature enacted the Medical Marijuana Program, codified as Health and Safety code section 11362.7 et. seq. The stated intent of the Medical Marijuana Program is to, clarify the scope of the application of the Compassionate Use Act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers; promote uniform and consistent application of the act among the counties within the state; enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects, and; to address additional issues that were not included within the Compassionate Use Act, and that must be resolved in order to promote the fair and orderly implementation of the act.

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C. The Federal Government's Provision Of Marijuana To Seriously Ill Patients.

Since the late 1970s, the federal government itself has set up and administered a program designed to provide marijuana to seriously ill patients. Some patients have been receiving their marijuana from the federal government for more than 20 years. The program no longer accepts new patients. Under the federal program, the marijuana must treat a serious or immediately life-threatening disease.

D. Under current state and federal law, physicians have a right to make sincere medical judgments about the utility of medical marijuana in a particular case. Under the First Amendment to the United States Constitution, physicians also have a right, in the exercise of their professional judgment, to recommend the use of medical marijuana to patients.

2. Purposes. This ordinance has three purposes. First, the ordinance is intended to protect the health and safety of qualified patients who meet the standards for eligibility set forth in California law, and applied by the federal government itself in its IND Compassionate Use Program, by ensuring safe and reliable access to medical marijuana. These patients should not suffer needlessly. Second, the ordinance is intended to prevent abuse of the medical marijuana system by strictly controlling the provision of medical marijuana to qualified patients. Third, the ordinance is intended to protect the health and safety of all citizens, including those who do not need medical marijuana, but who would all suffer if a black market developed to provide illegal marijuana to these seriously ill patients who do.

NOW THEREFORE BE IT ORDAINED by the City of Santa Cruz as follows:

Section 1: A new Chapter 6.92 of the Santa Cruz Municipal Code is created to read as follows:
"CHAPTER 6.92

Medical Marijuana - Office of Compassionate Use

- Section 6.92.010 Definitions
- Section 6.92.020 Creating An Office Of Compassionate Use To Provide Marijuana To Seriously Ill Patients
- Section 6.92.030 Creating an OCU Commission to Advise the OCU in Implementing this Chapter
- Section 6.92.040 Compassionate Provision Of Medical Marijuana To Qualified Patients
- Section 6.92.050 Patient Records
- Section 6.92.060 Possession, Transportation And Storage Of Medical Marijuana.
- Section 6.92.070 Prior Investigation By Law Enforcement.
- Section 6.92.080 Miscellaneous Applications.
- Section 6.92.090 Review Of Medical Literature To Ensure Necessity Of Medical Use
- Section 6.92.100 Revenue Neutral

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Section 6.92.010 Definitions.

1. Qualified patients. A "qualified patient" is one that is entitled to possess medical marijuana pursuant to Health and Safety Code section 11362.5. There are two categories of qualified patients:

A. Critical-use patient. A "critical-use patient" is a qualified patient who (a) obtains a recommendation to use marijuana for medical purposes from a physician licensed to practice medicine in the State of California and (b) for whom there is no comparable or satisfactory alternative drug available.

B. Compassionate-use patient. A "compassionate-use patient" is a qualified patient who obtains a recommendation to use marijuana for medical purposes from a physician licensed to practice medicine in the State of California.

2. Primary caregiver. "Primary caregiver" means the individual designated by a qualified patient who has consistently assumed responsibility for the housing, health or safety of the patient.

3. Marijuana. "Marijuana" means all parts of Cannabis plants, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seed or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

4. Legal source. A "legal source" refers to marijuana obtained or cultivated legally under current law or court order.

5. Medical review officer. A "medical review officer" is a physician with expertise concerning the medical use of marijuana.

6. California state medical marijuana provisions. California state medical marijuana provisions refers to the Compassionate Use Act of 1996, codified as Health and Safety Code section 11362.5, and the Medical Marijuana Program, codified as Health and Safety code sections 11362.7 et. seq.

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Section 6.92.020 Creating An Office Of Compassionate Use To Provide Marijuana To Seriously Ill Patients.

The City of Santa Cruz hereby establishes an Office of Compassionate Use ("OCU"). The OCU shall be responsible for:

1. Providing medical marijuana to qualified patients in accord with this ordinance. The OCU shall utilize medical marijuana from a legal source and store it in a secure location. If marijuana from a legal source is not available in sufficient amounts to care for all qualified patients who are residents of Santa Cruz County, the OCU shall so notify the Santa Cruz City Council.
2. Associating with a medical review officer to serve the functions set forth in this ordinance.

Section 6.92.030 Creating an OCU Commission to Advise the OCU in Implementing this Chapter.

The City of Santa Cruz further hereby establishes an OCU Commission to advise and assist the OCU in carrying out the duties specified in Section 6.92.020 of this Chapter and in further implementing this Chapter. The OCU Commission shall be comprised of five (5) persons appointed by the Santa Cruz City Council, of whom at least two (2) shall be qualified patients or caregivers and at least two (2) others shall be health care professionals. The OCU Commission shall issue regular reports to the Santa Cruz City Council concerning the implementation of this Chapter.

Section 6.92.040 Compassionate Provision Of Medical Marijuana To Qualified Patients.

When presented with a valid compassionate-use identification card issued by the Health Services Agency of Santa Cruz County pursuant to Chapter 7.124 of the county code, the OCU shall provide the patient, or the primary caregiver, with the amount of marijuana recommended by the physician for use over a one-month period. If the physician has not recommended a specific amount of marijuana, the OCU shall consult with and provide the amount of marijuana recommended by the medical review officer for use over a one-month period, taking into account the potency of the marijuana to be provided, the severity of the patient's symptoms, the patient's physiology, the patient's familiarity with medical marijuana, and the anticipated mode of ingestion. In no event shall the amount of marijuana provided for any patient over a one-year period be more than permitted under the California state medical marijuana provisions and Santa Cruz County ordinances. If there is insufficient marijuana available to treat all qualified patients, critical-use patients shall have priority in the receipt of medical marijuana.

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Section 6.92.050 Patient Records.

The OCU will maintain a record of the patients who have been provided medical marijuana pursuant to this ordinance. These records shall contain (1) the serial number provided to each patient by the Health Services Agency of Santa Cruz County pursuant to Chapter 7.124 of the county code, (2) the amount of marijuana recommended by either the patient's physician or the medical review officer and (3) the amount of marijuana provided to each patient. These records shall not contain the names or other identifying information of any patients or primary caregivers.

Section 6.92.060 Possession, Transportation And Storage Of Medical Marijuana.

The possession, transportation or storage of medical marijuana by the OCU or its employees in accord with the California state medical marijuana law provisions and this Ordinance shall be lawful.

Section 6.92.070 Prior Investigation By Law Enforcement.

When an alleged marijuana possession is discovered by law enforcement personnel, all reasonable efforts shall be made to investigate and determine whether or not the possession is for medical purposes in accord with the California state medical marijuana law provisions and this ordinance. Such investigation shall be conducted prior to any seizure or arrest.

Section 6.92.080 Miscellaneous Applications.

Possession, transportation and use of the following items shall be lawful when used in accord with the California state medical marijuana law provisions and this ordinance:

- (1) Pipes, papers, water pipes, vaporizers and other related paraphernalia;
- (2) Marijuana, marijuana seeds and marijuana products (such as baked goods, tinctures, infusions, oils, salves and any other marijuana derivatives).

Section 6.92.090 Review Of Medical Literature To Ensure Necessity Of Medical Use.

Every two years, the OCU shall conduct a review of the current scientific research into the status of medical marijuana. The OCU shall promptly prepare a report and provide it to the City Council summarizing the status of research into medical marijuana.

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Section 6.92.100 Revenue Neutral

The City of Santa Cruz shall enact administrative regulations governing the imposition of fees for participation in the compassionate use program, to ensure that the OCU is revenue neutral. Notwithstanding this section, no resident of Santa Cruz county will be refused the compassionate use of marijuana under this ordinance because of indigence."

Section 2. Severability. If any provision of this ordinance, or the application thereof, to any person or circumstance is held invalid, that invalidity shall not affect any other provision or application of this ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions or application of this ordinance are severable.

Section 3. This ordinance shall take effect thirty (30) days after the date of its adoption, but the OCU shall not cultivate, obtain, possess or distribute any marijuana pursuant to this ordinance until such time as a court of competent jurisdiction has issued a final order finding such activity to be permissible under federal law. As used herein, the term "final order" shall not include a court order which has been appealed or is under review or appeal.

PASSED FOR PUBLICATION this 25th day of October, 2005 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

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PASSED FOR FINAL ADOPTION this 8th day of November, 2005 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. 2005-_____
and that it has been published or
posted in accordance with the
Charter of the City of Santa Cruz.

City Clerk