

Clearlake Council to take closer look at medical marijuana dispensaries

Contributed by Elizabeth Larson
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CLEARLAKE — The Clearlake City Council isn't closing down the city's medical marijuana dispensaries — at least not yet.

The council held a lengthy debate filled with disagreements and concerns over how to govern the dispensing of the drug within city boundaries at its Thursday night meeting.

Many area residents who support medical marijuana's use came to speak in defense of local dispensaries. However, there also were voices who objected to having the drug readily available, especially because of concerns that it is easily passed to people without the legal medical recommendations.

The issue arose late last year, when Liz Byrd's new medical marijuana dispensary, Lakeside Herbal Solutions, opened. The city had moved to revoke her business license, saying she had not accurately stated her intention to sell medical marijuana, which Byrd denied. She has appealed that decision, as Lake County News has reported.

City Administrator Dale Neiman and Police Chief Allan McClain presented the council with four options for managing the dispensaries: prohibiting all of them based on health and safety concerns and closing the current operations because they violate the city's zoning ordinance, adopt zoning ordinance regulations establishing a cap on the number of dispensaries allowed in the city, allowing dispensaries to operate on a conditional use permit under the zoning ordinance and establishing specific health and safety regulations in compliance with the state's Medical Marijuana Program to cover them.

It was the first option — closing all of them completely — that was staff's preferred course. "Allan and I are recommending you take that approach," said Neiman.

City Attorney Malathy Subramanian explained the options to the council, outlining the latest in medical marijuana legal opinions.

"The law has been constantly changing," Subramanian said.

Under federal law, marijuana use and possession — medical or otherwise — remains illegal, she said. California's Compassionate Use Act of 1996, Proposition 215, allows qualified patients with a physician's recommendation to use and possess the drug, with the law offering immunity from criminal prosecution for patients and caregivers.

"That being said, the city does have the ability to regulate uses under zoning law," Subramanian said.

Last year, the city's temporary moratorium on new dispensaries ran out, she said. During that time, the city had allowed four dispensaries to continue operating. One of those dispensaries has since been shut down after it was raided by federal agents.

Subramanian said the city's zoning code doesn't currently permit medical marijuana dispensaries. She cited a case involving the city of Corona, which — much as Clearlake did — revoked a business license that didn't include information about selling medical marijuana. She said the court found in favor of the city.

If Clearlake wants to permit the dispensaries, they should amend the zoning code, she said, and treat all the facilities similarly.

There also is a court case that concluded that cities can't enforce federal law, which is why she recommended using the zoning code approach.

McClain emphasized, "We need to treat everybody the same," and make a decision on how they will approach all of the dispensaries.

Councilman Roy Simons asked if the city would become liable for business costs and improvements if they shut down the dispensaries. Subramanian said she can't guarantee the city won't be sued over a decision to revoke business licenses for dispensaries.

Council member Joyce Overton said she understood dispensaries must be run as nonprofits, and none of those currently operating in the city have any paperwork to suggest they have nonprofit status, which she suggested meant they're illegal in the first place.

Neiman said if the council wanted to pursue that angle, the city could shut down the dispensaries until they complied with nonprofit status. Subramanian cautioned that confirming that they're complying with state law could imply a permitted use in the city.

Mayor Chuck Leonard said he read the regulations to mean that dispensaries can't sell the marijuana for a profit, not that they have to be nonprofit organizations.

"That's a very good comment," said Subramanian. "That's probably very accurate."

During public comment, the council heard various opinions from those who use the drug for medical reasons and those who don't.

Clearlake resident and cancer patient Phyllis Murphy said the drug helps her not to throw up because of her treatments. "If you close down the shops here it would make it more difficult for me to get the medicine I need,"

Robyn Madill, who uses medical marijuana to deal with the pain of glaucoma, argued against the idea that dispensaries lead to drug abuse. She pointed to the number of bars in the city, and said that people don't necessarily run in and become alcoholics because the bars are there.

"People have choices. We all have choices. We all have to make the right choice," she said.

Some other area residents suggested that medical marijuana was a better alternative than some pharmaceutical drugs. Many said there were more important enforcement issues the city could take up. Still others suggested that ridding the

city of the dispensaries could create more drug trafficking and put patients in the position of having to go out on the streets to get it, and would be seen as a serious step backward.

Clearlake resident Alice Reece said the Compassionate Use Act was meant for people with terminal illnesses, not for "every Tom, Dick and Harry" who have toothaches, headaches or eye pain.

Dorothy Myers objected to the dispensaries because of her concern about the drug becoming available to children. She pointed out that some dispensaries were located close to local churches.

Greg Peters of Middletown brought a different perspective to the discussion.

"Sometimes we get fixated on the law," he said. "If it's not legal, too bad."

Peters said he believed laws should be compassionate. "If you have compassion in mind, then the laws get interpreted in a certain way,"

Marijuana once was legal in the United States, he said, and there's a fascinating history of how the laws were changed. "I just hope that the council tonight will look at this from a compassionate standpoint," he said, suggesting that the council should make helping people the guiding light for their eventual decision.

Council struggles with what path to take

Simons said he was wondering how he was going to vote. "You can prohibit something but you can't stop it. There is no way," he said, referring to the prohibition of alcohol in the early 20th century, which he said only resulted in high prices and the deaths of a lot of people.

Admitting to using marijuana when he was young, Simons said if the drug helps people, "We just have to learn to control it and take the criminal element out of it," a sentiment that was greeted with several calls of "Right on" from the audience.

"Whether we approve or don't approve of marijuana is not the issue," said Vice Mayor Judy Thein, calling California's medical marijuana "poorly written," a sentiment voiced in past meetings by McClain.

She said the operating dispensaries didn't denote on their business licenses that they were selling medical marijuana, and that they don't meet the criteria of caregivers under the law. Thein also was concerned about more dispensaries coming onto Lakeshore Drive, which isn't the vision the city has for that area.

Thein questioned if the dispensaries were truly operating in a nonprofit fashion. She said it was not her intention to withhold medication, and added there are other dispensaries in the county where patients can go.

Councilman Curt Giambruno said he had seen people coming out of one of the dispensaries and exchanging pot for money with young people. "That's something that concerns me and I don't know how we control that,"

Neiman said if they didn't decide to pull the licenses of all the dispensaries, the council should instead consider setting up some regulations to govern them.

McClain said if the people in the audience were the same kind of people regularly visiting the city's medical marijuana dispensaries, they wouldn't be having a problem. He said when he meets an 18 year old with a medical marijuana card for asthma, "It blows my mind,"

Monitoring the dispensaries would be "almost an impossible task," he said.

Simons suggested McClain come up with some rules to control how medical marijuana is used locally. McClain said he can't, but he added he would do as the council directed.

Thein was in favor of stopping the dispensaries immediately, as McClain had urged.

Subramanian suggested that the council could adopt another moratorium for a short period of time — six to nine months — while they studied the issue. That would keep out any new dispensaries attempting to locate in the city.

Overton reminded the rest of the council that she had wanted to hold a roundtable on the subject late last year, an idea that hadn't been approved by the rest of the council. She said she felt they could have had a solution by now if they had done so.

"I am directly opposed to denying medical marijuana to people who need it," said Mayor Chuck Leonard.

Leonard, admitting it was a hard decision, suggested going the route of trying to set up specific regulations for the city.

Overton moved to direct staff to come back with a temporary moratorium and continue Byrd's appeal at the next meeting. Leonard seconded, but the motion went down 3-2, with the rest of the council voting against it.

Thein then moved to direct staff to prohibit medical marijuana in the city and prepare a resolution to close the three existing dispensaries. Giambruno seconded, but it failed to pass in a 3-2 vote, with the no votes winning out.

Simons — who by that point had voted against both motions — made one of his own, to have a special meeting, which didn't receive support in the form of a second.

Overton then made a new motion to continue the item and set up a subcommittee consisting of McClain, two council members — Overton wanted to be one of them — and members of the public. That passed 3-2, with Giambruno and Thein voting no.

That group will set up meetings and then return to the full council with suggestions.

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