

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, OCTOBER 16, 2012**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, October 16, 2012, commencing at 7:00 a.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Receive Information and Discuss Options for Regulating the Cultivation of Medical Marijuana in the City of Lodi (CA)

City Manager Rad Bartlam briefly introduced the subject matter of regulating the cultivation of medical marijuana in the City.

Deputy City Attorney Janice Magdich provided a PowerPoint presentation regarding the options for regulating the cultivation of medical marijuana in the City of Lodi. Specific topics of discussion included application of the Lodi Municipal Code, federal law governing marijuana, California's medical marijuana laws, Compassionate Use Act (CUA), limitations of the CUA, purpose of the Medical Marijuana Program Act (MMPA), California Attorney General's guidelines for medical use, qualified patients, primary caregivers, cultivation of medical marijuana under California law, adverse impacts associated with cultivation, survey results, regulatory alternatives, impacts of a ban on cultivation of medical marijuana, and options associated with the same.

In response to Council Member Hansen, Ms. Magdich stated serious illness is defined under the statute and there is a catch-all phrase for almost any medical condition that a doctor believes can be helped by the use of marijuana.

In response to Mayor Pro Tempore Nakanishi, Mr. Bartlam stated some jurisdictions do have a 24-hour notice requirement for inspections, which is not the case right now for the City of Lodi because there are no inspections occurring currently.

A brief discussion ensued between Mayor Pro Tempore Nakanishi, Mr. Bartlam, Ms. Magdich, and City Attorney Schwabauer regarding the current cultivation in and around the City through caregivers and cooperatives, statutory prohibition against limiting the number of plants that can be cultivated, and the legislative body's ability to use its police power to limit the number of plants in a particular area based on health and safety concerns.

In response to Council Member Johnson, Ms. Magdich stated there is a pending lawsuit from Fresno County on the complete cultivation ban and California NORML is seeking plaintiffs for a variety of medical marijuana restriction cases.

In response to Mayor Pro Tempore Nakanishi, Ms. Magdich stated there are currently two cases in the California Supreme Court pertaining to dispensary bans and one case in the Court of Appeals on a cultivation ban.

In response to Council Member Hansen, Ms. Magdich stated the City Council previously deferred the discussion on cultivation when it was considering the ban on medical marijuana dispensaries. Mr. Schwabauer provided an overview of the Kelly case, stating a criminal case could be prosecuted for overgrowth on a case-by-case basis if an individual were growing more than what was reasonably necessary for medical purposes.

In response to Council Member Johnson, Police Chief Helms stated the department has had hundreds of cases over the last two years involving marijuana in one way or another, dozens of those cases involved medical marijuana, and several of those cases were also tied to other drugs and crimes such as burglary.

In response to Mayor Mounce, Sergeant Sierra Brucia stated from a law enforcement and officer perspective he preferred an outright ban, similar to the City of Tracy, based on the connection to other drug use, related crimes such as burglary, and limited police resources including staff time, which needs to be focused on more pressing concerns such as gangs. Mr. Bartlam stated the concerns apply to commercial and residential areas alike and the primary difference is the working environment instead of the living environment. Police Chief Helms stated he supports a ban from the law enforcement perspective, but understands the legal perspective which may necessitate some cultivation, and therefore would prefer a simple and easy-to-enforce ordinance if that is the direction.

In response to Mayor Mounce, Mr. Schwabauer stated there are some enforcement options through the nuisance abatement process that could apply to the option allowing cultivation without sight, smell, or other detection.

In response to Council Member Johnson, Electric Utility Director Elizabeth Kirkley stated there is an ability to track unusually high energy use. Sergeant Brucia confirmed electric usage monitoring is currently used as a tool to detect cultivation.

In response to Council Member Johnson, Mr. Schwabauer stated the City Attorney's office would prosecute medical marijuana ordinance violations and the penalties would similarly be controlled by the City. Chief Helms confirmed that the District Attorney continues to prosecute illegal marijuana cases.

City Manager Bartlam confirmed with the City Council the general direction to draft an ordinance permitting the cultivation of medical marijuana under a narrow set of circumstances whereby the rights of the qualified patient are balanced with the rights of neighbors. Mayor Pro Tempore Nakanishi stated he would also like to see an ordinance banning cultivation like the City of Tracy.

Wilma Bianchi spoke in support of a ban on cultivation or cultivation under a narrow set of circumstances based on her experience as a neighbor to an individual cultivating medical marijuana and the challenges associated with smell, sight, and crime. In response to Council Member Johnson and Mayor Mounce, Mr. Schwabauer stated he will research options, including a temporary moratorium, in an effort to provide immediate relief pending the final decision of the City Council on a cultivation ordinance.

Ed Miller spoke in support of a complete ban on cultivation based on his son's personal experience with drugs and the quality of life rights of neighbors and non-users.

Christine Albright spoke in support of a ban on cultivation under limited circumstances based on the comments provided by Wilma Bianchi above.

In response to Mayor Mounce, Mr. Bartlam stated a temporary moratorium ban could be considered by the City Council at the next meeting on November 7, 2012.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 8:45 a.m.

ATTEST:

Randi Johl
City Clerk