

Staff report to BOS re MMCA Business License Refusal

2008 JAN - 7 AM 9:20

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BOARD OF SUPERVISORS
EL DORADO COUNTY

To: Board of Supervisors

From: C. L. Raffety, Treasurer/Tax Collector

Re: Appeal of Medical Marijuana Caregivers Association of El Dorado County

Introduction

This matter involves the appeal to the Board of Supervisors of the refusal to renew a business license by the Tax Collector to Medical Marijuana Caregivers Association of El Dorado County (MMCA).

Recommendation:

Staff recommends that the Board of Supervisors deny the appeal and uphold the refusal to renew a business license to MMCA.

Background:

- On August 4, 2004, MMCA submitted a Business License Application as provided in Ordinance Code section 5.08.010. The Application identified the Business Description as "Public Information and implementation of California Health and Safety Code." Tax Collector staff assigned the code 215 – Druggists, Pharmacy, Retail, Wholesale, Sundries to the business license. The Application was approved with the caveat that there be "no retail sales on-site."
- On June 29, 2005 MMCA submitted a Business License Application noting a change of location from the original location to 3031 Alhambra Drive, Cameron Park, CA. The Business Description given at the time was "Patient Support Group". This application was approved with the caveat that there be "no dispensing of medical services, prescriptions or drugs on site."
- On September 6, 2007, MMCA attempted to renew the Business License for their ongoing business at the Alhambra Drive address. Further investigation of the type of business being conducted by MMCA revealed that MMCA described itself as "A facility to provide a market in which Medical marijuana, produced in excess may be exchanged for compensation of costs..." Their website states, "We provide medical cannabis to eligible patients."
- On November 28, 2007, the request for the renewal of the Business License was refused by the Tax Collector. A letter from the Treasurer & Tax Collector's office that same day advised MMCA of the fact that the business license would not be

renewed indicating that the previous licenses were issued with the caveat that there be no dispensing of medical services or prescription drugs on site and the fact that the dispensing of marijuana constituted a violation of federal law thereby justifying the refusal of the issuance of the license under Ordinance Code section 5.08.090 F.

- On December 3, 2007 Matt Vaughn, Founder and CEO of MMCA filed a written notice of appeal regarding the refusal of the Business License.

Analysis

A. The issuance of a Business License for the purposes of operating a Medical Marijuana Dispensary in the county would violate Ordinance Code section 5.080.090F in that the operation of a Medical Marijuana Dispensary is a violation of federal law.

El Dorado County Ordinance Code section 5.080.090 states in pertinent part:

“No person shall be refused a county business license nor have the license revoked except for one or more of the following grounds...

F. The violation of any state or federal law or any county ordinance regulating the business, construction, alteration, or repair of buildings and sewage disposal systems used in the business or regulating the use of land upon which the business is operated;...”

The dispensing of marijuana is a violation of federal law. Marijuana is listed as a Schedule I controlled substance. 21 USCS §812(c) (c) (17). As a Schedule I controlled substance, it is unlawful to “manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense...” marijuana. 21 USCS §841(a) (1).

The passage of the Compassionate Use Act of 1996 (Health and Safety Code section 11362.5) and SB420 (Health and Safety Code sections 11362.7 et. seq.) in California does not make the dispensing or distribution of marijuana legal under federal law. In *Gonzales v. Raich* (2005) 545 U.S. 1, the court held that despite the passage of these state laws allowing the medicinal use of marijuana, the manufacture, distribution, dispensing or possessing with the intent to do those acts remains a violation of federal law.

Under Ordinance Code section 5.08.090F, refusal to issue a business license is justified where the operation of the business would violate any federal law regulating the business. 21 USCS §§812 and 841 certainly regulate the business of selling marijuana, by making such activity unlawful and subject to criminal punishment.

Under such circumstances the refusal to issue a business license is appropriate.

B. The operation of an MMD is not an authorized use in a General Commercial District in El Dorado County.

Under the El Dorado County Zoning Ordinance, only those uses which are expressly permitted are allowed.

The property at 3031 Alhambra Drive is zoned as a General Commercial District. The uses which are allowed by right for a general commercial district are set forth in section 17.32.180 of the Ordinance Code. The uses allowed by right under that section do not include a Medical Marijuana Dispensary or any type of facility that provides medical marijuana to individuals for compensation. The section does allow for uses including drugstores and dry goods and notion stores, these general descriptions when read in the historical context of the manner which the Board of Supervisors dealt with the specific issue of medical marijuana dispensaries do not appear to include medical marijuana dispensaries.

On September 20, 2005 the El Dorado County Board of Supervisors adopted Ordinance 4683 eliminating the word "dispensary" from sections 17.28.110, 17.28.240, 17.56.110 and 17.56.240. This was done after the Board had adopted three ordinances imposing a temporary moratorium on the establishment and operation of medical marijuana dispensaries.¹ The purpose of the moratorium was to allow the Board to study the possible adoption of amendments to the County Zoning Ordinance to regulate medical marijuana dispensaries.

The apparent intent of the Board in adopting ordinance No. 4683 was to eliminate language in the Zoning Ordinance which would allow the use of property for purposes of a medical marijuana dispensary. In every section where the word dispensary appeared it was deleted. This came after the adoption of three ordinances placing a moratorium on the establishment or operation of medical marijuana dispensaries in the County. While the ordinance did not recite as its purpose the intent to prohibit the use of property as a medical marijuana dispensary, the elimination of the word "dispensary" in every section of the Zoning Ordinance Code in which it appeared was certainly intended to have that effect.

Taken together, the language of the Ordinance and the historical context, it is clear that a medical marijuana dispensary, however it is characterized by the applicant, is not a permitted use in a General Commercial District.

¹ The first, Ordinance No. 4654 was adopted on August 24, 2004 and imposed a 45 day moratorium. On October 19, 2004 the Board adopted Ordinance No. 4659 which extended the moratorium for 180 days. On March 29, 2005 the Board adopted ordinance No. 4667 further extending the moratorium for an additional 180 days.