City of Culver City, California

City Council Agenda Item Report

Meeting Date: 02/25/08		Item Number: A-4
AGENDA ITEM: Introduction of an Ordinance Amending Section 11.01.075 of the Culver City Municipal Code to Prohibit the Issuance of a Business Tax Certificate to any Business that Provides Goods, Services or Products that are Illegal Under Local, State or Federal Law (including but not limited to Medical Marijuana Dispensaries).		
Contact Person/Dept.: Scott Bixby Police Captain		Phone Number: (310) 253-6398
Fiscal Impact: Yes [] No [X]		General Fund: Yes [] No [X]
Public Hearing: []	Action Item: [X]	Attachments: [X]
Public Notification: Master Notification List (02/20/08)		
Department Approval: Don Pedersen (02/18/08)		City Attorney Approval: Carol Schwab (by H. Baker) (02/19/08)
Fiscal Impact Review: Jeff Muir (by N. Kimball) (02/20/08)		City Manager Approval: Jerry B. Fulwood (02/20/08)

RECOMMENDATION:

Staff recommends the City Council introduce an ordinance amending Section 11.01.075 of the Culver City Municipal Code to prohibit the issuance of a business tax certificate to any business that provides goods, services or products that are illegal under local, state or federal law (including but not limited to medical marijuana dispensaries).

BACKGROUND:

In regard to business tax certificates, Culver City Municipal Code ("CCMC") section 11.01.075 currently provides that "No license issued hereunder shall be construed as authorizing the conduct of or continuance of any illegal or unlawful business." After consulting with the City Attorney's office, the Police Department and the City Attorney's office agreed that this provision could be strengthened so that it may be clearly interpreted. The proposed amendment to section 11.01.075 clarifies the existing wording.

Council should be aware that one type of potential business that may be affected is medical marijuana dispensaries. Other examples may include businesses that sell illegal or stolen goods, businesses that front for an illegal activity such as prostitution, or businesses that sell fireworks.

DISCUSSION:

As discussed above, one example which may fall under this code section could be medical marijuana dispensaries. In 1996, the California voters enacted Proposition 215, referred to as the “Compassionate Use Act” (“CUA”) which protects patients, caregivers, and physicians who cultivate, possess, transport or recommend marijuana for medical purposes. In 2003, Governor Davis signed legislation (SB420) setting forth various criteria for the implementation of Proposition 215. (Attachment 1). Although granting wide latitude to the use of marijuana for medical purposes, the law specifically prohibited any individual or group from cultivating or distributing marijuana for profit. Further, the CUA and the applicable state law, as set forth in the California Health and Safety Code, do not legalize the distribution, dispensing or sale of marijuana in general. The “right” the CUA granted is the right of a “patient, or…a patient’s primary caregiver,” to possess or cultivate marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician without becoming subject to criminal punishment under sections 11357 and 11358 of the California Health and Safety Code

Federal law, however, does not recognize the medical use of marijuana, and the United States Supreme Court has ruled that distribution of marijuana for medical purposes is in violation of the federal Controlled Substances Act. (Attachment 2). Therefore, there remains a conflict between state law and federal law. In fact, the California Supreme Court acknowledged in December 2007 that “no state law could completely legalize marijuana for medical purposes because the drug remains illegal under federal law, even for medical users.”

Numerous marijuana/cannabis distribution centers calling themselves co-operatives (“co-ops)” have appeared in California and have been dealt with in a variety of manners by different cities. The concerns cities face include the real and potential negative secondary effects caused by the dispensaries, and the risk of potentially aiding and abetting a federal law violation by issuing a permit to a facility operating in violation of federal law. Some cities have passed ordinances permitting these distribution co-ops. Other cities have considered them a land use issue and have enacted a moratorium on licensing them so they can study the secondary effects and determine the appropriate zoning ordinance(s) to restrict or prohibit these distribution centers. Still other cities have taken a different approach and added language to their business licensing provisions to ensure that no business license could be issued to individuals or entities seeking to open a cannabis distribution business that violates federal law.

The City of Los Angeles, for example, originally permitted medical marijuana dispensaries. However, the Los Angeles saw the number of dispensaries increase over 2300% from July 2005, when there were four, to December 2006, when at least 98 were identified. Based on a recommendation from the Los Angeles Police Department, and due to the increase of various categories of crime, the proximity to schools and churches, and complaints from the public (Attachment 3), in 2007 the City of Los Angeles enacted a moratorium to prohibit any additional dispensaries from opening within the City while the matter is studied further and a more restrictive ordinance may be passed. West Hollywood also originally permitted medical marijuana dispensaries, but after an interim ordinance, amended its municipal code to limit the number of dispensaries to five. Seven were open at the time of passage of the moratorium; therefore, no new dispensaries may be opened at this time, until the number is reduced below five.

At least 34 cities in California have outright bans against medical marijuana dispensaries, and over 70 have enacted moratoria while they study the issue and determine how to proceed. Cities with outright bans include Anaheim, Fullerton, Costa Mesa, Pasadena, Monterrey Park and Whittier. In 2007, the City of Anaheim was sued by a medical marijuana cooperative, but was successful in getting the suit dismissed at the trial court level. The Orange County Superior Court opined that nothing in Anaheim's ordinance banning medical marijuana dispensaries violates the state CUA.

Recently cities such as Torrance, Covina and Newport Beach have strengthened their business license provisions to expressly state that businesses that furnish goods or services in violation of federal law are prohibited from obtaining a business license. This neutral approach is recommended for Culver City while the federal and state laws remain in conflict and the legal status of the dispensaries remains unclear. It should be noted that the proposed Ordinance does not affect the legal status of individual patients who are not involved in unlawful distribution.

The proposed amendment to the Municipal Code section will enhance the City's ability to enforce its business licensing laws in various situations. Therefore, the Police Department, with the concurrence of the City Manager, recommends that the City Council introduce (and ultimately adopt) the attached proposed Ordinance. (Attachment 4)

FISCAL ANALYSIS:

Enforcing this ordinance may create some additional staff time to research the legal status of a questionable business that is applying for a business license. However, staff anticipates only a few, if any, of these types of applications. Therefore, no significant fiscal impact is anticipated.

ATTACHMENTS:

1. California Compassionate Use Act
2. Federal Controlled Substances Act
3. City of Los Angeles fact sheet excerpt
4. Proposed Ordinance

MOTION:

That the City Council:

Introduce an Ordinance amending Section 11.01.075 of the Culver City Municipal Code, to prohibit the issuance of a business tax certificate to any business that provide goods, services or products that are illegal under local, state or federal law.