

PLANNING COMMISSION MINUTES

Date of Meeting: Tuesday, October 13, 2009
Time of Meeting: 5:15 p.m.
Place of Meeting: City Council Chambers
555 Washington Street
Red Bluff, CA

Commissioners Present: Jean Moran
Andrew Christ
Greg Latourell
Doug Dale
Kevin Fitzpatrick

Commissioners Absent: None

Staff Present: Scot Timboe, Planning Director
Michael Bachmeyer, Fire Chief
Cheryl Smith, Deputy City Clerk
Richard Crabtree, City Attorney
Martin Nichols, City Manager
Mark Barthel, Public Works Director
Paul Nanfito, Police Chief
J. D. Ellison, Building Director/Official

Chairperson Dale called the meeting to order at 5:17 p.m.

The Pledge of Allegiance was led by Commissioner Greg Latourell and the assemblage joined in.

CITIZEN'S COMMENT:

None

CURRENT BUSINESS

1. APPROVAL OF MINUTES

August 25, 2009

M/S/C Latourell, Christ to approve the minutes of August 25, 2009 as written.

AYES: Commissioners: Christ, Dale, Moran, Fitzpatrick and Latourell
NOES: Commissioners: None
ABSENT OF NOT VOTING: None

2. PUBLIC HEARING TO CONSIDER ORDINANCE NO. 1000; REZONE NO. 213; AMENDING SECTION 25.213 OF THE RED BLUFF CITY CODE PROHIBITING USES –PROHIBITING MEDICAL MARIJUANA DISPENSARIES, COLLECTIVES, COOPERATIVE AND THE CULTIVATION OF MARIJUANA IN ANY ZONING DISTRICT ALONG WITH AMENDING RED BLUFF CITY CODE SECTION 25.239 DEFINITIONS BY ADDING A DEFINITION FOR MEDICAL MARIJUANA DISPENSARIES, COLLECTIVES, COOPERATIVE AND THE CULTIVATION OF MARIJUANA

Scot Timboe, Planning Director, reviewed the staff report and gave staff's recommendation that the Planning Commission:

1. Conduct the public hearing and consider all public testimony and other information submitted relating to Ordinance No. 1000; Rezone No. 213.
2. Find that Ordinance No. 1000; Rezone No. 213 is exempt from CEQA pursuant to Section 15061 (b) (3) of the CEQA Guidelines.
3. Recommend that the City Council adopt Ordinance No. 1000; Rezone No. 213, amending Section 25.213 of the Red Bluff City Code Prohibiting Uses by adding Medical Marijuana Dispensaries, Collectives, Cooperatives and the Cultivation of Marijuana in any Zoning District along with Amending Red Bluff City Code Section 25.239 Definition by adding a Definitions for Medical Marijuana Dispensaries, Collectives, Cooperatives and the Cultivation of Marijuana

Richard Crabtree, City Attorney, addressed the legal issues of Medical Marijuana Dispensaries using the recent case of the City of Claremont v. Kruse where the California Court of Appeals found that operation of the dispensary constituted a nuisance per se. The court also upheld the City's determination that a Marijuana dispensary was a prohibited use under the zoning code. Mr. Crabtree explained that the Compassionate Use Act does not preempt a City's zoning authority, nor does it authorize the operation of a medical marijuana dispensary. Also state law does not preempt a City's ability to prohibit medical marijuana dispensaries.

Chairperson Dale requested clarification on whether this court case was related to the City of Anaheim.

Mr. Crabtree stated that it presents similar issues as the City of Claremont.

Mr. Timboe stated that the City has been aware of various small cultivations at homes and the City has dealt with these as a code enforcement issue, fences may be too high, there may be video cameras, illegal structures built on other people's properties.

Chairperson Dale requested clarification on 15.061(b) 3 of CEQA guidelines.

Mr. Timboe stated that this section addresses the fact that the language of specifically acknowledging and prohibiting marijuana land uses and defining them will not have an effect on the environment.

Chairperson Dale opened the public hearing.

John Prinz stated that he breaks federal law every day because he has to use this plant due to several back surgeries. A collective is a collective of patients trying to grow plants for themselves and they don't make money off the plants. He asked that the Commission not confuse a dispensary in a store with a collective or a real patient.

Curtis Parker feels that this is trying to take away his right to grow his little amount. A collective could be just a small family trying to grow their own marijuana. He feels that limiting the number of plants is justifiable and the State of California allows us to use.

Alyssa Eastman stated that she feels that this is taking her right to grow her own medicine is away; it's taking away her comfort and safety if she has to go to the streets to get her medicine rather than growing her own.

Vincent Basler stated that he is a medical marijuana user and a convicted felon of a violent offense. He has been on parole for two years and has anger problems, but refuses to take pills as he has children he watches and this is the only thing that keeps him calm.

Jeffery Fowler stated that he has had stomach issues since he was 13 years old and he was forced to find something that would work. He has been a user since he was 13 years old because no one could help him and he hasn't found anything wrong with using it. He stated that he agrees that dispensaries are one thing, but general users are another. He doesn't want his rights to grow, as a personal user, taken away.

Sharon Teague stated that she had been sick and uses marijuana in order to eat without getting sick, where she is able to stay out of hospitals. She doesn't grow at this time, but does want the ability to grow when she has a place to do so. She stated that she has smoked marijuana for over 40 years and has never causes any problems.

Chairperson Dale questioned if using as a tea worked, as he had never heard of marijuana being used in that manner.

Ms. Teague stated that you make a tea, which relaxing you. She stated that to her it's better than smoking. It keeps her from getting sick and she can sleep at night. She stated that she also has anxiety attacks and when she is using she doesn't get this attacks.

Greel Foushee stated that he doesn't like marijuana and doesn't want to be around it. The place next door to his home has plants which are 12 feet tall and that there are people coming and going at all hours of the day and night. He doesn't drink or take marijuana and he bills his health and his work on those factors.

Owen Garner stated that he has a Doctor's recommendation for marijuana use for arthritis. He quit drinking in 1984 and since then he has not been arrested. He feels that it has been made easier for people to obtain a liquor license to sell people more liquor in the City and he doesn't want to be denied his rights to do what he enjoys doing.

Mr. Prinz stated that he studies a lot about drugs and in 1923 in America cannabis was legal until 1936. He stated that he uses marijuana in a tea, in a cream, he eats with it, he bakes with it, and drinks it. In California you can't get in trouble for the leaf, just the bud.

Mr. Fowler asked that the Planning Commission take into consideration of how many stood up in favor of using and those who have objected.

Chairperson Dale closed the public hearing at 5:52 p.m.

Chairperson Dale requested clarification from Police Chief Nanfito on the number of prescriptions for people in the City limits and if there is a guideline for the number of plants a person can grow.

Chief Nanfito stated that it is a recommendation, not a prescription as it's illegal for a Doctor to write a prescription. He estimated that there may be hundreds, but they only come to the department's attention when they receive calls. From a law enforcement view point they have to look to see if it's an illegal operation. The department receives calls on medical marijuana because of the odor, because people growing experience thefts'. Recently, in the last 12 months there has been a carjacking in front of a residence as well as a strong armed robbery. There was also a homicide within the County at the home of someone who grew medical marijuana. A person, with a recommendation, is allowed to have 6 mature plants, 12 immature plants and 8 ounces of processed marijuana in their possession. The department has to evaluate how they are going to take enforcement action. At this time there are 14 operations within the City of Red Bluff that the department is aware of.

Chairperson Dale requested clarification on whether there was a time limit on the recommendations.

Chief Nanfito stated that the recommendations were good for one year.

Chairperson Dale stated that the way it is now puts the Police Department in a difficult situation and some people could say that you were selectively enforcing the law.

Chief Nanfito stated that some people will say that we are selective enforcing the law, but before we arrest someone we have to be sure that it's a prosecutable case and not just someone who's got a criminal offense to cultivation of marijuana.

Chairperson Dale questioned how the people who are not growing it getting their medical marijuana.

Chief Nanfito stated that the vast majority of those who have recommendations are trying to grow it themselves and they are doing things to hide and protect those crops by building illegal buildings, fences with concertina wire, setting up surveillance systems or sleeping in their back yard. The department usually starts receiving calls when the plants get mature as the odor is quite strong or people going to those places at night. As a general rule, one good strong mature plant will yield about one pound of marijuana when harvested, which on the illegal market that marijuana will yield about \$2,500 to \$3,000.

Chairperson Dale stated that basically what the State says is that people are allowed to get a recommendation for medical marijuana, but it's not providing a system for them to get the marijuana.

Chief Nanfito stated that he felt that was a fair assessment.

Commissioner Christ requested clarification on if this ordinance is passed as written how it would affect those who have indoor grows that have recommendations.

Mr. Timboe stated that at this point in time none of its allowed within the City limits per the zoning code. This is specifically acknowledging it, so that when people come to the counter, they can understand easier because he can hand them the paperwork which specifically spells it out as a prohibited use. It would continue to be not allowed under the zoning code and it would be specifically spelled out as a prohibited use and they would act on it the same as they do now, a code enforcement issue. If someone was selling it would be turned over to the Police Department.

Chairperson Dale requested clarification on if this ordinance is passed it would be forcing the Police Department to confiscate plants.

Mr. Timboe stated that it would be an infraction or violation of the zoning code. He continued by saying that because you have a violation under the zoning code, it's more of a code enforcement type process. If it was sever enough then it would be turned over to the Police Department to deal with.

Chairperson Dale requested clarification on the mention of code infraction and if the cure for a code infraction was removing the hazard and no fine involved.

Mr. Timboe stated that was correct, unless they continued to violate the code.

Chairperson Dale noted the numerous wild land raids of pot gardens and questioned if there was any idea of the number of plants at the County level have been eliminated.

Chief Nanfito stated that the County Sheriff's office has pulled up thousands of plants worth hundreds of thousands of dollars.

Chairperson Dale noted that most wild land grows was tended by Mexican national and questioned if it would be a fair statement that these wild land grows are part of a larger corporation. This would indicate to him that year after year, with the number of busts, that some must be successful or they wouldn't continue to try to grow.

Chief Nanfito stated that was correct and there are many that are not located by the Sheriff's office that create a lot of profit for those illegal cartels that are selling the marijuana. Typically if it's in the hills it's a large operation. In the City of Red Bluff we recently had a house that was rented out, but was being used as a processing center. The department confiscated 91 pounds of marijuana in which 5 people were arrested and they all were Mexican nationals.

Chairperson Dale questioned if most of the product is taken out of the county.

Chief Nanfito stated that probably most of it, yes.

Commissioner Christ requested clarification on how the ordinance was written, it states two or more, so if one person was growing for themselves they would be treated the same as they have been, it's not going to change any of that.

Mr. Timboe stated that cultivation talks about growing period, whether it's one person or five.

Commissioner Fitzpatrick requested clarification that all these are illegal now because they are not stated in the zoning code and all we're doing is stating them, not changing anything, just clarifying as not allowed, prohibited.

Mr. Timboe stated that was correct, we are specially acknowledging them so that people don't have to look through the code and there's not any confusion. We're specifically addressing it in the code where it is not specifically indicated previously and specifically being indicated now, if adopted, putting them in a prohibited use section.

Chairperson Dale stated that if something is not specifically mentioned it's outlawed, and questioned if that wasn't a rather broad brush interpretation.

Richard Crabtree, City Attorney, stated that it was an express provision used in Red Bluff City Code, as well as a lot of cities codes. Reality is, that when you are drafting a zoning ordinance, perhaps a use doesn't come to mind or there uses that develop that no one anticipated so the code is written so that uses that are not specially mentioned are prohibited.

Commissioner Latourell stated that there were two things the prohibition of dispensaries or cooperatives and then there's another for the cultivation and questioned if these could not be made into two separate ordinances, one for no dispensary and then come back for one for no cultivation.

Mr. Timboe stated that complaints being received are based on cultivation and the use is not allowed at this time.

Commissioner Moran stated that it is her understanding that this is just more definition of what our current procedure is, so her interpretation is that in the future if anyone wants to address one of these eliminates, independently in the future, now it's defined and in the past we had no definition, is this correct?

Mr. Timboe stated that was correct.

Commissioner Moran stated from her perspective this is identifying, clarifying and setting up a structure that can be amended or changed. From her perspective we are not going to try to fix everything, you have to define all components, and until we do that shame on us and a Planning Commission and City to look at what is in the best interest of the general population.

Mr. Crabtree stated that was correct and for example the County has chosen to deal with dispensaries and cultivation separately. They have passed an urgency ordinance outlawing dispensaries and collectives, but have taken under consideration for further review the cultivation issue.

Chairperson Dale stated that the City of Red Bluff is approximately one quarter of the population of the entire County. He stated that he thought banning anything to do with this marijuana issue would be an aberration of our responsibilities to our social realities. Medical marijuana law is over 13 years old and politically it's not going to be repealed. He sees parallels to prohibition of alcohol, which was a failed political response to a social situation, it made criminals out of citizens, it fostered and funded gang activities and it caused fear and disrespect of law enforcement officers, who are charged with enforcing a political decision. He stated that he feels having the City step out by saying no is the wrong way to go and is not fairly representing the population of the City; he feels this is the wrong way to go and urged a no vote.

M/S/C Moran, Fitzpatrick to adopt Resolution No. 2009-005 recommending City Council adoption of the 2008-2013 Housing Element General Plan Amendment 09-002 and approving the related Negative Declaration.

AYES: Commissioners: Christ, Fitzpatrick and Moran

NOES: Commissioners: Dale and Latourell

ABSENT OR NOT VOTING: None

Chairperson Dale called for a 5 minutes recess at 6:15 p.m. and reconvened at 6:28 p.m.

STAFF ITEMS/REPORTS:

Mr. Timboe reported that on October 27th there should be the first mobile vending unit proposed right across from the Valero on Sutter and there will be a prezone/rezone for an annexation of property located on the east side Baker Road owned by the Greenville Rancheria.

Chairperson Dale welcomed new Red Bluff Daily News reporter Tang Lor to the Planning Commission meetings.

ADJOURNMENT:

There being no further business the meeting was adjourned at 6:35 p.m. until October 27, 2009 at 5:15 p.m.

Respectfully submitted,

s/Scot Timboe
Planning Director