

COUNCIL COMMUNICATION

DATE: May 7, 2010	AGENDA NO. A.	SUBJECT: Extension of Current Moratorium for permits and land uses involving businesses selling or distributing medical marijuana
Department Head: Erich Schwiesow, City Attorney		
City Manager: Nathan M. Cherpeski		
PRESENTED BY: Erich Schwiesow		

Recommendation:

Adopt the proposed 90 day extension of the current moratorium.

Background:

On November 4, 2009, the City Council imposed a one hundred twenty (120) day moratorium on the submission, acceptance, processing, and approval of all applications for City permits and licenses and the use of any property within the City relating to the operation of Medical Marijuana Dispensaries to allow the City staff and the City Council to investigate the City's ability to regulate such businesses, and to develop and implement any appropriate regulations. On March 3, 2010, that moratorium was extended an additional 90 days to June 1, 2010. However, the General Assembly is still debating the issue of imposing regulations on medical marijuana dispensaries, including allowing a provision for local opt-out of any licensed large scale facilities, and other cities throughout Colorado are likewise dealing with issues substantially similar to those facing the City. An additional ninety (90) day extension of the current moratorium would allow the City to explore further study appropriate approaches and review regulations propounded by the General Assembly and/or other Colorado cities. Moratoria may not be extended indefinitely (they may only be temporary, and for a duration that is reasonable under the circumstances), but Council may not yet be ready to enact a medical marijuana ordinance, and the field is still very much in flux.

Issue Before the Council:

Does Council wish to adopt a 90 day extension of the current moratorium on permits and land uses related to medical marijuana facilities so that appropriate regulations may be explored without inadvertently "grandfathering in" an inappropriate use?

Alternatives:

- 1) Approve the proposed extension of the current moratorium, either for 90 days or some other length, to become effective immediately.

2) Decline to extend the current moratorium at this point, and enact the proposed ordinances regarding licensing and zoning of facilities.

Fiscal Impact: None relating to the extension of the moratorium.

Legal Opinion:

City Attorney will be available to discuss any legal issues pertaining to the extension of the current moratorium.

Conclusion:

The proposed extension to the current moratorium will allow time for the legislature to act in ways that may influence how the City chooses to address the regulation of medical marijuana.

ORDINANCE NO. 9, 2010

AN ORDINANCE EXTENDING THE CURRENT TEMPORARY MORATORIUM ON THE SUBMISSION ACCEPTANCE, PROCESSING, AND APPROVAL OF ANY APPLICATION FOR A CITY OF ALAMOSA SALES TAX PERMIT OR LICENSE, OR FOR ANY USE OF PROPERTY WITHIN THE CITY OF ALAMOSA RELATED TO THE OPERATION OF A BUSINESS THAT SELLS MEDICAL MARIJUANA PURSUANT TO THE AUTHORITY GRANTED BY ARTICLE 18, SECTION 14 OF THE COLORADO CONSTITUTION

WHEREAS, on November 4, 2009, the City Council imposed a one hundred twenty (120) day moratorium on the submission, acceptance, processing, and approval of all applications for City permits and licenses and the use of any property within the City relating to the operation of Medical Marijuana Dispensaries to allow the City staff and the City Council to investigate the City's ability to regulate such businesses, and to develop and implement any appropriate regulations; and

WHEREAS, on March 3, 2010, the City Council extended that moratorium an additional 90 days, to June 1, 2010; and

WHEREAS, the Colorado General Assembly is currently debating the issue of imposing regulations relating to the operation of Medical Marijuana Dispensaries; and

WHEREAS, other Colorado cities are currently addressing issues concerning the operation of Medical Marijuana Dispensaries similar to those facing the City; and

WHEREAS, the City is actively studying its options, and has conducted one public forum and multiple public hearings; and

WHEREAS the City is in need of a reasonable length of an additional ninety (90) days to properly investigate, develop, and, if appropriate, adopt and implement any regulations with respect to Medical Marijuana Dispensaries, as established by the Colorado General Assembly and/or other Colorado cities; and

WHEREAS, potential proprietors of Medical Marijuana Dispensaries will not be unduly prejudiced by the imposition of such a moratorium.

NOW, THEREFORE, BE IT HEREBY ORDAINED by the City Council of the City of Alamosa, Colorado, as follows:

Section 1. Findings and Intent. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the City Council of the City of Alamosa.

Section 2. Extension of Current Temporary Moratorium on Applications for Permits and Licenses Related to Businesses that Sell Medical Marijuana. Upon the adoption of this Ordinance the current temporary moratorium imposed upon the submission, acceptance, processing, and approval of all applications for permits and licenses by the City of Alamosa related to a Medical Marijuana Dispensary is extended for an additional ninety (90) days. All City staff are directed to refuse to accept for filing, and not to process or review, any such new applications for such businesses during the extended moratorium period.

Section 3. Extension of Current Temporary Moratorium on Land Uses Related to businesses that sell Medical Marijuana. Upon the adoption of this Ordinance, the current temporary moratorium imposed on all land uses within the City of Alamosa related to a Medical Marijuana Dispensary is extended for an additional ninety (90) days.

Section 4. Staff to investigate and Prepare Proposed Regulations. Before the expiration of the extended ninety (90) day moratorium imposed by this Ordinance the City staff, working with the City Attorney, shall prepare appropriate regulations for Medical Marijuana, which shall include appropriate modifications to the Code of Ordinances Sections on nuisances and/or business licensing, for consideration by the City Council.

Section 5. Police Power Finding. The City Council hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the City of Alamosa and the inhabitants thereof.

Section 6. Authority. The City Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S. (concerning municipal police powers); (v) Section 31-15-501 (concerning municipal power to regulate businesses); (vi) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vii) the powers contained in the Alamosa City Charter.

Section 7. Effective Date; Expiration. Pursuant to Article III Section 15 of the Charter, the Council finds, determines and declares that this Ordinance shall be effective upon adoption. The extension of the current moratorium by this Ordinance shall commence as of the date of the

adoption of this Ordinance, and shall expire ninety (90) days thereafter, unless repealed prior to that date.

INTRODUCED, READ AND APPROVED on first reading the 12th day of May, 2010, and published as provided by law with notice of a public hearing to be held for consideration of the adoption of said ordinance on the 19th day of May, 2010, at 7:00 p.m., or as soon thereafter as the matter may be heard, or on such subsequent date to which the public hearing or Council consideration may be continued.

APPROVED, AND ADOPTED after public hearing the 12th day of May, 2010.

CITY OF ALAMOSA

By _____
Kathleen J. Rogers, Mayor

ATTEST:

By: _____
Judy Egbert, City Clerk