



REPORT TO CITY COUNCIL

DATE: SEPTEMBER 22, 2010

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: LOUIS CELAYA, ASSISTANT TO THE CITY MANAGER 

SUBJECT: INTRODUCTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING CHAPTER 1 OF ARTICLE IV OF THE AGOURA HILLS MUNICIPAL CODE RELATING TO THE COMPENSATION FOR MEDICAL MARIJUANA AND CHAPTER 8 OF ARTICLE VI OF THE AGOURA HILLS MUNICIPAL CODE RELATING TO BUSINESS REGISTRATION PERMITS

On September 10, 2008, the City Council adopted Ordinance No. 08-355 prohibiting the establishment of medicinal marijuana dispensaries in all zones of the City, preventing their proliferation and ensuring the continued public health, safety, and welfare. During this time, the County of Los Angeles and the County District Attorney's Office were examining the issue of medical marijuana dispensaries to determine their role and means of enforcement countywide. At the time of the City's moratorium and ultimate prohibition of dispensaries, the County's position was not to take action until it examined the current law and its role with respect to enforcement.

The County District Attorney's Office (CDAO) has completed its research and has concluded that over the counter sales of marijuana are patently illegal under state and federal law. The County has advised municipalities that they will assist in enforcement with agencies that have adopted appropriate ordinances, including one that requires, as a condition of obtaining a business license/registration permit, that the business must comply with federal, state, and local laws. Presentations to various City Managers by the County's District Attorney's Office, have emphasized the importance of having all the necessary ordinances and processes in place to ensure that the County District Attorney's office can assist cities with future prosecution should the need arise.

In an effort to reinforce the existing Municipal Code and provide the best resources to assist with enforcement, and at the recommendation of the City Attorney's Office, the proposed ordinance looks to amend sections of the business registration permit process to include the language recommended by the County District Attorney's Office. Specifically, it expands on the prohibition of compensation for a medical marijuana dispensary and importantly, places "unlawful business" language in the code. The language clarifies that the issuance of a business registration permit shall not be construed to approve or authorize any unlawful act or conduct

that violates federal, state or any ordinance in the City. Currently the existing code does not contain these provisions in the business registration code.

Additional discussions with both the City Attorney's Office and City Prosecutor's Office on this issue have resulted in additional amendments to the business registration code that will enhance both legal counsel's offices with the tools necessary for enforcement violations to the business registration code. These amendments include, but are not limited to:

- Clarifies that granting of a business registration permit shall not be deemed to approve an unlawful activity
- Authorizes a business registration application investigation process and requests for additional information
- Authorizes suspension or revocation of a business registration permit if it is found to be an immediate threat to public health or safety
- Prohibits the issuing of a business registration permit to any illegal business
- Authorizes the suspension or revocation of a business registration permit for applicants who willingly make fraudulent or misleading statements
- Confines business registration permit to the specified application location
- Establishes the Planning Commission, except on appeal, as hearing board to determine denials, modifications, suspensions or revocations of business registration permit
- Establishes the City Council as the appeals hearing board

Staff has discussed the proposed changes to the Municipal Code with the City Attorney who concurs the amendment to the business registration code will enhance the existing code as it relates to medicinal marijuana dispensaries enforcement, as well as other areas where business registration permits are required.

RECOMMENDATION

Staff respectfully recommends the City Council conduct a public hearing, introduce, read by title only, and waive further reading of Ordinance No. 10-379, Amending Chapter 1 of Article IV of the Agoura Hills Municipal Code, relating to the Compensation for Medical Marijuana and Chapter 8 of Article VI of the Agoura Hills Municipal Code, relating to Business Registration Permits.

Attachment: Ordinance No. 10-379

ORDINANCE NO. 10-379

AN ORDINANCE OF THE CITY OF AGOURA HILLS,
CALIFORNIA, AMENDING CHAPTER 1 OF ARTICLE IV OF
THE AGOURA HILLS MUNICIPAL CODE RELATING TO
COMPENSATION FOR MEDICAL MARIJUANA AND
CHAPTER 8 OF ARTICLE VI OF THE AGOURA HILLS
MUNICIPAL CODE RELATING TO BUSINESS
REGISTRATION PERMITS

The City Council of the City of Agoura Hills does hereby ordain as follows:

SECTION 1. Reserved Section 4125 of Chapter 1 of Article VI of the Agoura Hills Municipal Code is hereby amended to read as follows:

“4125. Compensation for medical marijuana.

No medical marijuana dispensary, as defined in article IX, chapter 6, part 2, division 10, section 9660, shall receive compensation for distributing, trading, exchanging, bartering or making available, in any way, medical marijuana. No person shall manage, establish, conduct, or operate or permit to operate such a dispensary. This prohibition applies, without limitation, to all persons who are owners, operators, agents, officers or volunteers of such a dispensary, as well as to all persons who have an ownership or leasehold interest in the premises and/or structures at which such a dispensary is present. As used herein, “person” includes, without limitation, any individual, partnership, corporation, limited liability company, association, joint venture, or other organization or entity, however formed, as well as trustees, heirs, executors, administrators, and/or assigns. Nothing contained in this section shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.”

SECTION 2. Sections 6800 and 6801 of Chapter 8 of Article VI of the Agoura Hills Municipal Code are hereby revised to read as follows:

“6800. As used in this chapter, "business" means professions, trades, or occupations and each and every kind of calling, whether or not carried on for profit, and whether paid for in money, goods, labor, or otherwise.”

6801. An annual business registration permit shall be required for the conduct or operation of any business within the city, whether or not such business has a fixed location within the city. Such business registration permit is required in addition to any business license required pursuant to article VI, chapter 3, section 6300. A valid business registration permit shall be maintained at all times a business is conducted, operated, or advertised in the city.”

SECTION 3. Sections 6803 through 6805 of Chapter 8 of Article VI of the Agoura Hills Municipal Code are hereby renumbered as Sections 6808 through 6810, respectively.

SECTION 4. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6803 to read as follows:

“6803. Granting of business registration permit not approval of unlawful conduct.

The granting or renewal of a business registration permit shall not be considered approval or authorization of any unlawful activity or conduct in violation of any local, state, or federal law, statute, rule, or regulation. Any such business registration permit shall be void.”

SECTION 5. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6804 to read as follows:

“6804. Business registration permit application investigation.

Upon receipt of a complete business registration permit application and fee, the City Manager, or his or her designee, shall make an investigation of the application and transmit copies of the business registration permit application to the Building and Safety Division, the Planning and Community Development Department and the Public Works Department for their consideration and approval. The City Manager, or his or her designee, may, in his or her discretion, transmit copies of the business registration permit application to the Sheriff's Department and/or the Fire Department for their consideration and approval. Every department, to which a business registration permit application is referred, may require additional information as deemed necessary. The City Manager, or his or her designee, shall, prior to the issuance of a registration permit, also conduct an onsite inspection of the applicant's proposed fixed business location in the city.”

SECTION 6. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6805 to read as follows:

“6805. Conditional approval of business registration permit application.

If any department, to which an application is referred, finds that the facts are such that any one or more of the provisions of this chapter relating to the denial of a business registration permit application or renewal application would apply if the business registration permit is issued without conditions, or that the applicant could conduct the business so as to be detrimental to public health, or safety, or public welfare if the business registration permit is issued without conditions, but that conditions can be imposed which will eliminate any ground for denial, or, as the case may be, will prevent the conduct of the business so as to be detrimental to public health, or safety, or public welfare, then the department shall recommend that such business registration permit be issued subject to such conditions. The department shall, in writing, advise the City Manager, or his or her designee, of all material facts necessary to determine whether the business registration permit should be issued, issued subject to conditions, or denied, and their approval or disapproval of the application. The City Manager, or his or her designee, may impose any or all of the conditions so recommended.”

SECTION 7. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6806 to read as follows:

“6806. Denial of business registration permit application or renewal.

The City Manager, or his or her designee, shall not approve a business registration permit application or renewal if he or she finds:

1. The business or the carrying on of the business at the proposed fixed location is prohibited by any provision of this code or any local, state or federal law, statute, rule or regulation;
2. The use, occupancy, structure(s), or premises at which the business will be conducted is not in compliance with city, state and federal law, including but not limited to, the city’s zoning ordinance and construction codes;
3. The business or the carrying on of the business at the proposed fixed location is not a permitted use under any provision of this code, including, without limitation, a medical marijuana dispensary, as defined in Article IX, Chapter 6, Part 2, Division 10, Section 9660;
4. The business is a public nuisance or has been formally declared a public nuisance by the city within the two (2) calendar years prior to submittal of the application or renewal; or
5. The business is being conducted in a manner that does not comply with any permit conditions that have been imposed.”

SECTION 8. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6807 to read as follows:

“6807. Denial or issuance subject to conditions.

Before denying any new or renewal business registration permit or issuing any business registration permit subject to conditions, the City Manager, or his or her designee, shall notify the applicant in writing. The notice shall advise the applicant that, within ten (10) days after receipt of the notice, he or she may request a hearing pursuant to Sections 6824 to 6831. If the intention is to grant the business registration permit subject to conditions, the notice shall also specify the proposed conditions. The notice shall be given by registered mail, postage prepaid, return receipt requested. This section shall not apply to the renewal of any business registration permit made subject to conditions previously imposed or to which the applicant has previously agreed.”

SECTION 9. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6811 to read as follows:

“6811. Notification to applicant of right to impose or change conditions.

If at any time it appears to the City Manager, or his or her designee, that there are grounds for revocation of a business registration permit, or that the business is being conducted

so as to be detrimental to public health, safety, or public welfare, but that such grounds or such conduct could be eliminated by the imposition of conditions, or of additional conditions, or by the amendment of any existing conditions to such permit, the City Manager, or his or her designee, may notify the permittee in writing that it intends to impose or amend such conditions, and that the permittee may, within ten (10) days after receipt of such notice, request, in writing, a hearing pursuant to Sections 6824 to 6831.”

SECTION 10. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6812 to read as follows:

“6812. Right to revoke or suspend business registration permit.

Any business registration permit issued by the City may be conditioned, modified, suspended or revoked for cause as set forth in 6814.

SECTION 11. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6813 to read as follows:

“6813. Denial or issuance subject to conditions following notification.

SECTION 12. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6814 to read as follows:

“6814. Revocation or suspension.

(a) The City Manager, or his or her designee, may condition, modify, suspend or revoke a business registration permit if he or she finds that one or more of the following conditions exist:

1. The building, structure, premises or equipment used in the conduct of the business does not comply with any health, zoning, fire or building and safety laws of the state or ordinances of the City;
2. The permittee, or any employee, agent or manager of the permittee, has violated any federal or state statute or any ordinance of the City in the course of exercising any rights under the business registration permit which is being considered for revocation;
3. The permittee; or any employee, agent, or manager of the permittee, has been found to have committed or engaged in an unlawful act which bears a substantial relationship to the conduct of the business activity for which the permit is being considered for revocation;
4. The permittee, or any employee, agent, or manager of the permittee, has knowingly made any false, misleading or fraudulent statement of material fact in the application for the permit;

5. The permittee, or any employee, agent, or manager of the permittee, has published, uttered or disseminated any false, deceptive, or misleading statements or advertisements in connection with the operation of the permitted business;

6. The permittee, or any employee, agent, or manager of the permittee, has violated any conditions or restrictions of the permit;

7. The permittee, or any employee, agent, or manager of the permittee, has conducted the permitted business in a manner contrary to the public health, safety, or welfare; or

8. The permittee or any employee, agent, or manager of the permittee, has violated any provision of this chapter.

(b) The City Manager, or his or her designee, is authorized to execute an order immediately suspending a business registration permit during the pendency of the appeal process if he or she determines that the business is operating in violation of one or more local, state or federal regulations and as a result of the violation an imminent threat to public peace, health or safety exists.

SECTION 13. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6815 to read as follows:

“6815. Business activity without business registration permit prohibited.

No person shall engage in, conduct, manage, or carry on any business for which a business registration permit is required by this chapter if:

1. The person does so without having, pursuant to the provisions of this chapter, procured a business registration permit to do so and paid the fee required; or
2. Such business registration permit has expired, been suspended, revoked, or denied.”

SECTION 14. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6816 to read as follows:

“6816. Advertising business activities.

No person shall advertise or announce, by any means or medium, including, but not confined to, pamphlets, handbills, newspapers, radio, television and internet, any business activity, (including, without limitation, exhibitions, rodeos, traveling shows, single dances, or outdoor festivals, or the sale of tickets thereto), until that person has acquired the required business registration permit and such business registration permit is in full force and effect.”

SECTION 15. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6817 to read as follows:

“6817. Separate business registration permit required for each business.

If a person engages in, conducts, manages, or carries on at the same time and/or location more than one business, the person shall be deemed to be engaging in, conducting, managing and carrying on each such business separately and apart from the other business, except that the total fees for all annual business registration permits issued at the same time and to the same person at any one location and one post office address, shall be in the amount established by City Council resolution.”

SECTION 16. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6818 to read as follows:

“6818. Business confined to location specified in business registration permit.

When a business registration permit specifies the post office address of the business, the permittee may conduct such business only at the address specified in the business registration permit.”

SECTION 17. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6819 to read as follows:

“6819. Posting of business registration permit.

Every person having a business registration permit under the provisions of this chapter and conducting, managing or carrying on a business at a fixed location in the city, shall keep such business registration permit posted and exhibited while in force in some conspicuous part of the place of business.”

SECTION 18. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6820 to read as follows:

“6820. Exhibition of business registration permit upon request.

Every person having a business registration permit under the provisions of this chapter shall produce and exhibit that same whenever requested to do so by any peace officer or by any officer authorized to issue, inspect or collect business registration permits.”

SECTION 19. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6821 to read as follows:

“6821. Illegal businesses not authorized.

A business registration permit granted pursuant to this chapter does not permit any business of any kind that is prohibited by federal, state or local ordinance, statute, law, rule, order or regulation.”

SECTION 20. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6822 to read as follows:

“6822. Nuisance declared.

Any action taken or any condition caused or permitted to exist in violation of any of the provisions of this chapter or in violation of any business registration permit issued hereunder shall be deemed a public nuisance. Each day that such action or condition continues shall be deemed to be a new and separate offense.”

SECTION 21. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6823 to read as follows:

“6823. Violation – Penalty.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor punishable by a fine of not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the County Jail for a period not exceeding six (6) months, or by both such fine and imprisonment. Each such person is guilty of a separate offense for every day, during any portion of which any violation of any of the provisions of this chapter is committed, continued or permitted by such person, and shall be punished therefore as provided by this chapter.”

SECTION 22. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6824 to read as follows:

“6824. Hearing board.

The Planning Commission, except on final appeal, shall be the hearing board and shall hold all hearings, to determine whether to uphold, modify or reverse the decision of the City Manager or his or her designee to deny, suspend, condition, or revoke a business registration permit.”

SECTION 23. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6825 to read as follows:

“6825. Form and filing of notice of hearing.

Any applicant or permittee dissatisfied with any decision of the City Manager, or his or her designee, may, within fifteen (15) days after receipt of written notice pursuant to Sections 6807 and 6811, file with the Director of Community Development a request for hearing with the hearing board. The request shall be signed by the applicant or permittee and shall state the reason for the hearing. Failure of the Director of Community Development to receive a timely hearing request constitutes a waiver of the right to contest any such decision. In this event, the decision of the City Manager or his or her designee is final and binding.”

SECTION 24. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6826 to read as follows:

“6826. Time of notice of hearing.

Whenever a hearing pursuant to sections 6824 to 6831 is provided for by this chapter and notice of the hearing is given to any person, such notice shall be given by the Director of Community Development not less than ten (10) days before such hearing by registered, postage prepaid, return receipt requested.”

SECTION 25. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6827 to read as follows:

“6827. Conduct of hearing.

At the time set for the hearing or at the date to which the hearing may be continued by the hearing board, the hearing board shall hear the applicant or permittee, who may present any facts to show why the business registration permit should be granted, granted without conditions, or should not be modified, suspended, or revoked, and shall hear, also testimony and other statements of persons who may attend the hearing and present facts to show why the business registration permit should or should not be granted, granted subject to conditions, modified, suspended, or revoked.”

SECTION 26. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6828 to read as follows:

“6828. Decision after hearing.

At the close of the hearing or at any time within thirty (30) days thereafter, the hearing board shall determine from the facts produced at the hearing and from any other facts in its possession, whether to uphold, modify or reverse the decision of the City Manager or his or her designee. The hearing board may make its decision conditional upon the applicant or permittee doing or not doing any act, either personally or through the applicant’s or permittee’s employees, agents or managers, which the hearing board deems necessary for the public good.”

SECTION 27. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6829 to read as follows:

“6829. Notice to applicant of decision after hearing.

The Ddirector of Community Development shall notify the applicant or permittee of the decision of the hearing board by registered mail, postage prepaid, return receipt requested. The decision of the hearing board shall be in writing, and shall contain a determination of the issue presented and the penalty, if any.”

SECTION 28. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6830 to read as follows:

“6830. Effective date of decision.

The decision of the hearing board shall become effective upon service on the applicant or the permittee. Service is deemed complete when the decision is placed in a U.S. Postal Service mail receptacle. Unless timely appealed pursuant to sections 6832 to 6834, the decision of the hearing board shall be final and binding.”

SECTION 29. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6831 to read as follows:

“6831. Effect of appeal on decision.

The filing of an appeal to the appeals board from a decision of the hearing board which modifies, suspends, revokes or conditions a license shall operate to stay such decision of the hearing board. When a permit has been suspended as a result of the determination by the City Manager, or his or her designee, that the operation of the business results in an imminent threat to public health, safety or welfare, pursuant to Section 6814(b), suspension shall not be stayed during the pendency of the appeal process.”

SECTION 30. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6832 to read as follows:

“6832. Appeals board.

The appeals board shall be the City Council.”

SECTION 31. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6833 to read as follows:

“6833. Form and filing of notice of appeal.

Any applicant or permittee dissatisfied with any decision of the hearing board may, within fifteen (15) days after receipt of written notice of the decision, file with the City Clerk a notice of appeal to the appeals board. The notice shall be signed by the applicant or permittee and shall state that the applicant or permittee is appealing from a specified decision or a particular part thereof and the grounds upon which the appeal is taken. Failure of the City Clerk to receive a timely appeal request constitutes a waiver of the right to contest any such decision. In this event, the decision of the hearing board is final and binding.”

SECTION 32. Chapter 8 of Article VI of the Agoura Hills Municipal Code is hereby amended by adding a new Section 6834 to read as follows:

“6834. Notice, authorized actions and hearings of the appeals board.

1. The City Clerk shall transmit to the appeals board a copy of the notice of appeal filed pursuant to section 6833 within fifteen (15) days of receipt of the notice of appeal.
2. Within forty (40) days of receipt of a copy of the notice of appeal, the appeals board shall:
 - (1) Take such action as, in its opinion, is indicated by such evidence; or
 - (2) Schedule the matter for hearing.
3. The City Clerk shall give not less than ten (10) days' written notice of the date, time and place of an appeal hearing to the applicant or permittee.
4. Any action taken by the appeals board shall be in writing and the City Clerk shall provide notice of such action to the applicant or permittee.
5. The decision of the appeals board shall be final and binding."

SECTION 33. Severability. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 34. Effective Date. This ordinance shall go into effect on the 31st day after its passage.

SECTION 35. Certification. The City Clerk of the City of Agoura Hills shall certify to the passage and adoption of this ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this day of , 2010.

AYES: ()
 NOES: ()
 ABSENT: ()
 ABSTAIN: ()

 William D. Koehler, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

Craig A. Steele, City Attorney