



Agenda Item 65

Approvals:

City Manager MM

Dept. Head CGD

Attorney SS

Finance JS

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: December 1, 2015

Department: Community Development
Prepared By: Cecilia Gallardo-Daly, Community Development Director

Subject: A REQUEST TO INITIATE A ZONING AMENDMENT TO PROHIBIT OR REGULATE MEDICAL MARIJUANA DISPENSARIES, MEDICAL MARIJUANA MANUFACTURERS, MARIJUANA CULTIVATION, AND DELIVERY OF MARIJUANA

Fiscal Impact: Approval of this item will not result in net city cost (discretionary general funding).

Summary: The City has multiple options for the ban or regulation of medical cannabis. Because of the complexity of the legal and social issues surrounding medical cannabis, it is recommended the City Council (1) receive this report on new state legislation specifically authorizing local regulation of medical cannabis uses and the deadlines for adopting such local regulations; (2) direct staff to study the public health, safety, and welfare issues surrounding cannabis dispensaries (including mobile dispensaries), cultivation, manufacturing, and delivery and present to the Planning Commission and City Council alternatives for banning or regulating such uses; and (3) give direction on the parameters for the prohibition or long-term regulation of cannabis dispensaries, cultivation, transportation, and distribution.

Background: The California legislature recently adopted legislation identified as the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643)(MMRSA) to comprehensively regulate medical marijuana (medical cannabis). The MMRSA recognizes and preserves local control to regulate or ban medical cannabis cultivation, transportation, and distribution. The MMRSA confirms and clarifies that, in addition to the complete land-use control over retail *dispensaries* recognized in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, municipalities have the power to regulate or ban the *cultivation* and *distribution* of medical marijuana. *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.

Although the MMRSA allows municipalities to regulate or ban cannabis cultivation, manufacturing, transportation, and distribution within their jurisdictions, it requires local enabling legislation to accomplish some aspects of this. If a city chooses to regulate these activities comprehensively, it must adopt an overlay of local regulatory standards that are at least as strict as the state's default regulations. Specifically, the MMRSA provides that if a City has not banned or regulated

cannabis *cultivation* by March 1, 2016, then cultivation in that City will be subject only to state law on this issue.¹

Currently, the San Clemente Municipal Code prohibits marijuana dispensaries explicitly in the commercial and mixed use zones and implicitly in non-commercial zones. The law now expressly allows cities to regulate or ban these uses.

Discussion: Although a prohibited-unless-permitted zoning ordinance has been interpreted to prohibit marijuana dispensaries, to some, the *Riverside* decision leaves open the following issues:

- Whether a city's "similar-use determination" is potentially available to determine that marijuana dispensaries and cultivation are similar to other permitted uses and thus should also be permitted (expressly listing all marijuana uses as prohibited and not subject to the similar-use determination would remove all doubt); and
- Whether transportation and non-retail distribution are regulated under existing municipal zoning codes.

The MMRSA gives the City explicit authority to close these issues.

The cultivation, transportation, and distribution of marijuana can create problems relating to public health and safety, crime, water and air quality, and energy consumption. Marijuana uses can create nuisance activity such as loitering and criminal activity in business and residential districts.

Specifically, mobile delivery can create issues relating to responsibility and resources to monitor and enforce state law, questions of patient qualification, and risks relating to the high use of large sums of cash for mobile transactions.

And cultivation can create air-quality, energy, and water-quality damage and can impair building maintenance and safety. For example, the increased moisture necessary to grow plants indoors can create excessive mold growth and structural damage. Additionally, the equipment utilized to grow plants indoors can pose a risk of fire and electrical hazards due to dangerous electrical alterations and use. Further, inadequate ventilation combined with the use of pesticides and fertilizers in an enclosed space can lead to chemical contamination within structures.

1) Regulations of Medical Cannabis Dispensaries

As indicated above, the California Supreme Court upheld the City of Riverside's total ban of medical cannabis distribution facilities. The Riverside zoning ordinance categorizes medical marijuana dispensaries as prohibited uses throughout the city and provides that they may be abated as public nuisances.

¹ It is possible that this deadline provision will be repealed and allow cultivation regulation any time.

While Riverside has exercised a total ban on medical marijuana dispensaries, other cities have decided to permit and regulate dispensaries within their jurisdiction. Regulations can include, for example:

- Limiting the number of dispensaries;
- Separation requirements from parks, schools, churches, and other dispensaries;
- Limiting the use to a specific zoning designation;
- Security requirements for the operation of the dispensary;
- Hours of operation; and
- Loitering prohibition.

2. Regulation of Medical Cannabis Cultivation

At least one California city has successfully defended a total ban on the cultivation of marijuana for any purpose within that city. Its legally upheld regulation provides that “[m]arijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives, or dispensaries” are prohibited in all zones within the City. The MMRSA allows this approach.

Alternatively, some cities are allowing cultivation with regulations such as:

- Allowing outdoor, residential cultivation so long as plants are enclosed, screened, and five (5) feet from the property line;
- Allowing indoor cultivation with a permit;
- Requiring property owner approval of cultivation on the property;
- Limiting the legal area of personal cultivation (state default regulations will allow 100 square feet); and
- Limiting the number of plants.

Should the City choose to leave cultivation unregulated, under the currently enacted version of the MMRSA, on March 1, 2016 only State law would control cultivation activities in San Clemente.

3. Regulation of Cannabis Delivery

Mobile delivery of products has consistently created issues for cities because of the inherent transitory nature of the activity. A quick search of weedmaps.com identifies several cannabis dispensaries that currently operate in San Clemente. These mobile delivery services are often attempts to avoid the effects of dispensary bans. State law will regulate the delivery of medical marijuana unless delivery is explicitly prohibited by local ordinance. In light of the foregoing, the City has the option to ban or regulate mobile delivery. Regulations could include:

- Hours of operation;
- Amount of money or marijuana that can be carried at one time; and
- Time spent at one location.

Recommended

Action: **Staff recommends that the Council:**

- 1) Receive a report on new state legislation specifically authorizing local regulation of medical cannabis uses.

- 2) Refer this item to the Planning Commission to conduct research and discussion and give direction to the Council on the development of long-term prohibitions or regulation of cannabis dispensaries, cultivation, transportation, and distribution.

Attachments: None.