



## STAFF REPORT

**Meeting Date:** January 26, 2016  
**To:** Honorable Mayor & City Council  
**From:** David M. Snow, Interim City Attorney  
Maricela E. Marroquin, Assistant City Attorney  
**Subject:** Review of Possible Medical Marijuana Regulations  
**Attachments:** Draft Ordinance

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### INTRODUCTION

On October 9, 2015, the Governor signed into law the Medical Marijuana Regulation and Safety Act ("MMRSA"). The MMRSA requires a city to take affirmative action if it wants to prohibit or regulate the cultivation and delivery of medical marijuana within its jurisdiction. Pursuant to the MMRSA, as currently written cities must have a land use regulation in place that prohibits or regulates the cultivation of medical marijuana that is in effect before March 1, 2016, or the State will become the sole licensing authority for marijuana cultivation. Also, pursuant to the MMRSA, a city that wishes to ban the delivery of medical marijuana must expressly prohibit this activity by ordinance. The MMRSA does not contain a deadline for when the prohibition on the delivery of medical marijuana must be in effect.

Since 2011, the City has prohibited medical marijuana dispensaries from operating in the City. The City's municipal code currently prohibits medical marijuana cultivation, but exempts patients and caregivers who cultivate marijuana at their home for personal use of the patient.<sup>1</sup> The City's municipal code also prohibits marijuana deliveries within the City but does not expressly prohibit marijuana deliveries that originate from outside the City.

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<sup>1</sup> Section 10-3-100 of the City's municipal code refers to "patients" and "caregivers". Health and Safety Code section 11362.7(f) defines a "qualified patient" as "a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services." Health and Safety Code section 11362.7(d) defines a "primary caregiver" as the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

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Staff seeks Council direction on whether or not the current City regulations regarding cultivation of medical marijuana should be modified and if so directed, staff will bring forth an ordinance to address that within the March 1<sup>st</sup> deadline.

## **DISCUSSION**

In 1996, the voters of the State of California approved Proposition 215 entitled "The Compassionate Use Act of 1996" ("CUA") to enable seriously ill Californians, under the care of a physician, to legally possess, use, and cultivate marijuana for medical use under state law. In 2003, the California Legislature adopted SB 420 entitled the "Medical Marijuana Program" ("MMP"), which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code.<sup>2</sup> Neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate medical marijuana within its jurisdiction. Under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana remain unlawful and subject to federal prosecution without regard to a claimed medical need.

Governor Brown recently signed into law the MMRSA, which is comprised of three related bills: AB 243, AB 266, and SB 643. The MMRSA establishes licensing requirements for the cultivation, distribution, and transportation of medical marijuana, safety and testing standards for medical marijuana and medical marijuana products, and regulates the physicians who recommend or prescribe medical marijuana to patients. The MMRSA contains statutory provisions that allow local governments to maintain local control over medical marijuana and does not require a city to allow medical marijuana activity within its borders.

### **A. Cultivation of Medical Marijuana**

The MMRSA requires a city to take affirmative action if it wants to prohibit or regulate the cultivation of medical marijuana within its jurisdiction. The MMRSA provides that if a city does not have a land use regulation in effect by March 1, 2016 that prohibits the cultivation of marijuana, either by express prohibition, or under the principles of permissive zoning, the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applications. The State Legislature is considering enacting Assembly Bill 21 that would amend Health and Safety Code Section 11362.777(g) to eliminate the March 1, 2016 deadline. On January 14, 2016, Mayor Gold wrote a letter to the

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<sup>2</sup> Health and Safety Code section 11362.77(a) allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient, and maintain no more than six mature or 12 immature marijuana plants per qualified patient. If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs. See Health and Safety Code section 11362.77(b).

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Chair of the State Health Committee in support of Assembly Bill 21 in its current form. On January 15, 2016, Assembly Bill 21 was amended to delete the reserved authority for cities to regulate or ban the cultivation, storage, manufacture, transport, provision, or other activity by a qualified patient or primary caregiver. If Assembly Bill 21 is passed with this additional change, the City may lose its ability to prohibit a qualified patient or primary caregiver from cultivating medical marijuana. It is our understanding that Assembly Bill 21 may be amended to include language that a city is not limited or prevented from exercising its police power authority under Section 7 of Article XI of the California Constitution. Senate Bill 435 which is similar to AB21 was amended on January 19, 2016, and presently includes this language protecting a city's right to exercise its police powers.

The City's municipal code prohibits marijuana cultivation, but has a limited exception that allows a patient or caregiver to cultivate marijuana at their home for personal use of the patient. Specifically, Beverly Hills Municipal Code section 10-3-2761 provides that no person shall establish or conduct any "marijuana dispensary, store, co-op or cultivation operation", as defined in section 10-3-100, in any zone or overlay zone. Section 10-3-100 defines "marijuana dispensary, store, co-op or cultivation operation" as "a business or other person or entity, including any location, structure, facility, residence, or similar enclosure for the same, used, in full or in part, as a place at or in which marijuana is sold, traded, exchanged, bartered for in any way, made available, located, stored, placed, planted, cultivated, or processed, including, without limitation, any location, structure, facility, residence or similar enclosure if used in connection with the delivery of marijuana; except that cultivation or storage by a patient or that patient's caregiver, at the residence of the patient and incidental to a residential use by such patient, and for the sole use of the patient who resides there, shall not be considered a dispensary." Under the City's municipal code, the cultivation of marijuana is not expressly prohibited under all circumstances.

Staff requests that the City Council provide direction on whether the City should prohibit all cultivation of marijuana in the City, or whether the current exemption allowing patients and caregivers to cultivate marijuana at the patient's residence for the sole use by the patient should be retained.

A Planning Commission public hearing is scheduled for January 28, 2016, to consider a zoning ordinance regarding cultivation of marijuana in the City to preserve the City's options. A draft ordinance prohibiting all cultivation will be prepared for the Commission's consideration, and any direction provided by the City Council will be conveyed to the Commission at the January 28<sup>th</sup> meeting.

## **B. Medical Marijuana Deliveries and Mobile Marijuana Dispensaries**

The MMRSA allows deliveries by a dispensary (with a State dispensary license) in a city that does not explicitly prohibit it by local ordinance. The City prohibits marijuana deliveries, but does not expressly prohibit deliveries that originate outside the City. See Sections 10-3-100 and 10-3-2761. Any ordinance adopted

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by the City concerning the delivery of medical marijuana must be in place before the State begins issuing State licenses. It is anticipated that the State will begin to issue licenses in January 2018.

Staff seeks City Council input and direction as to whether it wishes to consider the adoption of an ordinance prohibiting medical marijuana delivery services (and mobile dispensaries) that operate outside the City from delivering marijuana into the City.

### **NEXT STEPS**

Staff intends to present a draft ordinance for the Planning Commission's consideration that would prohibit all marijuana cultivation in the City, all marijuana deliveries into the City and mobile marijuana dispensaries. Input provided by the City Council at the study session will be conveyed to the Planning Commission, and modifications to the draft ordinance may be considered by the Commission at its meeting on January 28<sup>th</sup>. If the City Council wishes to prohibit all marijuana cultivation in the City, this will require the adoption of an urgency ordinance since the effective date for a regular ordinance adopted by the City Council would be after the March 1, 2016 deadline.<sup>3</sup>

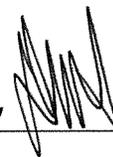
### **FISCAL IMPACT**

There is no fiscal impact as a result of this item.

### **RECOMMENDATION**

Staff seeks direction from City Council the scope of any prohibitions on medical marijuana cultivation and deliveries within the City.

David M. Snow  
Approved By



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<sup>3</sup> A qualified patient who cultivates less than 100 square feet of marijuana for personal medical use and who does not sell, distribute, donate, or provide marijuana to any other person or entity is not required to obtain a State license to cultivate marijuana. Likewise, a primary caregiver who cultivates less than 500 square feet of marijuana for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver, and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765 also does not need to obtain a State license. If a qualified patient or primary caregiver exceeds these amounts, he or she would need to obtain a State cultivation license for the cultivation of marijuana. Therefore, if the City wants to prohibit all personal cultivation of medical marijuana, it must adopt an ordinance that is in effect before the March 1, 2016 deadline.

# **Attachment 1**

**[DRAFT] ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING CHAPTER 3 OF TITLE 10 OF THE BEVERLY HILLS MUNICIPAL CODE TO EXPRESSLY PROHIBIT CULTIVATION OF MEDICAL MARIJUANA, INCLUDING CULTIVATION BY QUALIFIED PATIENTS, PRIMARY CAREGIVERS, AND PERSONS WITH IDENTIFICATION CARDS, IN ALL ZONES IN THE CITY, AND TO PROHIBIT MARIJUANA DELIVERIES AND MOBILE MARIJUANA DISPENSARIES**

The City Council of the City of Beverly hereby ordains as follows:

Section 1. The City has initiated amendments to the Beverly Hills Municipal Code to prohibit cultivation of medical marijuana in all zones in the City, and to prohibit marijuana deliveries and mobile marijuana dispensaries (“Code Amendments”). Since 2011, the City has prohibited medical marijuana dispensaries from operating in the City. The City’s municipal code currently prohibits medical marijuana cultivation, but exempts certain qualified patient and caregiver cultivation. The City now wishes to remove these exemptions and expressly prohibit medical marijuana cultivation anywhere in the City. The City also wants to expressly prohibit all marijuana deliveries and mobile marijuana dispensaries.

Section 2. On January 28, 2016, the Planning Commission conducted a duly noticed public hearing regarding the proposed Code Amendments, and following the receipt of public testimony, closed the hearing and adopted Resolution No. 16-\_\_\_\_, recommending that the City Council adopt the proposed Code Amendments.

Section 3. Section 10-3-100 (Words Defined) of Article 1 (Definitions) of Chapter 3 (Zoning) of Title 10 (Planning and Zoning) of the Beverly Hills Municipal Code is amended to replace or add the following definitions; with all other definitions remaining without amendment:

“CULTIVATION”: shall include, but not be limited to, “cultivation” as defined in Business and Professions Code Section 19300.5(l), as the same may be amended from time to time, and shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

“DELIVERY”: shall include, but not be limited to, “delivery” as defined in Business and Professions Code section 19300.5(m), as the same may be amended from time to time, and shall include the commercial transfer of medical marijuana or medical marijuana products to or from a dispensary, up to an amount determined by the bureau to a primary caregiver, qualified patient, or person with an identification card as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. “Delivery” also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under the Medical Marijuana Regulation

and Safety Act, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical marijuana or medical marijuana products.

“IDENTIFICATION CARD”: A document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.

“MARIJUANA”: shall include, but not be limited to, “cannabis” as defined in Business and Professions Code section 19300.5(f), as the same may be amended from time to time, and shall include all parts of the plant *cannabis sativa linnaeus*, *cannabis indica*, or *cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” also means the separated resin, whether crude or purified, obtained from marijuana. “Marijuana” also means marijuana as defined by Section 11018 of the Health and Safety Code. For the purpose of this Section, “marijuana” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

“MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATION”: A business or other person or entity, including any location, structure, facility, residence, or similar enclosure for the same or mobile dispensary used, in full or in part, as a place at or in which marijuana is sold, traded, exchanged, bartered for in any way, made available, located, stored, placed, planted, cultivated, or processed, including, without limitation, any location, structure, facility, residence or similar enclosure if used in connection with the delivery of marijuana.

“MEDICAL MARIJUANA PRODUCT”: shall include, but not be limited to, “cannabis product” or “medical cannabis product” as defined in Business and Professions Code section 19300.5 (ag), as the same may be amended from time to time, and shall include marijuana, as well as concentrates and extractions, intended to be sold for use by medical marijuana patients pursuant to the Compassionate Use Act of 1996 (Proposition 215).

“MMRSA”: The Medical Marijuana Regulation and Safety Act, as contained, codified and enacted in California Business and Professions Code Chapter 3.5.

“MOBILE MARIJUANA DISPENSARY”: The use of a motor vehicle that in any way involves growing, distributing, delivering, selling or making available to persons, with or without financial payment or consideration, marijuana or marijuana products, including marijuana for medical purpose as described in California Health and Safety Code Section 11362.5.

“PRIMARY CAREGIVER”: The individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

“QUALIFIED PATIENT”: A person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

Section 4. Section 10-3-2761 (Marijuana Dispensary, Store, Co-op or Cultivation Operation Prohibited) of Article 27 (Other Use and Building Restrictions) of Chapter 3 (Zoning) of Title 10 (Planning and Zoning) of the Beverly Hills Municipal Code is amended in its entirety to read as follows:

“10-3-2761: Marijuana Dispensary, Store, Co-op or Cultivation Operation Prohibited:

No person shall establish or conduct any “marijuana dispensary, store, co-op or cultivation operation”, as defined in section 10-3-100 of this chapter, in any zone or overlay zone.

Cultivation of marijuana, as defined in section 10-3-100 of this chapter, for commercial or non-commercial purposes, including cultivation by a qualified patient, primary caregiver, or person with identification card is expressly prohibited in all zones and all specific plan areas in the City. No person, including a qualified patient, primary caregiver or person with identification card, shall cultivate any amount of marijuana in the City, even for medical purposes.

All delivery of marijuana or marijuana products to or from the City is expressly prohibited. No person shall conduct or perform any delivery of marijuana or medical marijuana product, in or out of the City.

No provision of Article 1 of Chapter 3 of Title 1 of the Beverly Hills Municipal Code shall authorize a criminal prosecution or arrest prohibited by Health and Safety Code section 11362.71 *et seq.*”

Section 6. Severability. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

Section 7. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the City or within the territory comprising the City, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

Ordinance Number \_\_\_\_\_

Section 8. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

Section 9. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

PASSED, APPROVED AND ADOPTED by the Beverly Hills City Council on \_\_\_\_\_, 2016.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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JULIAN A. GOLD, M.D.  
Mayor

ATTEST:

\_\_\_\_\_  
BYRON POPE, MMC

City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
DAVID M. SNOW  
Interim City Attorney