



Planning Commission Report

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- Meeting Date:** January 28, 2016
- Subject:** Ordinance to prohibit medical marijuana cultivation in all zones in the city, including cultivation by qualified patients, primary caregivers and persons with identification cards, and prohibiting marijuana deliveries and mobile marijuana deliveries
- Project Applicant:** City Initiated Project
- Recommendation:** It is recommended that the Planning Commission consider the draft ordinance, and forward a recommendation to the City Council regarding the regulation regarding marijuana cultivation, marijuana deliveries and mobile marijuana dispensaries.

REPORT SUMMARY

This report summarizes the attached draft ordinance to prohibit medical marijuana cultivation in all zones in the City and provides the Planning Commission with background information related to the ordinance.

BACKGROUND

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, the City must adopt a land use regulation prohibiting or regulating 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 individual users who cultivate for personal use. The draft ordinance removes these exemptions and expressly prohibits medical marijuana cultivation anywhere in the City. The draft ordinance also expressly prohibits all marijuana deliveries and mobile marijuana dispensaries.

On January 26, 2015, the City Council will be holding a study session to provide policy direction on whether it wishes to prohibit or regulate the cultivation of marijuana for personal use and whether it wishes to prohibit all marijuana deliveries and mobile marijuana dispensaries. Staff will update the Planning Commission on what transpired during the City Council study session.



DISCUSSION

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 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.

The attached ordinance prohibits all cultivation of medical marijuana, including cultivation for personal medical use. The prohibition on all cultivation of medical marijuana will preserve and protect the public health, safety and welfare. The justification for banning medical marijuana cultivation pursuant to the City's police power includes, without limitation: 1) the increased risk to public safety, based on the value of marijuana plants and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; 2) the strong "skunk like" malodorous fumes emitted from mature plants that can interfere with the use and enjoyment of neighboring properties by their occupants; and 3) the risk of electrical fire hazards caused by medical marijuana cultivation.



Criminal activity is often associated with medical marijuana activities. As marijuana plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging theft by alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery of the plants and creating the potential for violent acts related to such criminal activity.

Furthermore, indoor cultivation of marijuana, often unattended, has potential to cause harm to persons and property in that the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a distinct risk of harm to the building and its occupants. Buildings where marijuana is cultivated are often illegally wired and have overloaded electrical systems that result in fires. In 2015 alone, there were a number of reported incidents of indoor marijuana cultivation sites causing fires. On February 9, 2015, there was a fire in a residence in Sacramento that was caused by the indoor cultivation of marijuana. On February 19, 2015, there was an electrical fire in Arcadia caused by an indoor marijuana cultivation operation. On April 24, 2015 there was an explosion in a Silver Lake home that leveled the house and destroyed several cars that was caused by an indoor marijuana cultivation operation. In May 2015, a fire erupted in a commercial building in Sun Valley that was caused by indoor marijuana grow house. In that same month, there was a fire in an Elk Grove home caused by an overheated illegal electrical power connection used to power an indoor marijuana grow house. In June 2015, there was a fire in a Sacramento residence caused by an indoor marijuana grow house. In July 2015, there was a fire in a Baldwin Park home caused by grow house. In September 2015, there was a fire in the garage of a Sun Valley residences that was caused by an indoor marijuana grow house. On October 23, 2015, there was a fire in a Rialto home that was caused by an indoor marijuana grow, started by an electrical panel that burst.

The normal ordinance process will not be concluded in time to meet the March 1, 2016 established by the MMRSA. Accordingly, staff has also prepared an urgency ordinance for the City Council's consideration that will prohibit all cultivation of medical marijuana in the City. This urgency ordinance will be considered by the City Council at the same meeting that the attached draft ordinance is being considered.

A. 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. Currently, the City does not expressly prohibit deliveries of medical marijuana or mobile marijuana dispensaries in the City. If the City does not adopt an express ban before the State begins issuing any State licenses, a State-licensed dispensary will be able to deliver medical marijuana within the City. Therefore, any ordinance adopted by Beverly Hills concerning the delivery of medical marijuana must be in place before the State begins issuing State licenses. It is projected that the State will begin to issue licenses in January 2018.

Successful enforcement of regulations against storefront medical marijuana dispensaries has been found to coincide with an increase in mobile marijuana dispensaries and marijuana deliveries. This increase in deliveries and mobile marijuana dispensaries exposes the City's residents to the increase of secondary effects related to the transportation of medical marijuana



on City roads. Mobile marijuana dispensaries and marijuana deliveries have resulted in criminal activity, as delivery drivers are targets for armed robbery. As a result, drivers choose to carry weapons to protect themselves. There are a number of recent reports of armed robberies of marijuana delivery services in California. On December 22, 2014, police in the City of San Bernardino reported that a customer robbed a mobile dispensary driver at gunpoint, which led to an hours-long standoff with police. On March 13, 2014, there was an armed robbery of a medical marijuana delivery vehicle that occurred in Long Beach that resulted in a physical fight between the medical marijuana employee and two suspects. In April 2015, a delivery driver for a medical marijuana dispensary was robbed at gunpoint in the Western Addition area of San Francisco. On August 20, 2015, police in the City of Monterey reported that a man held a medical marijuana delivery driver at gunpoint and fled with marijuana and cash. On September 25, 2015, a medical marijuana delivery man was robbed of the marijuana, cash and his car in the City of Altadena. Accordingly, the draft ordinance is necessary for the protection of the public health, safety and welfare.

The City is committed to the efficient and effective use of limited regulatory, investigatory, and prosecutorial resources, and the cultivation and delivery of medical marijuana would require the City to use its limited resources to prevent potentially negative outcomes related to marijuana cultivation and deliveries.

ENVIRONMENTAL IMPACT

There is no environmental impact related to this item. Pursuant to the California Environmental Quality Act ("CEQA"), the Planning Department has determined that the proposed prohibition on the cultivation of medical marijuana is exempt from the requirements of CEQA and the City's CEQA Guidelines pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed prohibition on marijuana cultivation within the City's jurisdiction will have a significant effect on the environment. The ordinance imposes greater limitations on uses and activities allowed in the City, and will thereby serve to eliminate potential significant adverse environmental impacts.

RECOMMENDATION

It is recommended that the Planning Commission consider the draft ordinance, and forward a recommendation to the City Council regarding the regulation regarding marijuana cultivation, marijuana deliveries and mobile marijuana dispensaries.

Report Reviewed By:



Ryan Gohlich, AICP, Assistant Director of
Community Development / City Planner



Attachment A
Resolution and Draft Ordinance

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING AN AMENDMENT TO 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, AND PROHIBITING MARIJUANA DELIVERIES AND MOBILE MARIJUANA DISPENSARIES

WHEREAS, on October 9, 2015, the Governor signed into law the Medical Marijuana Regulation and Safety Act (“MMRSA”). The MMRSA establishes a comprehensive statewide regulatory scheme for medical marijuana. The MMRSA provides that a city must take certain action if it wants to prohibit or regulate marijuana cultivation and deliveries within its jurisdiction.

WHEREAS, the City has initiated amendments to the Beverly Hills Municipal Code to prohibit (1) cultivation of medical marijuana in all zones in the City, (3) medical marijuana deliveries, and (3) mobile marijuana dispensaries (“Code Amendments”). Since 2011, the City has prohibited medical marijuana dispensaries, and is enacting these regulations in response to the MMRSA. The Code Amendments have been prepared in accordance with the provisions of Title 7, Division 4, Section 65853, *et seq.*, of the State of California Government Code.

WHEREAS, on January 28, 2016, the Planning Commission conducted a duly noticed public hearing where it received oral and documentary evidence regarding the proposed Code Amendments to Chapter 3 of Title 10 of the Beverly Hills Municipal Code as set forth in Exhibit A.

WHEREAS, the Code Amendments are consistent with the objectives, principles, and

standards of the General Plan. The Code Amendments are consistent with the following General Plan Goals and Policies from the Safety Element:

“S 1 Protection of Life and Property. The protection of human life and property from the risks of wildfires and urban fires.”

The Code Amendments are also consistent with the following General Plan Goals and Policies from the Land Use Element:

“LU 16 Social Sustainability and Equity. Land uses and built urban form that provide diverse social and cultural opportunities, life-long learning opportunities, safe access to schools, a healthy environment, and high quality of life.”

NOW, THEREFORE, the Planning Commission of the City of Beverly Hills does resolve as follows:

Section 1. The proposed Code Amendments have been reviewed pursuant to the California Environmental Quality Act (CEQA), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*), and the City’s Local CEQA guidelines. The Planning Commission finds that the proposed Code Amendments are exempt CEQA pursuant to the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations.

Section 2. The Planning Commission does hereby recommend that the City Council adopt an Ordinance approving and enacting the proposed Code Amendments substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by

reference.

Section 3. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: _____, 2016

Alan Robert Block
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:

Secretary

Approved as to form:

Approved as to content:

David M. Snow
Interim City Attorney

EXHIBIT A
[PROPOSED] ORDINANCE

Begins on next page.

[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:

JULIAN A. GOLD, M.D.
Mayor

ATTEST:

BYRON POPE, MMC

City Clerk

APPROVED AS TO FORM:

DAVID M. SNOW
Interim City Attorney