

**STAFF REPORT**  
**City of Lancaster**

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Date: February 9, 2016

To: Mayor Parris and City Council Members

From: Jocelyn Corbett, Assistant City Attorney  
Lee D’Errico, Public Safety Director

Subject: **Amendment to Title 17 of the Lancaster Municipal Code**

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**Recommendations:**

- a. Introduce **Urgency Ordinance No. 1012**, amending Title 17 of the Lancaster Municipal Code (“Zoning”) by adding a new section, 17.04.235 to Chapter 17.04 (“General Provisions”), relating to the prohibition of medical marijuana dispensaries and the cultivation and/or delivery of marijuana (the “Medical Marijuana Urgency Ordinance”).
  
- b. Direct staff to work with the Planning Commission and Criminal Justice Commission to analyze and consider whether regulations can be carefully crafted that would allow commercial medical marijuana activity to occur in the City while protecting the public from the detrimental secondary effects of such activity.

**Fiscal Impact:** Negligible; while the City may incur some cost associated with staff and Los Angeles County Sheriff Department time, it is expected to be minimal.

**Background:**

In 1996, California voters approved Proposition 215, the Compassionate Use Act, which exempted qualified patients and their primary caregivers from criminal liability for the possession and cultivation of marijuana for medical purposes. In 2003, the California Legislature enacted additional regulations through the passage of Senate Bill 420, the Medical Marijuana Program Act, to establish and implement a program for voluntary registration of qualified patients and their primary caregivers through a statewide identification card.

In late 2015, the Legislature passed, and the Governor signed, three pieces of legislation, AB 266, AB 243 and SB 643, collectively called the Medical Marijuana Regulation and Safety Act (the "Act"). The Act is effective as of January 1, 2016. The Act provides a statewide program for the licensing and regulation of commercial cannabis activity, specifically, the operation of medical marijuana dispensaries and the delivery and cultivation of marijuana. The Act provides that, in accordance with the California Constitution and as expressly held by the California Supreme Court, local authority remains intact, and the City may adopt ordinances to either regulate medical marijuana businesses or to prohibit such operations and related activities altogether.

However, if a city or county does not have a zoning ordinance expressly addressing cultivation, the State will become the sole licensing and regulatory authority for that activity effective March 1, 2016. Although the Assemblyman who authored the bill has stated that the deadline is in error and he intends to change it, there is no guarantee that such an amendment will be adopted in a timely manner. Additionally, the Act provides that if a city does not have an ordinance in effect that expressly bans medical marijuana delivery in conjunction with a dispensary before the State begins issuing licenses, the State will be the sole regulatory body and delivery will be allowed with just a State dispensary license. It is not immediately clear when the State will be ready to issue licenses.

In 2009 and 2010, the City Council adopted interim urgency ordinances to establish and extend a moratorium on medical marijuana dispensaries in the City; the moratorium expired in December 2011. When the moratorium was established, City Council took express notice of the adverse and often dangerous secondary effects related to the medical marijuana activities reported by cities that allowed dispensaries, specifically criminal activity, including illegal drug activity and drug sales in the vicinity of dispensaries; robbery of persons leaving dispensaries; persons acquiring marijuana from a dispensary and selling it to a non-qualified person; burglaries and robberies; and an increase in vacancies in the commercial areas in proximity to dispensaries.

Staff is recommending that a new section, 17.04.235, be added to Chapter 17.04 of the Lancaster Municipal Code, to expressly prohibit the establishment and/or operation of medical marijuana dispensaries, including mobile dispensaries, to prohibit the indoor or outdoor cultivation of marijuana, and further to prohibit the delivery of marijuana anywhere within the City's boundaries. As discussed in greater detail below, establishing the prohibition now retains local control over regulation of these activities while giving the City time to assess whether regulations can be developed that would allow commercial medical marijuana activities to be conducted in a manner that is safe and responsible and protects public health, safety and welfare from the adverse secondary effects of such activities.

At its regular meeting on January 13, 2016, the Criminal Justice Commission voted unanimously (5-0 vote with 2 absences) to recommend to City Council the adoption of the urgency ordinance. And the Planning Commission, at its regular meeting on January 25, 2016, voted unanimously (6-0) to adopt Resolution No. 16-01, which also recommended that City Council amend the zoning code by adopting the urgency ordinance to add the new Lancaster Municipal Code section 17.04.235.

### Purpose and Intent of the Medical Marijuana Urgency Ordinance

In recommending the prohibition of marijuana dispensaries and related activities, staff is making no judgment on whether individuals obtain some medical benefit from marijuana. The sole purpose of the Ordinance is to protect Lancaster residents, business owners and visitors from the detrimental secondary effects that such activities can create. The adoption of this Ordinance will allow the City to retain local control over the regulation of commercial medical marijuana activities, while giving the City time to have a fuller discussion about these issues. It may well be that carefully crafted regulations can be developed in the future that would both respect individuals' rights in determining whether marijuana provides some medical benefit and protect public health, safety and welfare by ensuring responsible and safe commercial operations. Additionally, adoption of a prohibition now will afford the City the opportunity to see how the State's regulatory structure develops and what unintended consequences, if any, may arise from implementation of the state program.

### Secondary Effects of Medical Marijuana Activities

Much of the criminal activity associated with marijuana dispensary operations is due to the fact that federal law still classifies marijuana as a Schedule I drug, considered one of the most dangerous controlled substances along with heroin, LSD, Ecstasy and others. As long as it remains so classified, banks face severe monetary penalties or even closure, and individual bankers can be criminally prosecuted and banned from the industry if they assist dispensary owners with opening and maintaining bank accounts. As a result, dispensaries must generally operate as a cash-only business. The Los Angeles Times recently reported that the "\$700-million-a-year cannabis industry run[s] almost entirely on cash." [December 19, 2015, pp. A1 and A12.] With so much cash moving around it is no surprise that dispensaries and related marijuana activities are a magnet for crime. In addition to robberies at dispensaries, grow houses have been broken into, and the Times reported that gangs in Denver have targeted couriers moving dispensary cash around the city.

Even a very cursory web search confirms that dispensaries are particularly vulnerable to criminal activity: in 2015 alone, at least three Los Angeles dispensaries were robbed; security guards at two of them were injured and an employee was injured at the third. A security guard was shot and killed at a San Bernardino dispensary in February. And an armed robbery of a dispensary in Upland in January 2015 led to a stand-off with the SWAT team at a nearby apartment building.

Here in the City of Lancaster, there have been a number of serious incidents related to medical marijuana in just the past few years:

- In June 2012, a person was delivering medical marijuana at a residence, where he was robbed at gunpoint by two men. After robbing the victim of the medical marijuana, the suspects attempted to take the victim's car. The suspects were later arrested and marijuana containers were recovered as well as a firearm.
- In October 2012, a woman was delivering medical marijuana at a residence. She was robbed at gunpoint and forced inside the residence, which was vacant. The suspects took the marijuana from the victim and attempted to take her vehicle. The suspects were later arrested and evidence of the crime was recovered.

- In November 2012, a man was delivering marijuana for a dispensary. At the location of the delivery, he was robbed at gunpoint and forced inside the vacant residence where the medical marijuana was taken. The victim was taken to a room inside the location and told not to leave. As the suspects attempted to take the victim's vehicle, the victim ran out of the back of the house and escaped. The two suspects were later arrested and evidence was recovered.
- In late 2012, a marijuana dispensary, under the name "Health-bud Pro" opened in a converted automobile repair garage on Sierra Highway. In January 2013 an armed robbery took place at the dispensary. During the LASD investigation into that crime, the dispensary owner stated the business made \$10,000.00 a month. A second armed robbery took place in February 2013. Further investigation revealed the owner sold marijuana to a number of people who did not have a marijuana recommendation, including an undercover deputy sheriff who had no form of identification at the time of the purchase. Deputies also learned that the owner occasionally gave marijuana away for free, particularly to female customers.

While serving a search warrant at the dispensary in March of 2013, deputies seized several pounds of marijuana and made several arrests, including the arrest of the dispensary owner, who received 4 years in state prison for the sale of marijuana.

- During the fall of 2013, the City received complaints of a person selling marijuana out of a residence in west Lancaster; the house reeked of marijuana and fans could be heard running in the garage at all times of the day and night. Investigation by LASD revealed a marijuana cultivation operation inside the garage. The suspect, who was on probation for the sale of marijuana, was arrested. Further investigation revealed the suspect was in possession of a firearm and was stealing electricity to run his marijuana grow operation. The suspect was sentenced to several years in prison.
- In March 2014, two people were delivering medical marijuana. Two suspects robbed the victims at gunpoint and stole the marijuana. While fleeing, the suspects fired shots at the victims. Both suspects were later identified and arrested for the robbery. Both suspects were also in possession of firearms at the time of their arrest.
- In May 2015, three people were delivering one pound of medical marijuana from Santa Cruz. The victims arrived at a location in the City to make the delivery when they were approached by two men. The suspects pointed a hand gun at the victims, then one victim was pistol whipped twice on the face. The suspects took the medical marijuana, cell phones and wallets from the victims.

#### Features of the Medical Marijuana Urgency Ordinance

The Medical Marijuana Urgency Ordinance prohibits the establishment and operation of a medical marijuana dispensary anywhere within the City's boundaries, regardless of the zone, adopted specific plan, overlay zone or any other development or use classification of the property. It further prohibits the indoor and outdoor cultivation of marijuana and the delivery of marijuana from a fixed or mobile dispensary to any location in the City.

It is important to note that the Ordinance exempts pharmacies and certain state-licensed health care facilities from the definition of “medical marijuana dispensary.” Additionally, the Act expressly provides that an individual “qualified patient,” as defined in the Health & Safety Code, who possesses, cultivates or transports marijuana exclusively for his or her personal medical use, but who does not provide, donate, sell or distribute marijuana to any other person, is not engaging in commercial cannabis activity, as defined in the Act, and therefore not subject to the Act’s licensing requirements. Staff believes that these exemptions allow sufficient opportunity for individuals who may experience a medical benefit to obtain marijuana without running afoul of the Ordinance.

Environmental Impact

The proposed Ordinance is not subject to the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that the enactment of this new land use regulation may have a significant effect on the environment (CEQA Guidelines Section 15061(b)(3)).

**Attachment:**

Ordinance No. 1012