

MEMORANDUM
PLANNING COMMISSION MEETING

DATE: October 03, 2016

TO: Chairman Vose and Members of the Planning Commission

FROM: Allison E. Burns, City Attorney

SUBJECT: ORDINANCE REGULATING CULTIVATION OF MEDICAL CANNABIS

Recommendation:

Review, receive testimony, discuss and provide directions to staff on the content of the proposed ordinance adding Chapters 5.56 and 17.43 to the Lancaster Municipal Code relating to the regulation of cannabis cultivation (the "Draft Ordinance").

Background:

The Evolution of California's Medical Cannabis Law

In 1996, the voters of the State of California approved Proposition 215, the "Compassionate Use Act of 1996" (the "CUA"), codified as Health and Safety Code Section 11362.5. The intent of the CUA was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. Senate Bill 420 (2004), codified as Health and Safety Code Sections 11362.7 *et seq.* (the "Medical Marijuana Program"), clarifies the scope of the CUA and provides qualifying patients and primary caregivers, who collectively or cooperatively cultivate marijuana for medical purposes, a limited defense to certain specified state criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amend the Medical Marijuana Program to expressly recognize the authority of counties and cities to: (i) adopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective, and (ii) civilly and criminally enforce such ordinances. The CUA and Medical Marijuana Program, as amended, primarily address the criminal law, providing qualifying patients and primary caregivers a limited immunity from, and/or an affirmative defense to, state criminal prosecution under certain identified statutes; however, neither provides comprehensive civil regulation of premises used for marijuana cultivation or licensing of cultivators.

On October 9, 2015, the California Governor signed the "Medical Marijuana Regulation and Safety Act" (the "Act") into law, which consists of the following: (i) Assembly Bill 243; (ii)

Assembly Bill 266; and (iii) Senate Bill 643. The Act became effective January 1, 2016, and contains provisions that govern cultivating, processing, transporting, and distributing medical marijuana to qualified patients throughout the state. The Act also contains new statutory provisions that: (i) allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana, and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Cal. Health & Safety Code Section § 11362.777(c)(4)); and (ii) expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Cal. Bus. & Prof. Code § 19316(c)).

The City's Prior and Current Regulation of Medical Cannabis

On December 8, 2009, the City Council adopted Ordinance No. 939, and imposed a moratorium on the use of real property for the sale or distribution of marijuana, which moratorium was extended on January 12, 2010, by Ordinance No. 940, and on November 9, 2010, by Ordinance No. 955. On February 9, 2016, the City Council adopted Ordinance No. 1012, which added Section 17.04.235 to the Lancaster Municipal Code, and generally prohibits the operation of a medical marijuana dispensary, the indoor or outdoor cultivation of medical marijuana, and the delivery of medical marijuana within the City.

The Draft Ordinance Conditionally Permitting and Regulating Cultivation of Medical Cannabis

Subject to various requirements and limitations, the Draft Ordinance conditionally permits the indoor cultivation of medical cannabis, and requires that medical cannabis be cultivated only in appropriately secured, enclosed, and ventilated structures, so as not to be visible or accessible to the general public, to provide for the health, safety and welfare of the public, to prevent negative impacts to property values, to prevent odor created by cannabis plants from impacting adjacent properties, to prevent crime associated with cannabis, and to ensure that cannabis grown for medical purposes remains secure and does not find its way to non-patients, minors, or illicit markets.

The Draft Ordinance would establish a comprehensive regulatory scheme requiring cultivators to apply for and obtain *both*: (i) a City-issued cultivator's license, *and* (ii) a conditional use permit. Under the Draft Ordinance, a Cultivator's license would be subject to various requirements and limitations related to security and operation, including, but not limited to, the following:

- Compliance with all applicable restrictions and mandates set forth in state and local laws and regulations, as well as the operating plan and security plan submitted as part of the application;
- Payment of applicable sales tax pursuant to federal, state, and local law, and all other legally required taxes and fees;

- Compliance with all applicable rules, regulations, and laws including, but not limited to, the Lancaster Municipal Code, the California Revenue and Taxation Code, the Americans with Disabilities Act, and all applicable state laws;
- Books, records and all other documents related to its operation shall be available for inspection by any City officer or official for purposes of determining compliance;
- Medical cannabis shall be kept and stored in a secured manner within a limited access area or restricted access area at all times, in compliance with the security plan approved as part of the application;
- No on-site smoking, ingestion, or consumption of cannabis;
- No sale or distribution of any item that would require a license issued by the California Department of Alcoholic Beverage Control;
- The City-issued license must be displayed;
- No physician may evaluate patients or provide recommendations for medical cannabis within the licensed premises;
- Must provide the Development Services Director with the name, phone number, facsimile number, and email address of an on-site community relations representative; and
- Until such a time that the State of California fully implements Section 19335 of the Business and Professions Code, must utilize third-party software that tracks all sales, transfers, purchases, receipts, deliveries of medical cannabis and medical cannabis products.

Under the Draft Ordinance, a conditional use permit for the cultivation of cannabis would similarly be subject to various requirements and limitations, including, but not limited to, the following:

- An application that includes
 - An environmental plan;
 - An emergency response plan;
 - Proof that the Applicant has received a City-issued cultivator’s license;
 - An aerial map stating the distances between the proposed medical cannabis cultivation facility and the nearest school, park and church;
 - The address of the location of the proposed cultivation facility;
 - A site plan and floor plan;
 - Owner and manager information;
 - Property owner information and acknowledgement;
 - An operating plan that includes, among other things, a description of the source of power (electric utility company, solar, diesel generators), the size of the electrical service or system, the total demand to be placed on the system by all

proposed uses on-site, verification of all water sources, evidence of compliance with all applicable environmental laws and regulations and any additional document(s) or information reasonably requested by the City;

- A security plan that, to the satisfaction of the City, addresses how the applicant intends to comply with and implement all requirements imposed by law, including, but not limited to, a description of how the security measures are sufficient to ensure the safety of medical cannabis patients, primary caregivers, employees and volunteers, protect the proposed licensed premises from diversion and theft, and ensure that all buildings where cannabis is cultivated or stored are secured sufficiently to prevent unauthorized entry; and
- Verification that the proposed medical cannabis cultivation facility will be equipped with an odor filtration system.
- A distance requirement that prohibits a medical cannabis cultivation facility in the following locations:
 - Within three hundred (300) feet of a religious assembly;
 - Within one thousand (1,000) feet of a public or private school;
 - Within three hundred (300) feet of a day care center;
 - Within three hundred (300) feet of a residential use or residentially designated property;
 - Within five hundred (500) feet of an existing medical cannabis cultivation facility;
 - Within five hundred (500) feet of a public park; or
 - Within five hundred (500) feet of a hospital.

*The Draft Ordinance Conditionally Permits **Medical Cannabis Cultivation***

The Draft Ordinance conditionally permits only **medical** cannabis cultivation facilities, and allows the City Council to limit the number of such facilities. The Draft Ordinance specifically prohibits cannabis manufacturing facilities, cannabis distribution facilities, cannabis dispensaries and/or cannabis delivery businesses.

Attachment:

Draft Ordinance adding Chapters 5.56 and 17.43 to the Lancaster Municipal Code relating to the regulation of cannabis cultivation

AEB:BSL/jr