

STAFF REPORT
City of Lancaster

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MVB

Date: December 13, 2016

To: Mayor Parris and City Council Members

From: Mark V. Bozigian, City Manager
Allison E. Burns, City Attorney

Subject: **Ordinance and Resolution Regulating Cultivation of Medical Cannabis**

Recommendations:

- a. Introduce **Ordinance No. 1019**, (the “Ordinance”), adding Chapters 5.56 and 17.43 to the Lancaster Municipal Code relating to regulation of the cultivation of medical cannabis.
- b. Adopt **Resolution No. 16-55**, (the “Resolution”), establishing the maximum number of licenses and permits that may be issued for cultivation of medical cannabis.

Fiscal Impact:

There is no direct fiscal impact associated with the cost of administering this ordinance as all costs would be covered by application and annual impact fees. There is the potential for substantial revenues to the City if Council chooses to require a development agreement and annual municipal surcharge on a per license basis as recommended by staff. Recommendations as to specific application and impact fees and surcharges will be scheduled for Council consideration at the January 10, 2017 City Council Meeting.

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 Ordinance Conditionally Permitting and Regulating Cultivation of Medical Cannabis

At the direction of the City Council, the Planning Commission and staff undertook the subject of cultivation of medical cannabis within the City, with the purpose of providing a recommendation to Council. The Planning Commission met five times to discuss this issue (8/15/16; 9/19/16; 10/3/16; 10/17/16; and 10/20/16) and to take public comment. Based on those discussions, the Commission and staff crafted the recommended Ordinance, which the Planning Commission voted 6-0 to recommend to Council. The Commission also took a separate vote on the broader question of whether to support the concept of allowing commercial medical cannabis facilities to locate within the City; the Commission voted 5-1 in the affirmative on this question.

Subject to various requirements and limitations, the Ordinance recommended by the Planning Commission 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 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 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 Community Development 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 and deliveries of medical cannabis and medical cannabis products.

Under the 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 sensitive uses (*e.g.*, schools, parks and churches);
 - 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 items, 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 six hundred (600) feet of a religious assembly;
 - Within one thousand (1,000) feet of a public or private school, college or university;
 - Within one thousand (1,000) feet of a day care center;
 - Within six hundred (600) feet of a residential use or residentially designated property;
 - Within six hundred (600) feet of a public park.

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

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

Suggestions Made by Cannabis Industry Representatives After Planning Commission Consideration

The following suggestions from cannabis industry representatives were substantially offered after the Planning Commission review process, although some may have been discussed during Planning Commission deliberations. We briefly summarize each below, along with a staff recommendation where appropriate, **and ask for Council direction, which may result in revisions to the Ordinance and/or the Resolution:**

- **Definition of “School”** – It was suggested that the definition of “school” should exclude colleges, universities, and trade schools for the purpose of imposing the distance requirements in the proposed CUP. The rationale for this request is that colleges, universities, and trade schools should not be grouped with schools in distance requirements for sensitive uses because the age for use of medical cannabis is 18 years of age and older and therefore, the facility would not pose the same potential threat to an adult of legal age for medical cannabis use. Staff would support and recommend the exclusion of trade schools. Because many colleges and universities now partner with high school districts in offering early college classes to students under 18 years of age, staff would not recommend excluding colleges and universities for purposes of a distance requirement.
- **Manufacturing and Distribution** – It was suggested that the City allow cannabis manufacturing and distribution operations or facilities, in addition to cultivation. For manufacturing, the rationale for this request is that manufacturing is highly regulated in terms of both public health and fire department approvals and therefore, poses no greater risk than cultivation operations; allowing manufacturing as well as cultivation would likely be more attractive to an operator wishing to site in Lancaster, without posing significantly more burdens upon the community. In contrast, distribution facilities will not even be allowed by the State until 2018. For that reason, staff would support the addition of medical cannabis manufacturing operations to the Ordinance if desired by Council.
- **Maximum Number of Licenses** – It was suggested that the City impose a limit on the maximum number of “projects” rather than licensed facilities because one licensee operating a single “project” may need to obtain several licenses. However, the Ordinance provides that the limitation imposed by the Council “...may be based on number of Local Licenses [or conditional use permits], the aggregate area of medical cannabis cultivation facilities, or any other measure determined by the City Council.” Consequently, while staff has no objection to the suggestion, staff does not believe this change is expressly necessary. Further, the Planning Commission did not recommend a specific maximum number of licenses. Proposed Resolution No. 16-55 would allow for a maximum of 10 local licenses and 10 conditional use permits under the Ordinance.
- **Development Agreement / Municipal Surcharge** – It was suggested that the certainty of a development agreement (in addition to the proposed conditional use permit) would encourage medical cannabis cultivators to purchase and develop land and create jobs within the City. Coupled with a municipal surcharge (in addition to a contemplated application fee and an annual regulatory compliance fee associated with the license) a well-crafted development agreement would provide both the cultivators and the City with an additional level of contractual standing along with a potentially significant revenue source for the City per license/CUP. Staff has researched this and is recommending that Council incorporate both the requirement for a development agreement and a municipal surcharge in the Ordinance. The Ordinance now before Council has been revised from that recommended by the Planning Commission to require a development agreement (as a condition to the effectiveness of the CUP) and payment of an annual municipal surcharge.

- While not specifically raised as an issue by cannabis industry representatives, in light of the recent passage of California Proposition 64 related to the recreational use of cannabis, Council may soon need to address possible revisions to existing City ordinances, as well as the proposed Ordinance. It is our understanding that currently, cultivators will need to determine whether they will be growing marijuana for medical or commercial use before operating. Based on research, discussions with industry representatives, and the fact that the state has not yet developed regulations for the commercial cultivation of marijuana for recreational use, staff recommends that Council consider the Ordinance as presented, restricted to medical cultivation only. If desired, Council could amend the Ordinance at a later date to allow for commercial cultivation for recreational use.

In addition to adoption of Ordinance No. 1019, it is staff's intent to bring before Council at the January 10, 2017 City Council meeting a fee Resolution recommending specific application, regulatory compliance, and municipal surcharge fees should Council choose to introduce recommended Ordinance No. 1019 and adopt Resolution No. 16-55.

Attachments:

Ordinance No. 1019

Resolution No. 16-55