

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM: CLARE HARTMAN, DEPUTY DIRECTOR - PLANNING
PLANNING AND ECONOMIC DEVELOPMENT
SUBJECT: PUBLIC HEARING - ZONING CODE TEXT AMENDMENT -
TEMPORARY PLACEHOLDER BAN ON COMMERCIAL
CULTIVATION OF MEDICAL CANNABIS

AGENDA ACTION: ADOPT ORDINANCE AND APPROVE RESOLUTION

RECOMMENDATION

It is recommended by the Planning and Economic Development Department and the City Attorney's Office that the Council adopt an ordinance adding Chapter 20-46, Medical Cannabis Cultivation to the Santa Rosa City Code, to retain local control and implement a temporary placeholder ban on commercial cannabis cultivation until September 1, 2016, or provide direction for staff to bring back an alternative ordinance that would preserve local control for approval. It is further recommended that the City Council, by resolution, initiate an amendment to Title 20 (Zoning) of the City Code to comprehensively address medical cannabis as a land use.

EXECUTIVE SUMMARY

On October 9, 2015, Governor Brown signed into law Assembly Bill 266, Assembly Bill 243, and Senate Bill 643, which together establish a framework for regulating medical marijuana. This item was prepared in response to a March 1, 2016 deadline stipulated in Assembly Bill 243 and provides the City with an opportunity to retain local control over medical cannabis cultivation by responding by the deadline. The proposal would add Chapter 20-46, titled Medical Cannabis Cultivation, to the Santa Rosa City Code to implement a temporary placeholder prohibition of commercial cultivation of medical cannabis until September 1, 2016, or until such time as the Legislature acts to eliminate the deadline to have a permissive local land use ordinance in place regarding commercial cultivation of marijuana. The prohibition would not apply to personal cultivation which is exempt by state law. Adoption of this temporary ordinance will serve as a placeholder, retaining local control over the land use, and allowing sufficient time to prepare local regulations with input from the Council subcommittee and the public.

This item Relates to Goal 6 - Commit to Making Santa Rosa a Healthy Community where People Feel Safe to Live, Work and Play.

BACKGROUND

The Federal Controlled Substances Act, 21 U.S.C. Section 801, et. seq. was adopted in 1970, and prohibits the manufacture, cultivation, distribution and possession of marijuana, also known as cannabis.

In 1996, the voters of the State of California approved Proposition 215, which was codified as “The Compassionate Use Act of 1996,” at California Health and Safety Code, Section 11362.5 (“CHA”). The state intent of the CHA was to ensure that seriously ill individuals have the right to obtain and use marijuana for medical purposes when recommended by a physician.

In 2003, the California Legislature erected the Medical Marijuana Program Act (“MMPA”) codified at Health and Safety Code, Section 11362.7, et. seq. The MMPA provided qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes.

In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court upheld the right of local public agencies to regulate medical marijuana operations through their land use powers.

On October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act (“MMRSA”), which goes into effect on January 1, 2016, established a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills 243 and 266 and Senate Bill 643. Among the things the MMRSA does is establish regulations that will allow for commercial cultivation of marijuana for medical purposes where authorized by the land use regulations of a city or county. The MMRSA also expressly preserves the right of a city or county to regulate or ban cultivating through the exercise of local land use powers.

To legally cultivate, all operators will be required to obtain a State cultivation license. If a city or county permits cultivation and requires a local license, then an operator in that jurisdiction shall also be required to obtain a local cultivation license. Thus, cultivating operators may be required to have two licenses in order to operate. The MMRSA also preserves the ability of a qualified patient and of primary caregivers to cultivate for personal, non-commercial purposes, set new limits on such cultivation, and exempts such personal cultivation from State cultivation licensing requirements.

The MMRSA also states, however, that if a city or county has not adopted land use regulations by March 1, 2016, to either regulate or ban cultivation of marijuana for medical purposes, only the State will have authority to issue cultivation licenses for that jurisdiction, meaning no local license will be required. Specifically, Health and Safety Code, Section 11362.777(a)(4) states, If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana,

either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

Prior to passage of the MMRSA, State law provided no legal mechanism for commercial cultivation of marijuana for medicinal purposes and Federal law prohibited all cultivation of marijuana. Until the MMRSA was passed, cultivation of marijuana for medical purposes in California was restricted to individual qualified patients or their primary caregivers for non-commercial purposes and limited to personal State permissible quantities.

For the foregoing reasons, until now, the City of Santa Rosa's land use regulations were not required to expressly prohibit commercial cultivation of medicinal marijuana because it was not legal pursuant to State and Federal law and because such commercial cultivation is not recognized as a specifically allowed use in any of the City's land use districts.

Although such cultivation is not a permissible use in the City's land use districts, in order to ensure full local control over regulation of commercial cultivation of marijuana for medical purposes in the City of Santa Rosa is preserved, the MMRSA requires the City to adopt cultivation regulations or a ban by ordinance in advance of March 1, 2016. The City must therefore adopt an express commercial cultivation ordinance to ensure the State is not the sole regulator of cultivation activities provided pursuant to the terms of the MMRSA.

There is insufficient time prior to March 1, 2016 for the City to fully consider all of the policy, safety and land use issues that are raised when considering whether to, and how to, authorize or regulate commercial cultivation of marijuana for medical purposes in the City. Therefore, if the City wishes to preserve the ability to exercise local control, the City can adopt a temporary placeholder ban prior to March 1, 2016, to preserve its ability to exercise local control over commercial cultivation issues. To enable full consideration of the subject matter and to ensure that a the temporary ban does not become permanent until such discussions and considerations take place, including public input, the City Council may adopt its cultivation ban on a temporary placeholder basis by providing that it expires on September 1, 2016, or when the State Legislature acts to eliminate the March 1, 2016 deadline, whichever comes first.

Personal cultivation is permissible by State law and will not be subject to this new Ordinance.

This Ordinance would be adopted pursuant to the land use powers of the City and to protect the health, safety and welfare of the public which would be put at risk if commercial cultivation of marijuana for medical purposes is allowed to move forward in the City without local regulation. Because commercial cultivation of marijuana has

never been authorized in the City, this temporary placeholder ban does not change any land use policy and makes no change that has the potential to impact the environment.

The City Council and staff may also discuss if there are alternative actions that could be taken rather than a ban that would still allow the City to maintain local control over regulation. If direction is given to pursue an alternative action, said action would be noticed and brought back to the Council for further action.

PROJECT DESCRIPTION

This item introduces the opportunity to retain local control over medical cannabis cultivation by responding in time to state imposed deadlines set forth in recent state legislation regarding cultivation. Pursuant to AB243 of the Medical Marijuana Regulation and Safety Act (MMRSA), local jurisdictions have only until March 1, 2016 to establish local regulations regarding cannabis.

The City of Santa Rosa currently has local regulation pertaining to Medical Cannabis Dispensaries, found within Chapter 10-40 of the Santa Rosa City Code. The City does not, however, have regulations pertaining to commercial cannabis cultivation. According to AB243, the City will lose its right to local control on this issue unless an ordinance is adopted by March 1, 2016.

The subject proposal would add Chapter 20-46 (Medical Cannabis Cultivation) to the Santa Rosa City Code to implement a temporary placeholder prohibition of commercial cultivation of medical cannabis until September 1, 2016 or until such time as the legislature acts to eliminate the March 1, 2016 deadline. Adoption of this ordinance will serve as a placeholder, allowing the City to retain local control over the land use, and allow sufficient time to prepare local regulations for proper analysis and public review.

PRIOR CITY COUNCIL REVIEW

On November 1, 2005, the City Council adopted Ordinance No. 3754, adding Chapter 10-40 (Medical Cannabis Dispensaries) to the Santa Rosa City Code.

On January 14, 2014, the City Council adopted Ordinance No. 4020, amending certain sections of Chapter 10-40 (Medical Cannabis Dispensaries) in the City Code.

On December 1, 2015, under City Attorney's Report, the City Council received an update on recent Medical Marijuana Legislation passed by the State of California. Highlighted in that update was the need for local jurisdictions to address a March 1, 2016 deadline to retain local control over commercial cultivation of medical cannabis. It was explained that in order for that to occur given the limited timeframe, a temporary ban on the land use could be considered by the Planning Commission and City Council in January 2016. It was also stated that staff from Assemblyman Woods's office, an author of the legislation, indicated that the March 1, 2016 deadline in AB 243 was inadvertently included, and that an attempt to correct the mistake was underway.

ANALYSIS

In response to recent state legislation, the Medical Marijuana Regulation and Safety Act, staff has prepared the following options for Council consideration followed by a brief analysis:

Option 1 – Adopt a temporary placeholder ban

The benefit of adopting a placeholder ban on commercial cultivation of medical cannabis is that it would allow the City to retain regulatory control over cultivation prior to the published March 1, 2016 deadline to do so. The ban would only apply to commercial cultivation, it would not apply to personal cultivation which is exempt by state law. The ban would serve as a placeholder, allowing the City time, specifically until September 1, 2016, to review the issue comprehensively, and to prepare and consider regulations through a public review process. It should also be noted that because commercial cultivation of marijuana has never been authorized in the City, this temporary ban does not change existing land use policy.

Option 2 – No action; do not adopt a temporary placeholder ban.

The benefit of this option is that no new regulations are put into effect that could be challenged, or perceived to impact existing rights or existing businesses. The risk is that the City would not meet the prescribed March 1, 2016 deadline, and as a result there is a potential that the City would lose local control over cultivation as a land use. On December 17, 2015, the City received correspondence from the Office of Assemblyman Jim Wood. This correspondence (attached) confirms that the deadline was considered by his office as an inadvertent mistake, and one that his office will assert correction of in new state legislation once provided the opportunity. However, even if the correction is pursued there is no way to confirm at this time what will be adopted by the Legislature, and if specifically the change will allow for retroactive protection from losing the ability to exercise local control.

Option 3 – Adopt a Cannabis Cultivation “urgency” ordinance

The benefit of moving quickly to adopt a local zoning regulation regarding cultivation is that the City would be able to assert local control over the land use in time for the March 1, 2016 deadline. In review of this, staff considered the potential for Council to adopt an urgency ordinance that would have the City adopt another jurisdiction’s ordinance on cannabis cultivation, such as the ordinance currently in effect in the City of Sebastopol. A potential complication with this option is the defensibility of making the finding of “urgency” which without just cause would subject the City to potential legal challenge. Adoption of a cannabis cultivation ordinance does not fit squarely within the criteria for an urgency ordinance which requires that the ordinance be necessary, “for the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote.” (Gov. Code Section 36937.) Another major concern is the insufficient time allotted for analysis, review and public notice of the ordinance.

Option 4 – Direct staff to initiate an amendment to the Zoning Code

In this option, the City Council would invoke Zoning Code Section 20-64.020(B)1(a) to initiate an effort to amend the Zoning Code to address medical cannabis as a land use. Under this option, the City Council, by resolution, would direct staff to initiate an amendment to Title 20 (Zoning) to address the cultivation of medical cannabis, and to combine this effort with a relocation and incorporation of regulations regarding Medical Cannabis Dispensaries, currently placed in Chapter 10-40 of the City Code, to Title 20 (Zoning). The benefit of this option is that it allows staff to add it to the Council's work plan, define and allocate appropriate resources to the effort, and to pursue a comprehensive policy regarding medical cannabis as a land use. It will also provide for proper analysis, outreach and public input.

Of the four options, staff recommends Options 1 and 4, adoption of a temporary placeholder ban; and initiation of a Zoning Code amendment to comprehensively address medical cannabis as a land use.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

On January 11, 2016, City Council subcommittee on Medical Cannabis is scheduled to convene. The Committee will learn about and discuss the recent state legislation, the options available to the City Council in response to that legislation, and define long term goals for regulating medical cannabis as a land use in Santa Rosa.

On January 14, 2016, the Planning Commission is scheduled to hold a public hearing on this item and to make a recommendation to the City Council regarding the placeholder ban and other options.

FISCAL IMPACT

Approval of this action does not have a fiscal impact on the General Fund.

ENVIRONMENTAL IMPACT

The proposed amendment has been reviewed in compliance with the California Environmental Quality Act (CEQA) in that the activity is covered by the general rule that CEQA applies only the projects which have the potential for causing a significant effect on the environment. It has been determined with certainty that there is no possibility that the Zoning Code text amendment will have a significant effect on the environment and, therefore, is not subject to CEQA.

NOTIFICATION

On January 4, 2016, a public hearing notice in the form of a 1/8 page ad will be placed in the Press Democrat. This notice is in compliance with Section 20-66.020(D) which allows for an alternative to mailed notice if the number of property owners to whom notice would be mailed exceeds 1,000.

ATTACHMENTS

Attachment 1 – Medical Marijuana in California: An Analysis of the 2015 Legislation – prepared by Ventura County Behavioral Health

Attachment 2 – Letter by the Office of Assemblyman Jim Wood, dated received December 17, 2016

Attachment 3 – Memo January 15, 2016

Attachment 3A – Memo Attachment 1: Options to be Presented to the City Council

Attachment 3B – Memo Attachment 2: Assembly Bill 21

Resolution – Initiating an Amendment to Title 20 (Zoning Code) for Medical Cannabis

Ordinance – Adopting a temporary placeholder prohibition on commercial cannabis cultivation

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