

MEMO ATTACHMENT 1

OPTIONS TO BE PRESENTED TO THE CITY COUNCIL

JANUARY 19, 2016

The following four options were developed by staff in response to recent state laws regarding Medical Cannabis Cultivation and a March 1, 2016 deadline; in addition to a recommendation to develop comprehensive policy for Medical Cannabis in the future:

Option 1 – Allow Commercial Cultivation with a Conditional Use Permit – Direct staff to prepare an urgency ordinance

Move quickly to adopt an interim zoning ordinance permitting commercial cultivation in General Commercial, Light Industrial or General Industrial zones with a Conditional Use Permit until more comprehensive regulations are adopted by resolution or subsequent ordinance. Personal cultivation as defined under State Law will be exempt. This would require further public hearing before the Planning Commission and adoption by urgency ordinance by Council (5/7ths vote required). This would preserve local control provided urgency findings are not challenged. A concern with this option is the insufficient time allotted for analysis, review and public notice of the ordinance.

Option 2 – Adopt a Temporary Placeholder Ban on Commercial Cultivation – Introduce Ordinance

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. The concern with this option is that it may set a negative tone from which to begin cannabis policy in the future.

Option 3 – Adopt a Model Ordinance Allowing Commercial Cultivation – Direct staff to prepare a an 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 a model ordinance as 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." (Gov. Code Section 36937.) A concern with this option is the insufficient time allotted for analysis, review and public notice of the ordinance.

Option 4 – Take No Action; Do not adopt a temporary placeholder ban; Do not introduce ordinance

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 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.

Recommendation – Initiate a Zoning Code Amendment Process to Comprehensively Address Medical Cannabis – Adopt Resolution

In this option, the City Council would invoke Zoning Code Section 20-64.020(B) 1(a) to initiate a process 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.