



## MEMORANDUM

Date: February 12, 2016

To: Mayor Sawyer and Members of the City Council

Copies: Sean P. McGlynn, City Manager  
Charles J. Regalia, Assistant City Manager  
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From: Clare Hartman, Deputy Director-Planning

Subject: **UPDATE on Item No. 16.1 – Interim Ordinance to Allow Commercial Cultivation of Medical Cannabis with a Conditional Use Permit**

The purpose of this memorandum is to inform the City Council of recent events and information related to Item No. 16.1 on the February 23, 2016 agenda.

### Planning Commission Action

On February 11, 2016, the Planning Commission held a public hearing on a draft interim ordinance that would allow commercial cultivation in five zoning districts with a conditional use permit. Following discussion, the Commission recommended (7-0-0) that Council adopt the interim ordinance, as amended:

- Allow “Commercial Cultivation of Medical Cannabis” in the Light Industrial (IL), General Industrial (IG), and Limited Light Industrial (LIL) Districts.
- Allow cultivation facilities 10,000 sq. ft. or less in size with a Minor Use Permit but elevate the review authority from the Zoning Administrator to the Planning Commission and require a public hearing.

### City’s Medical Marijuana Policy Subcommittee

On February 23, 2016, the City’s Medical Marijuana Policy Subcommittee will convene to discuss the passing of AB 21, whether or not to pursue an interim ordinance, review the Planning Commission’s recommendation, and prepare for

next steps in the process towards development of a comprehensive policy on medical cannabis.

#### Late Correspondence/Issues

The following issues emerged after staff had completed the February 11<sup>th</sup> Planning Commission and February 23<sup>rd</sup> City Council staff reports. The Planning Commission addressed these issues in their discussion on February 11, 2016.

#### Urgency Ordinance and the March 1<sup>st</sup> Deadline

On February 3, 2016, AB 21 was signed by the Governor. AB 21 is the statute that removes the March 1, 2016 deadline from AB 243. As a result of the deadline being removed, the proposed interim ordinance is no longer proposed as an urgency ordinance, but rather as a standard ordinance. The attached Draft Ordinance reflects this change.

As a standard ordinance, should the City Council choose to initiate the ordinance at its first reading, on February 23, 2016, and adopt it at its second reading, March 8, 2016, the effective date of the ordinance would be the 31<sup>st</sup> day following, estimated at April 8, 2016. Applications will not be accepted by the Planning and Economic Development Department prior to the effective date of the ordinance.

#### Scalability - Minor Use Permit option for smaller operators

Members of the public have expressed an interest in amending the ordinance to allow a Minor Use Permit option for smaller operators. This issue was not addressed in the draft interim ordinance. Staff has looked to the AB 243's state license types as a guide for facility size thresholds. The license types appear to split into two clear categories - cultivation facilities of 10,000 sq. ft. or less in size and those 10,001 sq. ft. or larger. An option for consideration therefore is to allow cultivation facilities of 10,000 sq. ft. or less in size be subject to a Minor Use Permit (\$2,445); while cultivation facilities 10,001 sq. ft. or greater, subject to a Major Conditional Use Permit (\$10,676).

In both cases, staff would recommend that the review authority still remain the Planning Commission during the life of the interim ordinance, due to the complexity of regulating a new land use. In addition, staff recommends that a public hearing be held, so both application types would also require a public hearing fee (\$1,839).

### Distance to Schools

A Commissioner has asked about any minimum distance requirements between a medical cannabis facility and a school. This issue was not addressed in the draft interim ordinance. The state, however, provides a standard in the State's Health and Safety Code Section 11362.7-11362.83, subsection 11362.768 as follows:

"No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600 foot radius of a school."

The distance is to be measured in a straight line from the property line of the school to the closest property line of lot on which the facility is to be located. Further "school" is defined by the statute as:

"School means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but not include any private school in which education is primarily conducted in private homes."

The statute directs that a city is not prohibited from adopting ordinances or policies that further restrict the location.

A Commissioner has asked if the City had a "distance to school" standard when considering a Conditional Use Permit for the sales of alcoholic beverages for offsite consumption. The City does not have a specific distance standard. Section 20-42.034C.5, however, provides the following "criteria for review" for consideration by the Commission when making findings on such a permit:

"The proximity of the alcoholic beverage outlet to residential districts, day care center, park and recreation facilities, places of religious assembly, and schools."

As a result, staff reports for such permits include a staff analysis and discussion on the issue of proximity to a school.

### Expansion of Ordinance to include Processing (Manufacturing)

Members of the public have expressed an interest that the interim ordinance be amended to allow more than just cultivation; that it be expanded to include

cannabis processing and manufacturing. This issue was not addressed in the draft interim ordinance. Staff has looked to the State's list of Cultivator License Types 1 to 4 in AB 243 for guidance on this issue. Per AB 243, there are four state license types that allow cultivation; of these, none allow more than just the cultivation activity.

For other cannabis related industry uses, there are other distinct state license types as follows: Types 6 and 7 for manufacturing (making cannabis products), Type 8 for testing (research and development), Type 10 and 10A for dispensary (sales), and Types 11 and 12 for distribution (transportation and delivery). As such, staff does not recommend that the interim ordinance be expanded at this time, to address the additional uses, but to include consideration of all license types and sectors in the industry in the future comprehensive policy.