Agenda Item #16.1
For City Council Meeting of: February 23, 2016

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: CLARE HARTMAN, DEPUTY DIRECTOR - PLANNING
PLANNING AND ECONOMIC DEVELOPMENT

SUBJECT: PUBLIC HEARING - ZONING CODE TEXT AMENDMENT – URGENCY ORDINANCE TO ALLOW COMMERCIAL CULTIVATION OF MEDICAL CANNABIS WITH A CONDITIONAL USE PERMIT

AGENDA ACTION: ADOPT ORDINANCE

RECOMMENDATION

It is recommended by the Planning Commission Planning the City Council adopt an ordinance adding Chapter 20-46, Medical Cannabis Cultivation to the Santa Rosa City Code, to retain local control and permit commercial cultivation of medical cannabis in the Light Industrial (IL), General Industrial (IG), and Limited Light Industrial (LIL) with a Conditional Use Permit until such time as the City completes its comprehensive effort to regulate medical cannabis.

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 an ordinance to retain local control and regulate commercial cultivation of medical cannabis until such time as a comprehensive policy effort regarding medical cannabis can be completed. The ordinance would not apply to personal cultivation which is exempt by state law.

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 regulations 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 any interim regulations do not become permanent until such discussions and considerations take place, including public input, the City Council may adopt its ordinance on a temporary placeholder basis and provide that it expires upon completion and adoption of a comprehensive policy regarding medical cannabis.

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.

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 AB 243 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 AB 243, the City will lose its right to local control on this issue unless an ordinance is adopted by March 1, 2016.

PRIOR ACTIONS BY PLANNING COMMISSION AND CITY COUNCIL

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.

On December 17, 2015, Assemblyman Wood's office provided a letter to the City asserting the position that there would an effort to introduce legislation (AB 21) to remove the March 1st deadline in AB 243.

On January 11, 2016, the Council Subcommittee met to learn about MMRSA and AB21, discuss options, listen to the public, and forward comments to the Planning Commission and City Council. The subcommittee unanimously supported the pursuit of a new option:

> *New* OPTION 1 – Adopt an ordinance that permits Commercial Cultivation of Medical Cannabis with a Conditional Use Permit in the General Commercial, Light Industrial, and General Industrial Zoning Districts.

As a result the options available for consideration were re-numbered and clarified as follows. In addition, the initiation of a comprehensive policy effort was considered a recommendation regardless of the option selected:

Option 1 – Adopt an ordinance allowing use with a Conditional Use Permit
Option 2 – Adopt a temporary placeholder ban
Option 3 – Adopt a model ordinance
Option 4 – Take no action
Recommendation – Initiate comprehensive policy amendment

On January 14, 2016, the Planning Commission held a public hearing on the temporary placeholder ban proposal, considered all of the options and the recommendation. Following a motion and a discussion, the Commission rejected (6-0-0) the temporary ban (Option 2). The Commissioners expressed support for the new Option 1 as a permissive placeholder but cautioned about the impact of approving use permits that may be in conflict with future land use policy. The Commission recommended (6-0-0) that the City Council initiate a comprehensive policy effort to address medical cannabis and to pursue this work expeditiously.

On January 19, 2016, the City Council held a public hearing on the temporary placeholder ban proposal, considered all of the options available and the recommendation, including the Planning Commission's recommendations. The City Council, by resolution, initiated (7-0-0) a zoning code text amendment effort to comprehensively address medical cannabis. As a result this initiative will be added to the City Council's work plan. In addition, the Council directed staff (7-0-0) to prepare an ordinance and zoning code text amendment to implement Option 1, allowing the commercial cultivation of medical cannabis with a Conditional Use Permit, and to expand the consideration of appropriate districts.

On February 11, the Planning Commission is scheduled to hold a public hearing on this item and make a recommendation to the City Council regarding an ordinance to allow Commercial Cultivation of Medical Cannabis with a Conditional Use Permit.

Staff is pursuing the scheduling of a Council Subcommittee meeting to discuss the Commission's recommendation and current status of AB21; however the date of the meeting was not determined as of the date of this report.

<u>UPDATE ON AB 21 – CLEAN UP LEGISLATION TO REMOVE DEADLINE</u>

On January 28, 2016, the City was informed that AB 21 was passed unanimously (65-0) by the California State Assembly. AB 21 removes the March 1 deadline ensuring local jurisdictions maintain the authority to develop their own rules and regulations for cultivating medical cannabis indefinitely.

AB 21 is now on the Governor's desk for signature. The Governor has publicly indicated he would sign a legislative fix to the March 1 deadline. Upon signature of the bill, it will

become law immediately. The Governor has 12 days to sign or veto the bill. If he does not sign by the 12th day, it will become law.

ANALYSIS

In response to recent state legislation, the Medical Marijuana Regulation and Safety Act, and Council direction, staff has prepared a draft ordinance adding Chapter 20-46, Titled Medical Cannabis Cultivation to the Santa Rosa City Code. This Chapter as proposed would allow the commercial cultivation of medical cannabis in the General Commercial (CG), Light Industrial (IL), General Industrial (IG), Business Park (BP), and Limited Light Industrial (LIL) Districts with a Conditional Use Permit. This ordinance would be in effect until such time as the City completes its policy effort to comprehensively address the regulation of medical cannabis. The ordinance would apply only to commercial cultivation; it would not apply to personal cultivation which is exempt by state law.

Definition of "Commercial Cultivation of Medical Cannabis"

The following is the proposed land use definition for commercial cultivation of medical cannabis for use in the ordinance and in the City of Santa Rosa Zoning Code. The definition is the same as that offered in a recently drafted Humboldt County Code ordinance relating to the commercial cultivation of cannabis for medical use. The benefit of having a clear and regionally consistent definition is for the public's expeditious understanding of what is included in the land use term "cultivation" as it relates to medical cannabis, and what is excluded.

"Commercial Cultivation of Medical Cannabis" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis for medical use, including nurseries, that is intended to be transported, processed, manufactured, distributed, dispensed, delivered, or sold in accordance with the Medical Marijuana Regulation and Safety Act (MMRSA) for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

Conditional Use Permit Review Process and Findings

The following is a summary of the Conditional Use Permit public review process and the findings necessary for a review authority to grant such a permit.

A Conditional Use Permit is acted on by the Planning Commission and involves a public hearing and compliance with the California Environmental Quality Act (CEQA). Fees for a Conditional Use Permit application are $10,676 plus $1,839 for the public hearing. Additional fees may be required to conduct environmental review and/or to hold neighborhood meetings. Uses that may have an impact on a residential neighborhood will be subject to an $890 Pre-Application Neighborhood meeting, to be held and facilitated by City staff prior to submittal of the conditional use permit application.

Processing timeframes can vary, but if project issues are readily resolved, a typical timeframe for a Conditional Use Permit is 3 to 5 months from application submittal to public hearing. It should be noted, however, that as a new land use for the City of Santa Rosa, staff, applicants, and the community may require additional time for processing to adequately address the review, understanding and resolution of issues.

Zoning Code Section 20-52.050 identifies the criteria for the issuance of a Conditional Use Permit. In order for a review authority to approve a Conditional Use Permit, the authority must first make the following findings:

1. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the City Code;
2. The proposed use is consistent with the General Plan and any applicable specific plan;
3. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity;
4. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints;
5. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located; and
6. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

Staff finds that these standard use permit findings will support the intent of the interim ordinance. It should be noted, however, that additional findings and/or specific development standards unique to the cultivation of medical cannabis may develop during the comprehensive policy effort on the use in the future.

In addition to the above noted findings, a review authority may also grant the use permit subject to conditions of approval required to address impacts associated with the proposed use.

Appropriate Zoning Districts under Consideration

The proposed Zoning Districts under consideration for the cultivation use are intentionally broad at the direction of the City Council. As such, the proposed Districts to be considered include the General Commercial (CG), Light Industrial (IL), General Industrial (IG), Business Park (BP), and Limited Light Industrial (LIL) Districts. The following summaries are intended to inform as to the intent of the District pursuant to Zoning Code Chapters 20-23 and 20-24.

In addition, the current land use tables for the commercial, industrial and the limited light industrial zoning districts are attached for reference.

CG (General Commercial) district. The CG zoning district is applied to areas appropriate for a range of retail and service land uses that primarily serve residents and businesses throughout the City, including shops, personal and business services, and restaurants. Residential uses may also be accommodated as part of mixed use projects, and independent residential developments. The CG zoning district is consistent with the Retail and Business Services land use classification of the General Plan.

BP (Business Park) district. The BP zoning district is applied to areas appropriate for planned, visually attractive centers for business that do not generate nuisances (noise, clutter, noxious emissions, etc.). This zone accommodates campus-like environments for corporate headquarters, research and development facilities, offices, light manufacturing and assembly, industrial processing, general service, incubator-research facilities, testing, repairing, packaging, and printing and publishing. Warehousing and distribution, retail, hotels, and residential uses are permitted on an ancillary basis. Restaurants and other related services are permitted as accessory uses. Outdoor storage is not permitted. The BP zoning district is consistent with and implements the Business Park land use classification of the General Plan.

IL (Light Industrial) district. The IL zoning district is applied to areas appropriate for some light industrial uses, as well as commercial service uses and activities that may be incompatible with residential, retail, and/or office uses. Residential uses may also be accommodated as part of work/live projects. The IL zoning district is consistent with the Light Industry land use classification of the General Plan.

IG (General Industrial) district. The IG zoning district is applied to areas appropriate for industrial and manufacturing activities, warehousing, wholesaling and distribution uses. Uses may generate truck traffic and operate 24 hours. Retail and business service uses that could be more appropriately in another zone are not permitted. Land uses allowed in the IG zoning district have the potential for creating objectionable noise, smoke, odor, dust, noxious gases, glare, heat, vibration, or industrial wastes. The IG zoning district is consistent with the General Industry land use classification of the General Plan.

LIL (Limited Light Industrial) Combining district. The -LIL combining district is intended to allow the properties within the Maxwell Court neighborhood to maintain a vibrant and thriving industrial area, while also allowing the uses permitted in the primary zoning district, Transit Village-Residential, to be developed, with ultimate conversion to Transit Village-Residential within the life of the Santa Rosa General Plan 2035. The Maxwell Court neighborhood is the area bound by College Avenue to the north, North Dutton Avenue to the west, West Ninth Street to the south and the Sonoma Marin Area Rail Transit (SMART) Railroad to the east.

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 30, 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.

ISSUES

Ordinance and the March 1st Deadline

As of the date of this report, the deadline of March 1, 2016, to assert local control over cultivation is in effect. As noted AB 21, which will remove the deadline, is pending the Governor's signature. As a result of the deadline, the proposed ordinance is an urgency ordinance. Should the deadline be removed, and should the Council continue to pursue the interim regulation, staff recommends adopting the ordinance as a standard ordinance not one of urgency.

As an urgency ordinance, the Council would initiate and adopt on February 23, 2016, with the ordinance effective immediately, currently scheduled and anticipated in this case as February 24, 2016.

As a standard ordinance, the Council would initiate the ordinance at the first reading, on February 23, 2016, then adopt at its second reading, March 8, 2016, with the ordinance not effective until the 31st 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.

Community Input

While legal notice of the Council subcommittee meeting, the public hearings and the scope of the proposed ordinance has been met, there has been little time for broad community outreach and engagement. Typically zoning code text amendments of this nature involve comprehensive interdepartmental review, agency outreach and coordination, stakeholder notification, and extensive community outreach and engagement. Timeframes for processing Code amendments can vary from 6 months to 18 months, depending on the complexity of the issues.

Cultivation as a Land Use and Appropriateness of Zoning Districts

As noted above, the definition of the "Commercial Cultivation of Medical Cannabis" as a land use means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis for medical use. As such, staff finds the use most associated with the Industry, Manufacturing & Processing, and Wholesaling land use category in the City's land use tables. In this category are similar land use classifications such as "Agricultural product processing", "winery-boutique", "winery-production" and "brewery-production". What these land uses have in common is an emphasis on the harvesting or conversion of raw materials, with little or no emphasis on a retail or service activity.

Of the various Zoning Districts being considered for "commercial cultivation of medical cannabis" there appears to be the most alignment with the Light Industrial (IL), General Industrial (IG), Business Park (BP) and Limited Light Industrial (LIL) Districts, which either permit or conditional permit similar types of classifications. The General Commercial (CG) District appears to be the least aligned, with its emphasis on retail and service based activity, with only a few industrial uses conditionally permitted.

Interim Ordinance in Effect While Developing a Comprehensive Policy

Should the urgency or interim ordinance be adopted, the City would begin processing Conditional Use Permits for commercial cultivation of medical cannabis. These site specific proposals will be measured case by case, in specific context to adjacent tenants and properties, and against current zoning standards and standard use permit findings. Once granted and implemented in accordance to any conditions of approval, the use permit will run with the land. These actions under the interim ordinance may therefore be occurring perhaps concurrently with a broader community conversation about the City's comprehensive policy on cultivation and other activities related to cannabis.

As such, operators may find their locations or operational conditions inconsistent with new regulations, rendering the use or aspects of the operation legal non-conforming. Staff has added the following language to the ordinance to address part of the issue and suggests that similar language be considered with subsequent use permits:

"Commercial Cultivation operators issued a Conditional Use Permit pursuant to this interim ordinance shall be required to comply with such additional operational conditions

or performance measures adopted by subsequent ordinance(s) of the City to comprehensive regulate medical cannabis."

Minor Use Permit vs. Conditional Use Permit

Several public speakers to date have raised the issue of scalability with regards to the permitting process and cost to the scale of the proposal. Many have asked that smaller scaled proposals (fewer square feet) be allowed with a Minor Use Permit, and larger scaled proposals (more square feet) be subject to the Conditional Use Permit. As proposed, all proposals for the commercial cultivation of medical cannabis would be processed with a Conditional Use Permit, which requires a duly noticed public hearing (on-site sign, newspaper ad, mailing) and action by the seven-member Council appointed Planning Commission. A Minor Use Permit, in contrast, requires a public notice (mailing only) and action by an individual, the City's Zoning Administrator. The City's Zoning Administrator is a Planning and Economic Development Department staff member who is delegated the authority by the Director. While a scalable permitting system makes sense as part of the comprehensive policy effort, staff finds that the broader public review process as supported by the Commission is warranted as the community is still discovering the use, its impacts and their resolution.

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 – Public handout "Medical Cannabis – Commercial Cultivation"
- Attachment 4 – Zoning Code Table 2-6 (Allowed Land Uses and Permit Requirements for Commercial Zoning Districts)
- Attachment 5 –Table 2-10 (Allowed Land Uses and Permit Requirements for Industrial Zoning Districts)
- Attachment 6 – Table 2-24 (Allowed Land Uses and Permit Requirements for Limited Light Industrial (-LIL) District)
- Attachment 7 – Correspondence
- Attachment 8 – Memorandum dated February 12, 2016
- Resolution

CONTACT

Clare Hartman, Deputy Director - Planning
Planning and Economic Development
100 Santa Rosa Avenue, Room 3
(707) 543-3185
Chartman@SRCity.org