

CITY OF SANTA ROSA
CITY COUNCIL

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

SUBJECT: REPORT – ZONING CODE INTERPRETATION TO ALLOW
MEDICAL CANNABIS SUPPORT USES (NON-VOLATILE
MANUFACTURING, TESTING, DISTRIBUTOR, AND
TRANSPORTER)

AGENDA ACTION: DIRECT THE ZONING ADMINISTRATOR TO ISSUE A ZONING
CODE INTERPRETATION TO ALLOW SPECIFIED MEDICAL
CANNABIS SUPPORT USES AND DIRECT STAFF AND
SUBCOMMITTEE TO BRING BACK A PERMIT COMPLIANCE
PROGRAM FOR EXISTING MEDICAL CANNABIS RELATED
BUSINESSS

RECOMMENDATION

It is recommended by the City Council's Medical Cannabis Policy Subcommittee ("Subcommittee"), the Medical Cannabis Technical Advisory Committee ("TAC"), and the Planning & Economic Development Department, that the Council, by motion, 1) direct the Zoning Administrator to issue a Zoning Code Interpretation to allow specified medical cannabis support uses, specifically non-volatile manufacturing, testing, distributor, and transporter; and 2) direct staff to bring back a proposal for a permit compliance program for existing medical cannabis related businesses.

EXECUTIVE SUMMARY

The 2016 City Council Goal Setting Workshop established five priorities to better focus staff efforts towards achieving established City Council Goals. One of the "Tier 1" priorities is to "Pursue current opportunities for medical marijuana cannabis cultivation, lab testing, and employment development. Prepare for the impacts of prospective legalized recreational marijuana law in California."

Consistent with the City Council's goals and in response to the state's adoption of the Medical Marijuana Regulation and Safety Act (MMRSA), the Council has asserted its interest in retaining local authority over medical cannabis operations. On January 19, 2016, the Council initiated a comprehensive policy effort to support and provide

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direction on all aspects of the medical cannabis industry, including cultivation, sale, distribution, testing, transportation, manufacturing and taxation. That same month, the Council reconvened its Medical Cannabis Policy Subcommittee (the Subcommittee), which meets monthly. On February 23, 2016, the Council adopted an interim zoning ordinance allowing commercial cultivation of medical cannabis with a conditional use permit (City Code Chapter 20-46). The City is currently processing three use permit applications associated with commercial cultivation. In addition, the City continues to support medical cannabis dispensaries through previously approved regulations (City Code Chapter 10-40).

On May 26, 2016, the Subcommittee directed staff to seek Council support for a Draft Zoning Code Interpretation as an additional interim measure while the comprehensive policy work is underway. The Interpretation addresses the manufacturing (non-volatile), testing, distribution, and transportation of medical cannabis.

In addition, staff is seeking Council direction for development of a permit compliance program to help existing medical cannabis related businesses currently in operation within the City of Santa Rosa achieve code compliance.

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 stated 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 signed into law the Medical Marijuana Regulation and Safety Act (“MMRSA”), which went into effect on January 1, 2016. MMRSA established a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, testing, storage, distribution, and sale of

medical marijuana through Assembly Bills 243 and 266 and Senate Bill 643. The MMRSA also expressly preserves the right of a city or county to regulate or ban medical cannabis operations through the exercise of local land use powers. MMRSA establishes a dual licensing structure; thus if a city or county asserts local authority to regulate medical cannabis operations, then an operator in that jurisdiction shall be required to obtain a local license in addition to obtaining a state license,. State licensure is not required, however, until such time as state licenses become available, anticipated to occur in early 2018.

PRIOR COUNCIL REVIEW AND ACTION – MEDICAL CANNABIS

The 2016 City Council Goal Setting Workshop established five priorities to better focus staff efforts towards achieving established City Council Goals. One of the “Tier 1” priorities is to “pursue current opportunities for medical marijuana cannabis cultivation, lab testing, and employment development. Prepare for the impacts of prospective legalized recreational marijuana law in California.”

In accordance with the City Council’s goals and in response to the state’s adoption of the Medical Marijuana Regulation and Safety Act (MMRSA), the Council has asserted its interest in retaining local authority over medical cannabis operations.

On January 19, 2016, the Council initiated a comprehensive policy effort to support and provide direction on all aspects of the medical cannabis industry, including cultivation, sale, distribution, testing, transportation, manufacturing and taxation. The City is in contract with a consulting firm to assist in completion of this effort.

In January 2016, the Council reconvened its Medical Cannabis Policy Subcommittee (Subcommittee), which meets monthly. To support the Subcommittee, a Technical Advisory Committee (TAC) has been formed, comprised of staff from the following Departments: Planning & Economic Development, Police, Fire, Water, Code Enforcement, and the City Attorney’s Office.

On February 23, 2016, the Council adopted an interim zoning ordinance allowing commercial cultivation of medical cannabis with a conditional use permit (City Code Chapter 20-46). The City is currently processing three use permit applications associated with commercial cultivation.

The City continues to support medical cannabis dispensaries through previously approved regulations (City Code Chapter 10-40).

MEDICAL CANNABIS POLICY SUBCOMMITTEE

The City Council’s Medical Cannabis Policy Subcommittee reconvened in January 2016 and has since been meeting monthly in the City Council Chambers on the last Thursday of the month. Meetings have been well attended by the community, with an average of

40 attendees each session. The Subcommittee's progress and meeting content can be tracked through the City's srcity.org/cannabis website. Initial meetings focused on establishing an organizational approach to medical cannabis policy development, with a phase one effort consisting of interim measures and a phase two effort focused on the comprehensive policy.

Since March, the Subcommittee has been discussing the need for additional interim regulations to address the various support uses and state license types not currently covered in the City's existing ordinances. These uses include manufacturing, testing, distributor, and transporter. Under MMRSA, these uses are needed to connect a licensed medical cannabis cultivation use with a licensed medical cannabis dispensary use.

In addition to reviewing different interim options, the Subcommittee has received reports from the Police and Fire Departments, and has heard from members of the public about how the City might help existing operators move forward with code compliance.

On May 26, 2016, the Subcommittee directed staff to forward the Draft Zoning Code interpretation to the City Council, publish the draft on the City's website srcity.org/cannabis to solicit public comments, and seek City Council direction prior to the Zoning Administrator taking action.

ANALYSIS - ZONING CODE INTERPRETATION

City Code Section 20-12.030 (Procedures for Interpretations) authorizes the Zoning Administrator to issue an official interpretation of the Zoning Code when the Administrator determines that the meaning or applicability of any of the requirements of the Zoning Code are subject to interpretation generally, or as applied to a specific case. The issuance of an interpretation must include findings stating the basis for the interpretation, such as the need to address technological changes or new industry standards. The findings must also address consistency with the City's General Plan.

Once published, a Zoning Code Interpretation goes into effect immediately, and remains in effect until such time as the issue is addressed by Ordinance. In this case, the proposed Zoning Code Interpretation is intended to be in effect until such time as the City completes its comprehensive policy effort to regulate medical cannabis.

The Zoning Code provisions to be interpreted include Section 20-24.030, Table 2-6 and Table 2-10 (Allowed Land Uses and Permit Requirements) and Section 20-70.020 (Definitions of Specialized Terms and Phrases).

At issue is whether existing land use classifications and permit regulations may apply to the medical cannabis support services that connect a licensed medical cannabis cultivation use with licensed medical cannabis dispensary use, in accordance with MMRSA. MMRSA specifies a variety of license types and descriptions that cover the

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following uses: cultivation, manufacturing, testing, dispensary (sale), distribution and transportation. The City Code currently provides express regulations that permit the commercial cultivation and dispensary of medical cannabis pursuant to MMRSA. The Zoning Code does not currently address other medical cannabis uses covered under MMRSA. Therefore the medical cannabis uses that are considered in the Interpretation include:

- Manufacturing/Processing
- Testing/Labs
- Distribution
- Transporter

The Draft Zoning Code Interpretation, attached to this report, provides a definition of the above land uses and license types per MMRSA and correlates each of these uses with their closest related land use classification in the Zoning Code. The interpretation determines that these medical cannabis uses, identified specifically by state license type, shall be allowed pursuant to Tables 2-6 and 2-10 in the City's Zoning Code, provided that these uses also comply with state law and applicable health and safety regulations established in the Santa Rosa City Code as set forth in the interpretation.

A table is provided in the interpretation to summarize where, as a result, each of the specified uses is permitted, or is subject to a zoning clearance or a conditional use permit, or is not allowed.

Permitted uses shall secure a ministerial Zoning Clearance from the Planning and Economic Development Department in accordance with Zoning Code section 20-52.020, followed by all necessary permits and certifications including but not limited to building, fire, and environmental compliance permits, and the filing of a business tax certificate.

Uses subject to a Minor Conditional Use Permit shall file the discretionary application prior to applying for a building permit. Discretionary applications are subject to public review and compliance with the California Environmental Quality Act (CEQA).

Uses that are not expressly allowed are prohibited.

Once the Interpretation is issued, it will be effective immediately. Staff is developing public handouts and an update to the City's website to correspond with the implementation of the Interpretation. This will include Frequently Asked Questions (FAQs), a Process Map outlining compliance steps from zoning verification to achieving a Certificate of Occupancy, and Checklists for achieving Building/Fire Code compliance, depending on the type of operation.

ANALYSIS – PERMIT COMPLIANCE PROGRAM

It is apparent through public comments and conversations with members of the community, that existing operators within the City are interested in complying with city regulations by seeking permits to operate. Many of these existing operators assert that they are in compliance with industry best practices and with state laws regarding medical cannabis. The operators have expressed concern, however, over the potential for enforcement, penalty or even prosecution if they come forward to seek compliance with the City Codes. In addition, they raise the issue of economic hardship that they and their employees would experience if the existing business were required to temporarily relocate or cease operations while they pursue compliance.

Staff finds that the immediate enforcement of these new regulations against an existing industry - without providing time and a reasonable path for compliance - may inadvertently place the City's existing local operators at a disadvantage to outside interests who have not yet located, invested or established operations in Santa Rosa. Staff finds that there may be mutual interest in supporting the local operators with a compliance program, given they are already invested in the local economy and are providing jobs, products, services and income to local residents and that these operators appear to be willing to be regulated and pay taxes like other local industries.

As a result, staff recommends that the City Council direct staff to work with the Subcommittee to bring back a proposal for a permit compliance program for existing medical cannabis related businesses.

Goals/benefits of the program could be:

- Provide certainty to the permit compliance process
- Provide a framework with timelines for the compliance process
- Prevent undue economic hardship to existing businesses, allow safe operations to continue
- Provide an incentive for existing operators to seek legitimacy
- Initiate an "operator in good standing" relationship between the City and the operator
- Address the fear of existing operators of prosecution/code enforcement

FISCAL IMPACT

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

ENVIRONMENTAL IMPACT

The proposed actions include direction to staff to issue a Zoning Code Interpretation, relating new industries to existing land use classifications and existing Zoning Code policy, and proposed direction to develop a permit program for existing operators. Both

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proposed actions are exempt from the California Environmental Quality Act (CEQA) because neither are a project with a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

NOTIFICATION

The report before the City Council was posted in accordance with the noticing requirements for the August 2, 2016 City Council Agenda. Materials have been made accessible through the City of Santa Rosa's City Council Agenda website. In addition, the initiation of the concept as well as drafts of the Zoning Code Interpretation were presented monthly to the City's Medical Cannabis Policy Subcommittee since March 2016, and posted on the City's srcity.org/cannabis website. Outreach to an e-mail distribution list associated with the City's medical cannabis policy efforts to date was also utilized.

PUBLIC COMMENTS

The Subcommittee and TAC have received many public comments and questions about the proposed Zoning Code Interpretation, including the differences between an Interpretation and a Text Amendment, what uses the interpretation will allow and where, clarification of permit expectations, and how the interpretation will be implemented with respect to both existing and new operators. In addition, concerns were expressed about how City approvals to operate will relate to the timing, availability and operational standards of state licenses, what flexibility may be given in addressing odor control for manufacturers, what permit compliance assistance and support will be available for existing operators, and clarification on why a building permit is necessary even if no improvements are proposed.

The Draft Zoning Code Interpretation was revised July 21, 2016 to address these issues, and staff is requesting direction to bring back a permit compliance program for existing operators. Staff is also developing a medical cannabis business tool kit that covers Frequently Asked Questions (FAQs), a Process Map outlining permit compliance steps, and Checklists for achieving Building/Fire Code compliance, depending on the type of operation.

ATTACHMENTS

- Attachment 1 – Draft Zoning Code Interpretation – July 21, 2016
- Attachment 2 – Public correspondence

CONTACT

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