



Legislation Details (With Text)

File #: 16-035 **Version:** 1 **Name:** Staff report for urgency ordinance prohibiting medical cannabis cultivation

Type: Staff Report **Status:** Filed

On agenda: 2/1/2016 **In control:** City Council

Enactment date: **Final action:** 2/1/2016

Enactment #:

Title: Staff Report for an Urgency Ordinance to Amend the San Leandro Municipal Code to Prohibit Medical Cannabis Cultivation Activities, and to Affirm that Under the Principles of Permissive Zoning, Medical Cannabis Cultivation Is Not a Permitted Land Use Under the City of San Leandro Zoning Code

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Date	Ver.	Action By	Action	Result
2/1/2016	1	City Council	Received and Filed	

Staff Report for an Urgency Ordinance to Amend the San Leandro Municipal Code to Prohibit Medical Cannabis Cultivation Activities, and to Affirm that Under the Principles of Permissive Zoning, Medical Cannabis Cultivation Is Not a Permitted Land Use Under the City of San Leandro Zoning Code

RECOMMENDATION

Staff recommends that the City Council approve, by a 4/5 vote of its membership, an urgency ordinance to amend the San Leandro Municipal Code to prohibit medical cannabis cultivation activities, and to affirm that under the principles of permissive zoning, medical cannabis cultivation is not permitted land use under the City of San Leandro Zoning Code, such that the State may not issue a license or permit for large scale and commercial medical cannabis cultivation within the City. Cultivation for personal use and distribution by primary caregivers under California Health & Safety Code section 11362.77(g) would be exempt under the new Ordinance, and under State law as it relates to land use regulations.

BACKGROUND AND ANALYSIS

By way of background, and as an overview of the State of California’s law related to medical cannabis, California Health and Safety Code section 11362.5, the Compassionate Use Act of 1996 (“CUA”), authorizes a limited defense to criminal charges for the use, possession or cultivation of cannabis for medical purposes when a qualified patient has a doctor’s recommendation for the use of cannabis. Health and Safety Code section 11362.7 et seq., the Medical Cannabis Program Act (“MMPA”), was adopted by the state legislature and offers some clarification on the scope of the Compassionate Use Act of 1996, and section 11362.83 specifically authorizes cities and other governing bodies to adopt and enforce rules and regulations related to medical cannabis. Neither the CUA nor the MMPA prevent a city from enacting nuisance and land use regulations regarding

medical cannabis. A city is constitutionally authorized to make and enforce within its limits all local police, sanitary, and other ordinances. (Cal. Const. Art. XI, § 7.)

The Legislature recently passed, and the Governor signed, new legislation - the "Medical Marijuana Regulation and Safety Act" (MMRSA) - that requires certain state agencies to promulgate regulations relating to medical cannabis cultivation. Under the new legislation an individual or entity wishing to cultivate medical cannabis must receive a license from the California Department of Food and Agriculture ("DFA"), which may only provide a license to an individual or entity that has also received a permit, license or entitlement from the city in which the cultivation is to occur. The new legislation further provides that if a city does not have land use regulations or ordinances regulating or prohibiting the cultivation of medical cannabis, then commencing on March 1, 2016, the DFA will be the sole licensing authority for medical cannabis cultivation applications in that city. Conversely, a city with a prohibition or regulations regarding the cultivation of medical cannabis in effect before March 1, 2016 retains the authority to later modify that prohibition or those regulations.

The adoption of this Urgency Ordinance is designed to satisfy the State-imposed March 1, 2016 deadline by establishing an ordinance prohibiting commercial-scale medical cannabis cultivation activities in the City. In addition, the Ordinance affirms that under the principles of permissive zoning, medical cannabis cultivation land uses are not permitted uses in any City zoning district, such that the State may not issue a license for medical cannabis cultivation in the City. The proposed Ordinance has an exemption for personal cultivation, which is provided in California Health & Safety Code section 11362.77(g), which allows cultivation by patients for personal use, or in the case of primary caregivers, limited to five patients.

In addition to the urgency created by the March 1, 2016 deadline to have land use regulations or a prohibition in place, because the cultivation of medical cannabis in San Leandro and other cities has resulted in calls for service to the police department, including calls for robberies and thefts, medical cannabis cultivation poses safety risks to City residents, including but not limited to, risks of violent confrontation in connection with attempts to steal cannabis and the risk of fire from improperly wired electric facilities and appliances within structures growing cannabis. These risks, and the potential for increased calls for service to address crime and fire suppression present an immediate threat to the public health, safety and welfare of the community if medical cannabis is cultivated in the City without proper City-specific regulations, resulting in harmful effects to businesses, property owners and residents of the City. Therefore, an urgency ordinance, which is permitted under California Government Code section 36937, is appropriate in this instance. An urgency ordinance must be passed by a 4/5 vote of the City Council (6 affirmative votes). If passed, it goes into effect immediately.

In the meantime, staff is preparing Zoning Code amendments through the normal process to establish specific land use definitions and regulations relating to the prohibition. The Planning Commission will hear the proposed Zoning Code changes, make a recommendation to the City Council, and then they will come to the City Council for review and approval. If those zoning changes are approved by the City Council, the amendments promulgated by the urgency ordinance will be rescinded. The City Council retains the power to amend its regulations to allow and tax large scale and commercial cultivation should it so desire.

Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws. Consistent with this authority, staff recommends that the San Leandro City Council should amend the

Municipal Code to prohibit medical cannabis cultivation activities, except for that which is allowed by State law for individual patients and primary caregivers. Staff recommends that the San Leandro City Council also affirm that under principles of permissive zoning, medical cannabis cultivation is not a permitted land use within the City, and as such the State may not issue a license or permit for medical cannabis cultivation. Thus, the San Leandro City Council can maintain local control of commercial-scale medical cannabis cultivation by initially prohibiting it, and then subsequently adopting City-specific regulations at a later time.

Fiscal Impact

There are minimal fiscal impacts expected from the passage of this urgency Ordinance.

ATTACHMENT

None.

PREPARED BY: Richard D. Pio Roda, City Attorney