



Legislation Text

File #: 14-129, **Version:** 1

Staff Report for Proposed Amendments to the City of San Leandro Zoning Code in Article 3, Section 1-304 Definitions; Article 6, Section 2-606 CC Districts - Use Regulations; Article 7, Sections 2-706 IG District - Use Regulations, 2-708 IP District - Use Regulations, and 2-712 IG(AU) District - Use Regulations; and Article 17, Section 4-1704 Off-Street Parking and Loading Spaces Required Related to a Medical Marijuana Dispensary

SUMMARY AND RECOMMENDATIONS

Staff has developed a set of draft revisions to the San Leandro Zoning Code in order to implement City of San Leandro Ordinance 2013-020 related to a Medical Marijuana Dispensary; the Ordinance went into effect on January 15, 2014. The ordinance allows for one Medical Marijuana Dispensary to operate in the City of San Leandro, after receiving approval from the City through a formal Request for Qualifications (RFQ) process and approval of a Conditional Use Permit from the Board of Zoning Adjustments. The Medical Marijuana Dispensary must be operated in accordance with the City's ordinance and State law.

Staff proposes to amend the San Leandro Zoning Code to add new definitions for "Medical Marijuana Dispensary" and "Medical Marijuana". Staff also recommends that the regulations in Article 6 Commercial and Professional and Article 7 Industrial should be amended to add the term "Medical Marijuana Dispensary" to the set of Use Regulations for uses subject to a Conditional Use Permit in the Industrial General (IG), Industrial Park (IP) and Commercial Community (CC) zoning districts. Finally, the parking requirements table in Article 17, Off-Street Parking and Loading Regulations should be amended by adding a requirement for one off-street parking space for every 200 square feet of floor area for the Medical Marijuana Dispensary use category.

At the February 20, 2014 meeting, the Planning Commission voted 4-3 to deny the motion on the staff proposal. The Commission then voted 5-2 in favor of a motion to recommend the City Council consider regulating Medical Marijuana Dispensaries as smaller scale cooperatives with up to six individuals as an alternative approach in lieu of staff's proposal outlined above.

Following the Planning Commission meeting, staff carefully considered the comments of the Planning Commission in consultation with the City Manager and City Attorney's Office. The intent of the Zoning Code amendments recommended by staff is to implement existing City policy on Medical Marijuana Dispensaries that was a result of lengthy City Council discussion and public process. As such, staff continues to recommend that the City Council amend the Zoning Code to implement Ordinance 2013-020 by allowing a medical marijuana dispensary in certain commercial and industrial districts, subject to separation requirements and a Conditional Use Permit.

Staff recommends that the City Council take public testimony on the proposed amendments and:

- A. Adopt the findings that this item is exempt from CEQA under Section 15061(b)(3) of the CEQA

Guidelines.

- B. Reject the Planning Commission's recommendation, Adopt the Ordinance amending the City of San Leandro Zoning Code in Article 3, Section 1-304 Definitions; Article 6, Section 2-606 CC Districts - Use Regulations; Article 7, Sections 2-706 IG District - Use Regulations, 2-708 IP District - Use Regulations, and 2-712 IG(AU) District - Use Regulations; and Article 17, Section 4-1704 Off-Street Parking and Loading Spaces Required Related to a Medical Marijuana Dispensary

BACKGROUND

In 2010, the City passed a moratorium on the issuance of land use entitlements, building permits, and business licenses for new medical marijuana dispensary related operations. The moratorium was subsequently extended in 2012 pursuant to City Council findings that included uncertainty regarding the legality of dispensaries as legitimate means of complying with State and Federal law under the Compassionate Use Act, the Medical Marijuana Program Act, and various jurisdictions' efforts to ban, regulate, and raise revenue from such operations.

Over the following two years, City Council held multiple work sessions and special public meetings regarding medical marijuana dispensaries and reviewed and approved the final drafts of the ordinance on December 2, 2013. The ordinance was passed to print on December 16, 2013.

The ordinance's main provisions are as follows:

- One valid permit is allowed;
- The City Manager may impose separate conditions of approval;
- A public hearing on approval of a Dispensary permit must be held by the Board of Zoning Adjustments pursuant to the approval of a conditional use permit;
- Operating, security, recordkeeping, facilities, and signage regulations are set in the ordinance;
- Dispensaries may only be located in the City's industrial and commercial zoning districts, and cannot be within 1,000 feet of a school, library, youth center, park and recreation facility, facilities for religious worship and incidental religious education, or another dispensary; and cannot be within 500 feet of a residential zone;
- On-site cooking and distribution of edible cannabis products is allowed and regulated to prevent the transmission of foodborne illnesses; and
- Payment of a non-refundable permit application fee, an annual permit renewal fee, and annual business license fee will be required at the amounts set by the City Council.

Analysis

The proposed changes to the Zoning Code reflect both the definitions and the locational and hour restrictions that are in the Medical Marijuana Dispensary Ordinance adopted by the City Council on December 16, 2013. These specify that a Medical Marijuana Dispensary be allowed with a Conditional Use Permit in the industrial or commercial community zoning districts, subject to buffers of a minimum distance of one thousand (1,000) feet from:

- a public or private school;

- public library;
- youth center (serving youth ages eighteen (18) and under);
- parks and recreation facilities;
- facilities for religious worship and incidental religious education; or
- another Dispensary.

Further, a Medical Marijuana Dispensary cannot be located within five hundred (500) feet from a residential zone. Finally, hours for a Dispensary would be restricted to 9 am to 7 pm, Monday through Sunday.

The resultant areas that are eligible for a Medical Marijuana Dispensary, per the attached Eligible Area maps, include the following zoning districts:

- CC Commercial Community
- IG Industrial General
- IP Industrial Park
- IG(AU) Industrial General/Assembly Use Overlay

As such, staff proposes to amend the Zoning Code for the above districts to allow for a Medical Marijuana Dispensary use, subject to the approval of a Conditional Use Permit.

Staff proposes amending the San Leandro Zoning Code, Article 3 Definitions, as follows:

Medical Marijuana Dispensary. A collective or cooperative that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana for medicinal purposes to four (4) or more qualified patients and/ or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 et seq. Baked medicinal products (i. e. brownies, bars, cookies, cakes), tinctures and other non-refrigerated type items are acceptable for manufacture and sale at a Dispensary. Edible cannabis products for sale or distribution at a Dispensary must have been prepared by a member of that Dispensary. No non-member edible cannabis products are allowed for sale or distribution at a Dispensary.

Medical Marijuana. All parts of the plant *Cannabis sativa* L., whether growing or not, as defined by California Health and Safety Code § 11018, as amended from time to time. This includes "cannabis" as: the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant incapable of germination.

Staff proposes that a Medical Marijuana Dispensary be allowed with a Conditional Use Permit in the CC Commercial Community, IG Industrial General, IG(AU) Industrial General/Assembly Use Overlay, and IP Industrial Park zoning districts with the above-stated locational and operational restrictions:

Medical Marijuana Dispensary. (A Medical Marijuana Dispensary shall not be located within

one thousand (1,000) feet of a public or private school, public library, youth center [serving youth ages eighteen (18) and under], parks and recreation facilities, facilities for religious worship and incidental religious education, or another Dispensary; and shall not be located within five hundred (500) feet from a residential zone. A Dispensary may be open only between the hours of 9 am to 7pm, Monday through Sunday and is further subject to performance standards in the San Leandro Municipal Code.)

Staff believes that a Medical Marijuana Dispensary will have similar parking demands as Retail Sales or Medical Offices. As such, the parking requirements table in Article 17, Off-Street Parking and Loading Regulations should be amended by adding a requirement for one off-street parking space for every 200 square feet of floor area of retail sales and services for a Medical Marijuana Dispensary. Parking for ancillary uses within the dispensary such as back offices, security facilities, and other activities would be as determined by the Conditional Use Permit as follows:

Medical Marijuana Dispensary: 1 space per 200 square feet for retail sales and services; other use types per conditional use permit

Current Agency Policies

- City of San Leandro Ordinance 2013-020 related to a Medical Marijuana Dispensary with effective date of January 13, 2014

Previous Actions

- October 4, 2010: The City Council passed An Interim Urgency Ordinance Prohibiting Consideration and Approval of Use Permits, Variances, Building Permits, Start of New Construction, or Other Entitlements for Any Establishment or Operation of Medical Marijuana Dispensaries, Marijuana Cultivation Facilities, or Other Land Uses that Could Be Proposed Should Prop 19 Be Approved by Voters for a Forty-Five Day Period
- On November 8, 2010, the City Council held a work session to review legal issues related to medical marijuana dispensaries and cultivation facilities, including the *Qualified Patients Association v. City of Anaheim* (2010) case (Case No. G040077).
- November 15, 2010: The City Council extended the Interim Urgency Ordinance to October 1, 2012.
- February 28, 2011: The City Council, at a special work session, directed staff to prepare an ordinance prohibiting Medical Marijuana Dispensaries and Cultivation Facilities.
- May 16, 2011: The City Council heard and did not pass an ordinance that would prohibit the establishment of medical marijuana dispensaries in the City. The moratorium continued in effect.
- On September 6, 2011, the Moratorium was extended by one year to September 30, 2012.
- June 15, 2012: City Council approved at First Reading an ordinance prohibiting the

establishment and operation of medical marijuana dispensaries with a sunset date.

- July 2, 2012: The City Council tabled discussion and action at Second Reading of an ordinance prohibiting the establishment and operation of medical marijuana dispensaries with a sunset date.
- July 16, 2012: The City Council directed the City Council Rules and Communications Committee to work with staff on an ordinance that would permit the establishment and operation of medical marijuana dispensaries within the City.
- November 1, 2012: The City Council Rules and Communications Committee approved the proposed ordinance, and forwarded it to City Council for review and comment.
- December 3, 2012 - Action item (Prior to the Action item, the City Council accepted the 11/07/2012 Rules and Communications Committee highlights and its recommendation to consider the proposed medical marijuana ordinance.). There was a consensus amongst the City Councilmembers to hold a City Council work session in February 2013 to receive public input on the draft medical marijuana dispensary ordinance.
- February 12, 2013 - Special public meeting: “Staff Presentations including Background Information and Next Steps for Development of Proposed Medical Marijuana Dispensaries Ordinance”
- May 20, 2013 - City Council meeting: “City Attorney Report on City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. Regarding California Supreme Court’s Decision on Medical Marijuana Dispensaries”
- November 4, 2013 - City Council Public Hearing reviewing draft ordinance
- December 2, 2013 - City Council Public Hearing reviewing and approving draft ordinance; adopted on December 16, 2013.

Applicable General Plan Policies

The 2002 General Plan states that “the San Leandro General Plan aspires to reshape the industrial areas of West and Central San Leandro to meet the demands of the new economy.” Furthermore, the General Plan states that “the guiding objectives in the City’s large business districts are to promote business retention and diversification;” and to “locate the most intensive industrial uses in the areas that are furthest away from residential neighborhoods.”

For the General Commercial designation (underlying the CC zoning), the General Plan states that the designation is “characterized by...commercial uses providing a broader range of goods and services and serving a broader market than the neighborhood commercial areas” (General Plan, page 3-11.) In both Light Industrial and General Industrial designations (underlying the IG and IP zoning), the General Plan states that “Allowances for retail stores within these areas is guided by General Plan Policy” (General Plan, page 3-12.)

The 2002 update of the General Plan did not contemplate this newly defined Medical Marijuana Dispensary use. As such, no policies exist to specifically encourage this use. However, the following broad policies in the General Plan support the introduction of a Medical Marijuana Dispensary, to the extent that this new use will promote economic diversity, re-use and adaptation of industrial and commercial buildings and job opportunities:

- **Policy 7.02 Economic Diversity** - *Promote economic diversity and the growth of new and emerging industries. Target businesses that will provide higher-paying jobs for San Leandro residents.*
- **Policy 8.02 Retail Diversity** - *Encourage a diverse range of commercial uses in the City, offering goods and services that fully meet the needs of San Leandro residents and businesses.*
- **Policy 10.01 Reuse of Older Buildings** - *Support the reuse of underused, vacant or obsolete industrial/commercial buildings with higher value uses that are consistent with the goals and policies of the General Plan.*
- **Policy 12.03 Job Opportunities for Residents** - *Promote opportunities for San Leandro residents to find suitable employment within the community...*

The proposed amendments to the Zoning Code would maintain San Leandro industrial and commercial districts through the Conditional Use Permit process and strict regulations as allowed by State law, while creating more opportunities for San Leandro residents to access retail medical marijuana outlets and to engage in innovative new employment.

Environmental Review

The proposed minor amendments to the Zoning Code are exempt from environmental review under subsections (b)(2) and (b)(3) of Section 15061 of the CEQA Guidelines as minor amendments of the Zoning Code to provide for a Medical Marijuana Dispensary use in the IG, IG(AU), IP and CC zoning districts with a Conditional Use Permit, because the amendments themselves will not have a significant effect on the environment.

Board/Commission Review and Actions

The Board of Zoning Adjustments (BZA) decides matters related to Zoning Code regulations. These updates were presented to the BZA on February 6, 2014 for feedback. The BZA reviewed the changes and provided general support for the amendments, with one member requesting greater separation of up to 1,000 feet from residential uses.

As discussed above, the Planning Commission, the body responsible for forwarding recommendations on Zoning Code amendments to City Council, reviewed the staff proposal and voted against the staff recommendation with a vote of 4-3. Furthermore, the Planning Commission voted to recommend that the City Council explore an alternative policy for smaller medical marijuana collectives of up to six members rather than supporting the current policy for one large medical marijuana dispensary. A motion was passed with a vote of 5-2 to forward to the City Council a

recommendation to consider regulating Medical Marijuana Dispensaries as smaller-scale collectives/cooperatives and direct staff to prepare a proposal to that effect.

The Planning Commission envisioned operations in all zoning districts that a) comprise up to six individuals who depend on, work with and support each other in life; b) undergo a less intense permitting/regulatory process than a large dispensary would; and, c) are allowed to grow and cultivate marijuana for medicinal purposes onsite. (see attached excerpt from the minutes of the February 20, 2014 Planning Commission meeting).

Summary of Public Outreach Efforts

Legal requirements for notification of this meeting included posting of the meeting agenda at City Hall a minimum of 72 hours in advance of the meeting date and notice in a paper of general circulation 10 days prior to the hearing. Notification of this meeting included publication of a legal notice in the Daily Review and posting of the meeting agenda at City Hall. In addition, a courtesy notice was sent to all Neighborhood Associations listed on the City's roster and to the San Leandro Chamber of Commerce. No public comments have been received as of the writing of this report.

On February 6, 2014, the Board of Zoning Adjustments received a staff report on these proposed amendments as an informational item.

The Planning Commission held a noticed, Public Hearing on February 20, 2014.

Legal Analysis

On July 16, 2012, pursuant to an appellate court decision that prohibited local jurisdictions from banning medical cannabis dispensary operations, ***County of Los Angeles v. Alternative Medicinal Cannabis Collective*** (July 2, 2012) 207 Cal.App.4th 601 (2d Distr., Div. 1), the City Council decided that it would allow the moratorium to expire. The City Council also directed the City Council Rules and Communications Committee to develop an ordinance and amendments to the Zoning Code to allow a limited number of dispensaries to operate in the City. That direction culminated in the draft proposed ordinance now before the City Council. Recommended Zoning Code amendments that conform to the proposed ordinance were drafted, and presented, along with the proposed ordinance, to the City's Board of Zoning Adjustments for review and comment. In accordance with State law, the Zoning Code amendments were presented to the Planning Commission for review, comment, and recommendation to the City Council.

The ordinance itself is modeled after the City of Oakland's 2011 amendments to its medical cannabis dispensary ordinance; the proposed ordinance also borrows from the City and County of San Francisco Department of Public Health's regulations related to edible cannabis product handling, labeling, and distribution. The ordinance is in strict compliance with the California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use. Staff also believes that the ordinance complies with the common law related to the establishment and regulations that may be imposed upon the operation of medical marijuana dispensaries.

The proposed Zoning Code amendments were analyzed by the City Attorney's Office and found to be in conformance with the California Government Code as well as the local General Plan and Zoning Code.

ATTACHMENT(S)

Attachment(s) to Staff Report

- Exhibit A: Eligible Medical Marijuana Dispensary Areas Map (showing zoning and buffers)
- Exhibit B: Eligible Locations for One Medical Marijuana Dispensary Areas Map (showing eligible locations, only)
- Exhibit C: Ordinance 2013-020 (for reference)
- Exhibit D: Excerpt of the Minutes of the Board of Zoning Adjustments meeting of February 6, 2014
- Exhibit E: Excerpt of the Minutes of the Planning Commission meeting of February 20, 2014

Attachment(s) to Related Legislative File

- Exhibit A: Proposed Zoning Code Amendments to Article 3, Section 1-304 Definitions; Article 6, Section 2-606 CC Districts - Use Regulations; Article 7, Sections 2-706 IG District - Use Regulations, 2-708 IP District - Use Regulations, and 2-712 IG(AU) District - Use Regulations; and Article 17, Section 4-1704 Off-Street Parking and Loading Spaces Required

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