



February 1, 2016

The Honorable City Council
Palo Alto, California

PUBLIC HEARING: Adoption of an Emergency Ordinance of the Council of the City of Palo Alto Adding Chapter 9.16 (Medical Marijuana Cultivation and Delivery) to Title 9 (Public Peace, Morals and Safety) of the Palo Alto Municipal Code to Prohibit Medical Marijuana Cultivation and Delivery in Palo Alto Pursuant to California Assembly Bills 243 and 266 and Senate Bill 643. This Action is Exempt Under Section 15061(b)(3) of the California Environmental Quality Act

Recommendation

Staff recommends that Council adopt the attached emergency ordinance (Attachment A) adding Chapter 9.16 (Medical Marijuana Cultivation and Delivery) to Title 9 (Public Peace, Morals and Safety) of the Palo Alto Municipal Code to prohibit medical marijuana cultivation and delivery in Palo Alto, effective immediately. This action implements state law and is consistent with prior Council policy.

Executive Summary

The proposed emergency ordinance is consistent with the City's existing land use policy adopted on June 9, 1997, as an uncodified urgency Ordinance No. 4422, prohibiting the establishment and operation of medical marijuana dispensaries under the City's zoning ordinance (Attachment B). The proposed ordinance expressly prohibits medical marijuana cultivation and delivery within the City of Palo Alto, effective immediately.

Under new provisions of State law, cities that do not have a land use regulation or ordinance regulating or prohibiting medical marijuana cultivation in effect by March 1, 2016, will lose local authority to regulate or ban cultivation, and the State of California would become the sole licensing authority for medical marijuana cultivation in the jurisdiction.

Also, under new provisions of State law, cities that do not have an ordinance regulating or prohibiting medical marijuana delivery in effect by January 1, 2018 (the date the State anticipates issuing licenses), will lose the local authority to regulate or ban delivery, and the State of California would become the sole licensing authority for medical marijuana delivery in the jurisdiction.

Staff recommends that the proposed emergency ordinance expressly prohibiting medical marijuana cultivation and delivery within the City be adopted by Council in February to ensure

an effective date prior to the State-imposed deadline of March 1, 2016 relating to local medical marijuana cultivation.

Background

On October 9 2015, Governor Brown signed three new laws relating to medical marijuana, Assembly Bills 243 and 266 and Senate Bill 643. These bills create a broad state regulatory and dual licensing system governing the cultivation, testing and distribution of medical marijuana, the manufacturing of marijuana products, and physician recommendations for medical marijuana.

Under the new legislation titled collectively as the Medical Marijuana Safety and Regulation Act (MMSRA), state licenses and local permits will be required for all facets of the medical marijuana industry.

AB 243 establishes the Department of Food and Agriculture (DFA) as the licensing and regulatory authority for medical marijuana cultivation. Any person who wishes to engage in commercial cultivation of medical marijuana must obtain a state license from the DFA. AB 243 also requires (1) the DFA to work with other state agencies to develop environmental protection standards, (2) the Department of Pesticide Regulation to establish medical marijuana pesticide standards, and (3) the Department of Public Health to create standards for labeling of marijuana edibles.

AB 266 creates the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs (DCA) to develop regulations and issue state licenses for medical marijuana dispensaries, distributors and transporters. AB 266 designates the Department of Public Health as the licensing and regulatory authority for manufacturers of marijuana products and medical marijuana testing laboratories. Like AB 243, AB 266 requires all state marijuana license applicants to comply with local permitting requirements.

SB 643 establishes standards for physicians that recommend medical marijuana, including discipline for physicians who recommend excessive amounts. SB 643 also creates standards for state license applications and enforcement.

Discussion

On June 9, 1997, the Council adopted uncodified urgency Ordinance No. 4422, prohibiting the establishment and operation of medical marijuana dispensaries under the City's zoning ordinance (Attachment B).

This urgency ordinance is not comprehensive and does not include an express prohibition against medical marijuana cultivation or medical marijuana delivery in the City. However, under principles of permissive zoning, neither medical marijuana cultivation nor medical marijuana delivery are listed as permitted activities in the City's zoning code and are presumptively prohibited. To avoid confusion and preserve local control, staff recommends including an express prohibition.

The proposed ordinance would expressly prohibit medical marijuana cultivation and medical marijuana delivery within the City. The proposed ordinance satisfies two MMRSA deadlines, as follows, allowing the City to maintain local authority over medical marijuana cultivation and delivery:

1. Under the MMRSA, cities that do not have a land use ordinance or regulation prohibiting medical marijuana cultivation and choose not to implement a regulatory scheme, commencing March 1, 2016, will lose local authority to regulate or ban cultivation; and the DFA will become the sole licensing authority.
2. Under the MMRSA, medical marijuana deliveries can only be made by a state-licensed dispensary in a city, county, or city and county that does not explicitly prohibit it by local ordinance (Business and Professions Code section 19340(a), part of AB 266). The State plans to begin issuing medical marijuana delivery licenses on January 1, 2018.

With regard to delivery, the proposed Ordinance incorporates a definition of “delivery” under state law that would prohibit the operation of medical marijuana delivery business in the City and the delivery of medical marijuana within the City from a business located elsewhere. The proposed Ordinance does not prevent, however, the City from regulating medical marijuana cultivation or delivery within the City of Palo Alto in the future, subject to the applicable state licensing requirements in the MMRSA.

Timeline

Under the MMRSA, as discussed above, cities that do not have a land use ordinance or regulation prohibiting medical marijuana cultivation and choose not to implement a regulatory scheme, commencing March 1, 2016, will lose local authority to regulate or ban cultivation; and the DFA will become the sole licensing authority.

Further, under the MMRSA, medical marijuana deliveries can only be made by a state-licensed dispensary in a city, county, or city and county that does not explicitly prohibit it by local ordinance (Business and Professions Code section 19340(a), part of AB 266). The State plans to begin issuing medical marijuana delivery licenses on January 1, 2018.

Accordingly, staff recommends that the proposed emergency ordinance expressly prohibiting medical marijuana cultivation and delivery within the City be adopted by Council in February to ensure an effective date prior to the State-imposed deadline of March 1, 2016 relating to local medical marijuana cultivation.¹ The attached ordinance is an emergency ordinance that takes effect immediately upon adoption. It requires 8 votes for adoption.

¹ Given the short deadlines imposed by the State, some cities are adopting ordinances through their emergency authority. Palo Alto’s emergency authority is codified in PAMC Section 2.04.270(d) and the attached ordinance contains the necessary health and safety findings.

Resource Impact

The staff does not anticipate a resource impact associated with this Ordinance.

Environmental Review

This proposed ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA") Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this proposed ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment in that this proposed ordinance simply codifies an existing prohibition.

ATTACHMENTS:

- Attachment A: Emergency Ordinance adding Chapter 9.16 to Title 9 of the Palo Alto Municipal Code to Prohibit Cultivation and Delivery of Medical Marijuana (PDF)
- Attachment B: Uncodified Urgency Ordinance No. 4422 Prohibiting the Establishment and Operation of Medical Marijuana Delivery in the City dated June 9, 1997 (PDF)

Department Head: Molly Stump, City Attorney

NOT YET APPROVED

ORDINANCE NO. _____

Emergency Ordinance of the Council of the City of Palo Alto Adding Chapter 9.16 (Medical Marijuana Cultivation and Delivery) to Title 9 (Public Peace, Morals and Safety) of the Palo Alto Municipal Code to Prohibit Medical Marijuana Cultivation and Delivery in Palo Alto Pursuant to California Assembly Bills 243 and 266 and Senate Bill 643

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. In 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States.

B. In 1972, California added Chapter 6 to the state Uniform Controlled Substances Act, commencing at Health and Safety Code section 11350, which established the state's prohibition, penalties and punishments for the possession, cultivation, transportation and distribution of marijuana.

C. In 1996, the voters of the State of California approved Proposition 215 (entitled the "Compassionate Use Act of 1996" (CUA) and codified as California Health and Safety Code Section 11362.5 et seq.).

D. California courts have held that the CUA created a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.

E. On June 9, 1997, the Palo Alto City Council adopted uncodified urgency Ordinance No. 4422 declaring the establishment and operation of medical marijuana dispensaries to be a prohibited use under the City's zoning ordinance.

F. On January 1, 2004, the state Legislature enacted the "Medical Marijuana Program" (MMP), codified as California Health and Safety Code sections 11362.7 to 11362.83, to clarify the scope of the CUA, establish a voluntary program for identification cards issued by counties for qualified patients and primary caregivers, and provide criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana, including the collective or cooperative cultivation of medical marijuana.

G. The California Supreme Court ruled unanimously in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, that the CUA and the

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MMP do not preempt local ordinances that completely and permanently ban medical marijuana dispensaries, collectives and cooperatives.

H. In *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Third District Court of Appeal of California held, based on *Inland Empire*, that there was no right to cultivate medical marijuana and that cities could implement and enforce a complete ban, including a ban on personal cultivation.

I. On October 9, 2015, Governor Brown signed Assembly Bills 243 and 266 and Senate Bill 643 (collectively known as the Medical Marijuana Regulation and Safety Act (MMRSA)), which taken together create a broad state regulatory and licensing system governing the cultivation, testing and distribution of medical marijuana, the manufacturing of marijuana products, and physician recommendations for medical marijuana, and provide immunity to marijuana businesses operating with both a state license and a local permit.

J. While the MMRSA expressly preserves local control over medical marijuana facilities and land uses, including the authority to prohibit all medical marijuana businesses and cultivation completely, newly-added Health & Safety Code section 11362.777(c)(4) provides that where a local jurisdiction does not have a land use regulation or ordinance regulating or prohibiting marijuana cultivation, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program under that section, then commencing March 1, 2016, the state Department of Food and Agriculture (DFA) will become the sole licensing authority for marijuana cultivation in that jurisdiction.

K. Newly-added Health & Safety Code section 11362.777(b)(3) provides that the DFA may not issue a State license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning.

L. The MMRSA requires a city that wishes to prohibit medical marijuana delivery activity, as defined in Business and Professions Code section 19000.5(m), from operating within the city to enact an ordinance expressly prohibiting such delivery activity.

M. Medical marijuana cultivation and medical marijuana delivery are not listed in the City's zoning code as either permitted or conditionally-permitted land uses and are, therefore, prohibited under the principles of permissive zoning provisions. (*City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 431-433). Accordingly, under the MMRSA, the DFA may not issue a State license to cultivate medical marijuana or for medical marijuana delivery within the City of Palo Alto because medical marijuana cultivation and medical marijuana delivery are prohibited in the City under principles of permissive zoning.

N. The City Council has determined that express Municipal Code provisions prohibiting medical marijuana cultivation and medical marijuana delivery will benefit the public by providing clear guidelines regarding the scope of prohibited conduct and minimize the potential for confusion regarding the City's policies.

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O. Many California communities have experienced adverse impacts and negative secondary effects from medical marijuana establishments and cultivation sites, including hazardous construction, unsafe electrical wiring, noxious odors and fumes affecting neighboring properties and businesses, increased crime in and around such land uses, and the diversion of medical marijuana to minors.

P. There is significant evidence that medical marijuana delivery services are also targets of violent crime and pose a danger to the public.

Q. In order to protect the public health, safety, and welfare, the City Council desires to add Palo Alto Municipal Code Chapter 9.16 to prohibit, in express terms, medical marijuana cultivation and delivery within the City.

R. The State regulation and licensing as contemplated in Assembly Bills 243 and 266 and Senate Bill 643 have not yet taken effect nor been implemented, and the Council desires to preserve local control over medical marijuana cultivation and delivery within the City.

S. This Ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment in that this Ordinance simply clarifies existing local regulations.

SECTION 2. Chapter 9.16 (Medical Marijuana Cultivation and Delivery) is hereby added to Title 9 (Public Peace, Morals and Safety) of the Palo Alto Municipal Code to read as follows:

Chapter 9.16

MEDICAL MARIJUANA CULTIVATION AND DELIVERY

9.16.010 Definitions.

9.16.020 Prohibitions.

9.16.030 Enforcement.

9.16.010 Definitions.

(a) "Marijuana" means all parts of the plant Cannabis, whether growing or not; 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 includes marijuana infused in foodstuff, and concentrated cannabis and the separated resin, whether crude or petrified, obtained from marijuana. 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

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compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germinations.

(b) "Medical marijuana cultivation" shall have the same meaning as "cultivation" set forth in California Business and Professions Code Section 19300.5(l) as that section may be amended from time to time.

(c) "Medical marijuana delivery" shall have the same meaning as "delivery" set forth in California Business and Professions Code Section 19300.5(m) as that section may be amended from time to time.

9.16.020 Prohibitions.

(a) The following are prohibited:

- (1) Medical marijuana cultivation in all zones in the City of Palo Alto.
- (2) Medical marijuana delivery in all zones in the City of Palo Alto.

9.16.030 Enforcement.

The City may enforce this section in any manner permitted by law. The violation of this Chapter shall be and is hereby declared to be a public nuisance and shall, at the discretion of the City, create a cause of action for injunctive relief.

SECTION 3. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be held invalid.

SECTION 4. The City Council finds and determines that this Ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA") because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment in that this Ordinance simply clarifies existing local regulations.

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SECTION 5. The City Council finds and declares that, for the reasons provided in Section 1, this Ordinance is necessary as an emergency measure for preserving the public peace, health, or safety. Pursuant to Palo Alto Municipal Code section 2.04.270(d), this Ordinance shall take full force and effect immediately upon adoption by a vote of four-fifths of the council members present.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Principal Attorney

City Manager

City of Palo Alto
Office of the City Clerk

ORDINANCE NO. 4422
ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO
DECLARING THE ESTABLISHMENT AND OPERATION OF
MEDICAL MARIJUANA DISPENSARIES TO BE A PROHIBITED
USE UNDER THE ZONING ORDINANCE, AND DECLARING THE
URGENCY THEREOF, TO TAKE EFFECT IMMEDIATELY

The City Council of the City of Palo Alto does ordain as follows:

SECTION 1. Findings. The Council finds and declares:

A. In November 1996 the voters of the State of California approved an initiative measure known as Proposition 215, which added Code Section 11362.5 to the California Health and Safety Code. Proposition 215 created a defense to the criminal laws forbidding possession and cultivation of marijuana, for persons possessing or cultivating the drug for personal medical purposes upon the written or oral recommendation or approval of a physician. The defense also extends to the individual's primary caregiver as defined by law.

B. Since enactment of Proposition 215, persons throughout the State have expressed a desire to establish locations where marijuana can be dispensed to those persons who qualify for its use under state law. Because possession and cultivation of marijuana was illegal until enactment of Proposition 215, cities and counties had not addressed in their zoning and other regulations the requirements for establishment and operation of facilities at which medical marijuana would be dispensed. Some cities and counties have responded to Proposition 215 by enacting ordinances which establish new zoning and police regulations governing medical marijuana dispensaries, or impose a limited-term moratorium on the opening of such facilities, to allow time for study and development of appropriate regulations.

C. The District Attorney's Office of Santa Clara County has announced its intent to interpret Proposition 215 in a manner which takes into account the humanitarian purposes of the Proposition, allowing for some reasonable production and distribution for medicinal purposes only. The nature and extent of cultivation and distribution which may lawfully be undertaken by private parties other than the medical marijuana users themselves is thus an open question. Special zoning and perhaps other regulations would therefore be necessary in order to adequately control such uses in Palo Alto.

D. The State Legislature is currently considering bills which would regulate the distribution of medical marijuana. Any city regulations of such activities may be required to be consistent with such state laws, once enacted.

8. It is necessary for the preservation of the public peace, health and safety to enact as an urgency measure an ordinance, declaratory of existing law, prohibiting the establishment and operation of medical marijuana dispensaries. The reasons for the urgency are as follows:

1. The City has in recent weeks received inquiries about establishment of a medical marijuana dispensary in the City.

2. Such inquiries should be taken seriously, inasmuch as nearby communities have also received such requests and experienced high interest by persons wishing to establish such facilities. The City of San Jose, for example, has recently obtained a court order requiring closure of an illegal medical marijuana dispensary, and is processing permit requests for two other facilities for which applications were filed under a recently-enacted ordinance regulating medical marijuana dispensaries.

3. While the City's zoning ordinance (Title 18, Palo Alto Municipal Code) allows various kinds of medical and related uses as permitted or conditional uses in specified zoning districts, it does not provide for the medicinal distribution of marijuana. Because cultivation and possession of marijuana in California was illegal until passage of Proposition 215, facilities dispensing medical marijuana are not an enumerated use under the zoning ordinance.

4. Experience in other communities suggests that a number of regulatory issues should be carefully considered prior to allowing establishment of medical marijuana dispensaries in order to prevent crime and ensure compatibility with other uses, including residential uses and schools. These issues include security requirements, appropriate zoning designations and development standards, and monitoring and reporting requirements. Study of these issues and development of recommendations will require prioritization with other projects currently being undertaken by the Police Department and the Department of Planning and Community Environment.

5. Because dispensation of medical marijuana is not an activity currently addressed in the Municipal Code, the City can expect to experience enforcement problems if persons attempt to dispense medical marijuana in Palo Alto, in the absence of regulations specifically governing such uses. In light of the expressed interest in establishing a medical marijuana dispensary in Palo Alto, and the time required to study and develop appropriate regulations, an urgency ordinance is necessary to provide a clear statement of existing law and to protect the public peace, health and safety.

SECTION 2. Definitions. For the purposes of this Ordinance, the following definition shall apply:

City of Palo Alto

Office of the City Clerk

"Medical Marijuana Dispensary" is a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 (Proposition 219). This does not include the cultivation or possession of marijuana, by a single patient or caregiver, for medical use in accordance with Health and Safety Code Section 11362.5.

SECTION 3. Establishment and Operation Prohibited.

(a) No person shall operate or allow or suffer the operation of a Medical Marijuana Dispensary within the City of Palo Alto.

(b) No permit or certificate of use and occupancy shall be issued for a Medical Marijuana Dispensary.

(c) This section is declaratory of existing law.

SECTION 4. Effective Date. This ordinance shall be effective immediately upon adoption.

SECTION 5. The Council finds that this project is exempt from the provisions of the Environmental Quality Act ("CEQA") because it can be seen with certainty that there is no possibility that this project, which consists of a declaration of existing law, will have a significant effect on the environment.

This ordinance was passed at a regular meeting of the Council of the City of Palo Alto on Monday, June 9, 1997, and was passed by a four-fifths vote of all Council members present at the meeting as follows:

INTRODUCED AND PASSED: June 9, 1997

AYES: EAKINS, FAZZINO, HUBER, MCCOWN, ROSENBAUM, SCHNEIDER, WHEELER

NOES:

ABSTENTIONS:

ABSENT: ANDERSEN, KNISS

ATTEST:

Kathi Hamilton
City Clerk

APPROVED AS TO FORM:

Alan Carr
Senior Assistant City Attorney

APPROVED:

John H. Huber
Mayor

Alan Fleming
City Manager

Kenneth R. Schreiber
Director of Planning and
Community Environment

City of Palo Alto

Office of the City Clerk

THIS DOCUMENT IS CERTIFIED TO BE AN
ORDINANCE DULY PASSED BY THE COUNCIL
OF THE CITY OF PALO ALTO AND
HEREAFTER POSTED IN THE COUNCIL
CHAMBERS ON 6/27/97 (WITHIN 10
DAYS OF ITS PASSAGE)

"I certify (or declare) under penalty
of perjury that the foregoing is true
and correct."

6/27/97 Palo Alto, CA [Signature]
Date & Place Signature