



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO PLANNING COMMISSION

SUBJECT

Adopt an urgency ordinance amending Sunnyvale Municipal Code Chapter 9.86 and Title 19 to expressly prohibit medical marijuana cultivation, commercial activity, distribution, and delivery; exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3).

BACKGROUND

In October 2015, Governor Brown signed into law three bills collectively referred to as the Medical Marijuana Regulation and Safety Act ("MMRSA"); AB 243, AB 266, and SB 643. The MMRSA establishes licensing requirements for cultivation, distribution and transportation of medical marijuana, along with safety and testing requirements for marijuana and marijuana products, and regulations for physicians who recommend or prescribe the drug. The MMRSA expressly preserves local rights to regulate or ban medical marijuana through the exercise of local land use powers, but requires that local agencies wishing to regulate cultivation and delivery of medical marijuana have local ordinances in place. Specifically, the MMRSA provides that cities must have land use regulations regulating or prohibiting cultivation in effect before March 1, 2016, or the state will be the sole regulatory authority for cultivation in the jurisdiction. The MMRSA further provides that cities wishing to ban delivery of medical marijuana must expressly prohibit deliveries by ordinance, although it does not contain a deadline for when a prohibition on delivery of medical marijuana must be in effect.

Municipal Code Chapter 9.86 has explicitly prohibited fixed and mobile medical marijuana dispensaries (called "medical marijuana distribution facilities") since 2010, and those distribution facilities are also listed as non-permitted uses in the City's zoning tables (Title 19). Although the code does not explicitly address other commercial medical marijuana activities associated with medical marijuana such as cultivation, processing, and delivery, the City has interpreted its existing permissive zoning scheme, which prohibits uses not articulated in the code, to bar other medical marijuana uses such as commercial cultivation, manufacturing, or delivery.

Maintaining local control over medical marijuana is important for the City. Commercial medical marijuana activities create a number of significant risks to public health and safety, including but not limited to crime and fire hazards. To ensure that the City maintains its existing policies on medical marijuana after the MMRSA becomes effective, staff will be recommending that the City Council adopt an urgency ordinance containing unequivocal regulations prohibiting cultivation, delivery and other commercial medical marijuana activities that will go into effect before the March 1, 2016 deadline in the MMRSA.

In order to maintain consistency between Title 19 (Zoning) and the proposed changes to Chapter 9.86, the Planning Commission is being asked to review and make a recommendation on the

proposed changes to Title 19. The City Council is scheduled to consider the entire ordinance (this item and related amendments to Title 9) on February 9, 2016. The public may comment on the substance of the medical marijuana regulations (Chapter 9.86) at that time.

EXISTING POLICY

General Plan

Chapter 6: Safety and Noise (SN):

Goal SN3 Safe and Secure City - Ensure a safe and secure environment for people and property in the community by providing effective public safety response and prevention and education services.

Chapter 3: Land Use and Transportation (LT):

Goal LT-4 Quality Neighborhoods and Districts - Preserve and enhance the quality character of Sunnyvale's industrial, commercial and residential neighborhoods by promoting land use patterns and related transportation opportunities that are supportive of neighborhood concept.

Policy LT-4.1 Protect the integrity of the City's Neighborhoods; whether residential, industrial or commercial.

ENVIRONMENTAL REVIEW

The proposed revisions to the SMC to expressly prohibit cultivation, delivery, and other commercial medical marijuana deliveries do not require review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed prohibitions will have a significant effect on the environment.

DISCUSSION

An ordinance amending SMC Chapter 9.86 (Medical Marijuana Distribution Facilities) of Title 9 (Public Health, Safety or Welfare) is being proposed to ensure that the City maintains its local authority to regulate medical marijuana activities given the requirements of the MMRSA. There are two main aspects of the proposed ordinance: amendments to Chapter 9.86 and amendments to Title 19 (zoning) to update sections relating to medical marijuana.

The changes to Chapter 9.86 will eliminate the reference only to medical marijuana distribution facilities and be revised to clarify that marijuana cultivation, processing, delivery, distribution, dispensaries, and any other commercial marijuana activities are prohibited in all zoning districts of the City.

However, only the Title 19 amendments are within the Planning Commission's purview. The proposed amendments to Title 19 are to update section 19.62.010 to reflect that medical marijuana activities including cultivation, delivery, and distribution are prohibited uses in all zoning districts in Sunnyvale, consistent with the prohibitions in Chapter 9.86 and eliminate the references to medical marijuana dispensaries in zoning tables 19.24.030 (Uses in office, public facilities, and civic center zones), 19.28.080 (Uses in Residential DSP Blocks), 19.28/070 (Uses in mixed use, commercial, and office DSP blocks), 19.18.030 (Uses in Residential Zoning Districts), 19.20.030 (Uses in Commercial Zoning Districts), 19.29.050 (Uses in MPSP Subdistricts), and 19.22.030 (Uses in Industrial Districts). With the citywide prohibitions created through Chapter 9.86 and section 19.62.010, continuing to reference medical marijuana dispensaries as nonpermitted uses in the zoning tables is redundant and unnecessary. .

FISCAL IMPACT

The proposed revision to Title 19 will ensure that the City's existing interpretation prohibiting medical marijuana activities is explicit and will have no financial impact to the City.

PUBLIC CONTACT

Public contact was made through posting of the Planning Commission agenda on the City's official-notice bulletin board, on the City's website, and the availability of the agenda and report in the Office of the City Clerk.

ALTERNATIVES

1. Recommend that the City Council adopt an ordinance amending Title 19 (Zoning), Section 19.62.010 and Tables 19.24.030, 19.28.080, 19.18.030, 19.20.030, 19.29.050, and 19.22.030, of the Sunnyvale Municipal Code relating to an express prohibition on medical marijuana cultivation, commercial activity, distribution, delivery and other activities and find that the project is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3).
2. Recommend an ordinance with modifications to the staff recommendation.
3. Recommend that no changes be made to current zoning regulations.

RECOMMENDATION

Alternative 1: Recommend that the City Council adopt an ordinance amending Title 19 (Zoning), Section 19.62.010 and Tables 19.24.030, 19.28.080, 19.18.030, 19.20.030, 19.29.050, and 19.22.030, of the Sunnyvale Municipal Code relating to an express prohibition on medical marijuana cultivation, commercial activity, distribution, delivery and other activities and find that the project is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3).

Prepared by: Andrew Miner, Acting Planning Officer

Reviewed by: Trudi Ryan, Director, Community Development

Reviewed by: Kent Steffens, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Proposed Amendments to Title 19 (Zoning) section 19.62.010 and tables 19.24.030, 19.28.080, 19.18.030, 19.20.030, 19.29.050, and 19.22.030.