



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Introduce an 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 Sections 15060(c)(2) and 15061(b)(3)

BACKGROUND

In 1996, California voters approved Proposition 215, the “Compassionate Use Act of 1996” (“CUA”) to allow seriously ill Californians to legally possess, use and cultivate marijuana for medical use under state law. In 2003, the Legislature adopted SB 420, the “Medical Marijuana Program (“MMP”) to allow qualified patients and their primary caregivers to cultivate medical marijuana without being subject to criminal prosecution.

Neither the CUA nor the MMP require local governments to allow or otherwise authorize facilities that cultivate marijuana within their jurisdictions. Under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana remain unlawful and are subject to federal prosecution without regard to medical needs.

In October 2015, Governor Brown signed into law three bills (AB 243, AB 266, and SB 643) collectively referred to as the Medical Marijuana Regulation and Safety Act (“MMRSA”). 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.

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: Tables 19.24.030, 19.28.080, 19.18.030, 19.20.030, 19.29.050, and 19.22.030). 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 zoning scheme, which prohibits uses not articulated in the code, to bar other medical marijuana uses such as cultivation, manufacturing, or delivery. Amending the City’s ordinance to expressly address these issues will provide clarity and simplicity in addressing questions about medical marijuana that arise, particularly when the MMRSA is fully implemented.

Maintaining local control over medical marijuana is important for the City. Medical marijuana activities may be incompatible with existing land uses, and create a number of significant risks to public health and safety, including but not limited to crime and fire hazards. As outlined in the findings section of

the proposed ordinance, the State Supreme Court has upheld the right of local public agencies to regulate and prohibit medical marijuana operations, and the MMRSA expressly preserves local rights to regulate or ban medical marijuana cultivation and similar activities through the exercise of local land use powers.

Although there are many possible approaches to regulation of medical marijuana, cities throughout the state that are comparable to Sunnyvale have or are in the process of taking similar action to regulate medical marijuana activities in light of the MMRSA. Many are approving explicit prohibitions similar to those recommended in this report. Within Santa Clara County, the majority of cities regulates and does not allow medical marijuana activities including dispensaries, cultivation, and delivery. The exceptions include the City of San Jose, which allows medical marijuana dispensaries, cultivation and delivery and the County of Santa Clara that allow personal cultivation. A summary of select city actions and a review of marijuana regulations for cities located within Santa Clara County are attached to this report (Attachment 3), and a non-comprehensive summary compiled by the League of California Cities of recent regulation in cities in other areas of the state is included as Attachment 4.

Adoption of an ordinance containing unequivocal regulations prohibiting cultivation, delivery and other commercial medical marijuana activities will ensure that the City maintains its existing policies regarding medical marijuana after the MMRSA becomes effective.

The Planning Commission considered the proposed changes to the Title 19 zoning tables (on January 11, 2016 and voted 6-0-1 (one commissioner abstaining) to recommend adoption as captured in the minutes (Attachment 2).

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 adoption of this ordinance 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 15060(c)(2) as the ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment and section 15061(b)(3)) as the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

DISCUSSION

A. Sunnyvale's Existing Regulations for Medical Marijuana Dispensaries

Chapter 9.86 of the Sunnyvale Municipal Code ("SMC") and related zoning tables in Title 19 currently explicitly prohibit medical marijuana distribution facilities in all zones of the City. A medical marijuana distribution facility is defined as "any facility or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides marijuana to two or more [persons]... or any facility where qualified patients, persons with identification cards, and primary caregivers meet or congregate to . . . cultivate or distribute medical marijuana for medical purposes."(SMC Section 9.86.010).

The code does not explicitly address any other medical marijuana issues. However, Sunnyvale's zoning ordinance is a permissive zoning scheme, in which permitted and conditionally permitted land uses in the City are specifically articulated and all other uses not identified are presumptively prohibited (SMC Section 19.98.220). Under this structure, medical marijuana cultivation and other activities have been and continue to be prohibited in the City. However, as the licensing process for medical marijuana cultivation and delivery under the MMRSA begins, ensuring that the City has clear and express provisions in the SMC to prohibit cultivation, delivery and all medical marijuana activities in the City will help protect public health and safety and avoid any question about the City's authority or scope of regulation.

B. Proposed Ban on Cultivation, Delivery and Other Medical Marijuana Activities.

The proposed revisions to the SMC will explicitly ban cultivation, delivery, and all other commercial medical marijuana activities in the City of Sunnyvale in order to preserve and protect the public health, safety and welfare. The proposed ordinance amendments to SMC Chapter 9.86 revise the existing prohibition on medical marijuana distribution facilities to include and make consistent with the MMRSA relevant definitions for various other commercial marijuana-related activities, and comprehensively and expressly prohibit all marijuana-related uses. The minor revisions to the Title 19 zoning tables make the zoning code consistent with the proposed changes to SMC Chapter 9.86.

Medical marijuana creates many risks that the City may regulate under its police powers, including but not limited to:

- (1) Increased risks to public safety: Marijuana is a valuable plant and, where it is stored, cultivated, or used, can create an increased risk of break-ins, robbery, and theft, with potential for related violence and injury.
- (2) Land use compatibility and possible nuisance conditions on private property: When marijuana is cultivated, the mature plants emit a strong, distinctive "skunk-like" odor for a period of two months or more. The odor is offensive to many, and can be detected far beyond property boundaries, especially if grown outside. The odor can not only interfere with the use and enjoyment of neighboring properties, but can also identify the property as a location of marijuana and create a target for break-ins and other crime.
- (3) Increased fire hazards: In locations where marijuana is cultivated or processed indoors, those activities can create fire hazards from generators, grow lamps, electrical or other equipment, and frequently, overloaded electrical systems from the use of such equipment. Indoor cultivation of marijuana is often unattended and, when combined with the common use of the electrical equipment described above, has the potential to cause damage to people and property because of the increased risk of fire. In 2015 alone, numerous fire incidents were reported throughout the state as a

result of medical marijuana cultivation or processing, including most recently, a fire and explosion on December 7, 2015, at a home in Petaluma, suspected to be caused from the production of marijuana or “hash” oil.

(4) Criminal activity associated with marijuana deliveries: Mobile marijuana dispensaries and marijuana deliveries also increase crime risks. These operations are targets for armed robberies, often causing drivers to choose to carry weapons as protection, further increasing the risk for violent crime. There have been numerous reported incidents of armed robbery cases involving deliveries or dispensaries over the last two years in cities throughout the state.

Particularly in the densely populated residential and commercial areas in Sunnyvale, these dangers present serious public health and safety risks that make marijuana-related activities particularly inappropriate within the City. The City has recently received at least one inquiry regarding commercial manufacture and distribution of medical marijuana products in Sunnyvale, and anticipates increased inquiries and activity once the MMRSA is fully implemented.

Staff believes that land use compatibility will be preserved and the health and safety risks can only be effectively mitigated by prohibiting cultivation, delivery and other medical marijuana related activities. The comprehensive, express medical marijuana prohibitions in the proposed ordinance will provide clear guidelines on the scope of prohibited activity. The proposed amendments will ensure that the City retains the maximum authority to regulate marijuana activities at the local level, but will not prevent the City from reconsidering the scope of medical marijuana prohibitions in the future if it so chooses.

FISCAL IMPACT

The proposed revision to the municipal code 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 by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website, and similar notice was provided in advance of the Planning Commission meeting on this topic on January 11, 2016, at which the Commission voted 6-0-1 (one abstention) to recommend adoption of the changes to the Title 19 zoning tables. In addition, a summary of the MMRSA and recommendations described in this report were included in the City Manager’s December 21, 2015 blog post.

ALTERNATIVES

1. Adopt an ordinance amending Chapter 9.86 and 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 sections 15060(c)(2) and 15061(b)(3).
2. Adopt a modified ordinance regulating medical marijuana based on other Council priorities or directives.
3. Do not adopt an ordinance related to medical marijuana.

RECOMMENDATION

Alternative 1: Introduce an ordinance amending Chapter 9.86 and 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 adoption of the ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3).

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Reviewed by: Trudi Ryan, Director of Community Development
Reviewed by: Walter C. Rossmann, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Ordinance amending Chapter 9.86 and 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
2. Planning Commission Minutes, January 11, 2016
3. Medical marijuana regulation review- Santa Clara County Cities
4. Non-comprehensive summary of select recent local medical marijuana ordinance changes from League of CA Cities

The MMRSA initially provided that cities must have land use regulations regulating or prohibiting cultivation in effect before March 1, 2016, or the state would be the sole regulatory authority for cultivation in the jurisdiction. Clean-up legislation to eliminate the March 1 deadline was proposed in early January 2016 and adopted in early February. The law still requires cities wishing to regulate in this area to have local ordinances in place; the removal of the deadline simply gives cities more time to consider regulation.