

**CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
MEMORANDUM**

TO: Planning Commission

FROM: Marisa Lundstedt, Director of Community Development

THROUGH: Laurie B Jester, Planning Manager

BY: Jason Masters, Assistant Planner

DATE: December 9, 2015

SUBJECT: Consideration of Amendments to the Municipal Code and Local Coastal Program (LCP) prohibiting cultivation of medical marijuana and commercial medical marijuana activity in all zones in the City.

RECOMMENDATION:

Staff recommends that the Planning Commission **CONDUCT** the Public Hearing and **ADOPT** the attached draft Resolution (Attachment A) recommending to the City Council approval of the proposed Municipal Code and Local Coastal Program (LCP) Amendments.

BACKGROUND

In 1996, the voters of the State of California approved Proposition 215 entitled "The Compassionate Use Act of 1996" ("CUA") to enable seriously ill Californians, under the care of a physician, to legally possess, use, and cultivate marijuana for medical use under state law. In 2003, the California Legislature adopted SB 420 entitled the Medical Marijuana Program ("MMP") which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code. Neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate medical marijuana within its jurisdiction. Under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need.

Governor Brown recently signed into law the MMRSA (Medical Marijuana Regulatory and Safety Act), which is comprised of three related bills: AB 243, AB 266, and SB 643. The MMRSA establishes licensing requirements for the cultivation, distribution, and transportation of medical marijuana, safety and testing standards for medical marijuana and medical marijuana products, and regulates the physicians who recommend or prescribe medical marijuana to patients. The MMRSA contains statutory provisions that allow local governments to maintain local control over medical marijuana and does not require a city to allow medical marijuana activity within its borders.

DISCUSSION

Cultivation of Medical Marijuana

The MMRSA provides that the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applications effective March 1, 2016, if a city does not have a land use ordinance in place regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under the principles of permissive zoning, or if a city chooses not to administer a conditional use permit program.

Manhattan Beach Municipal Code Section 10.60.160 (Attachment B) currently prohibits medical marijuana dispensaries in all zones of the City. A medical marijuana dispensary is defined as "any facility or location where medical marijuana is cultivated or made available to and/or distributed by any of the following: a qualified patient, a person with an identification card, or a primary caregiver." See Section 10.60.160(A)(3). The attached ordinance prohibits all cultivation of medical marijuana in the City, including cultivation for personal medical use by a qualified patient, a person with an identification card, or a primary caregiver.

The justification for banning medical marijuana cultivation pursuant to the City's police power includes, without limitation: 1) the increased risk to public safety, based on the value of marijuana plants and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; 2) the strong "skunk like" malodorous fumes emitted from mature plants that can interfere with the use and enjoyment of neighboring properties by their occupants; and 3) the risk of electrical fire hazards caused by medical marijuana cultivation.

Criminal activity is often associated with medical marijuana activity. As marijuana plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging theft by alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery of the plants and creating the potential for violent acts related to such criminal activity.

Furthermore, indoor cultivation of marijuana, often unattended, has potential to cause harm to persons and property in that the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a distinct risk of harm to the building and its occupants. Buildings where marijuana is cultivated are often illegally wired and have overloaded electrical systems that result in fires. In 2015 alone, there were a number of reported incidents of indoor marijuana cultivation sites causing fires. On February 9, 2015, there was a fire in a residence in Sacramento that was caused by the indoor cultivation of marijuana. On February 19, 2015, there was an electrical fire in Arcadia caused by an indoor marijuana cultivation operation. On April 24, 2015 there was an explosion in a Silver Lake home that leveled the house and destroyed several cars that was caused by an indoor marijuana cultivation operation. In May 2015, a fire erupted in a commercial building in Sun Valley that was caused by indoor marijuana grow house. In that same month, there was a fire in an Elk Grove home caused by an overheated illegal electrical power connection used to power an indoor marijuana grow house. In

June 2015, there was a fire in a Sacramento residence caused by an indoor marijuana grow house. In July 2015, there was a fire in a Baldwin Park home caused by grow house. In September 2015, there was a fire in the garage of a Sun Valley residences that was caused by an indoor marijuana grow house. On October 23, 2015, there was a fire in a Rialto home that was caused by an indoor marijuana grow, started by an electrical panel that burst.

Commercial Medical Marijuana Activity

Any commercial medical marijuana activity can adversely affect the health, safety, and well-being of City residents, visitors and workers. In order to more fully protect the public health, safety and welfare, prohibiting commercial medical marijuana activity is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, noxious smells and indoor electrical fire hazards that may result from such activities. Moreover, the manufacturing, processing, storing, laboratory testing, and labeling of medical marijuana will support medical marijuana dispensaries which impact the public health, safety and welfare.

The City is committed to the efficient and effective use of limited regulatory, investigatory, and prosecutorial resources, and the cultivation of medical marijuana and the establishment of commercial medical marijuana sites in the City would require the City to use its limited resources to regulate and prevent potentially negative outcomes commercial medical marijuana activity.

ENVIRONMENTAL REVIEW

Pursuant to the California Environmental Quality Act (“CEQA”), the Community Development Department has determined that the proposed prohibitions on the cultivation of medical marijuana and on commercial medical marijuana activity are exempt from the requirements of CEQA and the City’s CEQA Guidelines pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed prohibition on marijuana cultivation and commercial medical marijuana activity within the City’s jurisdiction will have a significant effect on the environment. The ordinances impose greater limitations on uses and activities allowed in the City, and will thereby serve to eliminate potential significant adverse environmental impacts. The ordinances will not have an impact on the physical environment, as they will not result in any changes to the environment.

PUBLIC INPUT

A ¼ page display ad public notice for the proposed MBMC and LCP Code Amendments was published in the Beach Reporter newspaper on November 26, 2015, in compliance with state and local law and mailed to the California Coastal Commission. The draft MBMC and LCP Amendments, including the staff report and attachments, have been made available at the Manhattan Beach County Library, the Police Department and at the Community Development Department. The staff report, draft Resolution and attachments are also posted on the City’s website.

CONCLUSION

Staff recommends that the Planning Commission conduct the public hearing, accept testimony, discuss the Amendments, and adopt the attached draft Resolution recommending approval of the Municipal and Local Coastal Program Code Amendments to the City Council.

Attachments:

- A. Draft Resolution No. PC 15-XX
- B. Current MBMC Section 10.60.160

cc. California Coastal Commission

RESOLUTION NO. 15-_____

RESOLUTION OF THE MANHATTAN BEACH PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL AMEND MUNICIPAL CODE SECTION 10.60.160 (MEDICAL MARIJUANA DISPENSARIES) AND LOCAL COASTAL PROGRAM SECTION A.60.160 TO EXPRESSLY PROHIBIT CULTIVATION OF MEDICAL MARIJUANA, INCLUDING CULTIVATION BY QUALIFIED PATIENTS, PRIMARY CAREGIVERS, AND PERSONS WITH IDENTIFICATION CARDS, AND PROHIBITING COMMERCIAL MEDICAL MARIJUANA ACTIVITY IN ALL ZONES IN THE CITY

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Planning Commission hereby makes the following findings:

A. On December 9, 2015 the Planning Commission conducted a public hearing, and reviewed proposed text amendments to Chapter 10.60 of the Municipal Code, part of the City's Zoning Ordinance, and Chapter A.60 of the Local Coastal Program.

B. The Planning Commission public hearing for December 9, 2015 included a ¼ page display ad public notice published in *The Beach Recorder*, a newspaper of general circulation in Manhattan Beach.

C. The proposed text amendments have been prepared in accordance with the provisions of Title 7, Division 4, Section 65853, *et seq.*, of the State of California Government Code.

D. The proposed text amendments are exempt from the requirements of the California Environmental Quality Act, pursuant to the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and that 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 pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations.

E. The proposed text amendments are consistent with the following General Plan Goals and Policies:

Land Use Element Goal LU-5: Protect residential neighborhoods from the intrusion of inappropriate and incompatible uses.

Community Safety Element Goal CS-1: Minimize the risks to public health, safety, and welfare resulting from natural and human-caused hazards.

F. The proposed text amendments are consistent with the following Local Coastal Program Policy:

**ATTACHMENT A
PC MTG 12-9-15**

II. Coastal Locating and Planning New Development Policy- Policy II.1: Control Development within the Manhattan Beach coastal zone.

Section 2. The Planning Commission recommends that the City Council amend Section 10.60.160 (Medical Marijuana Dispensaries) of Chapter 10.60 (Site Regulations-All Districts) of Part IV (Site Regulations) of Title 10 (Planning and Zoning) of the Manhattan Beach Municipal Code and Section A.60.160 160 (Medical Marijuana Dispensaries) of Chapter A.60 (Site Regulations-All Districts) of Part IV (Site Regulations) of the Local Coastal Program (Phase III Implementation Program) to substantially read as follows:

“A. Definitions.

1. “Commercial medical marijuana activity” shall have the same meaning as “commercial cannabis activity” that is set forth in Business and Professions Code Section 19300.5(k), as the same may be amended from time to time, and shall include the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical marijuana or a medical marijuana product.

2. “Cultivation” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(l), as the same may be amended from time to time, and shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

3. “Dispensary” shall mean any business, facility, location, office, store or establishment where medical marijuana, medical marijuana products, or devices for the use of medical marijuana or medical marijuana products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical marijuana and medical marijuana products as part of a retail sale. “Dispensary shall also mean any facility, residence, location, or site where medical marijuana is cultivated or made available to and/or distributed by any of the following: a qualified patient, a person with an identification card, or a primary caregiver. Each of these terms is defined herein and shall be interpreted in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 *et seq.*, as such sections may be amended from time to time.

4. “Identification card” is a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

5. “Marijuana” shall have the same meaning as “cannabis” as set forth in Business and Professions Code section 19300.5(f), as the same may be amended from time to time, and shall include all parts of the plant cannabis sativa linnaeus, cannabis indica, or cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” also means the separated resin, whether crude or purified, obtained from marijuana. “Marijuana” also means marijuana as defined by Section 11018 of the Health and Safety Code. For the purpose of this section, “marijuana” 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 seed of the plant which is incapable of germination. For the purpose of this section, “marijuana” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

6. “Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the Medical Marijuana Regulation and Safety Act as contained, codified, and enacted as Chapter 3.5 of the Business and Professions Code.

7. “Medical marijuana product” shall have the same meaning as “cannabis product” or “medical cannabis product” as set forth in Business and Professions Code section 19300.5(ag), as the same may be amended from time to time, and shall include marijuana, including, concentrates and extractions, intended to be sold for use by medical marijuana patients pursuant to the Compassionate Use Act of 1996 (Proposition 215).

8. “Primary caregiver” is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

9. “Qualified patient” is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

B. Prohibition.

1. Medical marijuana dispensaries shall be prohibited uses in all zones in the City.

2. Commercial medical marijuana activity of any type or nature is expressly prohibited in all zones and all specific plan areas in the City Manhattan Beach. No person shall establish, operate, maintain, conduct or allow commercial medical marijuana activity anywhere within the City. This section is meant to prohibit all activities for which a State license is required pursuant to the MMRSA. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MMRSA.

3. To the extent that it is not already prohibited by subsections 1 and 2 above, cultivation of marijuana for commercial or non-commercial purposes, including cultivation by a qualified patient, primary caregiver, or person with identification card is expressly prohibited in all zones and all specific plan areas in the City of Manhattan Beach. No person, including a qualified patient, primary caregiver or person with identification card, shall cultivate any amount of marijuana in the City, even for medical purposes.

C. Civil Penalties.

In addition to any other enforcement permitted by Chapter 1.04 of the Municipal Code, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Section. In any civil action brought pursuant to this section, a

court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party.”

Section 3. The Secretary to the Planning Commission shall certify to the adoption of this Resolution.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of December 9, 2015 and that said Resolution was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marisa Lundstedt
Secretary to the Planning Commission

Rosemary Lackow
Recording Secretary

10.60.160 Medical marijuana dispensaries.

A.

Except where the context otherwise requires, the definitions given in this subsection govern the construction of this section:

1.

"Identification card" is a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

2.

"Marijuana" means all parts of the Cannabis Sativa plant, whether growing or not, including but not limited to: the leaves; the flowers; the stems; the seeds thereof; the resin extracted from any part of the plant; every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. The term shall include marijuana infused in foodstuffs. The term shall not include fiber produced from the stalks, oil or cake made from the seeds of the plant or any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks (except resin extracted therefrom).

3.

"Medical marijuana dispensary" is any facility or location where medical marijuana is cultivated or made available to and/or distributed by any of the following: a qualified patient, a person with an identification card, or a primary caregiver. Each of these terms is defined herein and shall be interpreted in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq. as such sections may be amended from time to time.

4.

"Primary caregiver" is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

5.

"Qualified patient" is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

B.

Medical marijuana dispensaries shall be a prohibited use in all zones of the City.

(§ 2, Ord. 2114, eff. June 20, 2008)

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