

# SUPPLEMENTAL STAFF REPORT

<b>AGENDA ITEM NO.:</b> C.2.	<b>CASE NO.:</b> Amendment No. A-015-2015
<b>HEARING DATE:</b> December 3, 2015	<b>APPLICANT:</b> City of Garden Grove

The purpose of this supplemental report is to provide the Planning Commission with additional information and clarification regarding proposed Code Amendment No. A-015-2015.

## **SUMMARY OF MEDICAL MARIJUANA REGULATION & SAFETY ACT**

The Medical Marijuana Regulation & Safety Act is comprised of three discreet pieces of legislation, each signed by the Governor on October 9, 2015. Assembly Bill (AB) 266 establishes a dual licensing structure requiring state licenses *and* a local license or permit for commercial cannabis businesses, with the State Department of Consumer Affairs heading an overall regulatory structure establishing minimum health and safety and testing standards. Assembly Bill (AB) 243 establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture. Senate Bill (SB) 643 establishes criteria for licensing medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees. Each of these three bills is attached to this report for the Planning Commission's reference and is summarized in more detail below.

### **AB 243**

- Places the Department of Food and Agriculture (DFA) in charge of licensing and regulation of indoor and outdoor cultivation sites. Creates a Medical Cannabis Cultivation Program within the department.
- Mandates the Department of Pesticide Regulation (DPR) to develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
- Mandates the Department of Public Health (DPH) to develop standards for production and labelling of all edible medical cannabis products.
- Assigns joint responsibility to DFA, Department of Fish and Wildlife (DFW), and the State Water Resources Control Board (SWRCB) to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population.
- Specifies that DPR, in consultation with SWRCB, is to develop regulations for application of pesticides in all cultivation.
- Specifies various types of cultivation licenses.
- Directs the multi-agency task force headed by DFW and SWRCB to expand its existing enforcement efforts to a statewide level to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats.

- Prohibits cultivation of medical marijuana without first obtaining both a local license/permit and a state license. A person may not apply for a state license without first receiving a local license/permit or if the proposed cultivation will violate provisions of a local ordinance or regulation or if medical marijuana is prohibited by the local jurisdiction. *However, if a local jurisdiction does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or under the principles of permissive zoning, or chooses not to administer a conditional permit program, then commencing March 1, 2016, the state is the sole licensing authority for medical marijuana cultivation applicants.*

### **AB 266**

- Establishes a statewide regulatory scheme, headed by the Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs (DCA).
- Provides for dual licensing: state will issue licenses, and local governments will issue permits or licenses to operate marijuana businesses, according to local ordinances. State licenses will be issued beginning in January 2018.
- Revocation of a local license or permit will unilaterally terminate the ability of the business to operate in that jurisdiction.
- Expressly protects local licensing practices, zoning ordinances, and local constitutional police power.
- Caps total cultivation for a single licensee at four acres statewide, subject to local ordinances.
- *Requires local jurisdictions that wish to prevent delivery services from operating within their borders to enact an ordinance affirmatively banning this activity.*
- Specifies that DCA will issue the following licenses: Dispensary, Distributor, Transport, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Specifies various sub-categories of licensees (indoor cultivation, outdoor cultivation, etc.)
- Limits cross-licensing to holding a single state license in up to two separate license categories, as specified. Prohibits medical marijuana licensees from also holding licenses to sell alcohol.
- Grandfathers in vertically integrated businesses (i.e. businesses that operate and control their own cultivation, manufacturing, and dispensing operations) if a local ordinance allowed or required such a business model and was enacted on or before July 1, 2015. Also requires such businesses to have operated in compliance with local ordinances, and to have been engaged in all the covered activities on July 1, 2015.
- Requires establishment of uniform health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product.
- Specifies a standard for certification of testing labs, and specified minimum testing requirements. Prohibits testing lab operators from being licensees in any other category, and from holding a financial or ownership interest in any other category of licensed business.



- Includes a labor peace agreement under which unions agree not to engage in strikes, work stoppages, etc. and employers agree to provide unions reasonable access to employees for the purpose of organizing them. Specifies that such an agreement does not mandate a particular method of election.
- Provides for civil penalties for unlicensed activity, and specifies that applicable criminal penalties under existing law will continue to apply.
- Specifies that patients and primary caregivers are exempt from the state licensing requirement, and provides that their information is not to be disclosed and is confidential under the California Public Records Act.
- Phases out the existing model of marijuana cooperatives and collectives one year after DCA announces that state licensing has begun.

### **SB 643**

- Directs the California Medical Board to prioritize investigation of excessive recommendations by physicians.
- Imposes fines (\$5000.00) against physicians for violating prohibition against having a financial interest in a marijuana business.
- Recommendation for cannabis without a prior examination constitutes unprofessional conduct.
- Imposes restrictions on advertising for physician recommendations.
- Places DFA in charge of cultivation regulations and licensing, and requires a track and trace program.
- Codifies dual licensing (state license and local license or permit), and itemizes disqualifying felonies for state licensure.
- Places DPR in charge of pesticide regulation; DPH in charge of production and labelling of edibles.
- Upholds local power to levy fees and taxes (subject to applicable State constitutional and statutory requirements-such as the requirement of Proposition 218 for voter approval of general or special taxes).

### **WHAT IS THE CURRENT CITY POLICY REGARDING MEDICAL MARIJUANA DISPENSARIES?**

It is the current policy of the City of Garden Grove that all medical marijuana dispensaries and cultivation operations are prohibited City-wide.

In 2008, the City Council adopted Ordinance No. 2734 prohibiting medical marijuana dispensaries throughout Garden Grove.

In 2011, the City Council adopted Ordinance Nos. 2797-A and 2798-A establishing an eligibility cut-off date and registration process for potential eligibility of medical marijuana dispensaries for future permits, pending adoption by the City of regulations governing the location and operation of medical marijuana dispensaries. However, the City Council never adopted any regulations allowing and regulating the location and/or operation of medical marijuana dispensaries in the City, and the

City Council voted to suspend the medical marijuana dispensary registration process in January 2012.

The City Council has not subsequently taken further formal action or provided different policy direction regarding the prohibition of medical marijuana dispensaries or cultivation operations. Thus, at the current time, it remains the official policy of the City that marijuana dispensaries and related activities are prohibited in Garden Grove.

### **WHAT IS THE BASIS FOR THE CITY'S CURRENT POLICY?**

At the September 23, 2008 public hearing for Ordinance No. 2734, the City Council was provided with information pertaining to adverse secondary impacts to public health, safety and welfare associated with medical marijuana dispensaries, and the City Council made certain legislative findings in support of the prohibition of medical marijuana dispensaries when it adopted Ordinance No. 2734. Some of the reasons cited by the City Council in support of its adoption of Ordinance No. 2734 included the following:

- Jurisdictions permitting medical marijuana dispensaries have experienced increases in crime in the areas immediately surrounding medical marijuana dispensaries, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need.
- That it is difficult for law enforcement to distinguish between illegal marijuana grows and grows that qualify as medical exemptions, and that some self-designated "medical" marijuana growers may, in fact, be growing marijuana for illegal, "recreational" use.
- That the use, possession, distribution and sale of marijuana is a federal crime.
- That allowing medical marijuana dispensaries and issuing permits or other entitlements providing for the establishment and/or operation of medical marijuana dispensaries results in increased demands for police patrols and responses, which the City's police department is not adequately staffed to handle, and further poses a significant threat to the public health, safety and welfare.

A copy of Ordinance No. 2734 containing the City Council's findings, along with a copy of the September 23, 2008 City Council Staff Report and evidentiary attachments is attached to this supplemental report. For the Planning Commission's reference, Staff has also provided copies of a 2009 white paper on marijuana dispensaries prepared by the California Police Chiefs Association and a 2010 paper on public safety issues related with medical marijuana in Orange County prepared by the Orange County Chiefs of Police and Sheriff's Association.



**WHAT IS THE PURPOSE OF THE PROPOSED CODE AMENDMENT?**

The proposed Code Amendment would serve to *maintain the status quo* in the City until such time as the City Council directs otherwise.

**WHY IS IT NECESSARY TO ADOPT CODE AMENDMENTS TO MAINTAIN THE STATUS QUO?**

The Medical Marijuana Regulatory and Safety Act allows cities to continue to adopt and enforce their own local ordinances regulating or banning marijuana dispensary, delivery, and cultivation operations, but requires that such local ordinances contain certain specific language to do so. Otherwise, the new State law may preempt local city laws. The current language of the Garden Grove Municipal Code needs to be updated to satisfy the requirements of the new State law in order to maintain the regulatory status quo in the City.

**WHY IS IT NECESSARY FOR THE CITY TO ADOPT CODE AMENDMENTS NOW?**

Pursuant to a provision in the new State law, the State becomes the sole licensing authority for cultivation of marijuana in a city if that city does not have a land use regulation or ordinance in place as of March 1, 2016 clearly regulating or prohibiting the cultivation of marijuana. Although the City interprets its Land Use Code to prohibit stand-alone marijuana cultivation operations because such uses are not expressly permitted or conditionally permitted, the Land Use Code does not contain an express prohibition of marijuana cultivation. In order to ensure the City's ability to continue to prohibit marijuana cultivation, or to adopt its own future local regulations governing this activity, is preserved, the City Council should adopt an ordinance that expressly regulates or prohibits the cultivation of medical marijuana by January 26, 2016 (in order that the ordinance takes effect by March 1, 2016). If the City does not do so, it may lose its ability to adopt or enforce its own future local regulations regarding marijuana cultivation.

**IF AMENDMENT NO. A-015-2015 IS ADOPTED, WHAT EFFECT WILL IT HAVE ON FUTURE CITY COUNCIL POLICY DECISIONS PERTAINING TO THE REGULATION OF MEDICAL MARIJUANA RELATED ACTIVITIES IN LIGHT OF THE NEW STATE LAW?**

None. Amendment No. A-015-2015 would preserve the status quo regarding the City's regulation of medical marijuana-related activities for the time being, but would not preclude the City Council from adopting a subsequent ordinance in the future that changes how the City chooses to regulate such activities.

The Medical Marijuana Regulatory and Safety Act establishes a basic framework for State regulation of commercial cannabis activities, but it calls for multiple State agencies to develop the detailed regulations that will be necessary to implement that basic framework. This State regulatory scheme will not be implemented immediately; it is anticipated that it will take approximately two years for the State

to develop the necessary regulations and regulatory infrastructure called for under the new State law, and the State will not begin issuing licenses until 2018. During this two year period, local regulations will continue to prevail. Once the new State regulations are developed, cities and counties will have an opportunity to better evaluate their own local regulatory schemes and policies vis-à-vis the new State regulatory framework.

### **CONCLUSION**

Staff recognizes that the topic of whether and how to regulate marijuana dispensaries, marijuana delivery services, and marijuana cultivation is a difficult and complicated one regarding which opinions may vary. The City's policies regarding these matters are ultimately determined by the City Council. As reflected by the prior actions of the City Council, the City's current policy is to prohibit all such marijuana-related activities City-wide. Unless and until the City Council directs otherwise, Staff is not in a position to recommend changes to the City's current policy, and the proposed Code Amendments are not intended to do so. Rather, Amendment No. A-015-2015 reflects Staff's recommendation as to how best to *maintain the status quo* in light of the provisions of the newly enacted Medical Marijuana Regulatory and Safety Act, while at the same time establishing a legal framework that it is conducive to future modifications.

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### **Attachments**

1. Assembly Bill 243
2. Assembly Bill 266
3. Senate Bill 643
4. Ordinance No. 2734
5. City Council Staff Report Re Ordinance No. 2734
6. White Paper on Marijuana Dispensaries by California Police Chiefs Association
7. Report Regarding: Public Safety Issues Related to Medical Marijuana in Orange County by Orange County Chiefs of Police and Sheriff's Association