

RESOLUTION NO. 5853-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE RECOMMENDING THAT THE CITY COUNCIL APPROVE AMENDMENT NO. A-015-2015, AN AMENDMENT TO TITLE 9 OF THE GARDEN GROVE MUNICIPAL CODE TO UPDATE THE CITY'S LAND USE REGULATIONS PERTAINING TO CANNABIS DISPENSARIES, DELIVERY, AND CULTIVATION, AND TO CLARIFY THAT USES NOT EXPRESSLY PERMITTED ARE PROHIBITED.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove, in a regular session assembled on December 3, 2015, hereby recommends approval of Amendment No. A-015-2015 to the City Council.

BE IT FURTHER RESOLVED in the matter of Amendment No. A-015-2015 the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by the City of Garden Grove.
2. The City of Garden Grove proposes to amend Title 9 of the Garden Grove Municipal Code to update the City's land use regulations pertaining to cannabis dispensaries, delivery, and cultivation pursuant to new State laws and to clarify that uses not expressly permitted in the Land Use Code are prohibited.
3. The Planning Commission recommends the City Council find that the proposed Code Amendment is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.).
4. Report submitted by City Staff was reviewed.
5. Pursuant to a legal notice, a public hearing was held on December 3, 2015, and all interested persons were given an opportunity to be heard.
6. The Planning Commission gave due and careful consideration to the matter at its meeting on December 3, 2015.

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Sections 9.32.030 are as follows:

FACTS:

Significant adverse impacts and negative secondary effects are often associated with cannabis dispensaries, delivery, cultivation, and other cannabis-related activities, including increased crime, burglaries, robberies, violence, property damage, and unauthorized or illegal use of cannabis. In addition, the cultivation or processing of

cannabis raises certain unique environmental and safety concerns. Pursuant to State law, cities are permitted to regulate, including to completely prohibit, cannabis-related land use activities, including dispensaries, delivery, and cultivation.

In 2008, the Garden Grove City Council adopted Ordinance No. 2734 prohibiting medical marijuana dispensaries throughout the city. This city-wide marijuana dispensary ban is currently codified in Section 9.16.020.100 of the Garden Grove Municipal Code ("GGMC"). The City considers marijuana delivery services to be "dispensaries" that are prohibited by Section 9.16.020.100; however, delivery of marijuana is not expressly called out separately as a prohibited activity.

Ordinance No. 2734 does not directly address cultivation of medical marijuana. Marijuana cultivation is not an expressly permitted use authorized under the City's Land Use Code, however, and the City has historically interpreted its Land Use Code to prohibit any use that is not permitted expressly or through an interpretation of use.

On October 9, 2015, Governor Brown signed new legislation (AB 266, AB 243, and SB 643) collectively referred to as the Medical Marijuana Regulatory and Safety Act ("MMRSA"), which establishes a state-wide regulatory and licensing framework for the cultivation and distribution of medical marijuana. The MMRSA takes effect on January 1, 2016; however, many new state regulations must be developed, and the law will not be fully implemented until at least 2018.

The MMRSA generally does not preempt the authority of cities to regulate or prohibit medical marijuana dispensaries or the delivery or cultivation of medical marijuana. However, pursuant to the MMRSA, if a city wishes to preserve its right to prohibit the delivery and/or cultivation of medical marijuana, it must have an ordinance expressly doing so. With respect to the cultivation of medical marijuana, a city must have a land use ordinance in place that clearly regulates or prohibits such cultivation by March 1, 2016, or the State will become the sole licensing authority for individuals or entities seeking to cultivate marijuana in the city.

The City has proposed text amendments to Title 9 of the Municipal Code, which would update the City's land use regulations pertaining to marijuana/cannabis dispensaries, delivery, and cultivation pursuant to the Medical Marijuana Regulatory and Safety Act ("MMRSA"), and which would clarify that uses not expressly permitted in the Land Use Code are prohibited.

Pursuant to the proposed Code Amendment, all land use regulations specifically pertaining to marijuana/cannabis activities being conducted in the City would be consolidated in single, new Chapter in Title 9 of the GGMC. The provisions of existing GGMC Section 9.16.020.100 prohibiting medical marijuana dispensaries would be updated consistent with the MMRSA and the City's existing interpretation of Ordinance No. 2734 and would be relocated to the new Chapter in order to eliminate potential confusion regarding their application city-wide. Cannabis delivery would be expressly prohibited in the City, consistent with the City's current interpretation and

application of Ordinance No. 2734. The cultivation of cannabis would also be expressly prohibited in the City, consistent with the City's current interpretation of Title 9 prohibiting such activity.

The proposed Code Amendment would also add language to subsection D.7 of Section 9.32.030 of the GGMC expressly stating that any use not specifically identified as a permitted use, conditionally permitted use, or incidental use in any zoning district, planned unit development, or specific plan area is a prohibited use in that zone or planned unit development area. The addition of this language would merely further clarify application of the Land Use Code in a manner consistent with how the City has historically interpreted it.

FINDINGS AND REASONS:

1. The proposed Code Amendment is internally consistent with the goals, policies, and elements of the General Plan.

Proposed Amendment No. A-015-2015 would clarify the existing status of marijuana/cannabis dispensaries, delivery, and cultivation as prohibited land uses and activities throughout the City and would preserve the status quo by preventing State preemption regarding the regulation of cultivation and delivery of marijuana/cannabis in Garden Grove, pending implementation of the Medical Marijuana Regulatory and Safety Act and further study of implicated policy issues by the City. The General Plan does not contain specific goals or policies pertaining to cannabis-related activities. However, continuing to prohibit cannabis dispensaries, delivery, and cultivation in the City is consistent with various policies in the City's Land Use Element, which encourage compatibility between uses and seek to protect residential areas from the effects of potentially incompatible uses.

2. The proposed Code Amendment will promote the public health, safety and welfare.

Proposed Amendment No. A-015-2015 would clarify the existing status of marijuana/cannabis dispensaries, delivery, and cultivation as prohibited land uses and activities throughout the City and would preserve the status quo by preventing State preemption regarding the regulation of cultivation and delivery of marijuana/cannabis in Garden Grove, pending implementation of the Medical Marijuana Regulatory and Safety Act and further study of implicated policy issues by the City. The continued prohibition of cannabis dispensaries, delivery, and cultivation will promote the public health, safety and welfare by helping to prevent the significant adverse impacts and negative secondary effects often associated with these activities.

INCORPORATION OF FACTS AND FINDINGS SET FORTH IN STAFF REPORT:

In addition to the foregoing the Planning Commission incorporates herein by this reference, the facts and reasons set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. Amendment No. A-015-2015 possesses characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.32.030.D.1 (Code Amendment).
2. The Planning Commission recommends that the City Council approve Amendment No. A-015-2015 and adopt an Ordinance incorporating the zoning text amendments described in Attachment "A" attached hereto.

ATTEST: /s/ JOHN O'NEILL
CHAIR

/s/ JUDITH MOORE
SECRETARY

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, JUDITH MOORE, Secretary of the City of Garden Grove Planning Commission, do hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Garden Grove, California, at a meeting held on December 3, 2015, by the following vote:

AYES: COMMISSIONERS: (5) MAI, MARGOLIN, O'NEILL, PAREDES, ZAMORA
NOES: COMMISSIONERS: (0) NONE
ABSENT: COMMISSIONERS: (1) KANZLER

/s/ JUDITH MOORE
SECRETARY

PLEASE NOTE: Any request for court review of this decision must be filed within 90 days of the date this decision was final (See Code of Civil Procedure Section 1094.6).

A decision becomes final if it is not timely appealed to the City Council. Appeal deadline is December 24, 2015.