

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director



DATE: December 2, 2015 (CC Meeting of 12/16/2015)

SUBJECT: Consider Ordinance Approving Zoning Ordinance Amendment No. 2015-01, an Amendment to Sections 17.20.050 (Permitted Uses in Open Space, Agricultural, Residential, and Special Purpose Zones) and 17.20.060 (Permitted Uses in Commercial and Industrial Zones) of Chapter 17.20 (Uses by Zone) of Title 17, (Zoning) of the Moorpark Municipal Code to Prohibit Cultivation and Mobile Delivery of Marijuana and Medical Marijuana in All Zones and Determination That This Action Is Exempt from the California Environmental Quality Act

BACKGROUND/DISCUSSION

On October 9, 2015, Governor Brown signed three bills into law, AB 243, AB 266, and SB 643, collectively known as the Medical Marijuana Regulation and Safety Act. These bills provide for State oversight of medical marijuana cultivation and distribution as allowed under Proposition 215, while still allowing for local control. This act requires each local agency to specifically address mobile dispensaries and cultivation if it wishes to regulate these uses in a manner stricter than State law. Information prepared by the League of California Cities on the new act is attached. Chapter 17.20 of the Zoning Ordinance, Uses by Zones, has prohibited medical marijuana dispensaries, including cultivation and delivery, in all zones since 2007. No medical marijuana dispensaries have ever been permitted in Moorpark.

Under the new State legislation, the City would have to specifically address mobile dispensaries and cultivation of medical marijuana if it wishes to regulate these uses. The attached draft ordinance would make changes to Chapter 17.20, to specifically prohibit deliveries from mobile marijuana dispensaries and mobile medical marijuana dispensaries and cultivation of marijuana and medical marijuana as an agricultural use in all zones in Moorpark. Cultivation of medical marijuana for personal use by qualified patients on properties on which they reside would still be permitted. State law allows for the cultivation of up to 12 immature plants or 6 mature plants for personal use. In addition, deliveries of medical marijuana by qualified caregivers would still be allowed.

The proposed changes add clarity to the existing prohibition on medical marijuana dispensaries and cultivation in light of the language contained in the Medical Marijuana Regulation and Safety Act. They do not change the intent of the existing regulations. The City Attorney has reviewed this ordinance and approved it as to form.

On October 21, 2015, the City Council adopted Resolution No. 2015-3452, directing the Planning Commission to study, hold a public hearing, and provide a recommendation to the City Council on an amendment to the Zoning Ordinance to address changes in State law under the Medical Marijuana Regulation and Safety Act.

On November 24, 2015, the Planning Commission reviewed the draft ordinance and adopted Resolution No. PC-2015-606, recommending its approval. Planning Commissioners did express concern about the ability of qualified patients to obtain medical marijuana if deliveries are prohibited and the patients are unable to drive. Staff indicated that the prohibition on deliveries would not apply to primary caregivers. After the Planning Commission meeting, staff discussed this issue further with the City Attorney, who recommended that if the intent is to exempt primary caregivers from the prohibition on deliveries, such language should be included in the Municipal Code language for clarity. Suggested language from the City Attorney has been added to the draft ordinance.

FISCAL IMPACT

None.

ENVIRONMENTAL DETERMINATION

The Director has reviewed this project and found it to qualify for a General Rule Exemption in accordance with Section 15061 of California Code of Regulations (CEQA Guidelines), in that there would not be a physical change to any existing land uses in Moorpark as a result of this ordinance. No further environmental documentation is required.

NOTICING

The notice of the public hearing was published in the Ventura County Star in a 1/8 page ad on December 6, 2015.

STAFF RECOMMENDATION

1. Open the public hearing, accept public testimony and close the public hearing.
2. Introduce Ordinance No. _____, approving Zoning Ordinance Amendment No. 2015-01, for first reading, waive full reading, and place this ordinance on the agenda for January 20, 2016 for purposes of providing second reading and adoption of the ordinance.

ATTACHMENTS:

1. League of California Cities Information
2. Draft Ordinance

MEDICAL MARIJUANA REGULATION AND SAFETY ACT¹

What Cities Need to Know About the New Law and Delivery Services

OVERVIEW

Here's what you need to know:

- ▣ **Local prohibition or regulation:** Cities may prohibit or regulate medical marijuana businesses within their jurisdictions. **Local authority remains intact under the new law.**
- ▣ **State license required:** All medical marijuana businesses – dispensary sales, delivery service, cultivation, or transport – must have a State license².
- ▣ **State license not enough:** A medical marijuana business in any city may only operate if it has permission from the State **and** permission from the city (“dual licensing”).
- ▣ **Enforcement:** Revocation of local permission to operate means a medical marijuana business must terminate operation because the new law requires dual licensing. Upon approval of the State, a city may enforce State law.
- ▣ **State law penalties for unlicensed activity:** There are civil penalties and criminal penalties for operating without a State license.

DELIVERY

Here's what you need to know:

If a city does not expressly prohibit the delivery of medical marijuana within its jurisdiction, delivery will be allowed (with a State dispensary license). This means that if your city wishes to prohibit the delivery of medical marijuana within its jurisdiction, the city must adopt an ordinance expressly prohibiting delivery services and mobile dispensaries.

DELIVERY

Here's what you need to do:

- ▣ Determine whether your city currently bans delivery services for medical marijuana.
- ▣ If you have a ban, determine whether it is an express ban, or a ban enacted via permissive zoning (i.e., it is not listed in your zoning or other codes as a permitted activity within the city limits).
- ▣ If you have an express ban specifically identifying marijuana deliveries as a prohibited activity, you do not need to take further action.
- ▣ If you wish to prohibit delivery services but do not have an express ban, **you need to take further action.**

ACTION REQUIRED: Adopt an ordinance expressly banning deliveries within your jurisdiction. If you do not adopt an express ban ordinance before the State begins issuing any State licenses, a State-licensed dispensary will be able to deliver medical marijuana within your jurisdiction. You may adopt an ordinance expressly banning deliveries after the State begins to issue licenses. However, it may be difficult to terminate the State licensee's deliveries at that time. Therefore, best practice is for an ordinance to be in place before the State begins issuing State licenses. The State currently estimates that it will begin issuing dispensary licenses in January 2018, but that could certainly happen sooner.

- ▣ A ban enacted via permissive zoning is not an express ban.

Be sure to consult with your city attorney before taking any of the actions recommended in this document.

¹ AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016.

² The Department of Consumer Affairs estimates it will begin issuing State licenses in January 2018. The Department of Food and Agriculture and the Department of Public Health also have licensing authority under the new law. Businesses operating in compliance with local ordinances will get priority in the State licensing application process.

October 27, 2015



MEDICAL MARIJUANA REGULATION AND SAFETY ACT¹

What Cities Need to Know About the New Law and Cultivation

OVERVIEW

Here's what you need to know:

- **Local prohibition or regulation:** Cities may prohibit or regulate medical marijuana businesses within their jurisdictions. **Local authority remains intact under the new law.**
- **State license required:** All medical marijuana businesses – dispensary sales, delivery service, cultivation, transport or distribution – must have a State license².
- **State license not enough:** A medical marijuana business in any city may only operate if it has permission from the State and permission from the city (“dual licensing”).
- **Enforcement:** Revocation of local permission to operate means a medical marijuana business must terminate operation because the new law requires dual licensing. Upon approval of the State, a city may enforce State law.
- **State law penalties for unlicensed activity:** There are civil penalties and criminal penalties for operating without a State license.

CULTIVATION

Here's what you need to know:

If your 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 chooses not to administer a conditional permit program, then commencing **March 1, 2016**, the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applicants.

¹ AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016.

² The Department of Consumer Affairs estimates it will begin issuing State licenses in January 2018. The Department of Food and Agriculture and the Department of Public Health also have licensing authority under the new law. Businesses operating in compliance with local ordinances will get priority in the State licensing application process.

October 27, 2015

CULTIVATION

Here's what you need to do:

Determine if your city fits within City #1 or City #2 as described below:

- **City #1:** Municipal Code that does not expressly prohibit nor expressly regulate cultivation of medical marijuana and is not a “permissive zoning” code. **Need to take action.**

ACTION REQUIRED: Adopt a land use ordinance regulating or prohibiting the cultivation of medical marijuana. The ordinance must be effective by February 28, 2016. The ordinance may be adopted as an “urgency ordinance,” or second reading must occur on or before January 29, 2016.

- **City #2:** Municipal Code that is a “permissive zoning” code and does not enumerate cultivation of medical marijuana as a permitted or conditional use. **Need to take action.**

ACTION REQUIRED: (1) Check and confirm that your city’s zoning code is adopted and implemented under the principles of permissive zoning. If not, take action recommended for City #1. (2) If confirmed, adopt a resolution that includes the following provisions:

- States that Health & Safety Code section 11362.777(b)(3) provides that the Department of Food and Agriculture may not issue a State license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning;
- Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
- States this means that cultivation of marijuana is not allowed within City #2 because it is not expressly permitted; and
- Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #2.

Be sure to consult with your city attorney before taking any of the actions recommended in this document.



ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING ZONING ORDINANCE AMENDMENT NO. 2015-01, AN AMENDMENT TO SECTIONS 17.20.050 (PERMITTED USES IN OPEN SPACE, AGRICULTURAL, RESIDENTIAL, AND SPECIAL PURPOSE ZONES) AND 17.20.060 (PERMITTED USES IN COMMERCIAL AND INDUSTRIAL ZONES) OF CHAPTER 17.20 (USES BY ZONE) OF TITLE 17 (ZONING) OF THE MOORPARK MUNICIPAL CODE TO PROHIBIT CULTIVATION AND MOBILE DELIVERY OF MARIJUANA AND MEDICAL MARIJUANA IN ALL ZONES AND DETERMINATION THAT THIS ACTION IS NOT A PROJECT APPROVAL SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, on October 9, 2015, Governor Brown signed three bills into law, AB 243, AB 266, and SB 643, collectively known as the Medical Marijuana Regulation and Safety Act. These bills provide for State oversight of medical marijuana cultivation and distribution as allowed under Proposition 215, while still allowing for local control; and

WHEREAS, on October 21, 2015, the City Council adopted Resolution No. 2015-3452, directing the Planning Commission to study, hold a public hearing, and provide a recommendation on a Zoning Ordinance Amendment that would amend Sections 17.20.050 (Permitted Uses in Open Space, Agricultural, Residential, and Special Purpose Zones) and 17.20.060 (Permitted Uses in Commercial and Industrial Zones) of Chapter 17.20 (Uses by Zone) of Title 17 (Zoning) of the Moorpark Municipal Code to address changes in State law under the Medical Marijuana Regulation And Safety Act; and

WHEREAS, on November 24, 2015, the Planning Commission considered Zoning Ordinance Amendment No. 2015-01, an amendment to Sections 17.20.050 (Permitted Uses in Open Space, Agricultural, Residential, and Special Purpose Zones) and 17.20.060 (Permitted Uses in Commercial and Industrial Zones) of Chapter 17.20 (Uses by Zone) of Title 17 (Zoning) of the Moorpark Municipal Code to prohibit cultivation and mobile delivery of marijuana and medical marijuana in all zones, opened and closed a public hearing, and after discussion, adopted Resolution No. PC-2015-606, recommending approval of Zoning Ordinance Amendment No. 2015-01; and

WHEREAS, at duly noticed public hearing on December 16, 2015, the City Council considered Zoning Ordinance Amendment No. 2015-01, opened the public hearing and took and considered public testimony both for and against the proposal, closed the public hearing, and discussed and reached a decision on this matter; and

WHEREAS, the Community Development Director has determined that this project would qualify for a General Rule Exemption in accordance with Section 15061 of

California Code of Regulations (CEQA Guidelines), in that there would not be a physical change to any existing land uses in Moorpark as a result of this ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. ENVIRONMENTAL DETERMINATION: The City Council concurs with the determination of the Community Development Director that this project would qualify for a General Rule Exemption in accordance with Section 15061 of California Code of Regulations (CEQA Guidelines), in that there would not be a physical change to any existing land uses in Moorpark as a result of this ordinance. Based on its independent analysis and judgment of the City Council, it can be seen with certainty that there is no possibility that the Zoning Ordinance Amendment No. 2015-01 may have a significant impact on the physical environment. No further environmental documentation is required.

SECTION 2. GENERAL PLAN AND SPECIFIC PLAN CONSISTENCY: The City Council finds Zoning Ordinance Amendment No. 2015-01 to be consistent with the City of Moorpark General Plan and all adopted Specific Plans.

SECTION 3. The City Council hereby approves Zoning Ordinance Amendment No. 2015-01, which amends Sections 17.20.050 (Permitted Uses in Open Space, Agricultural, Residential, and Special Purpose Zones) and 17.20.060 (Permitted Uses in Commercial and Industrial Zones) of Chapter 17.20 (Uses by Zone) of Title 17 (Zoning) of the Moorpark Municipal Code, as shown in Exhibit A attached.

SECTION 4. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 5. This ordinance shall become effective thirty (30) days after its passage and adoption.

Ordinance No. ____

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SECTION 6. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall publish notice of adoption in the manner required by law.

PASSED AND ADOPTED this ____ day of _____, 2016.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Exhibit A – Amendments to Sections 17.20.050 and 17.20.060

EXHIBIT A

**ZONING ORDINANCE AMENDMENT NO. 2015-01
 AMENDMENTS TO
 SECTION 17.20.050 (PERMITTED USES IN OPEN SPACE, AGRICULTURAL,
 RESIDENTIAL AND SPECIAL PURPOSE ZONES)
 AND
 SECTION 17.20.060 (PERMITTED USES IN COMMERCIAL AND INDUSTRIAL
 ZONES)
 OF CHAPTER 17.20 (USES BY ZONE)
 OF TITLE 17 (ZONING)
 OF THE MOORPARK MUNICIPAL CODE**

No. 9 is added to Section A, Agricultural Uses, of Table 17.20.050 in Section 17.20.050 as follows:

Zones	O-S	A-E	R-A	R-E	R-O	R-1	R-2	RPD	RPD 20U-N-D	TPD
9. Cultivation of marijuana or medical marijuana, other than medical marijuana plants maintained for personal use by a qualified patient residing on the property as allowed by Health and Safety Code Section 11362.77										

No. 15 is added to Section D, Accessory and Miscellaneous Uses, of Table 17.20.050 in Section 17.20.050 as follows:

Zones	O-S	A-E	R-A	R-E	R-O	R-1	R-2	RPD	RPD 20U-N-D	TPD
15. Delivery of marijuana or medical marijuana, including, but not limited to, deliveries from mobile marijuana dispensaries and mobile medical marijuana dispensaries, except for deliveries from a patient's primary caregiver to a qualified patient, as those terms are defined in state law										

No. 10 in Section A, Retail and Services Uses, of Table 17.20.060 in Section 17.20.060 is amended as follows:

Zones	C-O	C-1	CPD C-2	C-OT	M-1	M-2	I
<p>10. <u>Marijuana (cannabis and all parts of that plant) dispensaries and medical marijuana (cannabis and all parts of that plant) dispensaries including any site, facility, location, mobile dispensary, use, cooperative or business which distributes, sells, exchanges, processes, stores, delivers, gives away, or cultivates marijuana, including marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers, or physicians pursuant to Proposition 215, Health and Safety Code Section 11362.5 et seq., or any state regulations adopted in furtherance thereof</u></p>							

-END-