



Planning Commission **STAFF REPORT**

Ken Goldstein, Chair
Gina Frierman-Hunt, Vice Chair
Matt Buckles, Commissioner
Manish Desai, Commissioner
Leslee Hinton, Commissioner
John Hutt, Commissioner
Bob Spears, Commissioner

*Vincent Gonzalez, Director of
Planning and Community
Preservation*

DATE: December 3, 2015

TO: Planning Commission

FROM: Vincent Gonzalez, Director of Planning & Community Preservation

**SUBJECT: Municipal Code Text Amendment 15-04 (MCTA 15-04) –
Ordinance No. 1371 Amending Chapter 17.10**

BACKGROUND

The Planning Commission will consider Ordinance No. 1371, amending Chapter 17.10 of the Municipal Code to establish local control measures regulating the cultivation and distribution of medical marijuana.

On September 11, 2015, the California Legislature passed a series of bills that together would establish California's first statewide regulatory system for medical cannabis businesses. Assembly Bill (AB) AB 266, AB 243, and Senate Bill (SB) SB 643 each contain key provisions of the Medical Marijuana Regulation and Safety Act. The Act provides a more comprehensive statutory framework while preserving many of the judicial decisions regarding local regulation of medical marijuana. These laws would govern cultivating, processing, transporting, testing, and distributing medical cannabis to qualified patients. On October 9, 2015, Governor Brown signed the Medical Marijuana Regulation and Safety Act (MMRSA) into law.

By March 1, 2016, local municipalities must adopt land use regulations or ordinances regulating or prohibiting the cultivation of cannabis. If a city does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016," the Department of Food and Agriculture (DFA) is in charge of State licensing and regulation of indoor and outdoor cultivation sites. (AB 243 Section 19362.777 (c)(4)).

The purpose of the proposed Municipal Code Text Amendments is to further an objective of the City's 2007 Ordinance 1266, prohibiting in all zones the cultivation of cannabis and medical marijuana dispensaries which involves the distribution of drugs

or other substances which is illegal to distribute or possess under state or federal law.

Staff recommends that the Planning Commission recommend to the City Council to adopt the proposed text amendments to Chapter 17.10 to establish local control measures regulating the cultivation and distribution of marijuana. Attached is draft Ordinance No. 1371 (Exhibit B).

ANALYSIS

Proposed Text Amendments to Chapter 17.10:

17.10.010 – Definitions.

In addition to the definitions contained elsewhere in this title, the words and phrases set forth below shall be given the following meanings for the purposes of this chapter:

“Cannabis” means 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. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. “Cannabis” 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 chapter, “cannabis” 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.

“Cultivation” means the harvested, dried, or processing of one or more marijuana plants including the plant seeds, resin and any compound, manufacture, salt, derivative, mixture, or preparation of the plant seeds, or resin.

“Delivery” means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. “Delivery” also includes the use by a dispensary or any technology platform owned and controlled by the dispensary or independently licensed under this chapter that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products (Business & Professions Code 19300.5(m)).

Chapter 17.10.020 – Prohibited Uses.

The following uses are explicitly prohibited in all zoning districts established by this chapter and may not be conducted anywhere in the city:

- A. A ~~medical~~-marijuana dispensary, is any facility or use, either in a fixed location, mobile dispensary or by means of delivery using any form of vehicle, which involves the distribution of drugs or other substances which it is illegal to distribute or possess under state or federal law.
- B. The cultivation of marijuana or cannabis.

CEQA FINDINGS

The Planning Commission hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance establishing local control measures regulating the cultivation and distribution of marijuana will have a significant effect on the environment. The adoption of this Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 1506 (b)(3) of the California Code of Regulations.

FINANCIAL REVIEW

There is no financial impact related to the proposed code text amendments to Title 17, Chapter 17.10. Staff time was incurred in the preparation of the report and draft ordinance.

PUBLIC NOTICE

This item has been noticed through the regular agenda notification process. Notice of the hearing was published consistent with the requirements of Government Code Section 65090. Copies of this report are available at the City Hall public counter, on the City of Sierra Madre website, and the Sierra Madre Public Library.

ALTERNATIVES

1. Recommend to the City Council adoption of the proposed text amendments to Chapter 17.10 (Marijuana Cultivation and Marijuana Dispensary), pursuant to Resolution 15-17.
2. Recommend to the City Council adoption of the proposed text amendments to Chapter 17.10 (Marijuana Cultivation and Marijuana Dispensary), with revisions.
3. Recommend to the City Council denial of the proposed text amendments to Chapter 17.10 (Marijuana Cultivation and Marijuana Dispensary).

RECOMMENDATION

Staff recommends Alternative No. 1, that the Planning Commission recommend to the City Council adoption of the proposed text amendments to Chapter 17.10 (Marijuana Cultivation and Marijuana Dispensary), pursuant to Resolution 15-17 (Exhibit A).

Attachments (3):

Exhibit A: Planning Commission Resolution 15-17

Exhibit B: Draft City Council Ordinance No. 1371

Exhibit C: Draft Municipal Code Text Amendments to Chapter 17.10

EXHIBIT A

PLANNING COMMISSION RESOLUTION 15-17

RESOLUTION NO. 15-17

AN RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SIERRA MADRE RECOMMENDING TO THE CITY COUNCIL APPROVAL OF ORDINANCE NO. 1371 TO AMEND CHAPTER 17.10 (REGULATING THE CULTIVATION AND DISTRIBUTION OF MARIJUANA) OF THE SIERRA MADRE MUNICIPAL CODE.

WHEREAS, On December 12, 2006, the City Council adopted Ordinance No. 1266 prohibiting medical marijuana dispensaries in all zones; and

WHEREAS, the State Legislature passed a series of bills on September 11, 2015 establishing California's first statewide regulatory system for medical cannabis businesses consisting of Assembly Bills 243 and 266, and State Senate Bill 643; and

WHEREAS, the Governor signed the Medical Marijuana Regulatory Act (MMRSA) on October 9, 2015 into law, regulating the cultivation, processing, transporting, testing, and distribution of medical cannabis to qualified patients; and

WHEREAS, Federal law continues to prohibit the possession, sale, and distribution of marijuana; and

WHEREAS, by March 1, 2016, local municipalities must adopt land use regulations or ordinances regulating or expressly prohibiting the cultivation and distribution of cannabis; and

WHEREAS, the Sierra Madre Municipal Code should be amended to reflect that the cultivation, deliveries and mobile dispensaries of cannabis is expressly prohibited in the City of Sierra Madre; and

WHEREAS, the Health and Safety Code 11362.777(b)(3) states 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; and

WHEREAS, this ordinance states that the cultivation of cannabis is not allowed within the City of Sierra Madre because it is not expressly permitted and therefore, the State is not allowed to issue a license for the cultivation of medical cannabis within the City of Sierra Madre; and

WHEREAS, the Planning Commission has discussed these revisions and wish to recommend to the City Council the subject municipal code text amendments as the proposed changes recognizing that the cultivation and distribution of cannabis can have significant, adverse secondary effects on neighboring properties and land uses; and

WHEREAS, Sierra Madre is primarily a low-intensity residential community with limited sites appropriate for high-traffic commercial uses; and

WHEREAS, the Planning Commission has received the report and recommendations of staff; and

WHEREAS, notice was duly given of the public hearing on November 21, 2015, with all testimony being received being made part of the public record; and

NOW, THEREFORE, in consideration of the evidence received at the public hearing, and for the reasons discussed by the Commissioners at said hearing, the Planning Commission resolves as follows:

The Planning Commission recommends that the City Council approve the Ordinance amending Chapter 17.10, which is attached hereto as Exhibit B.

APPROVAL RECOMMENDED, this 3RD day of December 2015, by the following vote:

PASSED AND ADOPTED this ____ day of _____, 2015.

AYES:

NOES:

ABSENT:

ABSTAIN:

Ken Goldstein
Chair, Planning Commission

ATTEST:

Vincent Gonzalez
Director of Planning & Community Preservation

EXHIBIT B

**DRAFT
CITY COUNCIL ORDINANCE NO. 1371**

ORDINANCE NO. 1371

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SIERRA MADRE AMENDING MUNICIPAL CODE CHAPTER
17.10 REGULATING THE CULTIVATION AND DISTRIBUTION
OF MARIJUANA.**

THE CITY COUNCIL OF THE CITY OF SIERRA MADRE DOES HEREBY RESOLVE:

WHEREAS, On December 12, 2006, the City Council adopted Ordinance No. 1266 prohibiting medical marijuana dispensaries in all zones; and

WHEREAS, the State Legislature passed a series of bills on September 11, 2015 establishing California's first statewide regulatory system for medical cannabis businesses consisting of Assembly Bills 243 and 266, and State Senate Bill 643; and

WHEREAS, the Governor signed the Medical Marijuana Regulatory Act (MMRSA) on October 9, 2015 into law, regulating the cultivation, processing, transporting, testing, and distribution of medical cannabis to qualified patients; and

WHEREAS, Federal law continues to prohibit the possession, sale, and distribution of marijuana; and

WHEREAS, by March 1, 2016, local municipalities must adopt land use regulations or ordinances regulating or expressly prohibiting the cultivation and distribution of cannabis; and

WHEREAS, the Sierra Madre Municipal Code should be amended to reflect that the cultivation, deliveries and mobile dispensaries of cannabis is expressly prohibited in the City of Sierra Madre; and

WHEREAS, the Health and Safety Code 11362.777(b)(3) states 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; and

WHEREAS, this ordinance states that the cultivation of cannabis is not allowed within the City of Sierra Madre because it is not expressly permitted and therefore, the State is not allowed to issue a license for the cultivation of medical cannabis within the City of Sierra Madre; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on December 3, 2015, and thereafter recommended that the City Council approve this Ordinance; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Sierra Madre as follows:

SECTION 1: *Municipal Code Amendment.* Chapter 17.10, entitled "Marijuana Cultivation and Marijuana Dispensary", is hereby amended in its entirety with a new Chapter 17.10 as provided herein as Exhibit "B".

SECTION 2. *California Environmental Quality Act.* The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during the public hearing on the matter held by the Planning Commission and City Council, and hereby determines that this ordinance establishing local control measures regulating the cultivation and distribution of cannabis will not have a significant effect on the environment. The amendments to Chapter 17.10 of this Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 1506 (b)(3) of the California Code of Regulations; and

SECTION 3. *Severability; Continuation of Provisions.* If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the rules adopted hereby. The City Council of the City of Sierra Madre hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable. To the extent the provisions of the Sierra Madre Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as they read immediately prior to the adoption of this Ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 4. *Effective Date.* This Ordinance shall take effect thirty days after its passage and adoption pursuant to California Government Code section 36937.

SECTION 5. *Certification.* The City Clerk shall certify to the adoption of this ordinance and shall cause the same to be published or posted in the manner prescribed by law.

PASSED AND ADOPTED this _____ day of _____, 2015.

AYES:
NOES:
ABSENT:
ABSTAIN:

John Capoccia, Mayor

ATTEST:

APPROVED AS TO FORM:

Nancy Shollenberger, City Clerk

Teresa L. Highsmith, City Attorney

EXHIBIT C

DRAFT MUNICIPAL CODE TEXT AMENDMENTS CHAPTER 17.10

Chapter 17.10 – MARIJUANA CULTIVATION AND MARIJUANA DISPENSARY**17.10.010 – Definitions.**

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