



# *CITY COUNCIL AGENDA REPORT*

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MEETING DATE: June 21, 2016

ITEM NUMBER: **NB-4**

**SUBJECT:** CONSIDERATION OF A CITY INITIATIVE PETITION REGARDING MEDICAL MARIJUANA BUSINESSES

**DATE:** JUNE 16, 2016

**FROM:** CITY CLERK'S OFFICE; CITY ATTORNEY'S OFFICE

**PRESENTATION BY:** TARQUIN PREZIOSI, DEPUTY CITY ATTORNEY

**FOR FURTHER INFORMATION CONTACT:** BRENDA GREEN, CITY CLERK, 714-754-5221

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## **RECOMMENDATION**

Staff recommends that the City Council:

Consider and provide direction on whether to place the attached initiative ordinance entitled "The City of Costa Mesa Medical Marijuana Measure" on the November 8, 2016 ballot relating to medical marijuana manufacturing, testing and related uses within certain areas of the City. If so directed, Resolutions calling for a consolidated municipal election, and submission of the measure to the ballot, will be presented for adoption at the July 5, 2016 City Council meeting.

## **BACKGROUND**

On April 5, 2016, the City Council directed staff to prepare a medical marijuana ballot measure for consideration by Council, in order to compete with the two citizen initiative measures that will be considered by the voters at the November general election. Of the options presented at the April 5<sup>th</sup> Council meeting, the City Council directed staff to prepare a new initiative ordinance to be placed on the ballot that would provide: 1) for medical marijuana businesses to be located north of the South Coast Drive and west of Harbor Blvd.; 2) to allow certain types of medical marijuana manufacturing uses in this area; 3) to provide for future regulation of dispensaries consistent with State law; 4) to impose a tax on medical marijuana businesses; and 5) to compete with the two citizen-backed measures on the November 8, 2016 ballot that would allow up to 4 and 8 dispensaries, respectively, in the City.

## **STATE LAW GOVERNING MARIJUANA**

In 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996"). The intent of the Compassionate Use Act (CUA) was to enable persons in need of marijuana for medical purposes to obtain and use marijuana without the threat of criminal

prosecution under limited and specified circumstances. Under the CUA, “qualified patients” with a physician’s recommendation for medical cannabis and “primary caregivers” are exempted from being prosecuted under Health and Safety Code Section 11357 (possession of marijuana) and 11358 (cultivation of marijuana) for specified amounts.

On January 1, 2004, the California State Legislature enacted Senate Bill 420 (the Medical Marijuana Program Act or MMPA) to clarify the scope of the CUA to allow cities and other governing bodies to adopt and to enforce rules, regulations, and laws consistent with Senate Bill 420.

The California Supreme Court has made clear that neither the CUA nor the MMPA expressly or impliedly preempts the authority of cities or counties, under their traditional land use and police powers, to allow, restrict, limit or entirely exclude marijuana cultivation or distribution within their jurisdictions. The MMPA allows cities and counties to adopt local ordinances that regulate the location, operation or establishment of medical marijuana collectives and to enforce such ordinances. The safe distribution of marijuana, as contemplated by the CUA, and the safe distribution of marijuana edibles should include consideration of the safety of all residents and businesses, not just the users of marijuana or the consumers of the marijuana edibles. The proposed ordinance is designed to address safety and professional management in the operation of any proposed medical marijuana business.

On October 9, 2015, the Governor signed three pieces of state legislation which comprise the Medical Marijuana Regulation and Safety Act (MMRSA): AB 266, AB 243, and SB 643. AB 266 establishes a dual licensing structure requiring a state license and a local license or land use permit. The Department of Consumer Affairs newly created Bureau of Medical Marijuana Regulation (BMMR) will coordinate the overall regulatory structure establishing minimum health and safety and testing standards. AB 243 establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture. SB 643 establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees. Generally, and altogether, the MMRSA governs the licensing and control of all medical marijuana businesses in the state and provides criminal immunity for licensees. The legislation protects local control in several ways: it requires dual licensing; local governments may enforce state law in addition to local ordinance (upon request by the local jurisdiction); civil and criminal penalties are available for unlicensed activity; and it expressly protects local licensing practices, zoning ordinances, and local actions taken under the constitutional police power. Under MMRSA, BMMR will regulate transporting, distribution and testing of medical marijuana; the Departments of Food and Agriculture will regulate cultivation; and the Department of Public Health will regulate manufacturing and testing.

Before MMRSA was enacted, the only types of marijuana businesses allowed under state law were collectives/cooperatives where patients and primary caregiver joined a non-profit legal entity, to collectively grow and distribute marijuana to members only. The state law (the MMPA) does not require cooperatives/collectives to obtain a state permit or license to operate, but they must be authorized by the local jurisdiction and meet all of the local and state regulations pertaining to their operations. The MMRSA will revoke the Health and Safety Code section enacted under the MMPA that permitted cooperatives and collectives one year after the state begins issuing licenses for the various for-profit categories of medical marijuana businesses now permitted under MMRSA. The BMMR is currently in the early stages of rulemaking necessary to implement the provisions of

MMRSA. The BMMR has stated that it anticipates publishing comprehensive regulations and that the State will begin issuing licenses by January 2018. Under MMRSA, these new types of for-profit medical marijuana businesses - including distributors, manufacturers, testing laboratories and transporters - must obtain both a state license and a City permit before they can commence operations. This is because these new categories of medical marijuana businesses allowed under MMRSA were not previously permitted by state law to operate as a collective or cooperative.

## **DISCUSSION**

Currently, medical marijuana related uses – cultivation and dispensaries – are prohibited in all areas of the City. The proposed initiative ordinance would require a medical marijuana business permit to engage in wholesale distribution, manufacturing, testing, research and development, and transportation of medical marijuana. The ordinance does not alter the City’s current ban on dispensaries or cultivation, other than to regulate where dispensaries may be located in the future. The ordinance would permit these medical marijuana businesses to be located only in the Manufacturing Park (MP) zone north of South Coast Drive and west of Harbor Boulevard. Such business would require a conditional use permit (CUP) to locate in this zone, in addition to the medical marijuana business permit. The ordinance would impose a 6% business tax on these uses. The ordinance could be amended by the City Council, except for matters relating to tax, as discussed below.

The ordinance would add a new Section 9-29.5 to Article 4 (Schedules) of Chapter I (Business Tax), of Title 9 (Licenses and Business Regulations) of the Costa Mesa Municipal Code (CMMC). Section 9-29.5 imposes a 6% gross receipts business tax on all medical marijuana businesses authorized under Chapter VI, as well as any non-medical marijuana or cannabis businesses that may arise in the future – unless otherwise prohibited by state law. The initiative provides that this amount may be decreased by the City Council. However, as a general tax, this amount can only be increased by approval of a majority (51%) vote of the electorate in a general election. Under state law, such businesses would not be allowed to operate until licensed by the state.

The ordinance would also add a new Chapter VI (Medical Marijuana Business Permits) to Title 9. Chapter VI requires a business permit to engage in distribution (wholesale), manufacturing, testing, research and development, and transportation of medical marijuana. Chapter VI generally provides the following:

- The purpose of the ordinance, which is to regulate these in a responsible manner and that protects the health, safety, and welfare of the residents of the City.
- Legal Authority and Definitions, which generally follow the definitions set forth in MMRSA.
- The authority of the CEO to issue permits under this Chapter, which valid for two years.
- The ability of the CEO to establish procedures and regulations to implement the permit process.
- Authority to revoke the permit for any violation of the Municipal Code or state law.
- Security measures, including employee background checks, limited access, storage and alarm system, and restrictions relating to owners and employees with felony convictions.

- Operating requirements including recordkeeping and inventory control, signage and notices, odor control, restriction of minors, loitering prohibition.
- The requirement to obtain a regular City business license.
- Requirements to maintain transaction and sale records for inspection.

Further, the ordinance would add a new Article 21 to Chapter IX of Title 13 (Zoning Code) and would amend Article Chapter IV (Citywide Land Use Matrix). Article 21 provides that medical marijuana distributors (wholesale), manufacturers, testing laboratories, research and development laboratories, and transporters may be located in the Manufacturing Park (MP) zone north of South Coast Drive and west of Harbor Boulevard with a conditional use permit. Attachment 4 depicts the area zoned for these medical marijuana uses. These business would require a conditional use permit to locate in this zone, in addition to the medical marijuana business permit. Article 21 would also allow dispensaries to be located in this area, if and when dispensaries are authorized under by the CMMC. Dispensaries would not be authorized to locate within 500 feet of any school or day care facility. As currently written, future dispensary uses would not require a CUP, since it is anticipated that any such use would be subject to a detailed permitting and selection process that may not be amenable to a CUP.

**ALTERNATIVES CONSIDERED**

1. Accept the ordinance as written to be brought back on the July 5, 2016 agenda for placement on the November 8, 2016 ballot.
2. Direct staff to revise the ordinance and consider those revisions at the July 5, 2016 agenda for placement on the November 8, 2016 ballot.
3. Decline to place the initiative ordinance on the ballot.

**FISCAL IMPACT OF PLACING MEASURE ON BALLOT**

The cost to place the initiative on the November 2016 ballot is estimated at \$10,000.00 and is included in the Fiscal Year 2016-17 budget, Elections Consulting. At present the estimated costs of implementing the ordinance are indeterminate.

**LEGAL REVIEW**

The City Attorney’s office has reviewed this report for legal content and approved it as to form.

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THOMAS P. DUARTE  
City Attorney

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BRENDA GREEN  
City Clerk

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RICHARD L. FRANCIS  
Assistant CEO

- ATTACHMENTS:
1. [April 5, 2016 Agenda Report \(excluding attachments\)](#)
  2. [November 18, 2014 Agenda Report \(excluding attachments\)](#)
  3. [Proposed Initiative Ordinance](#)
  4. [Zoning Map](#)