



# ***CITY COUNCIL AGENDA REPORT***

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MEETING DATE: July 5, 2016

ITEM NUMBER: OB-1

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

**DATE:** JUNE 28, 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:

1. Consider the proposed initiative ordinance (Attachment 1) entitled, "The City of Costa Mesa Medical Marijuana Measure" relating to medical marijuana manufacturing, testing and related uses within certain areas of the City; and
2. Provide direction on whether to place the proposed ordinance on the November 8, 2016 ballot by adoption of the following resolutions:
  - a. Resolution 2016-51: Calling and giving notice for the holding of a General Municipal election to be held on November 8, 2016 for the submission to the voters of a proposed ordinance entitled, "The City of Costa Mesa Medical Marijuana Measure" (Attachment 5); and
  - b. Adopt Resolution 2016-52: Requesting the Orange County Board of Supervisors to Consolidate a General Municipal election to be held on November 8, 2016, for the purpose of submitting to the voters of the City of Costa Mesa a question relating to the adoption of a proposed ordinance entitled, "The City of Costa Mesa Medical Marijuana Measure" (Attachment 5); and
  - c. Adopt Resolution 2016-53: Authorizing written arguments for or against the proposed ordinance "The City of Costa Mesa Medical Marijuana Measure", setting priorities for filing written arguments, determining the authors of the written arguments, and directing the City Attorney to prepare an impartial analysis (Attachment 5); and

- d. Adopt Resolution 2016-54: Authorizing the filing of a Notice of Exemption pursuant to the provisions California Environmental Quality Act (Attachment 5).

3. Provide direction on informational mailers.

## **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.

On June 21, 2016 the City Council reviewed the proposed measure and requested the following revisions: that references to dispensaries be deleted from the Zoning Code amendments; that the PDI zone be included in the area north of South Coast Drive and west of Harbor Boulevard where medical marijuana businesses can locate; that insurance provisions be added to Medical Marijuana Business Permit requirements; and that the definition of “distributor” be refined. The City Council also discussed imposing a separation requirement between medical marijuana businesses and clarifying that the intent of the ordinance is to regulate the same subject as the two other medical marijuana initiatives that will appear on the November 8, 2016 ballot. The item was continued until the July 5, 2016 meeting for further consideration of these and other possible revisions.

## **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 newly created “dispensary” category under MMRSA is entirely different from that which was previously authorized, in that (1) it can be owned/operated by anyone, not just patients and primary caregivers, (2) the marijuana and products can be sold to any qualified patient or primary caregiver (not only members/employees), and (3) it can generate a profit. Other uses under MMRSA, such as distributors, manufacturers, testing laboratories and transporters, were not previously authorized as such under state law. 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 accepting applications for licenses by January 2018. However, it may be a matter of months after the license applications are available before licenses are actually issued.

The MMRSA provides in Business & Profession Code section 19321(c), that “[n]otwithstanding subdivision (a) of Section 19320, a facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, may continue its operations until its application for licensure is approved or denied pursuant to this chapter.” Under MMRSA, these new types of for-

profit medical marijuana businesses - including distributors, manufacturers, testing laboratories and transporters - must obtain both a local permit or other authorization and a state license when the state begins to issue such licenses. A conservative interpretation of section 19321(c) is that it applies to businesses that are legally operating as cooperatives or collectives - not as permitting all businesses that might be illegally operating in violation of state law to continue operating until they receive a state permit. Staff has been informed verbally by BMMR that this is BMMR's interpretation of MMRSA. Nevertheless, MMRSA does not appear to *expressly* prohibit a local entity from issuing permits for these uses prior to the date the state begins issuing licenses. However, such non-state licensed uses may be subject to enforcement action by BMMR or other state or federal agencies.

## **DISCUSSION**

Following the June 21<sup>st</sup> Council meeting, staff has revised the initiative ordinance as requested. In addition, staff refined the area within the PDI zone to exclude the South Coast Collection properties. A red-lined version is included with this report as Attachment 2. Staff also received a request after the June 21<sup>st</sup> meeting to amend the definitions of "distributor", "distribution", "manufacturer", "manufacturing site", "research and development laboratory" and "testing laboratory", in Section 9-485, as follows:

"Distribution" means the procurement, sale, and transport of medical cannabis or medical cannabis products between entities ~~licensed pursuant to MMRSA and any subsequent State of California legislation regarding the same~~ who are currently in compliance with all applicable state and local laws and regulations pertaining to the medical marijuana business and medical marijuana activities.

"Distributor" means a person holding a valid medical marijuana business permit for distribution issued by the city ~~and a valid state license for distribution, required by state law and is currently in compliance with all applicable state and local laws and regulations required to~~ engage in the business of purchasing medical cannabis from a licensed cultivator, or any medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

"Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as defined in this section, or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, where the operator holds a valid medical business permit for manufacturing from the city and a valid state license for manufacturing pursuant to MMRSA is currently in compliance with all applicable state and local laws and regulations pertaining to the medical marijuana business and medical marijuana activities.

"Manufacturing site" means a location that produces, prepares, propagates, or compounds medical cannabis or medical cannabis products, directly or indirectly, by means of chemical synthesis, or by a combination of extraction methods and chemical synthesis and is owned by a person issued a valid Medical marijuana business permit from the city ~~and a valid state license as required for manufacturing of cannabis products~~ is currently in compliance with all applicable state and local laws and regulations pertaining to the medical marijuana business and medical marijuana

activities.

“Research and development laboratory” means a facility, entity, or site in the city that performs research into and/or the development of medical cannabis or medical cannabis products, where cannabis in any amount is located on-site, and that is both of the following:

1. Accredited by an accrediting body that is independent of all other persons involved in the medical cannabis industry in the state.
2. Registered with the State Department of Public Health, and is owned and operated by a person issued a valid medical marijuana permit for laboratory testing from the city and a state license for such uses as required by state law is currently in compliance with all applicable state and local laws and regulations pertaining to the medical marijuana business and medical marijuana activities.

“Testing laboratory” means a facility, entity, or site in the city that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

1. Accredited by an accrediting body that is independent of all other persons involved in the medical cannabis industry in the state.
2. Registered with the State Department of Public Health, and is owned and operated by a person issued a valid medical marijuana permit for laboratory testing from the city and a state license for such uses as required by state law is currently in compliance with all applicable state and local laws and regulations pertaining to the medical marijuana business and medical marijuana activities.

The net effect of these proposed revisions would be to enable the City to issue Medical Marijuana Business Permits and conditional use permits under the municipal code following the effective date of the initiative ordinance - rather than making these uses contingent upon a state issued license. As discussed, the BMMR anticipates that the state will publish comprehensive regulations governing these uses, and will begin issuing such licenses by January 1, 2018. Staff has identified only one local entity in California - the City of Oakland - that currently authorizes medical marijuana “processing” and “manufacturing”. See Oakland Municipal Code section 5.81 et seq. However, the definition of manufacturing therein differs from that in MMRSA. No other city or county was identified that otherwise expressly regulates distribution, manufacturing, or testing of medical marijuana as defined by MMRSA. However, research and/or testing laboratories have been approved in various cities under local zoning provisions. For example, the cities of Berkeley, Oakland, Santa Ana and Santa Cruz have all at one time permitted these uses in certain manufacturing and/or industrial districts.

## **ENVIRONMENTAL DETERMINATION**

This measure including the amendments to the Zoning Code and Municipal Code proposed by this measure have been reviewed for compliance with the California Environmental Quality Act (CEQA)(Pub. Res. Code §§ 21000 et seq.), the CEQA guidelines (14 Cal. Code Regs. § 15000 et seq.) and the City’s environmental procedures, and has been found to be exempt pursuant to Section 15061(b)(3) (general rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the proposed amendments to the Zoning Code or the Municipal Code will have a significant effect on the environment. In addition, the revisions to the Zoning Code are exempt from further environmental review pursuant to Section 15183, because they are consistent with the General Plan for which an EIR has been certified.

**ALTERNATIVES CONSIDERED**

1. Direct staff to make specific revisions to the proposed ordinance to be placed on the November 8, 2016 ballot.
2. Decline to place the initiative ordinance on the ballot.

**INFORMATIONAL MAILERS**

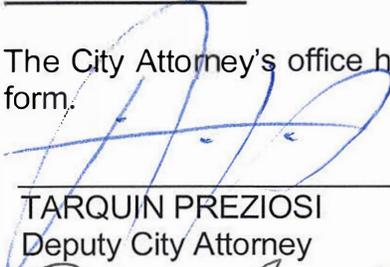
Staff is requesting direction from Council on whether informational mailers on the proposed ordinance should be prepared and how many. Each mailer would cost approximately \$8,400.00.

**FISCAL IMPACT**

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. The cost for citywide mailings would be approximately \$8,400.00 per mailing. In addition, the estimated annual tax revenue, based on analysis by the Finance Department for the two citizen initiative measures on the ballot, is between \$48,000-\$912,000.

**LEGAL REVIEW**

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



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TARQUIN PREZIOSI  
Deputy City Attorney



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BRENDA GREEN  
City Clerk



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RICHARD L. FRANCIS  
Assistant CEO

- ATTACHMENTS:
1. [Proposed Initiative Ordinance](#)
  2. [Proposed Initiative Ordinance \(redline/strikeout\)](#)
  3. [Zoning Map](#)
  4. [June 21, 2016 Agenda Report \(excluding attachments\)](#)
  5. [Resolutions 2016-51, 2016-52, 2016-53, and 2016-54.](#)