



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: DECEMBER 14, 2015

ITEM NUMBER: PH-3

SUBJECT: AN ORDINANCE TO ADOPT CODE AMENDMENT CO-15-06: AN AMENDMENT TO TITLE 13 OF THE COSTA MESA MUNICIPAL CODE RELATED TO CULTIVATION OF MARIJUANA AND/OR MEDICAL MARIJUANA

DATE: NOVEMBER 20, 2015

FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: MINOO ASHABI, PRINCIPAL PLANNER

**FOR FURTHER INFORMATION CONTACT: MINOO ASHABI, AIA (714) 754-5610
minoo.ashabi@costamesaca.gov**

PROJECT DESCRIPTION

The Costa Mesa Planning Commission will hold a public hearing to consider an Ordinance to adopt Code Amendment CO-15-06 amending Costa Mesa Municipal Code Title 13, Chapter I definitions and enforcement, Chapter IV City Wide Land Use, and adding new Article 20 to Chapter IX, Special Land Use Regulations.

RECOMMENDATION

Recommend that City Council approve and give first reading to the ordinance.

BACKGROUND

Planning Commission Action Required on December 14, 2015

In response to three new bills that were signed into law by Governor Jerry Brown on October 9, 2015 related to regulation of medical marijuana with the State of California, City Staff reviewed the current zoning ordinance related to prohibition of marijuana cultivation within the City. In consent with City Attorney's office, City Staff determined that a new ordinance would need to be adopted and in effect by March 1, 2016 in order to allow the City to prohibit this use.

In the state of California, cities have the authority to adopt and enforce local laws so long as they are not in conflict with state or federal law. On the basis of this authority, the City has adopted a zoning ordinance that provides the permissible uses of and development standards for all land within the City's boundaries. To this end, the City has adopted a host of 'use classifications,' which define uses within the City. Under the zoning ordinance, a use classification not listed within a given zoning district is prohibited, unless otherwise authorized by the Planning Commission. Currently, the outdoor cultivation of marijuana is not a listed use and therefore prohibited. The proposed ordinance prohibiting marijuana cultivation, however, will make the prohibition explicit.

Marijuana cultivation is known for persistent strong odors as marijuana plants mature, which could be offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable marijuana plants and creating an increased risk of crime. Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, smells and indoor electrical fire hazards that may result from marijuana cultivation, The indoor cultivation of substantial amounts of marijuana also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation.

It has been reported that the cultivation of marijuana in other cities has resulted in calls for service to the police department, including calls for robberies thefts, and physical assaults from marijuana that is grown outdoors; Marijuana growth poses significant safety risks for surrounding neighbors, including but not limited to, risks of violent confrontation in connection with attempts to steal marijuana, risk of fire from improperly wired electrical lights within structures growing marijuana, risk of guard dogs and security measures associated with structures and properties growing marijuana.

Furthermore, the United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, *et seq.*). The use of pesticides is therefore inadequately regulated and cannabis cultivated in California can and often does contain pesticide residues. These substances can run off of outdoor cultivation sites onto neighboring properties and/or leach into the groundwater.

There are thus serious nuisance impacts associated with the outdoor cultivation of marijuana. Cultivation bans in other cities have been reviewed by the courts and have been

upheld in a variety of forms, including complete bans on cultivation within city limits (see *Maral v. City of Live Oak* (2014)).

To ensure that the zoning code adequately address cultivation of medical marijuana, staff recommends an amendment to the zoning ordinance to make explicit the fact that cultivation of marijuana and/or medical marijuana is prohibited in the City.

STATE LAW GOVERNING MARIJUANA CULTIVATION

The laws governing medical marijuana cultivation, sale, and use in California have evolved rapidly, and are presently in flux at the state level. As has been widely reported in the media, the State of California is attempting to create a new statewide framework to regulate medical marijuana cultivation, sale, and use (see AB 243 (Wood), AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood), and SB 643 (McGuire)). All three of these bills have been passed by the Legislature and were signed by Governor Brown on October 9, 2015. Their passage significantly affects the City's regulation of this subject.

Generally, the new laws continue to recognize the power of local governments to regulate marijuana cultivation. However, under AB 243, the State Department of Food and Agriculture will establish a 'Medical Cannabis Cultivation Program,' which will be administered by the Department's secretary "except as specified in subdivision (c)" and will administer the new state laws pertaining to the cultivation of medical marijuana. Under subdivision (c):

If a city ... does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the [State Department of Food and Agriculture] shall be the sole licensing authority for medical marijuana cultivation applicants in that city... (Health & Safety Code § 11362.777(c)(4).)

Since this new framework has been signed into law, it is appropriate that the City ensure its prohibition on the cultivation of marijuana is clear, so there is no question of the need for the State to act as the only licensing authority under the new laws¹.

¹ Notwithstanding the foregoing, it should be noted that this new legislation could be overturned by the voters. The Secretary of State has recently announced that an initiative to amend the California Constitution with regard to medical marijuana issues has been cleared for circulation. According to the State Attorney General's summary, if passed, the initiative would, among other things, bar "state and local laws that restrict patients' ability to obtain, *cultivate*, or transport medical marijuana, including concentrated cannabis, in any way that does not apply equally to other plants." (Emphasis added.) A second marijuana initiative to amend the State Constitution ("The Control, Regulate and Tax Cannabis Act of 2016") was just submitted to the state Attorney General on October 5th and would likewise impact local regulation of cultivation. While there is no way of predicting whether either of these initiatives (or another that has not yet surfaced) might pass, it is certain the City will need to continue to monitor and revise regulations governing marijuana.

ANALYSIS

The proposed amendment is intended to further fortify the existing prohibition per Code and explicitly provide for prohibition of marijuana cultivation in all zoning districts.

On November 16, 2010, the City adopted Ordinance No. 10-14 that prohibited "Medical Marijuana Dispensaries" in all zoning codes and added a new definition to Chapter 1 of the zoning code as follows:

Medical marijuana dispensary. A facility or location where medical marijuana is cultivated or by any other means made available to and/or distributed by or to three (3) or more of the following: a primary caregiver, a qualified patient, or a person with an identification card in strict accordance with State Health and Safety Code Sections 11362.5 et seq and 11362.7 et seq., which shall include, but not be limited to any facility or location engaging in the retail sale, dispensation, or distribution of marijuana for medical purposes that does not have an active role in the cultivation of the marijuana product that it sells, dispenses, or distributes, or when its cultivation of the marijuana product is off-site from the facility or location for retail sale, dispensation, or distribution.

Even though the ordinance referred to marijuana cultivation, the new proposed amendment is required to ensure this specific use is prohibited throughout the City.

PUBLIC NOTICE

Code requires publication of a display AD in the local newspaper (Daily Pilot) for Title 13 Code Amendments. At the time of publication of this report, no public comments have been received. Any correspondence will be forwarded to the City Council under separate cover. In addition to the newspaper ad, homeowners associations and other neighboring cities and government agencies were notified by mail.

ENVIRONMENTAL DETERMINATION

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, 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 amendment to the Zoning Code will have a significant effect on the environment.

ALTERNATIVES

Direct staff to make modifications to the draft. In order to meet the deadlines established by the State, Planning Commission will need to make a recommendation that this ordinance be considered by City Council. Continuing the meeting may compromise the required processing time.

LEGAL REVIEW

The draft ordinance has been reviewed by the City Attorney's Office.

CONCLUSION

In response to three new bills that were signed into law by Governor Jerry Brown on October 9, 2015 related to regulation of medical marijuana with the State of California, City Staff determined that a new ordinance would need to be adopted and in effect by March 1, 2016 in order to allow the City to prohibit this use.



MINOO ASHABI, AIA
Principal Planner



CLAIRE FLYNN, AICP
Asst. Development Services Director

- Attachments: 1. Draft Ordinance
2. Information from League of California Cities

cc: Director of Economic & Development / Deputy CEO
Sr. Deputy City Attorney
Public Services Director
City Engineer
Transportation Services Manager
Fire Protection Analyst
File (2)

ORDINANCE NO. 15-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA ADOPTING CODE AMENDMENT CO-15-06, AMENDING TITLE 13, CHAPTER I (DEFINITIONS AND ENFORCEMENT) AND CHAPTER IV (CITYWIDE LAND USE MATRIX), AND ADDING ARTICLE 20 TO CHAPTER IX ADOPTING NEW REGULATIONS RELATED TO PROHIBITING MARIJUANA CULTIVATION

THE CITY COUNCIL OF THE CITY OF COSTA MESA FINDS AND DECLARES AS FOLLOWS:

WHEREAS, the City Council of City of Costa Mesa, pursuant to its police power, may adopt regulations to protect the health, safety and welfare of the public, Cal. Const. art. XI, § 7, Cal. Govt. Code § 37100, and thereby is authorized to declare what use or condition constitutes a public nuisance; and

WHEREAS, Section 38771 of the California Government Code 38771 authorizes the City through its legislative body to declare actions and activities that constitute a public nuisance; and

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana possession, cultivation and distribution; and

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5 et seq.) (the "CUA"), which exempts qualified patients and their primary caregivers from criminal prosecution under enumerated Health and Safety Code sections for use of marijuana for medical purposes; and

WHEREAS, the California Legislature enacted Senate Bill 420 in 2003, the Medical Marijuana Program Act (codified at Health and Safety Code Section 11362.7 et seq.) (the "MMPA"), as amended, which created a state-wide identification card scheme for qualified patients and primary caregivers; and

WHEREAS, on October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act ("MMRSA"), effective January 1, 2016, which establishes a state licensing system for medical marijuana cultivation, manufacturing, delivery, and dispensing, regulating these activities with licensing requirements and regulations that are only applicable if cities and counties also permit marijuana cultivation, manufacturing, dispensing, and delivery within their jurisdictions. Under the MMRSA, cities and counties may continue to ban medical marijuana cultivation, manufacturing, dispensing, and delivery, in which case the new law would not allow or permit these activities within the cities and counties; and

WHEREAS, notwithstanding the CUA, the MMPA, and the MMRSA, marijuana remains a schedule I substance pursuant to Cal. Health & Saf. Code § 11054 (d)(13); and

WHEREAS, marijuana also remains a schedule I substance pursuant to federal law, 21 U.S.C. § 812, Schedule 1 (c)(10), and federal law does not provide for any medical use defense or exception (Gonzales v. Raich, 545 U.S. 1 (2005); United States v. Oakland Cannabis Buyers' Coop., 532 U.S. 483 (2001)); and

WHEREAS, the California Supreme Court has established that neither the CUA nor the MMPA preempt local regulation in the case of City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal. 4th 729 (2013); and

WHEREAS, the MMRSA expressly allows cities and counties to ban marijuana cultivation consistent with current state law including the City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal. 4th 729 (2013);

WHEREAS, the MMRSA provides that if a city, county, or city and county does not have land use regulations or ordinances 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 pursuant to the MMRSA, then commencing March 1, 2016, the state will be the sole licensing authority for medical marijuana cultivation applicants (Health & Safety Code section 11372.777(c)(4));

WHEREAS, the City intends by the adoption of this ordinance to prohibit marijuana cultivation within the City for the express and specific purpose of preserving the City's authority to ban and/or adopt future regulations pertaining to marijuana cultivation as is required by California Health and Safety Code section 11372.777(c)(4), effective January 1, 2016, added by the MMRSA; and

WHEREAS, per Title 13, Zoning Code of the City of Costa Mesa, marijuana cultivation is not a permitted use in any of the zoning districts in the City; and,

WHEREAS, the City Council of the City of Costa Mesa finds that it is in the interest of the health, safety and welfare of the City to make explicit that marijuana cultivation is prohibited anywhere in the City and is a public nuisance per se; and]

WHEREAS, the City Council finds that the cultivation of marijuana significantly impacts, or has the potential to significantly impact, the City's jurisdiction. These impacts include the following:

- A. In Orange County, public safety agencies, city residents, and other public entities have reported adverse impacts from marijuana cultivation, including disagreeable odors and release of pollen that can aggravate the respiratory system; increased risk of burglary and other property crimes; and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes.
- B. The creation of persistent strong odors as marijuana plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable marijuana plants and creating an increased risk of crime.

- C. The unregulated cultivation of marijuana can adversely affect the health, safety and well-being of the city and its residents. Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, smells and indoor electrical fire hazards that may result from marijuana cultivation.
- D. The indoor cultivation of substantial amounts of marijuana also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation.
- E. The cultivation of marijuana in other cities has resulted in calls for service to the police department, including calls for robberies thefts, and physical assaults from marijuana that is grown outdoors;
- F. Marijuana growth poses significant safety risks for surrounding neighbors, including but not limited to, risks of violent confrontation in connection with attempts to steal marijuana, risk of fire from improperly wired electrical lights within structures growing marijuana, risk of guard dogs and security measures associated with structures and properties growing marijuana; and

Whereas the City Council finds that sanctioning the cultivation of marijuana would be inconsistent with federal law;

WHEREAS, this Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, 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 the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this Ordinance will have a significant effect on the environment.

WHEREAS, the City Council finds that the provisions of this Ordinance are consistent with the City of Costa Mesa's General Plan; and

WHEREAS, the City Council finds that this Ordinance will not adversely affect property values and will not be detrimental to the City; and

WHEREAS, the City Council has considered evidence presented by the Planning Commission and City Staff at a duly noticed public hearing held on [INSERT DATE]; and

WHEREAS, all legal prerequisites prior to the adoption of this ordinance have occurred.

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

Section 1: Title 13, Chapter I, Article 2, Definitions, Section 13-6 of the Costa Mesa Municipal Code is hereby amended to include the following new definitions within an alphabetized series of definitions:

“Marijuana. Has the same definition as that set forth in California Health & Safety Code Section 11018.”

“Medical marijuana. Marijuana used for medical purposes in accordance with California Health and Safety Code section 11362.5.”

“Marijuana cultivation and/or Medical Marijuana Cultivation. The planting, growing, harvesting drying or processing of marijuana plants or any part thereof for any purpose, including medical marijuana, and shall include both indoor and outdoor cultivation.”

Section 2: Title 13, Chapter I, Article 4, Enforcement, Section 13-16(d), of Costa Mesa Municipal Code is hereby amended to read as follows:

Sec. 13-16. Enforcement

“ (d) No criminal prosecution, citation or penalty. Notwithstanding the provisions of subsections (a) and (b) of this section, no person shall be criminally prosecuted or cited, or suffer any criminal penalty, for any violation of the provisions of section 13-30, Table 13-30, rows 31a and/or 31b relating to the prohibition of medical marijuana dispensaries or medical marijuana cultivation within the city, or for a violation of the provisions of Chapter IX, Article 20 related to the prohibition against medical marijuana cultivation. “

Section 3: Title 13, Chapter IX, Article 20 of Costa Mesa Municipal Code is hereby added as follows:

“Article 20. Marijuana and/or Medical Marijuana Cultivation

Sec. 13-200.84 PURPOSE

The purpose of this article is to prohibit marijuana cultivation, in order to promote the health, safety, morals and general welfare of the residents and the businesses within the City by maintaining local control over the ability to authorize and regulate marijuana-related businesses, including cultivation.

Sec. 13-200.85 APPLICABILITY

1. Nothing in this article is intended, nor shall it be construed, to burden any defense to criminal prosecution under the Compassionate Use Act of 1996.
2. All the provisions of this article shall apply to all property, public and private, within the City.
3. All the provisions of this article shall apply indoors and outdoors.

Sec. 13-200.86 DEFINITIONS

The following definition applies to this article:

“Person” shall mean any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer and/or salesperson.

Sec. 13-200.87 CULTIVATION OF MARIJUANA PROHIBITED

Marijuana and/or medical marijuana cultivation by any person, including primary caregivers, qualified patients and dispensaries, is prohibited in all zone districts within the City of Costa Mesa.

Sec. 13-200.88 DECLARATION OF PUBLIC NUISANCE

Any use, structure, or property that is altered, enlarged, erected, established, maintained, moved, or operated contrary to the provisions of this article, is hereby declared to be unlawful and a public nuisance and may be abated by the city through civil and/or administrative proceedings by means of a restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances.

Sec. 13-200.89 VIOLATIONS

Violations of this article shall be punishable pursuant to the provisions of section 13-16. “

Section 4: Title 13, Table 13-30 of Chapter IV (Citywide Land Use Matrix) of Costa Mesa Municipal Code is hereby amended to add row 31b as follows:

“31b. Marijuana and/or medical marijuana cultivation.” [prohibited in all zones]

[See attachment A]

Section 5: Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 6: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 7: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage

shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

Adopted this _____ day of _____, 2016

Stephen Mensinger, Mayor

ATTEST:

Brenda Green
City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2016, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2016, was duly passed and adopted by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Brenda Green
City Clerk of the City of Costa Mesa



Informational Briefing: Medical Marijuana Regulation and Safety Act

- This briefing is designed to educate our members on the three bills comprising the Medical Marijuana Regulation and Safety Act (MMRSA). Its goals are to:
 - Explain how this legislation protects local control;
 - Review the details of what each bill does;
 - Highlight specific regulatory issues that require immediate attention from local governments;
 - Discuss timelines for implementation
 - Field your questions

Note: Some of the provisions of the new laws discussed in this briefing are not included in the Medical Marijuana Regulation and Safety Act.



Medical Marijuana Regulation and Safety Act

- The Medical Marijuana Regulation and Safety Act consists of three discrete pieces of legislation:
- **AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood)** – Establishes dual licensing structure requiring state license and a local license or permit. Department of Consumer Affairs heads overall regulatory structure establishing minimum health and safety and testing standards.
- **AB 243 (Wood)**– Establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture.
- **SB 643 (McGuire)** - Establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees.



Medical Marijuana Regulation and Safety Act

- This legislation protects local control in the following ways:
- **Dual licensing**: A requirement in statute that all marijuana businesses must have **both** a state license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban.
- **Effect of Local Revocation of a Permit or License**: Revocation of a local license or permit terminates the ability of a marijuana business to operate in that jurisdiction under its state license.
- **Enforcement**: Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency.
- **State law penalties for unauthorized activity**: Provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law will continue to apply.
- With certain exceptions, expressly protects local licensing practices, zoning ordinances, and local actions taken under the constitutional police power.



Medical Marijuana Regulation and Safety Act

- This legislation protects public safety in the following ways:
- **SB 643**: Establishes a track and trace program for all marijuana.
- **AB 266**:
 - Limits vertical integration by requiring third party distribution, transportation and testing.
 - Requires the development of a study that identifies the impact and impairing effect that marijuana has on motor skills.
 - Establishes uniform security requirements at dispensaries as well as for transporters.



Key State Medical Marijuana Laws

- Medical Marijuana Regulation and Safety Act (Business and Profession Code section 19300 through 19360). Governs the licensing and control of all medical marijuana businesses in the state and provides criminal immunity for licensees.
- Compassionate Use Act of 1996 (Health and Safety Code section 11362.5). Criminal violations relating to possession and cultivation of marijuana do not apply to patients and primary caregivers for possession and cultivation of marijuana for personal medical use with doctor's approval.
- Medical Marijuana Program (Health and Safety Code section 11362.7 through 11362.9). Establishes voluntary program for identification cards issued by county for qualified patients and primary caregivers and provides criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana.



Medical Marijuana Regulation and Safety Act

Two areas will require immediate attention from local governments:

- **Deliveries and mobile dispensaries:** Delivery is permitted with a State license unless a city adopts an express prohibition on delivery (AB 266).
- **Cultivation ordinances:** Cities must adopt an ordinance prohibiting or regulating cultivation prior to March 1, 2016. Otherwise the State will be sole licensing authority.



Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**
 - Establishes a statewide regulatory scheme administered by the Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs (DCA).
 - Provides for dual licensing: both a state license, and a local permit or license, *issued according to local ordinances*, are required.
 - Caps total cultivation for a single licensee at 4 acres statewide, subject to local ordinances.
 - Creates four licensing categories: Dispensary, Distributor, Transport, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Specifies various sub-categories of licensees (indoor cultivation, outdoor cultivation, etc.)
 - Limits cross-licensing: Operators may hold one state license in up to two separate license categories. Prohibits medical marijuana licensees from also holding licenses to sell alcohol.



Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**
- Grandfathers in vertically integrated businesses (i.e. businesses that operate and control their own cultivation, manufacturing, and dispensing operations) if a local ordinance allowed or required such a business model and it was enacted on or before July 1, 2015. Requires businesses to operate in compliance with local ordinances, and to have been engaged in all the specified activities on July 1, 2015.
- Requires establishment of uniform state minimum health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product. Product testing is mandatory.
- Specifies a standard for certification of testing labs, and specified minimum testing requirements. Prohibits testing lab operators from being licensees in any other category, and from holding a financial or ownership interest in any other category of licensed business.



Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**
- **Labor Peace:** Includes a labor peace agreement under which unions agree not to engage in strikes, work stoppages, etc. and employers agree to provide unions reasonable access to employees for the purpose of organizing them. Specifies that such an agreement does not mandate a particular method of election.
- Specifies that patients and primary caregivers are exempt from the state licensing requirement, and provides that their information is not to be disclosed and is confidential under the California Public Records Act.
- Phases out the existing model of marijuana cooperatives and collectives one year after DCA announces that state licensing has begun. Thereafter license will be required.



Medical Marijuana Regulation and Safety Act

- **AB 243 Medical Marijuana – what the bill does:**
- Places the Dept. of Food and Agriculture (DFA) in charge of State licensing and regulation of indoor and outdoor cultivation sites.
- Mandates the Dept. of Pesticide Regulation (DPR) to develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
- Mandates the Dept. of Public Health to develop standards for production and labelling of all edible medical cannabis products.
- Assigns joint responsibility to DFA, Dept. of Fish and Wildlife, and the State Water Resources Control Board (SWRCB) to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population.



Medical Marijuana Regulation and Safety Act

- **AB 243 Medical Marijuana – what the bill does:**
 - Specifies that DPR, in consultation with SWRCB, is to develop regulations for application of pesticides in all cultivation.
 - Specifies various types of cultivation licenses.
 - Directs the multi-agency task force headed by the Dept. of Fish and Wildlife and the SWRCB to expand its existing enforcement efforts to a statewide level to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats.



Medical Marijuana Regulation and Safety Act

- **SB 643 Medical Marijuana – what the bill does:**
- Directs California Medical Board to prioritize investigation of excessive recommendations by physicians;
- Imposes fines (\$5000.00) vs. physicians for violating prohibition against having a financial interest in a marijuana business;
- Recommendation for cannabis without a prior examination constitutes unprofessional conduct;
- Imposes restrictions on advertising for physician recommendations;



Medical Marijuana Regulation and Safety Act

- **SB 643 Medical Marijuana – what the bill does:**
- Places Dept. of Food and Agriculture in charge of cultivation regulations and licensing, and requires a track and trace program;
- Codifies dual licensing (state license and local license or permit), and itemizes disqualifying felonies for state licensure;
- Places DPR in charge of pesticide regulation; DPH in charge of production and labelling of edibles;
- Authorizes counties to tax – declaratory of existing law.



Medical Marijuana Regulation and Safety Act

- **SB 643: Disqualifying felony convictions for licensure**
 - These include felony narcotics convictions, violent felony convictions, serious felony convictions, and felony convictions involving fraud, deceit or embezzlement.
 - Applications cannot be denied if the denial is based solely on the applicant's conviction of a crime for which the applicant was subsequently granted a certificate of rehabilitation, or if the applicant's conviction was subsequently dismissed.



Medical Marijuana Regulation and Safety Act

- **Delivery of Medical Marijuana (AB 266)**
- “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 & 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))



Medical Marijuana Regulation and Safety Act

- **Delivery of Medical Marijuana (AB 266)**
- “*Deliveries*” can only be made by a dispensary and in a city, county, or city and county that does not **explicitly prohibit** it by local ordinance. Business & Professions Code 19340(a). See also Section 19340(b)(1).
- Therefore, if your city wishes to prohibit delivery of medical marijuana within your city, an ordinance must be adopted to explicitly prohibit deliveries.
- Timing: State licenses are expected to be issued starting January 1, 2018. A facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements may continue its operations until its application for licensure is approved or denied effective January 1, 2018 (Business & Professions 19321(c)).
- Ordinance explicitly prohibiting deliveries should include (1) an amendment to the zoning code prohibiting “delivery” (as defined in AB 266) in any zoning district; or (2) an amendment to the Municipal Code relating to business operations prohibiting “delivery” of “medical marijuana” and “medical cannabis products” (as defined in AB 266) as a business within the city.



Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243)**

- AB 243 (Wood) prohibits cultivation of medical marijuana without first obtaining both a local license/permit/other entitlement for use and a state license. A person may not apply for a state license without first receiving a local license/permit/other entitlement for use.
- A person may not submit an application for a state license if proposed cultivation will violate provisions of local ordinance or regulation or if medical marijuana is prohibited by city, county, or city and county either expressly or otherwise under principles of permissive zoning (Health & Safety 11372.777(b)).



Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243)**

- **However...** If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, *either expressly or otherwise under the principles or permissive zoning*, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the state is the sole licensing authority for medical marijuana cultivation applicants (Health & Safety 11372.777(c)(4)). [March 1, 2016 deadline does not apply to cultivation for personal medical use within 100 square foot area/500 square foot area for primary care-taker].
- Under a “permissive” zoning code, “any use not enumerated in the code is presumptively prohibited.” *City of Corona v. Naulis* (2008) 166 Cal.App.4th 418, 425 cited in *County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, FN. 3



Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243) – Examples:**
- City #1: Municipal Code that expressly prohibits cultivation of marijuana: No need to take any action.
- City #2: Municipal Code that expressly regulates (requires a permit or license or other entitlement) the cultivation of medical marijuana: No need to take any action.
- City #3: Municipal Code that does not expressly prohibit or expressly regulate (requires a permit or license or other entitlement) to cultivate medical marijuana and is not a “permissive zoning” code. ***Need to take action (see next slide)***
- City #4: 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 (see second slide following)***.



Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243) – Examples:**
- **City #3 : What needs to be done before March 1, 2016?**
- **City #3: Enact an ordinance. The Department of Food and Agriculture will be the sole licensing authority for the cultivation of medical marijuana within City #3 if City #3 does not have an ordinance either expressly prohibiting or expressly regulating the cultivation of medical marijuana before March 1, 2016. (Health & Safety Code 11362.777(c)(4). Second reading of an ordinance must occur by January 29, 2016 or a city may consider adopting an urgency ordinance pursuant to Government Code 36937).**



Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243) – Examples:**
- **City #4 : What needs to be done before March 1, 2016?**
- **City #4:** If City #4 prohibits the cultivation of medical marijuana “under principles of permissive zoning,” then the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within City #4. (Health & Safety Code 11362.777(b)(3)). *However, the city still needs take action (see next slide).*



Medical Marijuana Regulation and Safety Act

- **Cultivation - General Guidelines for Cities**
- 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 #3.
- If confirmed that your city's zoning code is adopted and implemented under the principles of permissive zoning: Adopt a resolution that includes the following provisions:
 - (1) States that H & S 11362.777(b)(3) states that 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;
 - (2) Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
 - (3) States this means that cultivation of marijuana is not allowed within City #4 because it is not expressly permitted and,
 - (4) Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #4.



Medical Marijuana Regulation and Safety Act

- Timeline for Implementation
 - None of the bills specify a timeline for implementation
 - This is partly due to various departments being at different stages in terms of their readiness
 - The rough timeline we have been given for state licensing to begin is January 2018
 - The more immediate timeline for locals to bear in mind is March 2016 regarding your cultivation ordinances



Medical Marijuana Regulation and Safety Act

- Questions?

Frequently Asked Questions (FAQs)

Medical Marijuana Regulation and Safety Act¹

Topic #1: Cultivation

*The State will be the sole licensing authority for the commercial cultivation of medical marijuana unless a city adopts land use regulations or ordinances regulating or prohibiting the cultivation of marijuana -- either expressly or otherwise under the principles of permissive zoning -- prior to **March 1, 2016.***²

1. **Question:** If a city wants to enact a total ban on cultivation, can the ban include cultivation for personal use?

Answer: Yes. Under *Live Oak*³, a city can ban all marijuana cultivation -- even cultivation of small amounts by qualified patients. The *Live Oak* ban had no exceptions for personal use by a qualified patient. The new legislation does not change the law in this regard.

2. **Question:** Must a city's ordinance prohibiting cultivation make an exception for personal medical marijuana cultivation of up to 6 mature or 12 immature plants?⁴

Answer: No. In the *Live Oak* case, the California Court of Appeal upheld the city's total ban on all marijuana cultivation. That authority is preserved under the new legislation.

3. **Question:** Is a person who cultivates marijuana for his or her personal medical use required to get a cultivation license from the State?

¹ AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016. Please consult your City Attorney before taking action to implement the MMRSA. The answers to these FAQs may be different in your city based upon your municipal code, regulations, and policies. The answers do not constitute legal advice from the League of California Cities®.

² Health & Safety 11362.777(c).

³ *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.

⁴ Health & Safety Code 11362.77 allows a qualified patient to cultivate 6 mature or 12 immature plants without criminal liability.

Answer: No, if the area used for cultivation does not exceed 100 square feet, or 500 square feet for a primary caregiver with no more than five patients.⁵ If the areas exceed these limits, then a State license is required. The exemption from the State licensing requirements does not prevent a city from regulating or banning cultivation by persons exempt from State licensing requirements.⁶

4. **Question:** Can a city prevent the State from becoming the sole licensing authority for cultivation by adopting an ordinance that permits the cultivation of six plants per residence prior to March 1, 2016?

Answer: Yes. The State becomes the sole licensing authority for cultivation as of March 1, 2016 if a city does not have a land use regulation or ordinance "regulating or prohibiting the cultivation of marijuana." An ordinance permitting cultivation under certain specific conditions (not more than six plants per residence) is an ordinance "regulating" marijuana cultivation and therefore qualifies. However, in order to be completely clear, the City Attorney may wish to determine whether it is advisable to prohibit all other types of cultivation as part of the ordinance.

5. **Question:** Must the cultivation prohibition be adopted as part of a city's zoning code? Could it be adopted instead under the city's business licenses and regulations?

Answer: It's not possible to answer "yes" or "no." AB 243 requires a "land use regulation or ordinance." Whether the phrase "land use" requires a zoning ordinance is a question for the city attorney to answer based on the particular language of the city's municipal code.

6. **Question:** Can a city ban large growers but still allow qualified patients to cultivate a small amount of medical marijuana in their private residences?

Answer: Yes. There's nothing in the legislation that requires a total ban. The most important consideration is to clearly identify cultivation that is prohibited and cultivation that is allowed and to do so before March 1, 2016.

7. **Question:** Is a temporary land use moratorium (under Government Code section 65858) on medical marijuana cultivation that is effective in a city by March 1, 2016 sufficient to prevent the State from having sole licensing authority under the new law for medical marijuana cultivation applicants in that city?

⁵ Business & Professions Code 19319; Health & Safety 11362.777(g).

⁶ Health & Safety Code 11362.777(g).

Answer: Probably not. The new law requires a land use regulation or ordinance that prohibits or regulates cultivation. Because a moratorium adopted under Government Code 65858 would only temporarily prohibit cultivation, it may not qualify as a land use ordinance that “prohibits” cultivation.

8. **Question:** Can a local medical marijuana cultivation ordinance be enacted on an urgency basis in order to comply with the March 1, 2016 deadline in the new legislation?

Answer: Yes, with urgency findings relating to the statutory deadline.

Topic #2: Delivery

*Deliveries of medical marijuana can only be made by a State-licensed dispensary in a city that does not explicitly prohibit deliveries by local ordinance. If a city wants to prevent deliveries within its jurisdiction, it must adopt an ordinance expressly prohibiting them.*⁷

9. **Question:** Is there a deadline for adopting an ordinance explicitly prohibiting deliveries?

Answer: There is no deadline in the new law. However, best practice would be to adopt the ordinance prior to the date the State begins issuing licenses allowing deliveries so as to reduce the risk of confusion and to avoid the process of requesting the State to terminate the operations of a dispensary making deliveries within the city. The legislation does not specify a deadline for the State to begin issuing any category of license. The State is generally expected to begin issuing licenses on January 1, 2018, but it could begin sooner.

10. **Question:** What are the quantities that delivery services will be authorized to transport?

Answer: The amount that local delivery services will be authorized to carry will be determined by the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. The determination will be based on security considerations, cash value, and other factors. The amount will be a statewide threshold, authorized for delivery primarily to patients, primary caregivers, and testing labs. Larger amounts will not be considered “delivery” but rather “transport” triggering heightened security requirements while the product is being moved.

⁷ Health & Safety 19340.

Topic 3: Dispensaries and Retail Operations

11. **Question:** Will cities still be able to ban dispensaries?

Answer: Yes. Cities currently have the ability to enact bans on dispensaries and other marijuana retail operations. The new law will not change that, and in fact requires a local permit and a State license before a marijuana business can begin operations within a specific jurisdiction. Cities will retain the discretion to deny permits or licenses to marijuana dispensaries.

12. **Question:** Can a city allow dispensaries and prohibit delivery services?

Answer: Yes. But cities should be aware that if they wish to prohibit delivery services, an ordinance prohibiting delivery services is required.

Topic #4: Other Questions

13. **Question:** Does the new legislation make any distinction between “not-for-profit” and “for profit” medical marijuana businesses?

Answer: No. There is no distinction in the new legislation between medical marijuana businesses that operate “for profit” and those that operate on a “not-for-profit” basis. The new law does not mandate that dispensaries or other businesses operate under either business model.

14. **Question:** Are marijuana edibles covered under the new legislation? Is there a separate designation for them under the new law, with additional State regulatory requirements?

Answer: The new legislation directs the State Department of Public Health (DPH) to develop standards for the production and labeling of all edible medical cannabis products (Business & Professions Code section 19332(c)). A license is required from DPH to “manufacture” edibles. The DPH standards are “minimum standards.” A city may adopt additional stricter standards, requirements and regulations regarding “edibles” (Business & Professions Code section 19316(a)). Cities also retain their ability to license and regulate edible sales or distribution.

15. **Question:** The new law says: “upon approval of the state, cities may enforce state law”. If an existing medical marijuana dispensary does not have both licenses (State and city), then must a city wait for the State to approve shutting the dispensary down

November 6, 2015

before a city can cite the dispensary or otherwise seek to shut it down under the city's ordinances and regulations?

Answer: No. A city may enforce its own ordinances and regulations against the dispensary since a medical marijuana dispensary cannot operate lawfully unless it complies with all local ordinances and regulations.

16. **Question:** Does a P.O. Box qualify as a medical marijuana business location? Is that considered a "use" in a city?

Answer: The answer to this question depends upon a city's municipal code. The State law prohibits a person from engaging in commercial cannabis activity without possessing both a State license and a local permit, license or other authorization. A State licensee may not commence activity under the authority of a State license until the applicant has complied with all requirements of the applicable local ordinance (Business & Professions Code section 19320). A city's municipal code will determine whether a "use" includes a post office box.

17. **Question:** Does the new law address extraction of THC, butane or other substances from marijuana?

Answer: The new law does not specifically address the issue of extraction at all – other than to acknowledge very generally that extraction falls within the definition of manufacturing, and that medical marijuana or a product derived from it may contain extracts.

18. **Question:** Since patients and primary caregivers are exempt from the licensing requirement under specified circumstances, how will that work if they are also owners of a dispensary or cultivation site?

Answer: A primary caregiver or qualified patient who seeks to operate a dispensary or cultivation site is subject to the same State licensing requirements and local permitting requirements as any other person.

19. **Question:** What types of medical marijuana businesses require a State license?

Answer: The new law creates six State licensing categories: Dispensary, Distributor, Transport, Cultivation, Manufacturing, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Any person or entity wishing to operate under a State license must also comply with all local requirements.

20. **Question:** Several initiative measures to legalize recreational marijuana have been filed with the Attorney General in advance of the November 2016 ballot. Should a city be considering prohibiting or regulating recreational marijuana at this time?

Answer: No. The new law does not address recreational use of marijuana. It adds a licensing structure for businesses that wish to serve those qualified patients and primary caregivers who use medical marijuana for their personal use. The League of California Cities is following the various recreational marijuana initiative measures that have been filed with the Attorney General. There is no need for a city to take any action at this time. If a city is interested in following these measures, more information can be found at: <https://www.oag.ca.gov/initiatives/active-measures>.

21. **Question:** Does the new law protect the privacy of patients and primary caregivers?

Answer: Yes. Patient and primary caregiver information is confidential and not subject to disclosure under the California Public Records Act, except as necessary for employees of the State or any city to perform official duties.

22. **Question:** Is there a provision in the new law giving business operators priority for State licensing if they can show that they are in compliance with local ordinances? If so, what is the purpose of this provision?

Answer: Yes. The State licensing authority is required to prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016. This provision is intended as an incentive for business operators to be in compliance with local ordinances, to ease any difficulties local governments may have in launching their local regulatory structures, and to help expedite the initial phase of issuing state licenses.

23. **Question:** Does the new law address food trucks that sell marijuana edibles?

Answer: No. The operation of food trucks are within the control and regulation of cities and county health departments.

PLEASE NOTE: This document will be updated periodically, as needed, and will remain available at www.cacities.org. As noted above, each city should consult with its city attorney on all of these issues. The answers to these FAQs do not constitute legal advice from the League of California Cities®.