



DATE: January 6, 2016

TO: Honorable Mayor and City Councilmembers
Chair and Members of the Community Development Commission

FROM: Development Services Department

SUBJECT: **INTRODUCTION OF AN ORDINANCE ADDING ARTICLE XIII TO CHAPTER 7 OF THE OCEANSIDE CITY CODE TO PROHIBIT COMMERCIAL CANNABIS ACTIVITIES INCLUDING CULTIVATION AND DELIVERY REQUIRING STATE LICENSES AS BUSINESSES WITHIN THE CITY OF OCEANSIDE – APPLICANT: CITY OF OCEANSIDE**

SYNOPSIS

Staff recommends that the City Council introduce an ordinance to amend the City Code (Code) by adding Section XIII to Chapter 7, prohibiting commercial cannabis activities, including cultivation and delivery requiring State licenses, as businesses within the City of Oceanside.

BACKGROUND

In 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (the "CUA"), to enable Californians suffering from serious illnesses to possess, use and cultivate marijuana for medical use and exempt qualified patients and their primary caregivers from criminal prosecution.

In 2003, California Legislature adopted Senate Bill 420, the Medical Marijuana Program Act (the "MMPA"). The MMPA set forth a state-wide identification card scheme for qualified patients and primary caregivers, established limits on the amount of marijuana an individual can possess, and exempted from State criminal liability individuals who associate collectively or cooperatively to cultivate marijuana for medical purposes.

Although the CUA and MMPA provide exemptions under State law for medical marijuana use/activities, neither Acts impose a mandate upon a local government to authorize the establishment of commercial cannabis related activities within its jurisdiction. Furthermore, under the Federal Controlled Substances Act (CSA), use, possession and cultivation of marijuana remains illegal and subject to federal prosecution regardless of any asserted medical need.

On October 11, 2015, Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act (“MMRSA”) were signed into law by Governor Jerry Brown. This Act, takes effect on January 1, 2016, and establishes a state licensing system for medical marijuana cultivation, manufacturing, delivery, and dispensing activities throughout the State. Based on MMRSA provisions, unless a local government has an ordinance in place by March 1, 2016, that regulates or prohibits marijuana cultivation, regulation and permitting authority for those activities will default to the State. In addition, the City is required to adopt an ordinance regulating or prohibiting delivery services before the State begins issuing permits.

ANALYSIS

Several California cities have reported negative impacts to public health, safety and welfare from marijuana cultivation, processing, and distribution activities (e.g. offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies, and robbery attempts, fire hazards and problems associated with mold, fungus and pests). To avoid such impacts on residents and businesses, the City of Oceanside currently prohibits commercial cannabis activities within its jurisdictional boundaries, based on applicable “permissive zoning” regulations which limit land uses within the City to those enumerated in the zoning ordinance as either permitted by right or as conditional uses.

The existing permissive zoning ban of commercial cannabis activities within Oceanside has been effectively utilized in the closure of unauthorized medical marijuana dispensaries and to preclude new dispensaries, distribution facilities and cultivation of marijuana within the City. Nevertheless, due to the transient nature of the activity, enforcement of the ban on medical marijuana delivery services originating from sources beyond the City limits still presents an unresolved challenge.

Oceanside Police Department statistics involving marijuana crime incidents (Attachment 2) confirm reports of negative impacts related to commercial cannabis activities. Crime reports within City limits indicate that a minimum of 45 robberies related to the sale, purchase or possession of marijuana have taken place since 2012, of which 24 were committed using firearms, and 21 involved use of other types of weapons. Eleven of these 45 incidents were related to mobile marijuana dispensaries, including an incident on October 30, 2015, involving a mobile medical marijuana driver who was shot twice and left paralyzed. It should be noted that crime statistics do not reflect the actual number of incidents, as a great number of them remain unreported. This fact was confirmed at a recent shooting incident where Oceanside Police recovered over 600 grams of marijuana from a residence that according to neighbors’ reports was also robbed but no report was filed – a clear indication that individuals in possession of large amounts of marijuana become crime targets and incidents of criminal nature are never reported.

New MMRSA statutory scheme provisions in AB 243 and AB 266 require of local agencies that wish to maintain regulatory authority on commercial cannabis activities or prohibit such uses within their jurisdiction to enact ordinance(s) explicitly regulating/ prohibiting them. To that end, the proposed ordinance expressly provides that commercial cannabis

activities, including cultivation and delivery services requiring State licenses are prohibited in the City of Oceanside and declares these uses a nuisance.

ENVIRONMENTAL DETERMINATION

In accordance with the California Environmental Quality Act (CEQA), staff has determined that there is no possibility that approval of this ordinance may have a significant effect on the environment. Therefore, pursuant to CEQA Guidelines Section 15061(b) (3) (General Rule), the subject activity is exempt from CEQA.

CITY ATTORNEY'S ANALYSIS

The City Attorney has reviewed and approved the form of the ordinance.

RECOMMENDATION

Staff recommends that the City Council introduce an ordinance to amend the City Code (Code) by adding Section XIII to Chapter 7, prohibiting commercial cannabis activities, including cultivation and delivery requiring State licenses, as businesses within the City of Oceanside.

PREPARED BY:



Amy Fousekis
Principal Planner

SUBMITTED BY:



Michelle Skaggs Lawrence
City Manager

REVIEWED BY:

Peter Weiss, Assistant City Manager
Frank McCoy, Chief of Police
Rick Brown, Development Services Director
Jeff Hunt, City Planner



Attachments:

1. Ordinance prohibiting marijuana cultivation and delivery
2. Marijuana Safety Related Issues Memorandum, dated November 19, 2015

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE, CALIFORNIA, ADDING ARTICLE XIII TO CHAPTER 7 OF THE OCEANSIDE CITY CODE TO PROHIBIT COMMERCIAL CANNABIS ACTIVITIES INCLUDING CULTIVATION AND DELIVERY REQUIRING STATE LICENSES AS BUSINESSES WITHIN THE CITY OF OCEANSIDE

WHEREAS, the City of Oceanside, 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 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,

1 regulating these activities with licensing requirements and regulations that are only applicable
2 if cities and counties also permit marijuana cultivation, manufacturing, dispensing, and delivery
3 within their jurisdictions. Under the MMRSA, cities and counties may continue to ban medical
4 marijuana cultivation, manufacturing, dispensing, and/or delivery, in which case the new law
5 would not allow or permit these activities within the cities and counties; and

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

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

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

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

18 WHEREAS, the MMRSA provides that if a city, county, or city and county does not
19 have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana,
20 either expressly or otherwise under the principles of permissive zoning, or chooses not to
21 administer a conditional permit program pursuant to the MMRSA, then commencing March 1,
22 2016, the state will be the sole licensing authority for medical marijuana cultivation applicants
23 (Health & Safety Code section 11372.777(c)(4)); and

24 WHEREAS, the City intends by the adoption of this ordinance to prohibit marijuana
25 cultivation and delivery activities as specified in Section 7.115 below within the City of
26 Oceanside for the express and specific purpose of preserving the City's authority to ban and/or
27 adopt future regulations pertaining to marijuana cultivation and delivery as is required by
28 California Health and Safety Code section 11372.777(c)(4), effective January 1, 2016, added
by the MMRSA; and

1 WHEREAS, several California cities have reported negative impacts of marijuana
2 cultivation, processing and distribution activities, including offensive odors, illegal sales and
3 distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards
4 and problems associated with mold, fungus and pests; and

5 WHEREAS, the Oceanside Police Department reports at least forty-six robberies related
6 to the sale, purchase or possession of marijuana, twenty-four of which were committed using
7 firearms, and twenty-two using other types of weapons. Twelve of these forty-six incidents
8 were related to mobile marijuana dispensaries, including an incident on October 30, 2015 in
9 which a mobile medicinal marijuana driver was shot twice and left paralyzed; and a incident on
10 December 1, 2015 where two victims delivering medical marijuana were assaulted and robbed
11 by three suspects; and

12 WHEREAS, the City Council of the City of Oceanside finds that the cultivation of
13 marijuana and marijuana delivery activities within the City of Oceanside have the potential to
14 negatively impact the City and constitute a public nuisance because:

15 a) Marijuana plants release pollen that can aggravate the respiratory system and
16 impact the health of residents;

17 b) Persistent strong odors from mature and flowering marijuana plants produce a
18 strong odor, offensive to many people, detectable beyond property boundaries alerting persons
19 to the location of plants thus increasing the risk of burglary, robbery, armed robbery and other
20 property crimes and acts of violence associated with the commission of such crimes;

21 c) Excessive use of electricity for indoor cultivation of marijuana can adversely
22 affect the structural integrity of building(s) by increasing the risk of fire danger to the
23 building(s) and imposing a health hazard to its occupants; and

24 WHEREAS, the City of Oceanside's permissive Zoning Code does not list marijuana
25 commercial cannabis activities as defined in Business and Professions Code section 19300.5(k),
26 as permitted uses in any zoning district in the City and therefore, such uses are not allowed
27 anywhere in the City; and

28 WHEREAS, the City Council finds that sanctioning the cultivation of commercial
cannabis activities would be inconsistent with federal law; and

1 WHEREAS, the City of Oceanside, California, pursuant to the provisions of the
2 California Environmental Quality Act (hereinafter "CEQA") (California Public Resources
3 Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) has
4 determined that the Ordinance is exempt pursuant to Section 15061(b)(3) of Title 14 the
5 California Code of Regulations; and

6 WHEREAS, the City Council finds that the provisions of this Ordinance are consistent
7 with the City of Oceanside's Zoning Ordinances and General Plan; and

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

10 NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OCEANSIDE
11 DOES ORDAIN AS FOLLOWS:

12 SECTION 1: The City Council finds that all the facts, findings, and conclusions
13 set forth above in this Ordinance are true and correct.

14 SECTION 2: Chapter 7, Article XIII. Commercial Cannabis Activities is hereby
15 added to the Oceanside City Code to read as follows:

16 **Sec. 7.115 - Purpose.**

17 The City Council of the City of Oceanside hereby finds and determines that it is the
18 purpose and intent of this article to prohibit any Commercial Cannabis Activity, including
19 marijuana cultivation requiring a state license and/or commercial delivery of marijuana within
20 the City of Oceanside, in order to promote the health, safety, and general welfare of residents
21 and businesses within the City.

22 **Sec. 7.116 - Applicability**

23 A. Nothing in this article is intended, nor shall it be construed, to burden any defense
24 to criminal prosecution under the CUA.

25 B. All the provisions of this article shall apply to all property, public and private,
26 within the City.

27 C. All the provisions of this article shall apply indoors and outdoors.

28 **Sec. 7.117 - Definitions**

 The following definitions apply to this chapter:

1 A. “Commercial Cannabis Activity” shall have the same definition as set forth in
2 California Business and Professions Code section 19300.5(k) and includes cultivation,
3 possession, manufacture, processing, storing, laboratory testing, labeling, transporting,
4 distribution, or sale of medical cannabis or medical cannabis product except as set forth in
5 Business and Professions Code section 19319.

6 B. “Marijuana” shall have the same definition as that set forth in California Health &
7 Safety Code Section 11018.

8 C. “Medical marijuana” shall mean marijuana used for medical purposes in
9 accordance with California Health and Safety Code section 11362.5.

10 D. “Marijuana cultivation” shall mean the indoor and outdoor planting, growing,
11 harvesting drying or processing of marijuana plants or any part thereof for any purpose, and/or
12 associated operational activities.

13 E. “Marijuana delivery” shall have the same meaning in Business and Professions
14 Code section 19300.5(m) and includes the commercial delivery, transfer or transport, or the
15 arranging for the commercial delivery, transfer or transport, or the use of any technology
16 platform to arrange for or facilitate the commercial delivery, transfer or transport of marijuana,
17 marijuana edibles, and/or any marijuana products to or from any location within the
18 jurisdictional limits of the City of Oceanside, and any and all associated business and/or
19 operational activities.

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

23
24 **Sec. 7.118 - Commercial Cannabis Activity Prohibited**

25 Any Commercial Cannabis Activity, including Marijuana cultivation requiring a state
26 license by a licensing authority as defined in Business and Professions Code section
27 19300.5(w), and Marijuana delivery is prohibited in the City of Oceanside. No permit shall be
28 issued by the City to authorize any Commercial Cannabis Activity. Any Commercial Cannabis
Activity that takes place is hereby declared a public nuisance.

1 **Sec. 7.119. - Violations**

2 Any violation of this article shall be remedied pursuant to Chapter 1 - General
3 Provisions, Sections 1.7(g) and/or 1.14 through 1.14.8.

4 SECTION 3. The City Clerk of the City of Oceanside is hereby directed to publish
5 this Ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen
6 (15) days after its passage in a newspaper of general circulation published in the City of
7 Oceanside.

8 SECTION 4. If any section, sentence, clause or phrase of this Ordinance is for any
9 reason held to be invalid or unconstitutional by a decision of any court of competent
10 jurisdiction, such decision shall not affect the validity of the remaining portions of this
11 Ordinance. The City Council hereby declares that it would have passed this Ordinance and
12 adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the
13 fact that any one or more sections, subsections, sentences, clauses or phrases be declared
14 invalid or unconstitutional.

15 SECTION 5. This ordinance shall be effective 30 days after its adoption.

16
17 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,
18 California, held on the ____ day of _____, 2016, and, thereafter,

19 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
20 Oceanside, California, held on the ____ day of _____, 2016, by the following vote:

21 AYES:

22 NAYS:

23 ABSENT:

24 ABSTAIN:

25 MAYOR OF THE CITY OF OCEANSIDE

26
27 ATTEST:

APPROVED AS TO FORM:

28 _____
CITY CLERK


CITY ATTORNEY



MEMORANDUM

INVESTIGATIONS DIVISION

TO: Annie Perrigo, Senior Deputy City Attorney, City Attorney Office
FROM: Adam Knowland, Lieutenant, Special Enforcement Section
SUBJECT: Marijuana Safety Related Issues
DATE: November 19, 2015

The Oceanside Police Department considers the sales/furnishing/growing of Marijuana within the City of Oceanside a detriment to public safety. Between 2012 and October of 2015, Oceanside Police investigated at least forty five (45) Robberies related to the sale/purchase/possession of Marijuana. Twenty four (24) were committed using firearms; twenty one (21) were committed with the use of either Tasers, knives, pepper spray or strong armed. Eleven (11) of these were classified as Home Invasion including one that occurred on a boat in the Oceanside Harbor. Thirty (30) were classified as street robberies and four (4) were classified as a Kidnapping, Carjacking and Commercial Robbery.

The most recent case took place on 10/30/15. The suspect(s) called the victim and arranged to purchase Marijuana from him. The victim (marijuana dealer) arrived at the agreed location, a gas station, with three additional companions. During the meeting the suspect(s) produced a handgun and shot the victim twice, once in the head and once in the torso. The additional companions were beat and forced out of the vehicle which was subsequently stolen (carjacking). The victims injuries are still considered life threatening and despite two surgeries, the victim has been left paralyzed.

The sales of Marijuana are obviously financially lucrative making those cultivating, selling or furnishing likely targets of violent criminals to either steal proceeds or product. The propensity to use weapons by those targeting Marijuana suppliers will and has in some cases led to suppliers arming themselves for protection. This has created an unsafe environment for the citizens of Oceanside and is a detriment to the public's safety in general.