

staff report

DATE: January 12, 2016

TO: Mark Scott, City Manager

FROM: Patrick Prescott, Interim Community Development Director
Via: Carol D. Barrett, Assistant Community Development Director
By: Daniel Villa, Assistant Planner

**SUBJECT: Cannabis Activity Ordinance
Project No. 15-0008109, Burbank Municipal Code Text Amendment**

RECOMMENDATION

Introduce AN ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK AMENDING TITLE 3 (BUSINESSES AND LICENSES), TITLE 5 (POLICE AND PUBLIC SAFETY) AND TITLE 10 (ZONING REGULATIONS) OF THE BURBANK MUNICIPAL CODE (BMC) TO EXPRESSLY DEFINE AND PROHIBIT CERTAIN CANNABIS ACTIVITIES IN THE CITY (Exhibit A).

BACKGROUND

Although not expressly identified in the BMC, land uses associated with medical marijuana are currently not permitted in the City because they are not identified as authorized uses anywhere in the City's Zoning Code. However, recently approved State laws now require cities to expressly identify and prohibit certain medical marijuana uses within their jurisdictions, if they wish to continue such prohibitions. Under the new State law, failure to expressly enact regulations (including prohibitions) of certain medical marijuana land uses will result in (1) the State becoming the "sole" licensing agency over local land uses relating to marijuana cultivation, and (2) authorizing medical marijuana deliveries to occur within the city. To maintain the current status of permitted and prohibited land uses within the city, the draft ordinance would expressly ban land uses involving cannabis activity of all types, including commercial and non-commercial cultivation, deliveries, and dispensaries.

Regulatory History in California

Both Federal and California laws generally prohibit the use, possession, cultivation, transportation, and furnishing of marijuana. However, the Compassionate Use Act of 1996 (CUA) and the Medical Marijuana Program of 2003 (MMP) removed obstacles in State law for patients with a diagnosed medical need who could benefit from using marijuana for medical purposes. Among other things, these statutes exempt qualified patients, primary caregivers and persons who collectively or cooperatively cultivate medical marijuana from State criminal liability under specified State laws.

Despite the limited protections afforded by the CUA and MMP, the California Supreme Court has held that nothing in the CUA or MMP limits the authority of cities to regulate or prohibit medical marijuana land uses.¹ Moreover, the United States Supreme Court has continued to hold that the manufacture (including cultivation), distribution, and possession of marijuana, including medical marijuana, violate Federal law.²

On October 9, 2015, Governor Jerry Brown approved the Medical Marijuana Regulation and Safety Act (MMRSA), which is comprised of the following California legislative bills: Assembly Bill 243 (Exhibit B), Assembly Bill 266 (Exhibit C), and Senate Bill 643 (Exhibit D). Among other things, the MMRSA contains new statutory provisions which give local governments the authority to expressly ban the cultivation of cannabis for commercial and non-commercial purposes, as well as prohibit commercial cannabis activity of all types, including deliveries and dispensary of medical cannabis. However, MMRSA also provides that if cities wish to prohibit cannabis cultivation within their jurisdictions, but fail to expressly do so by March 1, 2016, the State will become the sole licensing authority for medical marijuana cultivation in that city, depriving the local jurisdiction of its regulatory power over such land uses.³ In addition, MMRSA also requires cities to expressly prohibit medical cannabis deliveries within its jurisdiction or otherwise such activity will be authorized within a city.⁴

DISCUSSION

MMRSA defines “commercial cannabis activity” as including cultivation, possession, manufacture, processing, storage, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis, and requires that entities conducting commercial cannabis activity receive authorization to operate from a local jurisdiction.⁵ The proposed ordinance expressly incorporates MMRSA’s definitions of “commercial cannabis activity,” “cultivation,” “delivery,” and “dispensary,” (among others) into the City’s Zoning Code, and expressly bans all commercial cannabis activities, including cultivation, delivery, and dispensaries, in all zones throughout the city. The proposed ordinance also bans non-commercial cultivation of cannabis within the city. Finally, to ensure clarity and consistency, the proposed ordinance restates these land use prohibitions in BMC Title 3 (Businesses and Licenses) and BMC Title 5 (Police and Public Safety). As discussed above, the ban is declaratory of existing law since the City currently does not allow medical marijuana uses in any zones. Nonetheless, because of the need to expressly ban cultivation and delivery, an affirmative ban of cannabis activity of all types was prepared to prevent ambiguity.

The following considerations support the recommendation that an ordinance be adopted prohibiting cannabis activity of all types in the City of Burbank:

- 1) Land use regulation is a matter of City Council legislative discretion.
- 2) The cultivation, possession, distribution or use of marijuana is illegal under Federal law.

¹ City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729

² See Gonzalez v. Raich (2005) 545 U.S. 1; United States v. Oakland Cannabis Buyers’ Cooperative (2001) 532 U.S. 483

³ See Assembly Bill 243

⁴ See Assembly Bill 266

⁵ See Assembly Bill 643

- 3) California law (MMRSA) expressly recognizes cities' authority to ban marijuana cultivation, storage, manufacture, transport, provision, or other activity by any person.
- 4) Marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outside, potentially creating a public nuisance.
- 5) Indoor cultivation of marijuana has potential adverse effects to the structural integrity of buildings, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants.
- 6) Los Angeles County has reported that most medical marijuana dispensaries are "cash only" businesses and that the presence of large amounts of cash and marijuana make dispensaries, their employees and qualified patients the target of a disproportionate amount of violent crime, including robberies and burglaries.

Planning Board

The Planning Board considered the proposed changes to the BMC at a public hearing on December 14, 2015 and voted 4-0 to recommend approval to the City Council (Exhibit E).⁶ The Board was satisfied that the proposed changes addressed updates in State law and had no further comments.

Environmental Review

The proposed project is exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15061(b)(3) of the State CEQA Guidelines. The project is exempt because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

FISCAL IMPACT

There will be no direct fiscal impact to the City's General Fund resulting from administration or enforcement of the proposed BMC Text Amendment. The proposed changes codify the City's existing practice and will not require any additional staff time or resources to administer.

CONCLUSION

As a result of recent amendments to State law, should the City fail to adopt a local ordinance expressly banning marijuana cultivation, the State will become the sole licensing authority for such local land uses in the city effective March 1, 2016. In addition, should the City fail to adopt express prohibitions on medical marijuana deliveries within the city, such activities will be permitted to occur within the city. Cannabis land use activities can adversely affect the health, safety, and well-being of residents. Citywide prohibition is necessary to avoid the risks of increased criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Staff recommends approval of the BMC Text Amendment.

⁶ Planning Board Member Kimberly Jo was absent from the meeting.

List of Exhibits

Exhibit	Title
A	Ordinance
B	California Assembly Bill No. 243
C	California Assembly Bill No. 266
D	California Senate Bill No. 643
E	Planning Board Resolution No. 3336