



# City of Chula Vista

## Staff Report

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**File#: 16-0059, Item#: 2.**

ORDINANCE NO. 3362 OF THE CITY OF CHULA VISTA AMENDING CHAPTER 19.02 OF THE CHULA VISTA MUNICIPAL CODE TO AFFIRM PERMISSIVE ZONING PRINCIPLES AND TO CLARIFY THAT USES PROHIBITED ELSEWHERE IN THE MUNICIPAL CODE ARE ALSO PROHIBITED LAND USES (SECOND READING AND ADOPTION)

### **RECOMMENDED ACTION**

Council adopt the ordinance.

### **SUMMARY**

Under recently enacted state law, unless local jurisdictions enact rules governing the cultivation of medical marijuana by March 1, 2016, state laws will preempt local laws in this area. Consistent with previous City Council action, this item clarifies as a matter of city zoning laws that medical marijuana cultivation and any and all other prohibited and not expressly allowed uses are not permitted within the City. This action both clarifies the City's existing laws and avoids any argument that state laws will preempt City laws in this area starting on March 1<sup>st</sup>. This action does not prevent the City from changing its own laws at a later date.

### **ENVIRONMENTAL REVIEW**

#### **Environmental Notice**

The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required. Notwithstanding the foregoing, the activity qualifies for an Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act State Guidelines.

#### **Environmental Determination**

The proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a "Project" as defined under Section 15378 of the state CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to the CEQA. Notwithstanding the foregoing it has also been determined that there is no possibility that the activity may have a significant effect on the environment; therefore, pursuant to Section 15061(b)(3) of the State CEQA Guidelines, the activity is not subject to the CEQA. Thus, no environmental review is required.

### **BOARD/COMMISSION RECOMMENDATION**

This item went to the Planning Commission on January 13, 2016 for a recommendation for approval. The Planning Commission approved, with a 5-0-1 vote, a resolution recommending approval of the ordinances. To review the approved resolution, please see Planning Commission Resolution MPA16-0001 attached.

## DISCUSSION

Since the voters of the State of California approved Proposition 215 in 1996, seriously ill Californians, under the care of a physician, have been granted limited criminal immunity from state prosecution for the possession, use, and cultivation of medical marijuana. Local governments, however, have maintained police powers under the California Constitution to regulate or prohibit the sale, distribution, or cultivation of medical marijuana within their respective jurisdictions.

The Chula Vista City Council considered and adopted Ordinance 3204 on September 20, 2011, which prohibits the operation of medical marijuana dispensaries and the cultivation of medical marijuana within the City. In considering adoption of the ordinance, the City Council reviewed the Public Safety Subcommittee recommendation, staff presentations, and public input. At the conclusion of this review, the City Council expressed a desire to: 1) prevent the negative secondary effects associated with medical marijuana facilities, such as increased crime, loitering, and underage access; and 2) protect the ability of seriously ill patients to access medical marijuana. Ordinance 3204 accomplishes these goals by enacting Chapter 5.66 of the Chula Vista Municipal Code. For further explanation of City Council action, please see City Council Ordinance 3204 (adopted September 20, 2011) and City Council Agenda Statement Item 14 (September 13, 2011) attached.

Chapter 5.66 is contained within the Business Licenses, Taxes and Regulations section of the Municipal Code and prohibits fixed facilities from dispensing, selling, or cultivating medical marijuana; specific provisions exempt facilities traditionally associated with medical and residential care from the Chapter.

Since Ordinance 3204 was approved, California courts have issued decisions in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* and *Maral v. City of Live Oak* affirming that cities do have the authority to ban both medical marijuana dispensaries and the cultivation of medical marijuana under the police powers granted to them in the California Constitution.

Staff is now recommending that City Council amend Title 19 in response to the newly enacted Medical Marijuana Regulation and Safety Act (the "Act"). The Act, which became effective on January 1, 2016, provides new and comprehensive regulation over the cultivation, processing, transporting, testing and distribution of medical cannabis (i.e., marijuana) to qualified patients under a dual state-local licensing scheme. However, the Act contains a new statutory provision in Health & Safety Code section 11362.777(c)(4) that requires local governments to have land use regulations or ordinances regulating or prohibiting cultivation of medical marijuana, either expressly or under the principles of permissive zoning, prior to March 1, 2016. In the event that a local government does not have the applicable regulation, ordinance, or express zoning principle prior to March 1, 2016, the state will become the sole licensing authority for medical marijuana cultivation applicants in that local jurisdiction. In response to concern from the League of California Cities and other entities, California Assembly Member Wood has introduced Assembly Bill 21, which would delete the provision that grants the state sole licensing authority under those circumstances; however, AB 21 has not yet

passed the Senate and the deadline for local jurisdictions remains in place.

Although the City of Chula Vista currently prohibits the cultivation of medical marijuana in its Business License and Regulation title, it does not explicitly prohibit the cultivation of marijuana as a land use in Title 19, its zoning code. Because Health & Safety Code section 11362.777(c)(4) requires a *land use* regulation or ordinance regulating or prohibiting cultivation of marijuana, staff is recommending that Chapter 19.02 be amended to clarify that actions prohibited elsewhere in the Municipal Code, such as the cultivation of marijuana, are also prohibited as a land use under Title 19.

In addition, because the City's zoning code has traditionally operated under the principals of permissive zoning, staff is recommending that Chapter 19.02 be amended to explicitly affirm such in light of the new legislation and pending deadline. A "permissive zoning" code has been defined by the California Courts of Appeal in *City of Corona v. Naulls* and *City of Monterey v. Carrnshimba* as a zoning code that operates to prohibit any non-permitted use. Such amendment would affirm that because the cultivation of medical marijuana is not permitted as a land use, it is therefore prohibited.

These proposed amendments to Chapter 19.02 maintain the status quo and are intended to secure the City's future power to regulate or ban the cultivation of marijuana within its jurisdiction. Although the City currently prohibits the cultivation of medical marijuana, such amendments will protect the City's ability to maintain or change its laws regarding cultivation at a later date.

#### **DECISION-MAKER CONFLICT**

Staff has reviewed the decision contemplated by this action and has determined that it is not site specific and consequently the 500 foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11) is not applicable to this decision for purpose of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov. Code section 87100, *et seq.*).

Staff is not independently aware, and has not been informed by any Planning Commission member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

#### **LINK TO STRATEGIC GOALS**

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The amendment to Title 19 supports the Operational Excellence and Strong and Secure Neighborhoods goals as it seeks to clarify the City's zoning code and to maintain local jurisdiction over the cultivation of marijuana in the City.

#### **CURRENT YEAR FISCAL IMPACT**

The subject amendment to Title 19 results in no current year fiscal impact to the City.

#### **ONGOING FISCAL IMPACT**

The subject amendment to Title 19 results in no ongoing fiscal impact to the City.

**ATTACHMENTS**

1. Planning Commission Resolution No. MPA16-0001
2. City Council Agenda Statement Item 14 (September 13, 2011)
3. City Council Ordinance 3204 (adopted September 20, 2011)
4. City Council Emergency Ordinance (Version A) No. XXXX
5. City Council Ordinance (Version B) No. XXXX

*Staff Contact: Megan McClurg*