



Legislation Text

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SUBJECT: Zoning Ordinance Amendment #16-02 Regarding Medical Marijuana Dispensaries, Deliveries, and Cultivation for Qualified Patients

REPORT IN BRIEF

Consider adoption of an ordinance to establish regulations for medical marijuana dispensaries, deliveries, and cultivation for qualified patients.

RECOMMENDATION

City Council - Adopt a motion approving one of the following options:

A. Adopt a Negative Declaration and Introduce **Ordinance 2463** (as recommended by the Planning Commission) that would allow medical marijuana dispensaries in the Professional/Commercial Office (C-O), Light Industrial (I-L), and Heavy Industrial (I-H) zones with a conditional use permit; allow delivery of medical marijuana under specific circumstances; and allow limited growth, indoors only, of medical marijuana (6 plants or less per lot) for a qualified patient:

“An Ordinance of the City Council of the City of Merced, California, Amending Chapter 20.84, “Medical Marijuana and Cultivation” and amending Sections 20.20.040 “Conditional Uses,” 20.34.040 “Conditional Uses,” and 20.36.040 “Conditional Uses,” of the Merced Municipal Code regarding the zoning of medical marijuana dispensaries as conditional uses”.

OR

B. Adopt a Negative Declaration and Introduce **Ordinance 2464** (as directed by the City Council on April 20, 2016, and originally presented to the Planning Commission on May 18, 2016) that would allow medical marijuana dispensaries in the Professional/Commercial Office (C-O) zone with a conditional use permit; allow delivery of medical marijuana under specific circumstances; and allow limited growth of medical marijuana (12 immature or 6 mature plants or less per lot) for a qualified patient under specific circumstances:

“An Ordinance of the City Council of the City of Merced, California, Amending Chapter 20.84, “Medical Marijuana and Cultivation” and amending Sections 20.20.040 “Conditional Uses,” of the Merced Municipal Code regarding the zoning of medical marijuana dispensaries as conditional uses”.

AND

C. Approving a supplemental appropriation in Fund 017 in the amount of \$2,260 to pay for State filing fees for the Negative Declaration and allowing the Finance officer to make the necessary budget adjustments.

ALTERNATIVES

1. Approve one of the two options above, subject to modifications as conditioned by Council; or,
2. Approve a modified ordinance based on one of the motions made at the July 5, 2016, public hearing; or,
3. Approve a modified ordinance based on a combination of #1 and/or #2 above; or,
4. Deny the request; or,
5. Refer back to staff for reconsideration of specific items (specific items to be addressed in City Council motion); or,
6. Continue to a future City Council meeting (date and time to be specified in City Council motion).

AUTHORITY

City of Merced Charter, Section 200.

CITY COUNCIL PRIORITIES

Not Applicable.

DISCUSSION

City Council Meeting of July 5, 2016

On July 5, 2016, the City Council held a public hearing on the proposed medical marijuana ordinance. Eight (8) individuals testified, most in support of outdoor growth and dispensaries. (See Attachment 10 for written materials submitted by some of those individuals at the hearing.)

During City Council deliberation, two motions were made and failed by 3-3 votes, with Councilmember Lor absent. The motions were as follows:

Murphy motion:

- Approve Planning Commission recommendation, but delete the industrial zones (I-L and I-H) for dispensaries (i.e., allow in Commercial Office, C-O, zone only with a conditional use permit)
- Six plants allowed, grown indoors only
- Four dispensaries as soon as state licensing is in place
- Deliveries allowed from licensed dispensaries

Belluomini motion:

- Approve Planning Commission recommendation, but delete the industrial zones (I-L and I-H) for dispensaries (i.e., Commercial Office, C-O, zone only)
- Six plants allowed, grown indoors only
- Four dispensaries allowed to begin operation prior to state issuing licenses for dispensaries
- Draft regulatory language as presented at Attachment 11
- Deliveries allowed from licensed dispensaries

Given the failure of both motions, the City Council then voted to continue the public hearing to July 18, 2016, for further deliberation.

Background

At its meeting on January 4, 2016, the City Council first held a study session on medical marijuana issues and then subsequently held a public hearing regarding medical marijuana in response to 2015 changes in State Law. After taking public testimony and extensive deliberations, the City Council voted 7 to 0 to introduce Ordinance No. 2454, which prohibits all commercial medical marijuana uses in the City and prohibits cultivation of marijuana for medical use by a qualified patient or primary caregiver. However, as part of the motion introducing Ordinance No. 2454, the City Council directed staff to schedule multiple study sessions after the effective date of the ordinance to consider the City's options relating to medical marijuana within the City (including dispensaries, delivery, and cultivation). On January 19, 2016, the City Council adopted Ordinance No. 2454, which became effective 30 days later on February 18, 2016.

On March 1, 2016, the City held a special meeting to discuss medical marijuana. At that meeting, the City Council took public testimony and considered issues relating to medical marijuana dispensaries (including information regarding the six commercial zones in the City), delivery of medical marijuana from licensed dispensaries, and if medical marijuana would be allowed to be cultivated within the City by primary caregivers or qualified patients. At that meeting, the City Council asked that staff provide answers to specific questions at the next study session.

On April 20, 2016, the City Council held a second special study session on medical marijuana and was asked to provide guidance on the following questions:

- 1) Does the City Council wish to allow medical marijuana dispensaries within the City?
- 2) If so, in which zone(s) would dispensaries be allowed?
- 3) If dispensaries are allowed, does the City Council wish to place a limit on the number of dispensaries within the City?
- 4) Does the City Council wish to allow deliveries of medical marijuana within the City?
- 5) Does the City Council wish to allow the cultivation of medical marijuana within the City by a primary caregiver or qualified patient?
- 6) If so, will the cultivation be allowed indoors, outdoors, or both?
- 7) If cultivation is allowed, how many plants or square footage of cultivation will be allowed per lot or per dwelling unit? Options include, but are not limited to:
 - a) A specific number of plants per legal lot or parcel.
 - b) A specific number of plants within a single private residence or upon the grounds of that residence.
 - c) A specified square footage for indoor and/or outdoor growing of medical marijuana.

After extensive public testimony and discussion by the City Council, the City Council directed staff to prepare an Ordinance based on the City Council's answers to the above questions. This draft Ordinance was presented to the Planning Commission on May 18, 2016.

General Overview of Proposed Changes to the Zoning Ordinance

As directed by the City Council, City staff prepared an Ordinance (Attachment 9) to amend Chapter 20.84 "Medical Marijuana and Cultivation" and Section 20.20.040 "Conditional

Uses” (Professional/Commercial Office Zone) of the Merced Municipal Code as follows:

- 1) To allow medical marijuana/cannabis dispensaries in the Professional/ Commercial Office (C-O) zones and Planned Developments with Commercial Office General Plan designations by Conditional Use Permit subject to certain restrictions as described below. (The Planning Commission recommended that the Light and Heavy Industrial zones be added, see Attachment 8); and,
- 2) To allow deliveries from licensed dispensaries of medical marijuana in the City with limited hours; and,
- 3) To allow the cultivation of 12 immature plants or 6 mature plants per parcel/lot, either indoors or outdoors, of marijuana/cannabis for personal medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced, with certain restrictions regarding visibility and distance from the property line as described below. [The Planning Commission recommended that this be modified to allow indoor growth only and to limit the number of plants to 6 (immature or mature) per lot, see Attachment 8.]

Medical Marijuana Dispensaries

As directed by the City Council, the ordinance would allow medical marijuana/cannabis dispensaries in the Professional/Commercial Office (C-O) zones and Planned Developments with Commercial Office General Plan designations (Attachment 1) by Conditional Use Permit, but would also place restrictions on medical marijuana dispensaries as follows:

- 1) The proposed dispensary could not be located within 600 feet of the property line of any kindergarten, elementary school, middle school, or high school (consistent with State law) (see map at Attachment C of the Planning Commission Staff Report at Attachment 7); and,
- 2) The proposed dispensary could not be located within 500 feet of the property line of any public park that includes playgrounds, active play areas, and/or sports fields (not including bike paths) (see map at Attachment D of the Planning Commission Staff Report at Attachment 7); and,
- 3) The proposed dispensary could not be located within 500 feet of the property line of any youth center, City-owned and operated recreational center, or public library (see map at Attachment E of the Planning Commission Staff Report at Attachment 7); and,
- 4) No more than four dispensaries shall be authorized to operate in the City at any given time; and,
- 5) Dispensaries must also obtain a license from the State of California to operate a dispensary prior to opening for business at a specific location in the City.

A composite map of the above restrictions for the C-O zones is included at Attachment 3. Please note that the maps above are included for illustrative purposes only and contain information that is current only up to the date of this staff report. This information is subject to change over time. Confirmation of the distance that any proposed dispensary is located away from schools, parks, and other uses will need to be confirmed at the time of Conditional Use Permit application.

At its meeting of May 18, 2016, the Planning Commission recommended that medical marijuana dispensaries also be allowed by conditional use permit in the Light Industrial (I-L) and Heavy Industrial (I-H) zones. A map showing the industrial zones is included at Attachment 2, and a composite map showing distances from sensitive uses described above for the Industrial zones in addition to the C-O zones is included at Attachment 4.

Medical Marijuana Deliveries

As proposed, the ordinance would allow only licensed dispensaries be authorized to make medical marijuana deliveries within the City of Merced and such deliveries shall occur solely between the hours of 8 a.m. and 7 p.m.

Medical Marijuana Cultivation for Personal Use

As proposed in either ordinance, commercial cultivation of marijuana in any amounts is prohibited in all zones in the City, including industrial zones. Cultivation is for personal use only, not for commercial harvesting and resale. As proposed, 12 immature or 6 mature plants may be cultivated indoors or outdoors on any lot in the City if the owner, lessee or tenant of the lot is the primary caregiver or the qualified patient and the cannabis is intended for the qualified patient. However, any plants cultivated outdoors shall not be visible from the public right-of-way and shall not be located within 5 feet of the property line. In addition, no fences (whether temporary or permanent) shall be constructed at a height no greater than 6 feet to screen marijuana plants from the public right-of-way, unless City regulations only authorize a fence of a lesser height and in that case, the fence shall conform to that lesser height requirement.

At its May 18, 2016 public hearing, the Planning Commission recommended that the ordinance be amended to only allow indoor growth (not outdoors) and to limit the number of plants to 6 (either mature or immature) per lot.

Timetable for Adoption and Implementation

If the ordinance is introduced at tonight's meeting (July 18, 2016), then a second reading will occur on August 1, 2016. The ordinance, if approved, would then become effective 30 days after that or on August 31, 2016.

If adopted and before accepting conditional use permit (CUP) applications, the City will need to establish guidelines for the application and adoption process for the four (4) CUP's for dispensaries, which should include some objective criteria for evaluating and ranking each application in order to provide guidance regarding which applications should be approved (given the limited number of authorized dispensaries). Based on the number of inquiries City staff has been receiving, the number of requests will likely be higher than the four CUP's allowed. The Planning Commission will be the issuing authority for those Conditional Use Permits, with any appeals to be decided by the City Council. Therefore, City staff will present some draft criteria to the Planning Commission for recommendation and City Council for final adoption.

However, please note that the draft ordinance has specific language stating that "before a dispensary may open for business within the City, the operator of the dispensary must also have a license from the State of California to operate..." (Section 20.84.020(A)). Unless the City Council provides different direction at the public hearing, medical marijuana dispensaries will not be allowed to operate within the City before the State of California creates the state regulatory structure for licensing dispensaries. The State will require applicants for State licenses to have the local license approved prior to applying for the State license, however.

On May 25, 2016, City staff attended a webinar put on by the League of California Cities with the newly-created State Bureau of Medical Marijuana Regulation regarding the regulation of California's cannabis industry. At the webinar, Lori Ajax, the head of the Bureau, outlined the schedule for

developing and adopting the State licensing requirements for dispensaries, deliveries, etc. Ms. Ajax indicated that the goal would be to have all the regulations finalized and approved by December 2017 and to begin accepting applications on January 1, 2018, with the first licenses being issued some 6-8 months after that. As such, based upon the current language of the ordinance, dispensaries would not be allowed to open in Merced until mid-2018.

To remove any issues under the State Permit Streamlining Act (generally requiring the processing of CUP's within 180 days), the City Council may wish to add specific language to the ordinance stating that CUP applications for medical marijuana dispensaries shall not be accepted until the State of California adopts licensing regulations for medical marijuana dispensaries (likely December 2017). This could also help ensure that City and State regulations do not conflict with each other.

City staff recommends that the City Council add language as follows: "Conditional Use Permit applications for medical marijuana dispensaries shall not be accepted until the State of California formally adopts licensing regulations for medical marijuana dispensaries," to the ordinance in Section 20.84.020 (G) of the City Council version at Attachment 9 or Section 20.84.020 (F) for the Planning Commission version at Attachment 8.

Environmental Clearance

The Planning staff has conducted an environmental review (Initial Study #16-12) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Draft Negative Declaration (i.e., no significant adverse environmental effects have been found) is being recommended (see Attachment H of the Planning Commission Staff Report at Attachment 7).

Planning Commission Action

On May 18, 2016, the Planning Commission held a public hearing on the proposed ordinance. The Planning Commission heard testimony from two individuals in support of the ordinance, but one individual felt that dispensaries should also be allowed in the Central Commercial (C-C) zone in the Downtown Core. After the public hearing, the Planning Commission voted 5-1-1 (5 ayes, 1 no, 1 abstain) to recommend approval of negative declaration and the draft ordinance to the City Council with the following changes:

Prohibit outdoor growing of medical marijuana/cannabis for personal use, reduce the number of plants allowed for personal cultivation to 6 plants (either immature or mature), and to allow medical marijuana dispensaries in the Light Industrial (I-L), Heavy Industrial (I-H) with a Conditional Use Permit in addition to the Professional/Commercial Office (C-O) zone and Planned Developments (with Commercial Office designations), subject to certain restrictions.

The Planning Commission Resolution and Minutes can be seen at Attachments 5 and 6 with the Planning Commission Staff Report at Attachment 7.

City Council Action

After the public hearing, the City Council should consider adopting a Negative Declaration and introducing either the Ordinance recommended by the Planning Commission at Attachment 8 or the Ordinance as originally directed by the City Council at Attachment 9, with the modified language described above in regards to the timing of City acceptance of CUP applications.

IMPACT ON CITY RESOURCES

There is \$2,260 in FY 2015-16 savings to carry over into FY 2016-17 for the supplemental appropriation.

ATTACHMENTS

1. Map of Professional/Commercial Office Zones
2. Map of Light Industrial and Heavy Industrial Zones
3. Buffer Areas around Schools, Parks, Youth Centers, Libraries, etc. (C-O Zones)
4. Buffer Areas around Schools, Parks, Youth Centers, Libraries, etc. (I-L & I-H Zones in addition to C-O Zones)
5. Planning Commission Resolution #3068
6. Planning Commission Minutes from May 18, 2016
7. Planning Commission Staff Report #16-11
8. Draft Ordinance 2463 (as recommended by the Planning Commission)
9. Draft Ordinance 2464 (as previously directed by the City Council)
10. Information submitted by the public at the July 5, 2016, City Council Meeting
11. Proposed regulatory language submitted by Councilmember Belluomini at the July 5, 2016, City Council Meeting