



City of NORWALK

CITY COUNCIL AGENDA REPORT

Date: January 5, 2016

TO: Honorable City Council

FROM: Michael J. Egan, City Manager

BY: Kurt H. Anderson, Director of Community Development
Beth Chow, Senior Planner

SUBJECT: PUBLIC HEARING – ORDINANCE NO. 16-1674 - ADOPTING TEXT AMENDMENT NO. 313 - AMENDING THE NORWALK MUNICIPAL CODE RELATING TO MEDICAL MARIJUANA

Background:

On December 9, 2015 the Planning Commission considered Text Amendment No. 313 to amend Title 17 of the Norwalk Municipal Code (NMC) as it relates to medical marijuana. At the meeting, the Planning Commission recommended City Council approval of the ordinance with a 5-0 vote.

Discussion

In 1996, the voters of the State of California approved Proposition 215 entitled "The Compassionate Use Act of 1996" ("CUA") to enable seriously ill Californians, under the care of a physician, to legally possess, use, and cultivate marijuana for medical use under state law. In 2003, the California Legislature adopted SB 420 entitled the Medical Marijuana Program ("MMP") which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code. Neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate medical marijuana within its jurisdiction. Under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need.

Governor Brown recently signed into law the Medical Marijuana Regulation and Safety Act ("MMRSA") which is comprised of three related bills: AB 243, AB 266, and SB 643.

The MMRSA establishes licensing requirements for the cultivation, distribution, and transportation of medical marijuana, safety and testing standards for medical marijuana and medical marijuana products, and regulates the physicians who recommend or prescribe medical marijuana to patients. The MMRSA contains statutory provisions that allow local governments to maintain local control over medical marijuana and does not require a city to allow medical marijuana activity within its borders.

In 2008, the City of Norwalk prohibited the establishment of medical marijuana dispensaries in all zones. However, based on the newest legislation signed by the Governor, the City must enact additional regulations in order to maintain local control over the cultivation of medical marijuana.

The MMRSA provides that the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applications effective March 1, 2016, if a city does not have a land use ordinance in place regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under the principles of permissive zoning, or if a city chooses not to administer a conditional use permit program. It would behoove the City to implement its own ordinance in order to keep its local control.

NMC §17.04.080 currently prohibits medical marijuana dispensaries. Staff is proposing to reorganize NMC §17.04.080 and expand upon what is prohibited with regards to the cultivation and distribution of medical marijuana, including commercial activity. The proposed ordinance prohibits cultivation of medical marijuana in the City, including cultivation for personal medical use by a qualified patient, a person with an identification card, or a primary caregiver. Further, other commercial activities related to medical marijuana are prohibited.

The justification for banning medical marijuana cultivation pursuant to the City's police power includes, without limitation: 1) the increased risk to public safety, based on the value of marijuana plants and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; 2) the strong "skunk like" malodorous fumes emitted from mature plants that can interfere with the use and enjoyment of neighboring properties by their occupants; and 3) the risk of electrical fire hazards caused by medical marijuana cultivation.

Criminal activity is often associated with medical marijuana activity. As marijuana plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging theft by alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery of the plants and creating the potential for violent acts related to such criminal activity.

Furthermore, indoor cultivation of marijuana, often unattended, has potential to cause harm to persons and property in that the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a distinct risk of harm to the building and its occupants. Buildings where marijuana is cultivated are often illegally wired and have overloaded electrical systems that result in fires.

In 2015 alone, there were a number of reported incidents of indoor marijuana cultivation sites causing fires as follows:

- February 9, 2015 – A fire in a residence in Sacramento that was caused by the indoor cultivation of marijuana.
- February 19, 2015 – An electrical fire in Arcadia caused by an indoor marijuana cultivation operation.
- April 24, 2015 – An explosion in a Silver Lake home that leveled the house and destroyed several cars that was caused by an indoor marijuana cultivation operation.
- May 2015 - A fire erupted in a commercial building in Sun Valley that was caused by an indoor marijuana grow house; and a fire in an Elk Grove home caused by an overheated illegal electrical power connection used to power an indoor marijuana grow house.
- June 2015 - A fire in a Sacramento residence caused by an indoor marijuana grow house.
- July 2015 - A fire in a Baldwin Park home caused by grow house.
- September 2015 - A fire in the garage of a Sun Valley residence that was caused by an indoor marijuana grow house.
- October 23, 2015 - A fire in a Rialto home that was caused by an indoor marijuana grow, started by an electrical panel that burst.

Based on the many instances of danger posed to the public from the cultivation of marijuana, staff recommends a prohibition of medical marijuana cultivation both for personal and commercial cultivation.

Environmental Review

Pursuant to the California Environmental Quality Act (“CEQA”), the Planning Department has determined that the proposed prohibitions on the cultivation and commercial activity related to medical marijuana are exempt from the requirements of

CEQA and the City's CEQA Guidelines pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed prohibition on marijuana cultivation and commercial activity within the City's jurisdiction will have a significant effect on the environment. The ordinance imposes greater limitations on uses and activities allowed in the City, and will thereby serve to eliminate potential significant adverse environmental impacts. The ordinance will not have an impact on the physical environment as they will not result in any changes to the environment.

Fiscal Impact: N/A

Citizens Advised:

Notice of this public hearing was posted at the three designated city posting places on December 23, 2015 and published in the Norwalk Patriot on December 25, 2015.

Strategic Action Plan Implementation: N/A

Recommended Action:

Staff recommends City Council:

- a. direct staff to file the Notice of Exemption; and
- b. introduce for first reading, by title only Ordinance No. 16-1674 approving Text Amendment No. 313, and waive further reading.

Attachments:

1. Ordinance No. 16-1674 for Zoning Ordinance Text Amendment No. 313
2. Notice of Exemption

ORDINANCE NO. 16-1674

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORWALK AMENDING SECTION 17.04.080 OF THE NORWALK MUNICIPAL CODE TO EXPRESSLY PROHIBIT CULTIVATION OF MEDICAL MARIJUANA, INCLUDING CULTIVATION BY QUALIFIED PATIENTS, PRIMARY CAREGIVERS, AND PERSONS WITH IDENTIFICATION CARDS, AND PROHIBITING COMMERCIAL MEDICAL MARIJUANA ACTIVITY INCLUDING MEDICAL MARIJUANA DISPENSARIES IN ALL ZONES IN THE CITY

THE CITY COUNCIL OF THE CITY OF NORWALK DOES ORDAIN AS FOLLOWS:

Section 1. The City has initiated amendments to the Norwalk Municipal Code to prohibit cultivation of medical marijuana and commercial medical marijuana activity in all zones in the City (“Code Amendments”). Since 2008, the City has prohibited medical marijuana dispensaries and now desires to expressly prohibit cultivation and all commercial medical marijuana activity anywhere in the City.

Section 2. On December 9, 2015, the Planning Commission conducted a duly noticed public hearing regarding the proposed Code Amendments and following the receipt of public testimony, closed the hearing and recommended that the City Council adopt the proposed Code Amendments prohibiting marijuana cultivation and commercial medical marijuana activity in all zones in the City.

Section 3. Pursuant to the California Environmental Quality Act (“CEQA”), and the City’s local CEQA Guidelines, staff has determined that the proposed Code Amendments are exempt from the requirements of CEQA. It can be seen with certainty that there is no possibility that the adoption of the Code Amendments, and the zoning provisions established hereby, may have a significant effect on the environment, because the Code Amendments will only impose greater limitations on uses allowed in the City, and will thereby serve to eliminate potentially significant adverse environmental impacts. The City Council has reviewed the staff’s determination of exemption and based on its own independent judgment, concurs in staff’s determination that the proposed Code Amendments are exempt from CEQA. The adoption of the Code Amendments is therefore not subject to CEQA review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. A Notice of Exemption will be prepared.

Section 4. Section 17.04.080 of Article I (Specific Uses in Any Zone) of Chapter 17.04 (Specific Use Requirements) of Title 17 (Zoning) is hereby amended in its entirety to read as follows:

“17.04.080 Medical Marijuana

A. Definitions. The following words, phrases and terms are hereby defined for the purpose of this Section 17.04.080.

“Commercial medical marijuana activity” shall have the same meaning as “commercial cannabis activity” that is set forth in California Business and Professions Code Section 19300.5(k), as the same may be amended from time to time, and shall include the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical marijuana or a medical marijuana product.

“Cultivation” shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(l), as the same may be amended from time to time, and shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

“Dispensary” or “dispensaries” shall mean the use of any business, facility, location, office, store or establishment that in any way involves growing, distributing or making available to persons, with or without financial payment or consideration, marijuana for medical purposes as described in California Health and Safety Code Section 11362.5 or where medical marijuana, medical marijuana products, or devices for the use of medical marijuana or medical marijuana products are offered, either individually or in any combination, for retail sale. “Dispensary” shall also mean any facility, residence, location, or site where medical marijuana is cultivated or made available to and/or distributed by any of the following: a qualified patient, a person with an identification card, or a primary caregiver. Each of these terms is defined herein and shall be interpreted in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 *et seq.* as such sections may be amended from time to time.

“Identification card” shall have the same meaning as set forth in California Health and Safety Code Section 11362.7(g), as the same may be amended from time to time, and includes a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.

“Marijuana” shall have the same meaning as “cannabis” as set forth in California Business and Professions Code Section 19300.5(f), as the same may be amended from time to time, and shall include all parts of the plant *cannabis sativa linnaeus*, *cannabis indica*, or *cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” also means the separated resin, whether crude or purified, obtained from marijuana. “Marijuana” also means marijuana as defined by Health and Safety Code Section 11018. “Marijuana” also means “medical marijuana” that is used for medical purposes under the Medical Marijuana Regulation and Safety Act as well as the

Compassionate Use Act of 1996 including the provisions of SB 420 enacted in 2003 (Health & safety Code Sections 11362.7 to 11362.83). For the purpose of this Article, “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination nor does it mean “industrial hemp” as defined by California Food and Agricultural Code Section 81000 or California Health and Safety Code Section 11018.5.

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall collectively mean the Medical Marijuana Regulation and Safety Act as contained, codified, and enacted as California Business and Professions Code Chapter 3.5.

“Medical marijuana product” shall have the same meaning as “cannabis product” or “medical cannabis product” as set forth in Business and Professions Code Section 19300.5(ag), as the same may be amended from time to time, and shall include marijuana, including, concentrates and extractions, intended to be sold for use by medical marijuana patients pursuant to the Compassionate Use Act of 1996 (Proposition 215).

“Primary caregiver” shall have the same meaning as set forth in California Health and Safety Code Section 11362.7(d), as the same may be amended from time to time, and includes an individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

“Qualified patient” shall have the same meaning as set forth in California Health and Safety Code Section 11362.7(f), as the same may be amended from time to time, and includes a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

B. Medical marijuana dispensaries are prohibited in all zones in the City. It shall be unlawful for any person or entity to own, manage, establish, conduct, or operate any medical marijuana dispensary, or participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any medical marijuana dispensary, in the City.

C. Commercial medical marijuana activity of any type or nature is expressly prohibited in all zones in the City. No person shall establish, operate, maintain, conduct or allow commercial medical marijuana activity anywhere within the City. This Section 17.04.080 is meant to prohibit all activities for which a State license is required pursuant to the MMRSA. The City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MMRSA.

D. To the extent that it is not already prohibited by subsections B and C above, cultivation of marijuana for commercial or non-commercial purposes, including cultivation by a qualified patient, primary caregiver, or person with identification card is expressly prohibited in all zones in the City. No person, including a qualified patient, primary caregiver or person with identification card, shall cultivate any amount of marijuana in the City, even for medical purposes.

E. In addition to any other enforcement permitted by Chapter 1.16 of the Norwalk Municipal Code, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Chapter. In any civil action brought pursuant to this Chapter, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party. No provision of Chapter 1.16 shall authorize a criminal prosecution or arrest prohibited by Health and Safety Code section 11362.71 et seq.”

Section 5. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part hereof or exhibit hereto is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance or any part thereof or exhibit thereto. The City Council of the City of Norwalk hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared invalid.

PASSED, APPROVED AND ADOPTED this ___ day of _____ 2016.

**LEONARD SHRYOCK
MAYOR**

ATTEST:

**THERESA DEVOY, CMC
CITY CLERK**



CITY OF NORWALK

NOTICE OF GENERAL RULE EXEMPTION

12700 Norwalk Blvd.

Norwalk, CA 90650

Tel.: (562) 929-5744

Project Title: Text Amendment No. 313

Project Applicant: City of Norwalk

Project Location: Citywide in all zones in the City of Norwalk

Project Description: A text amendment which amends Title 17 of the Norwalk Municipal Code as it relates to the prohibition of medical marijuana cultivation and commercial activity.

Approving Project: City Council

Exempt Status: The ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed ordinance has no potential for resulting in a physical change to the environment directly or indirectly as it prohibits medical marijuana cultivation and would not result in an increase in permitted densities or modifications to resource protection policies. Therefore, no significant environmental impacts would occur as a result of the ordinance.

Date: January 5, 2016

Prepared by: Beth Chow, Senior Planner

Date

Kurt H. Anderson,
Director of Community Development