



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 11/20/2012

Report Type: Staff/Discussion

Title: Medical Marijuana Cultivation (M12-008)

Report ID: 2012-00908

Location: Citywide

Recommendation: Pass an Ordinance amending Chapter 8.04.100 and add Chapter 8.132 to Title 8 of the Sacramento City Code related to Medical Marijuana Cultivation

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Presenter: David Kwong, Planning Director, (916) 808-2691, Community Development Department

Department: Community Development Dept

Division: Planning

Dept ID: 21001221

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Ordinance Related to the Cultivation of Medical Marijuana.

City Attorney Review

Approved as to Form
GMartinez
11/15/2012 11:14:25 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
11/5/2012 10:40:26 AM

Approvals/Acknowledgements

Department Director or Designee: Max Fernandez - 11/9/2012 2:33:23 PM



Description/Analysis

Issue: At the Sacramento City Council meeting of October 16, 2012, the City Council discussed the public nuisances resulting from the outdoor cultivation of medical marijuana in residential areas. The City Council directed the City Manager to prepare an ordinance that would prohibit the outdoor cultivation of medical marijuana in residential areas and return directly to the City Council in November 2012.

Policy Considerations: Currently the Sacramento City Code does not address the topic of medical marijuana cultivation. Outdoor cultivation of marijuana plants has created an attractive nuisance in several areas of the city as the plant has a distinct and strong odor during the harvesting season and, when visible outside, the cultivation site has, in some cases, been a target for burglaries, crime and other disturbances.

Economic Impacts: None.

Environmental Considerations: Because this report concerns general policy and procedure making, the California Environmental Quality Act (CEQA) does not apply per Section 15378(b)(3), which states that continuing administrative or maintenance activities, which are not conducted in conjunction with a project subject to CEQA review, are not considered to be “projects” and are therefore exempt from CEQA.

Sustainability Considerations: None.

Commission/Committee Action: On July 24, 2012, the Law and Legislation Committee discussed the public nuisances resulting from the cultivation of medical marijuana outside in residential areas. The committee was split, two ayes and two noes as to whether or not an ordinance should be prepared. The Law and Legislation Committee procedures indicate that in the case of a split vote the item is to be brought forward to the Council for decision. The City Council directed the City Manager to have an ordinance prepared. As the Council Members had a significant discussion on the item on October 16th, the Council also directed that the ordinance did not need to return to the Law and Legislation Committee for review and should come back directly to City Council in November.

Rationale for Recommendation: In light of the increase in calls for police service, related crime associated with outdoor medical marijuana cultivation and offensive odors that are created with large outdoor grows an ordinance regulating the cultivation of medical marijuana would assist in responding to what has become an attractive nuisance in residential areas and would be beneficial to both the occupants of the residence and adjacent residential neighbors.

Financial Considerations: None.

Emerging Small Business Development (ESBD): Not applicable.

Background Information

In developing regulations pertaining to prohibiting the outdoor cultivation of medical marijuana in residential areas, staff has reviewed the ordinances adopted by other California communities and discussed requirements relating to growing area, ventilation and electricity needs with local stakeholders in the medical marijuana community.

The attached ordinance adds Title 8.132, Cultivation of Medical Marijuana, to the Health and Safety Title (Title 8) of the Sacramento City Code. The proposed ordinance has the following provisions:

- In order to cultivate marijuana in residential zones or on parcels used for residential purposes in the City of Sacramento a person:
 - Must be a qualified patient, primary caregiver or person with an identification card
 - Reside full-time on the premises where the cultivation occurs
 - Cultivate inside a fully enclosed and secure building
- The area of cultivation must not exceed 400 square feet on the property (building[s] may be larger than 400 square feet but the total cumulative area of growing area[s] shall not exceed 400 square feet). This square footage was selected because it is the maximum growing area necessary to yield a sufficient quantity of supply to meet the reasonable medical needs of a moderate to high dosage qualified patient for one year.
- Indoor grow light systems, if used, must:
 - Comply with the city building code and fire prevention code
 - Not exceed 3,800 watts
 - Be shielded to confine light and glare to the interior of the structure
- A ventilation and filtration system:
 - Must be installed in the structure to prevent plant odors from exiting the interior of the structure
 - Must be approved by the City Building Official and installed prior to commencement of cultivation
- Plants may be grown in the main residence or a detached accessory structure if it:
 - Complies with the city's building and zoning code
 - Is fully-enclosed and secure
 - Has a complete roof enclosure supported by connecting walls extending from the ground to the roof
 - Only accessible through one or more lockable doors
 - Is inaccessible to juveniles, except for juveniles that are qualified patients, primary caregivers, or have an identification card

- There shall be no exterior evidence of medical marijuana cultivation at the premises from the public right of way or from adjacent parcels
- Cultivation shall not adversely affect health and safety with offensive odors; excessive dust, heat, noise smoke or traffic; or allow the storage of hazardous materials processes, products or wastes.

In lieu of passing the ordinance title for publication before adoption, the entire ordinance will be published in the City's official newspaper in accordance with City Charter Section 32 (d).



ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTION 8.04.100 OF, AND ADDING CHAPTER 8.132 TO, TITLE 8 OF THE SACRAMENTO CITY CODE RELATING TO CULTIVATION OF MEDICAL MARIJUANA

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

A. Subdivision P is added to Section 8.04.100 of the Sacramento City Code to read as follows:

P. Any condition in violation of Chapter 8.132 of this code (cultivation of medical marijuana).

B. Except as specifically amended to add subdivision P, Section 8.04.100 remains unchanged and in full force and effect.

SECTION 2.

Chapter 8.132 is added to Title 8 of the Sacramento City Code to read as follows:

Chapter 8.132

CULTIVATION OF MEDICAL MARIJUANA

8.132.010 Purpose and intent.

In 1996 California voters approved Proposition 215, entitled “The Compassionate Use Act,” that was later codified at Health and Safety Code section 11362.5. The Compassionate Use Act provides that qualified patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction under state law. In 2003 the state enacted Senate Bill 420, known as the Medical Marijuana Program Act, codified at Health and Safety Code sections 11362.7 et seq. The Medical Marijuana Program Act was intended to supplement the provisions and clarify the intent and scope of the Compassionate Use Act and to allow cities to adopt and enforce rules and regulations consistent with the Medical Marijuana Program Act.

It is the purpose and intent of the city council to implement state law by regulating the cultivation of medical marijuana and requiring that it be cultivated in secured, enclosed, and ventilated structures, so as not be visible to the public; to prevent odors created by marijuana

plants from impacting adjacent properties; to protect the health, safety, and welfare of the residents of the City of Sacramento; and to ensure that medical marijuana grown for medical purposes does not result in the diversion of marijuana for nonmedical purposes.

The regulations in this chapter do not interfere with a qualified patient’s right to obtain and use marijuana as authorized under state law, nor do they criminalize the possession of marijuana by qualified patients or their primary caregivers. It is neither the intent nor the effect of this chapter to condone or legitimize the illegal use, consumption, or cultivation of marijuana under federal, state, or local law.

8.132.020 Definitions.

As used in this chapter:

“Allowable structure” means a building or other structure that is fully-enclosed and secure; complies with the city’s building and zoning code; has a complete roof enclosure supported by connecting walls extending from the ground to the roof; has a foundation, slab, or equivalent base to which the floor is secured by bolts or similar attachments; is secure against unauthorized entry; and is accessible only through one or more lockable doors. Walls and roofs must be constructed of solid, non-transparent material, that cannot be easily breached, such as two-inch by four-inch or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting or similar products, regardless of gauge, do not satisfy this requirement.

“Cultivation” means the planting, growing, harvesting, drying, or processing of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including within an allowable structure.

“Identification card” has the same definition as set forth in California Health and Safety Code section 11362.7.

“Juvenile” means a person under the age of eighteen years.

“Marijuana” has the same definition as set forth in California Health and Safety Code section 11018.

“Marijuana plant” means any mature or immature marijuana plant, or any marijuana seedling.

“Medical marijuana” means marijuana used for medical purposes in accordance with the Compassionate Use Act (California Health and Safety Code section 11362.5) and the Medical Marijuana Program Act (California Health and Safety Code sections 11362.7 et seq.).

“Outdoor” means any location in the city that is within a residential zone or parcel used for residential use, and that is not within an allowable structure.

“Person with an identification card” has the same definition as set forth in California Health and Safety Code section 11362.7.

“Premises” means a single parcel of property or contiguous parcels under common ownership or control.

“Primary caregiver” has the same definition as set forth in California Health and Safety Code section 11362.7.

“Qualified patient” has the same definition as set forth in California Health and Safety Code section 11362.7.

8.132.030 Cultivation of medical marijuana.

A. Prohibitions. A person owning, leasing, occupying, or having charge or possession of any premises within a residential zone or used for residential purposes, shall not cause, allow, or permit the premises to be used for the following:

1. The outdoor cultivation of marijuana plants.
2. The cultivation of marijuana plants, unless the person cultivating the plants is a qualified patient, primary caregiver, or person with an identification card and that person resides full-time on the premises where the marijuana cultivation occurs.

B. Indoor cultivation. The indoor cultivation of medical marijuana in residential zones or on premises used for residential use shall be conducted only within an allowable structure and shall conform to the following minimum standards:

1. Regardless of how many qualified patients, primary caregivers, or persons with identification cards are residing at the premises, the cumulative area used for cultivation on the premises shall not exceed 400 square feet.

2. Indoor grow lighting systems shall:

- a. Not exceed 3,800 watts.
- b. Be shielded to confine light and glare to the interior of the allowable structure.
- c. Comply with the city building code and fire prevention code.

3. Allowable structures shall have ventilation and filtration systems installed that prevent medical marijuana plant odors from exiting the interior of the structure. The ventilation and filtration system shall be approved by the building official and installed prior to commencing cultivation within the allowable structure.

4. Medical marijuana cultivation shall be concealed from public view at all stages of growth and there shall be no exterior evidence of cultivation occurring at the premises from a public right-of-way or from an adjacent parcel.

5. The medical marijuana cultivation shall not create offensive odors; create excessive dust, heat, noise, smoke, traffic, or other impacts that are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public; or be hazardous due to use or storage of materials, processes, products, or wastes.

6. Medical marijuana cultivation areas, whether in a detached building or inside a residence, shall not be accessible to juveniles who are not qualified patients, primary caregivers, or persons with an identification card.

8.132.040 Violations.

A. Any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28 of this code.

B. Violations of this chapter are declared to be public nuisances and may be abated in accordance with the procedures and remedies specified in Article I through Article VIII of chapter 8.04 of this code.

C. Any person who violates a provision of this chapter is liable for civil penalties of not less than \$250.00 or more than \$25,000.00 for each day the violation continues.

D. Any person who violates any provision of this chapter is guilty of a misdemeanor.

8.132.050 Remedies cumulative.

All remedies prescribed under this chapter shall be cumulative and the election of one or more remedies shall not bar the city from the pursuit of any other remedy for the purpose of enforcing the provisions hereof.

SECTION 3. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, that decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The city council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

