



**CITY OF LOS ALTOS
CITY COUNCIL MEETING
January 26, 2016**

PUBLIC HEARING

Agenda Item # 4

SUBJECT: Adopt Urgency Ordinance No. 2016-418, pertaining to the prohibition of marijuana cultivation, processing, deliver and dispensary uses

BACKGROUND

In 1996, the voters of the State of California approved Proposition 215 entitled “The Compassionate Use Act of 1995” or “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 or process 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.

In 2010, the Los Altos Municipal Code (“LAMC”) Chapter 4 (Business Licenses and Regulations) was amended to include provisions to prohibit medical marijuana dispensaries and delivery. Current legislation requires an expansion of that section.

EXISTING POLICY

None

PREVIOUS COUNCIL CONSIDERATION

None

DISCUSSION

Most recently, on October 9, 2015, Governor Brown signed a comprehensive package of bills (AB 243, AB 266, and SB 643), known as the Medical Marijuana Regulation and Safety Act (“Act”) into law. This Act establishes minimum standards to establish a regulatory structure around the medical marijuana industry with particular focus on provisions that govern the cultivation, processing, transportation, and distribution of medical marijuana. Under AB 243, a local agency must expressly prohibit or regulate the cultivation of medical marijuana by March 1, 2016.

The LAMC, Chapter 14, is the City’s zoning code and is set-up as a permissive zoning code, whereby permitted and conditionally permitted uses are listed in the zoning ordinance – all other uses not otherwise specifically identified are presumptively prohibited. This presumption has been applied in the past. However, under AB 243, if a local agency does not have an ordinance in effect before March 1, 2016, that either expressly prohibits or expressly regulates the cultivation of medical marijuana, the California Department of Food and Agriculture will be the sole licensing authority for

such uses, and may issue such permits for locations within the City.

Several California cities have reported illegal “grow house” operations. Cities have further reported negative impacts to the public health, safety and welfare resulting from marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, robberies, fire hazards and problems associated with mold, fungus and pests.

While LAMC Chapter 4.45 expressly prohibits medical marijuana dispensaries and delivery, it does not expressly regulate nor does it expressly prohibit the cultivation and processing of medical marijuana. These activities are prohibited under federal regulations, and Chapter 4.45 of the LAMC does not permit the issuance of a business license to operations that are in violation of federal, state or local law. Since the LAMC is silent with regard to the recently enacted Act as it pertains to cultivation related uses, an ordinance amendment is necessary to retain local regulatory control over such uses and operations. As such, the proposed ordinance amendment includes pertinent definitions for the various marijuana related activities, eliminates the existing prohibition on dispensaries (under Chapter 4.45) and comprehensively prohibits all marijuana related uses (including cultivation, dispensaries and delivery) under a new Chapter 14.82. The proposed Urgency Ordinance No. 2016-418 is attached as Attachment A.

The Planning and Transportation Commission of the City of Los Altos held a public hearing on January 7, 2016, and considered and reviewed written materials and took public comments related to the Ordinance No. 2016-418 and recommended its adoption.

PUBLIC CONTACT

The Planning and Transportation held a public hearing on Ordinance No. 2016-418 on January 7, 2016.

A public hearing notice was published in the *San Jose Mercury News* on January 14, 2016 for the January 26, 2016 City Council meeting.

Posting of the meeting agenda serves as notice to the general public.

FISCAL/RESOURCE IMPACT

None

ENVIRONMENTAL REVIEW

The proposed Ordinance is exempt from environmental review in accordance with Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines as an activity that can be seen with certainty to have no possibility for causing a significant effect on the environment.

RECOMMENDATION

Adopt Urgency Ordinance No. 2016-418, pertaining to the prohibition of marijuana cultivation, processing, deliver and dispensary uses

Adopt Urgency Ordinance No. 2016-418, pertaining to the prohibition of marijuana cultivation, processing, deliver and dispensary uses

ALTERNATIVES

1. Do not adopt Urgency Ordinance No. 2016-418

Prepared by: Jolie Houston, City Attorney

Approved by: Marcia Somers, City Manager

ATTACHMENT:

1. Ordinance No. 2016-418

Adopt Urgency Ordinance No. 2016-418, pertaining to the prohibition of marijuana cultivation, processing, deliver and dispensary uses

ORDINANCE NO. 2016-418

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LOS ALTOS REPEALING THE LOS ALTOS
MUNICIPAL CODE, CHAPTER 4.45 IN ITS ENTIRETY;
AMENDING THE LOS ALTOS MUNICIPAL CODE CHAPTER
14.02 TO ADD NEW DEFINITIONS PERTAINING TO THE
PROHIBITION OF MARIJUANA CULTIVATION, PROCESSING,
DELIVER AND DISPENSARY USES; AND ADDING A CHAPTER
14.82 PERTAINING TO THE PROHIBITION OF MARIJUANA
CULTIVATION, PROCESSING, DELIVER AND DISPENSARY
USES IN THE CITY OF LOS ALTOS**

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 et seq. and entitled “The Compassionate Use Act of 1996” referred to herein as the “CUA”); and

WHEREAS, the intent of the CUA was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law once a physician has deemed the use beneficial to a patient’s health; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program (“MMP”), codified as Health & Safety Code Section 11362.7 et seq., 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; and

WHEREAS, 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 or process medical marijuana within its jurisdiction; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., et al.*, holding that cities have the authority to ban medical marijuana land uses; and

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“Act”), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains new statutory provisions that:

(1) Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4))

(2) Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a))

(3) Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c))

(4) Require a local government that wishes to prevent marijuana deliver activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)); and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large number of plants could be cultivated on the same legal parcel, or parcels, within the City of Los Altos ("City"); and

WHEREAS, 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 outdoors; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, 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; and

WHEREAS, the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing and distribution activities; and

WHEREAS, prior to the effective date of this Urgency Ordinance No. 2016-418, the Los Altos Municipal Code (“LAMC”) does not expressly address the cultivation and processing of medical marijuana, but did prohibit medical marijuana dispensaries and delivery under Section 13.65; and

WHEREAS, the Planning and Transportation Commission of the City of Los Altos held a public hearing on January 7, 2016, and considered and reviewed written materials and took public comments related to the Ordinance No. 2016-418 and recommended its adoption; and

WHEREAS, the City Council of the City of Los Altos held a public hearing on January 26, 2016, to consider the request and review written materials and oral comments related to Urgency Ordinance No. 2016-418; and

WHEREAS, the City Council finds that it is necessary for the protection of the public health, safety and welfare that Urgency Ordinance No. 2016-418 takes effect immediately due to the Act’s requirements to expressly prohibit the cultivation of medical marijuana by March 1, 2016; and

WHEREAS, the City Council further finds that since the LAMC is silent with regard to the recently enacted Act as it pertains to cultivation related uses, Urgency Ordinance No. 2016-418 is necessary to retain local regulatory control over such uses and operations; and

WHEREAS, City Council further finds that it is necessary for the protection of the public health, safety and welfare that Urgency Ordinance No. 2016-418 takes effect immediately because it includes pertinent definitions for the various marijuana related activities, eliminates the existing prohibition on dispensaries (under LAMC Chapter 4.45) and comprehensively prohibits all marijuana related uses (including cultivation, dispensaries and delivery) under a new Chapter 14.82, which will avoid any confusion as to what prohibitions of medical marijuana related uses apply; and

WHEREAS, this Urgency Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended, as an activity that can be seen with certainty to have no possibility for causing a significant effect on the environment.

NOW THEREFORE, the City Council of the City of Los Altos does hereby adopts Urgency Ordinance 2016-418 repealing Los Altos Chapter 4.45 entitled “Medical Marijuana Dispensaries as a Prohibited Use” in its entirety and adding the following sections to Chapter 14.02 and 14.82 of the Los Altos Municipal Code to read as follows:

SECTION 1. AMENDMENT OF CODE:

The Los Altos Municipal Code, Chapter 4.45 entitled “Medical Marijuana Dispensaries as a Prohibited Use” is here by repealed in its entirety to be replaced by adding new definitions in Los Altos Municipal Code Chapter 14.02 and a new Chapter 14.82, Sections 14.82.10 through 14.82.40 to the Los Altos Municipal Code.

SECTION 2. AMENDMENT OF CODE:

The Los Altos Municipal Code, Chapter 14.02, entitled “General Provisions and Definitions” is hereby amended to add new definitions pertaining to marijuana cultivation, processing, delivery and dispensaries to read as follows:

“Marijuana” means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated 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, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term “marijuana” shall also include “medical marijuana” as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of the California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

“Marijuana cultivation” means growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana, regardless of whether there is an intent to product, distribute, or sell the resulting product commercially. Marijuana cultivation shall not include cultivation by an individual qualified patient.

“Marijuana processing” means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

“Marijuana dispensary” or “Marijuana dispensaries” means any business, office, store, facility, location, retail or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business & Professions Code section 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Ordinance No. 2016-418

Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical use, as may be amended from time to time, that was issued by the office of the Attorney General for the State of California or subject to the provisions of the California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

“Medical marijuana collective” or “cooperative or collective” means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of the California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

SECTION 3. AMENDMENT OF CODE:

Los Altos Municipal Code, Chapter 14, entitled “Zoning” is hereby amend to add a new Chapter 14.82, Sections 14.82.10 through 14.82.40 pertaining to the “Prohibition of Marijuana Cultivation, Processing, Delivery and Dispensary Uses” to read as follows:

14.82.10 Legislative Findings and Statement of Purpose – Prohibition of Marijuana Cultivation, Processing, Delivery and Dispensary Uses

(a) The City Council finds that the prohibitions on marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council’s prohibition of such activities is within the authority conferred upon the City Council in its Charter and state law.

(b) On October 9, 2015, the governor signed the “Medical Marijuana Regulation and Safety Act” (“Act”) into law. The Act becomes effective January 1, 2016 and contains new statutory provisions that:

(1) Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));

(2) Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinance, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));

(3) Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government’s right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c));

(4) Require a local government that wishes to prevent marijuana deliver activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)).

(c) The City Council finds that this chapter: (1) expresses its intent to prohibit the cultivation of marijuana in the City and to not administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana in the City; (2) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; (3) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; and (4) expressly prohibits the delivery of marijuana in the City.

14.82.20 Prohibited Activities.

Marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries shall be prohibited activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of marijuana cultivation, marijuana processing, marijuana delivery, or the establishment or operation of a marijuana dispensary in the City, and no person shall otherwise establish or conduct such activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

14.82.30 Public Nuisance.

Any violation of this chapter is hereby declared to be a public nuisance.

14.82.40 Violations.

Any violation of this chapter may be enforced through civil or administrative remedies or any other remedy as provided for by the law.

SECTION 4. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 5. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 6. EFFECTIVE DATE. Pursuant to Government Code section 36397 this ordinance shall be effective upon its adoption as an Urgency Ordinance based on the following:

1. The City Council finds that it is necessary for the protection of the public health, safety and welfare that Urgency Ordinance No. 2016-418 takes effect immediately due to the Medical Marijuana Regulation and Safety Act's ("Act") requirements to expressly prohibit the cultivation of medical marijuana by March 1, 2016; and
2. The City Council further finds that since the Los Altos Municipal Code ("LAMC") is silent with regard to the recently enacted Act as it pertains to cultivation related uses, Urgency Ordinance No. 2016-418 is necessary to retain local regulatory control over such uses and operations.

The City Council further finds that it is necessary for the protection of the public health, safety and welfare that Urgency Ordinance No. 2016-418 takes effect immediately because it includes pertinent definitions for the various marijuana related activities, eliminates the existing prohibition on dispensaries (under LAMC Chapter 4.45) and comprehensively prohibits all marijuana related uses (including cultivation, dispensaries and delivery) under a new Chapter 14.82, which will avoid any confusion as to what prohibitions of medical marijuana related uses apply.

The foregoing urgency ordinance was passed and adopted at a regular meeting of the City Council of the City of Los Altos held on January 26, 2016 passed and adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Jeannie Bruins, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK