



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: January 12, 2016

TO: Mayor and Councilmembers

FROM: City Attorney's Office

SUBJECT: Introduction Of Ordinance Regulating Cultivation Of Marijuana

RECOMMENDATION:

That Council:

- A. Receive a report from the City Attorney's Office outlining the Planning Commission's list of concerns regarding the proposed marijuana cultivation ordinance; and
- B. Introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Adding Section 28.87.300 to the Santa Barbara Municipal Code to Regulate Cannabis Cultivation.

Executive Summary:

On October 9, 2015, Governor Jerry Brown signed legislation implementing the Medical Marijuana Regulation and Safety Act (MMRSA) creating a dual licensing system for the cultivation, transportation, and sale of medical marijuana between the state and local governments. Under this new legislation, if the City does not have an ordinance in place on March 1, 2016 prohibiting or regulating cultivation of marijuana, it will lose the authority to regulate or ban cultivation within the City limits, and the State will become the sole licensing authority.

On November 10, 2015, at a duly noticed council meeting, the City Council expressed its desire to retain local control, and voted (7-0) to direct the City Attorney to draft a zoning ordinance regulating the type and scope of marijuana cultivation within the City of Santa Barbara. Specifically, Council directed the City Attorney to draft an ordinance prohibiting the commercial cultivation of marijuana and allowing limited cultivation of marijuana for personal use (otherwise referred to as cannabis) within the City.

Pursuant to the direction given by Council at the November 10th meeting, the proposed ordinance would allow a qualified patient to cultivate one hundred (100) square feet of marijuana either outdoors or indoors, on a single horizontal plane, for personal medical use, so long as the marijuana is cultivated on his or her lawfully permitted residence.

A “qualified patient” is defined as a person that has the protections granted under section Health and Safety Code 11362.5, or otherwise more generally stated, as a person who has a physician’s recommendation to use medical marijuana. Commercial cultivation, or cultivation for other than personal use, is strictly prohibited anywhere in the City. Recognizing, however, that even marijuana which is being grown by a qualified patient in his or her legal residence could have a detrimental impact on neighbors, there is a provision in the ordinance that would allow the City to attempt to enjoin the cultivation at a location if it became a public nuisance.

On December 3, 2015, the City Attorney’s Office presented the proposed marijuana cultivation ordinance to the Planning Commission. The Planning Commission moved (6-1) to recommend that City Council introduce and adopt the proposed ordinance to add section 28.87.300 to the Santa Barbara Municipal Code to regulate cultivation of marijuana, subject to inclusion of language clarifying that the cultivation sites were limited to a single “contiguous” horizontal plane of 100 square feet. The Planning Commission also resolved that the City Attorney’s Office should present the Planning Commission’s list of concerns regarding the proposed ordinance at the council meeting introducing the ordinance. Specifically, the Planning Commission was concerned with the impact the proposed ordinance could have on individuals who were physically unable to cultivate their own marijuana, and the impact the ordinance would have on marijuana dispensaries lawfully permitted under the City’s Storefront Dispensary Ordinance (SBMC Chap. 28.80).

Impact to Qualified Patients Physically Unable to Cultivate

Because the ordinance limits cultivation only to qualified patients, and does not allow cultivation by primary caregivers, the Planning Commission expressed concern that individuals who are too ill or disabled to cultivate for themselves, or too ill to travel to a storefront dispensary, would be unable to obtain marijuana. The Planning Commission discussed the option of a hardship exception that would allow cultivation by someone other than a qualified patient if the qualified patient was too ill to cultivate for him or herself. The regulation and permitting of which persons might qualify for a hardship exception would be difficult to administer and enforce by City staff. An alternative, to address the ability of qualified patients who are too disabled to cultivate for themselves, or unable to travel to a dispensary, could be addressed through an ordinance permitting mobile delivery of marijuana by dispensaries at a later and less time critical date.

Impact to City Permitted Storefront Dispensaries

Additionally, the Planning Commission was concerned about the impact that the proposed cultivation ordinance may have on City permitted storefront dispensaries. Under the proposed ordinance, since marijuana may only be cultivated for “personal use,” and may not be traded, bartered, or sold, a dispensary member may not cultivate marijuana for the dispensary within City limits because the cultivation would not be solely for his or her personal use.

Members of a dispensary will need to cultivate the dispensary’s marijuana outside City limits, but within the Tri-County area, as required by the City’s dispensary ordinance. The Planning Commission was concerned with the potential hometown impacts that transporting marijuana from other jurisdictions may have.

Size of Cultivation Site and Impact to Neighboring Properties

In an attempt provide Council with a general idea of how many marijuana plants could be cultivated within a single contiguous horizontal plane of 100 square feet, and how much marijuana could potentially be harvested from a cultivation site of that size, the City Attorney’s Office consulted with local law enforcement. Based on the information provided, it is estimated that 90 to 100 marijuana plants could conceivably be grown indoors within 100 square feet. Fewer plants could be grown outdoors within 100 square feet. Indoor marijuana plants do not need the amount of canopy space to produce the same harvest as outdoor plants because of the controlled indoor environment. Many indoor growers run their plants on a 90 day harvest cycle. The average harvest, per plant on a 90 day cycle for an experienced cultivator would be approximately ¼ to ½ pound per plant. For reference, the average price per pound of marijuana is \$3,000 to \$5,000.

When broken down per year, estimating 100 plants growing on a 90 day cycle within a 100 square foot indoor space, it is possible for a single person to produce 140 pounds of marijuana. If this marijuana was commercially sold (at \$4,000 per pound), in violation of the municipal code, it could yield a street value of approximately \$560,000.

Because the ordinance as presently drafted allows for cultivation to occur in any legally permitted residence, it is possible that marijuana cultivation, on the scale described in the paragraphs above, could occur in multifamily dwelling units and next to schools, parks, and religious institutions. The actual impact to these locations, and whether the impact would rise to the legal level of creating a “public nuisance,” is unknown and would need to be investigated and addressed on an individual basis by City enforcement staff and the City Attorney’s Office. Additionally, there is no provision that restricts cultivation to those areas on private property not visible to the public.

BUDGET/FINANCIAL INFORMATION:

There may be potential staff code compliance costs that would need to be budgeted upon implementation.

SUMMARY:

In order to retain local control over the cultivation of marijuana, the City Council must have a zoning ordinance regulating cultivation in place on or before March 1, 2016. The City Attorney's Office recommends that the Council introduce and adopt an ordinance adding Santa Barbara Municipal Code section 28.87.300, Cultivation of Cannabis.

ATTACHMENT: Draft Planning Commission Resolution No. 019-15

PREPARED BY: Tava Ostrenger, Assistant City Attorney

SUBMITTED BY: Ariel Calonne, City Attorney

APPROVED BY: City Administrator's Office



City of Santa Barbara California

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 019-15 CITY WIDE RECOMMENDATION TO CITY COUNCIL DECEMBER 3, 2015

AMENDMENT TO ADD SANTA BARBARA MUNICIPAL CODE SECTION 28.87.300 TO REGULATE CANNABIS CULTIVATION.

The City Council has initiated a zoning ordinance amendment to permit the cultivation of cannabis for personal medical use in the City.

The purpose of this hearing was for the Planning Commission, at the recommendation of the City Council, to review the parameters for permitting the cultivation of cannabis for personal medical use and prohibiting commercial cannabis cultivation in all zones, and to forward their recommendations to the City Council. Subsequently, the Council would introduce and adopt the ordinance to add section 28.87.300 to the Santa Barbara Municipal Code to regulate cannabis cultivation. The Planning Commission recommendations will be forwarded to the City Council for adoption in early 2016.

WHEREAS, the Planning Commission has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, no one appeared to speak in favor of the application, and no one appeared to speak in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, November 25, 2015.

NOW, THEREFORE BE IT RESOLVED that the City Planning Commission recommends as follows:

- I. City Council introduce and adopt the ordinance to add section 28.87.300 to the Santa Barbara Municipal Code to regulate cannabis cultivation, subject to the inclusion of clearer and consistent language throughout the ordinance when referencing 100 horizontal square feet to reflect 100 "contiguous" square feet for both indoor or outdoor cultivation.

This motion was passed and adopted on the 3rd day of December, 2015 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 6 NOES: 1 (Jordan) ABSTAIN: 0 ABSENT: 0

- II. The City Attorney forward to City Council the Planning Commission's following list of concerns regarding the proposed ordinance:
 - A. Absence of a hardship clause for people that are unable to physically cultivate their own.
 - B. Jurisdictional issues in future deliveries, truck trips, etc. outside the boundaries of the City.
 - C. Impact the proposed cultivation ordinance will have upon current Dispensary Ordinance.

This motion carried by the following vote:

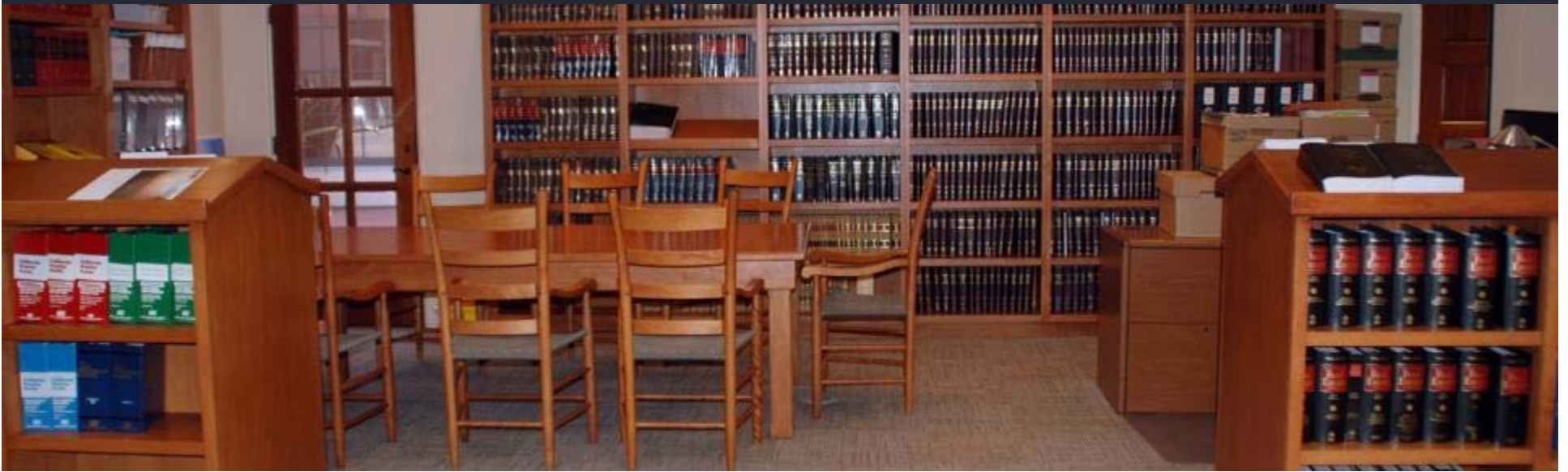
PLANNING COMMISSION RESOLUTION No.019-15
RECOMMENDATION TO CITY COUNCIL – AMENDMENT TO REGULATE CANNABIS CULTIVATION
DECEMBER 3, 2015
PAGE 2

AYES: 6 NOES: 0 ABSTAIN: 1 (Jordan) ABSENT: 0

I hereby certify that this Resolution correctly reflects the action taken by the city of Santa Barbara Planning Commission at its meeting of the above date.

Julie Rodriguez, Planning Commission Secretary Date _____

DRAFT



OFFICE OF THE CITY ATTORNEY

INTRODUCTION OF ORDINANCE REGULATING CULTIVATION OF MARIJUANA

(SBMC § 28.87.300)



AB 243

Unless the City has an ordinance in place regulating or banning marijuana cultivation before March 1, 2016 it will lose the ability to regulate cultivation of marijuana.

- ❖ State will determine type, size, and location of cultivation subject to its own licensing scheme.



COUNCIL'S DIRECTION

On November 10th Council directed the City Attorney's Office to:

- Draft an ordinance allowing up to 100 square feet of personal cultivation of marijuana on residential sites within the City; and
- Return to Council no later than January 12th for introduction of the ordinance.

SBMC § 28.87.300

- Allows cultivation of marijuana by one qualified patient for personal medical use at his or her legal residential unit;
- Limits cultivation to 100 contiguous square feet on a single horizontal plane either indoors or outdoors;
- Prohibits commercial cultivation of marijuana for any purpose in all zones of the City; and
- Does not allow cultivation of marijuana by an individual that creates a public nuisance.





PLANNING COMMISSION REVIEW

- Moved (6-1) that Council introduce the proposed ordinance, subject to language clarifying cultivation is on a single “**contiguous**” cultivation site.
- Planning Commission asked that its concerns regarding the proposed ordinance be presented to Council for consideration.
 - ❖ *Impact on individuals unable to cultivate personally.*
 - ❖ *Relationship to City permitted storefront dispensaries.*



Limited Solely to Qualified Patients

- Cultivation is limited to “qualified patients” and is not extended to “primary caregivers.”
- PC concern that individuals physically unable to cultivate for themselves or travel to a dispensary will not be able to obtain marijuana. Some PC members discussed a potential “hardship exception.”
- “Hardship exception” would be virtually impossible to administer and enforce.
- Ability to obtain marijuana can be addressed later through an ordinance permitting mobile delivery by dispensaries.



Relationship of Proposed Ordinance to Permitted Dispensaries

- Cultivation is strictly for personal use and cannabis may not be sold by qualified patients to a dispensary.
- Dispensary members may cultivate marijuana at cultivation sites outside of the City.



SIZE OF CULTIVATION SITE AND IMPACT TO NEIGHBORING PROPERTIES

WHAT 100 SF COULD LOOK LIKE



WHAT 100 SF COULD PRODUCE

- 90 – 100 plants
- 90 day harvest cycle
- $\frac{1}{4}$ – $\frac{1}{2}$ lb per plant/per cycle
- 140 pounds per year
- Annual street value of \$560,000





POTENTIAL NEIGHBORHOOD IMPACTS

Potential impacts to public and neighboring residents due to size and location of cultivation sites:

- Cultivation sites in dense multifamily dwellings.
- Possible location next to schools, parks, and religious institutions.
- No restrictions on visibility of cultivation sites.



ACTION

Introduction of ordinance amending chapter 28.87 to add a section regulating cultivation of medical marijuana for personal use.