

STAFF REPORT

Meeting

Date: January 25, 2017

To: Chairperson and Members of the Planning Commission

From: Community Development Department

Subject: **ITEM B: 2017 MARIJUANA REGULATIONS**

Resolution No. 2017-2

Ordinance Amendments (OA2016-4)

Location: Citywide

Applicant: City of Fairfield

Property Owner: Citywide

Public Hearing on Request by the City of Fairfield for Adoption of an Ordinance of the City Council of the City of Fairfield Amending Section 25.32.17 "Marijuana Regulations" of the Fairfield Zoning Ordinance to Update the Existing Prohibition Against All Commercial Marijuana Activity in the City to Include Non-Medical Marijuana, to Reasonably Regulate Indoor Personal Cultivation of Marijuana Consistent with State Law, and to Prohibit Outdoor Cultivation of Marijuana (Planner: Brian K. Miller, 707-428-7446, bkmiller@fairfield.ca.gov)

BACKGROUND/DISCUSSION

In 2016, the Fairfield City Council amended the Fairfield Zoning Ordinance to explicitly prohibit medical marijuana cultivation, deliveries, dispensaries, and mobile dispensaries in the City of Fairfield. The original justifications for banning commercial medical marijuana pursuant to the City's police power include: 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 indoor medical marijuana cultivation.

The Control, Regulate and Tax Adult Use of Marijuana Act ("the AUMA") was approved by California voters on November 8, 2016. The AUMA legalizes the possession, use, and cultivation of non-medical marijuana for those who are 21 years of age or older and authorizes a comprehensive State system to regulate commercial marijuana activity. For the purposes of the AUMA, commercial marijuana activity includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery or sale of marijuana and marijuana products.

The provisions of the AUMA related to the possession, use, and cultivation of non-medical marijuana became effective on November 9, 2016. The AUMA allows for the cultivation of up to six marijuana plants in or upon the grounds of a private residence. The plants and any marijuana produced by the plants in excess of 28.5 grams must: (1) be kept within the private residence, or upon the grounds of the private residence (e.g., in an outdoor garden area), (2) be kept in a locked space, and (3) not be visible by normal unaided vision from a public place.

Cities may not completely prohibit limited indoor cultivation for personal use. However, a city may enact and enforce an ordinance that reasonably regulates cultivation activities *inside* a private residence or *inside* a fully-enclosed, secure accessory structure located upon the grounds of a private residence. The AUMA does not define or provide examples of “reasonable regulations.” A city may also enact and enforce an ordinance that prohibits cultivation activities *outdoors* upon the grounds of a private residence.

The provisions of the AUMA related to commercial marijuana activity grant State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for non-medical marijuana businesses. A business will not be required to obtain a local permit or authorization before being issued a State license. State agencies are to begin issuing licenses by January 1, 2018.

However, a city may adopt and enforce local ordinances, including zoning and land use requirements, to regulate marijuana businesses or to completely prohibit the establishment or operation of such businesses within the city’s jurisdiction. No State license will be approved for a business that violates local ordinances.

ANALYSIS

The Ordinance

On December 20, 2016, the City Council adopted Urgency Ordinance 2016-6 amending Section 25.32.17 of the Zoning Ordinance to regulate marijuana in conformance with AUMA. The amendment addressed cultivation, distribution, and sale of marijuana as a commercial product, replacing language adopted by the City Council which specifically addressed medical marijuana. This proposed regular ordinance complements the Urgency Ordinance adopted in December. It is standard practice recommended by the City Attorney to adopt a regular ordinance complementary to adopted urgency ordinances to provide further legal backing for City policy.

Before the December action, the City’s regulations specifically addressed *medical* marijuana. Section 25.32.17(C) prohibited the establishment of medical marijuana dispensaries in the City. Section 25.32.17(D) prohibited medical marijuana deliveries and mobile dispensaries. Section 25.32.17(E) prohibited the cultivation of marijuana for both commercial and non-commercial purposes in all zones throughout the City.

These previous prohibitions on medical marijuana dispensaries and mobile dispensaries did not explicitly preclude the State from issuing licenses to non-medical marijuana businesses wishing to operate in the City. Therefore, if the City wanted to prevent the establishment and operation of non-medical marijuana businesses, it needed to adopt an ordinance to expressly prohibit such uses before the State began issuing licenses. Further, the prohibition on cultivation conflicted with the AUMA to the extent that it prohibited the indoor personal cultivation of six or fewer marijuana plants.

The language in the regular ordinance before the Planning Commission tonight complements the amendments adopted by the Council through the Urgency Ordinance in December. The ordinance is consistent with AUMA. Highlights of the ordinance include:

- Rather than differentiate between medical and non-medical marijuana activity, the proposed ordinance defines “commercial marijuana activity” broadly. “Commercial marijuana activity,” as defined in the ordinance, includes both “commercial cannabis activity” and “commercial marijuana activity” as set forth in Division 8 (medical marijuana) and Division 10 (marijuana) of the Business and Professions Code. In addition, the prohibition on commercial marijuana activity in the revised Section 25.32.17(B) explicitly states that activities for which a state license is required under either the AUMA or the Medical Marijuana Regulation and Safety Act (“MCRSA”) are prohibited in Fairfield.
- The ordinance prohibits commercial marijuana activity in all zones, and provides that the City shall not issue any permit, license, or other entitlement for any activity that requires a State license under the AUMA or MCRSA.
- The definition of “delivery” is amended to include the commercial transfer of non-medical marijuana. As under the prior regulations, deliveries originating or terminating within the City are prohibited.
- The ordinance clarifies that outdoor marijuana cultivation is expressly prohibited in all zones. It amends the ban on cultivation to provide that indoor personal cultivation of six or fewer live marijuana plants within a single private residence or inside an accessory structure located upon the grounds of a private residence is permitted as authorized by state law.
- The ordinance specifies that indoor cultivation must be carried out in strict compliance with seven “reasonable regulations.” Those regulations require, among other things, that: (1) cultivation must occur within a fully enclosed, secure structure that is inaccessible to minors and which is not visible from a public right of way; (2) no more than six plants may be cultivated, regardless of the number of individuals in the private residence; (3) cultivation must comply with Chapter 5 (Building and Housing), Chapter 7 (Electricity), Chapter 8 (Fire), and Chapter 22 (Water) of the Fairfield Municipal Code; (4) cultivation must not be conducted in a

manner that constitutes a nuisance; (5) the residential structure must remain in residential use; (6) cultivation must not displace required off-street parking; and (7) written consent of the property owner must be obtained.

CORRESPONDENCE

Notice of the proposed Zoning Ordinance revisions was published in the newspaper, as required by State law.

ENVIRONMENTAL REVIEW

Staff has determined the proposed ordinance is categorically exempt from CEQA review pursuant to 14 Calif. Code of Regs. §15061(b)(3) because it can be seen with certainty that there is no possibility that the approval could have a significant effect on the environment.

RECOMMENDATION

Staff recommends that the Planning Commission consider the issues with respect to commercial marijuana and indoor cultivation for personal use as established by the California electorate in November 2016 and adopt Planning Commission Resolution No. 2017-2, which recommends the City Council approve the proposed regular ordinance.

Attachments:

1. Planning Commission Resolution No. 2017-2, with attached:
 - Exhibit A: Proposed Draft City Council Regular Ordinance

City of Fairfield Planning Commission

RESOLUTION NO. 2017-2

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FAIRFIELD
RECOMMENDING THE CITY COUNCIL ADOPT AN REGULAR ORDINANCE
AMENDING SECTION 25.32.17 "MARIJUANA REGULATIONS" OF THE FAIRFIELD
ZONING ORDINANCE TO UPDATE THE EXISTING PROHIBITION AGAINST ALL
COMMERCIAL MARIJUANA ACTIVITY IN THE CITY TO INCLUDE NON-MEDICAL
MARIJUANA, TO REASONABLY REGULATE INDOOR PERSONAL CULTIVATION
OF MARIJUANA CONSISTENT WITH STATE LAW, AND TO PROHIBIT OUTDOOR
CULTIVATION OF MARIJUANA**

WHEREAS, the Control, Regulate and Tax Adult Use of Marijuana Act ("the AUMA") was approved by California voters on November 8, 2016; and

WHEREAS, the AUMA legalizes the possession, use, and cultivation of non-medical marijuana for those who are 21 years of age or older and authorizes a comprehensive State system to regulate commercial marijuana activity; and

WHEREAS, under the AUMA, cities may adopt and enforce local ordinances, including zoning and land use requirements, to regulate marijuana businesses or to completely prohibit the establishment or operation of such businesses within the city's jurisdiction. No State license will be approved for a business that violates local ordinances; and

WHEREAS, the California State Legislature adopted the Medical Marijuana Regulation and Safety Act ("MMRSA"), which became effective January 1, 2016, and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients; and

WHEREAS, on February 2, 2016, the Fairfield City Council adopted Ordinance Number 2016-3 establishing Section 25.32.17 of the Fairfield City Code prohibiting the cultivation, distribution, sale, and dispensing of medical marijuana in the City of Fairfield; and

WHEREAS, on December 20, 2016, the City Council adopted Urgency Ordinance 2016-6 amending Section 25.32.17 of the Zoning Ordinance to address cultivation, distribution, and sale of marijuana as a commercial product, replacing language adopted by the City Council which specifically addressed medical marijuana; and

WHEREAS, while cultivation and all commercial medical marijuana uses are prohibited under the City's current zoning regulations, the Fairfield Zoning Ordinance does not currently expressly regulate the cultivation and delivery of non-medical marijuana within its jurisdiction; and

WHEREAS, contrary to the AUMA, current zoning regulations prohibit cultivation for personal use of medical marijuana in the City of Fairfield; and

WHEREAS, the Fairfield Planning Commission has reviewed information and studies from staff regarding marijuana; and

WHEREAS, the Fairfield Planning Commission has determined, on the basis of the experience of other cities, that there is an increase in crime and other health and human safety issues, such as burglaries, robberies, sales of illegal drugs, odor, and fires associated with commercial cultivation and delivery of medical marijuana; and

WHEREAS, federal law currently still classifies marijuana as a Schedule 1 controlled substance, the possession or sale of which constitutes a federal crime; and

WHEREAS, the Planning Commission has held a duly noticed public hearing on the proposed regular and urgency ordinances clarifying that commercial cultivation, mobile marijuana dispensaries and delivery services are not a permitted activity or use anywhere within the City of Fairfield, and continuing the ban on medical marijuana dispensaries; and

WHEREAS, the proposed ordinance before the Planning Commission tonight would allow for the limited cultivation of marijuana for personal non-commercial use subject to specific regulations and requirements consistent with State law; and

WHEREAS, the Planning Commission has determined that the proposed ordinance is categorically exempt from CEQA review pursuant to 14 Calif. Code of Regs. § 15304 (Minor Alterations in Land Use) and pursuant to § 15061(b)(3) because it can be seen with certainty that there is no possibility that the approval could have a significant effect on the environment; and

WHEREAS, the Planning Commission has considered all public testimony and information presented during the public hearings regarding these items; and

WHEREAS, on December 20, 2016, the Fairfield City Council adopted Urgency Ordinance 2016-6 prohibiting commercial marijuana in the City of Fairfield and permitting indoor cultivation of marijuana for personal use under certain restrictions.

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Fairfield hereby forwards a recommendation that the City Council approve the regular ordinance (attached hereto as Exhibit A) to prohibit commercial marijuana except cultivation for personal use as permitted under the AUMA within the City of Fairfield.

PASSED AND ADOPTED this 25th day of January, 2017.

AYES: COMMISSIONERS: Randy BLANKENCHIP / Jesse BRANCH / Tom GEIGER / Don McDONALD / Perry PATTIZ (Vice) / Lamont THOMPSON / Gary WALKER (Chair)

NOES: COMMISSIONERS: _____

ABSTAIN: COMMISSIONERS: _____

ABSENT: COMMISSIONERS: _____

GARY WALKER, Chair

ATTEST:

KARL A. DUMAS, Secretary

EXHIBIT A

DRAFT

CITY OF FAIRFIELD

ORDINANCE NO. 2017-_____

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAIRFIELD AMENDING SECTION 25.32.17 "MARIJUANA REGULATIONS" OF THE FAIRFIELD ZONING ORDINANCE TO UPDATE THE EXISTING PROHIBITION AGAINST ALL COMMERCIAL MARIJUANA ACTIVITY IN THE CITY TO INCLUDE NON-MEDICAL MARIJUANA, TO REASONABLY REGULATE INDOOR PERSONAL CULTIVATION OF MARIJUANA CONSISTENT WITH STATE LAW, AND TO PROHIBIT OUTDOOR CULTIVATION OF MARIJUANA

The City Council of the City of Fairfield does ordain as follows:

SECTION 1. Section 25.44.6, Medical Marijuana, is hereby deleted in its entirety.

SECTION 2. Section 25.31.17 "Marijuana Regulations" of the Fairfield City Code is hereby amended to read in its entirety as follows:

"25.32.17 Marijuana Regulations.

A. Purpose. In enacting this Section, it is the intent of the Fairfield City Council to protect the safety and welfare of the general public. Federal laws prohibit the possession, sale, and distribution of marijuana and the City Council finds that sanctioning commercial marijuana activities would be inconsistent with federal law. The purpose of this Section is to prohibit commercial marijuana activities, marijuana deliveries, and outdoor marijuana cultivation from occurring in the City, and to reasonably regulate indoor personal cultivation of marijuana consistent with State law.

B. Definitions. For the purposes of this Section, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this section, the common and ordinary meaning of the word shall apply. All citations to State law shall refer to the act, statute, or regulation as may be amended from time to time.

"AUMA" refers to the Control, Regulate and Tax Adult Use of Marijuana Act approved by the voters on November 8, 2016.

"Commercial marijuana activity" includes both "commercial cannabis activity" and "commercial marijuana activity" as that set forth in Business and Professions Code Sections 19300.5 and 26001(d), and means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or

sale of marijuana or marijuana products. "Commercial marijuana activity" also includes the activities of any business or nonprofit licensed by the State or other government entity under Chapter 3.5 of Division 8 or Division 10 of the Business and Professions Code.

"Concentrated cannabis" shall have the same meaning "cannabis concentrate" as defined in Business and Professions Code Section 19300.5(g), and includes manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency.

"Cultivation" shall have the same meaning as that set forth in Business and Professions Code Section 26001(e), and shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

"Delivery" shall have the same meaning as set forth in Business and Professions Code Section 26001(h) and shall include the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform, whether owned and controlled by the retailer or independently licensed, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

"Fully enclosed and secure structure" means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors.

"Indoors" means within a fully enclosed and secure structure.

"Marijuana" shall have the same meaning as set forth in Health and Safety Code Section 11018 and shall include all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" shall also be construed to include, but not be limited to, "cannabis" as defined in Business and Professions Code Section 19300.5(f). "Marijuana" does not include:

1. "Industrial hemp," as defined by Food and Agricultural Code Section 81000 or Health and Safety Code Section 11018.5.
2. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

"Marijuana product" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to

concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

“MCRSA” shall collectively mean the Medical Cannabis Regulation and Safety Act as contained, codified, enacted, and signed into law on October 9, 2015, as Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643, and as amended by Assembly Bill 21 in 2016. The MCRSA was formerly known as the Medical Marijuana Regulation and Safety Act.

“Outdoors” means any location that is not within a fully enclosed and secure structure.

“Person” includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

“Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

C. Prohibitions.

1. **Commercial Marijuana Activity.** Commercial marijuana activity is expressly prohibited in all zones and all specific plan areas of the City of Fairfield. No person shall establish, operate, maintain, conduct, or allow commercial marijuana activity anywhere within the City. This subsection is meant to prohibit all activities for which a State license is required pursuant to the AUMA or the MCRSA. Accordingly, the City shall not issue any permit, license, or other entitlement for any activity for which a State license is required under the AUMA or the MCRSA.
2. **Property Owners.** A property owner shall not rent, lease, or otherwise permit any business that engages in commercial marijuana activity to occupy real property in the City. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial marijuana activity on any real property owned or controlled by that property owner that is located in the City.
3. **Deliveries.** To the extent not already prohibited by Subsection 1, delivery of marijuana or marijuana products to or from the City of Fairfield is expressly prohibited. No person shall conduct or perform any delivery of marijuana or marijuana products where the delivery either originates or terminates within the City.

4. Outdoor Cultivation. To the extent not already prohibited by Subsection 1, outdoor marijuana cultivation is expressly prohibited in all zones and all specific plan areas of the City of Fairfield.
5. Indoor Cultivation. The prohibition in Subsection 1 shall not prohibit the indoor cultivation of six (6) or fewer live marijuana plants within a single private residence or inside an accessory structure located upon the grounds of a private residence, to the extent such cultivation is authorized by State law and is in strict compliance with the requirements set forth below:
 - a. Marijuana cultivation is permitted only within fully enclosed and secure structures inaccessible to minors. Cultivation areas shall be secured by lock and key or other security device which prevents unauthorized entry and shall not be visible from a public right of way.
 - b. Marijuana cultivation shall be limited to six (6) plants total, whether immature or mature, regardless of how many qualified residents reside at the private residence.
 - c. Marijuana cultivation, including any lighting, plumbing, or electrical components used for cultivation, shall comply with Chapter 5 (Building and Housing), Chapter 7 (Electricity), Chapter 8 (Fire Protection), and Chapter 22 (Water) of the Fairfield City Code. Lighting shall not exceed 1,000 watts per light. The use of gas products (CO₂, butane, etc.) or CO₂ and Ozone generators for marijuana cultivation is prohibited. Any fully enclosed and secure structure or residence used for the cultivation of marijuana must have proper ventilation and shall not create a humidity or mold problem in violation of the City Code or applicable state health and safety codes.
 - d. Cultivation shall not be conducted in a manner that constitutes a public nuisance. A public nuisance may be deemed to exist if the cultivation produces light, glare, heat, noise, odor, or vibration that is or whose effect is either detrimental to public health, safety, or welfare or interferes with the reasonable enjoyment of life or property.
 - e. The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping, and sanitation facilities with proper ingress and egress. These rooms shall not be used for marijuana cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping, and bathing.

- f. Cultivation of marijuana shall not displace required off street parking, or violate any other provisions of the Fairfield City Code.
- g. Written consent of the property owner must be obtained prior to the commencement of cultivation.

D. Permissive Zoning. Nothing in this Section shall be interpreted to the effect that the City's permissive zoning scheme allows any other use not specifically listed therein.

E. Enforcement. Violations of this Section shall constitute a public nuisance. In addition to any other enforcement authorized under Fairfield City Code Chapter 1, Article II, the city attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Section. In any civil action brought pursuant to this Section, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party.

Notwithstanding the foregoing, this Section does not authorize a criminal prosecution, arrest, or penalty inconsistent with or prohibited by Health and Safety Code Section 11362.7 et seq. In the event of any conflict between the penalties set forth Chapter 1, Article II of the City Code and any penalties set forth in state law, the maximum penalties allowable under state law shall govern.”

SECTION 2. CEQA. Staff has determined that this ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”). It can be seen with certainty that there is no possibility that the adoption of this ordinance and the City Code amendments established thereby may have a significant effect on the environment. The provisions to regulate indoor marijuana cultivation and to prohibit commercial marijuana activity and outdoor marijuana cultivation 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 staff's determination of exemption, and based on its own independent judgment, concurs. The adoption of this ordinance is therefore not subject to CEQA review pursuant to CEQA Guidelines Section 15061(b)(3). A Notice of Exemption will be prepared.

SECTION 3. Severability. If any sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this ordinance. The City Council hereby declares that it would have passed this ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases are declared unconstitutional, invalid, or ineffective. To this end, the provisions of this ordinance are declared to be severable.

SECTION 4. Effective Date, Publication. This ordinance shall take effect thirty (30) days after the date of its final passage and adoption. A summary of this ordinance shall, within fifteen (15) days after passage, be published in accordance with Section 36933 of the Government Code with the names of the Councilmembers voting for and against.

INTRODUCED at a regular meeting of the City Council of the City of Fairfield on the _____ day of _____, 2017; and

PASSED AND ADOPTED this _____ day of _____, 2017, by the following vote:

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSENT: Councilmembers: _____

ABSTAIN: Councilmembers: _____

MAYOR

ATTEST:

CITY CLERK