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Staff Report

ITEM NO. 4

To: Lemoore City Council
From: J. R. Laws, Chief of Police
Date: October 25, 2012
Subject: Ordinance 2012-05 on Medical Marijuana Cultivation Registration / Requirements

Discussion:

In 1996, with the adoption of Proposition 215, California voters approved the Compassionate Use Act (Health and Safety Code 11362.5) to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where medical use is deemed appropriate and has been recommended by a physician, without fear of criminal prosecution under limited, specified circumstances. Subsequent State legislation has sought to clarify the scope of the Compassionate Use Act and provided additional statutory guidance regarding medical marijuana use. These statutes are codified at Health and Safety Code 11362.7 and allow cities and counties to adopt supplemental rules and regulations. While State law allows the use of marijuana for medical purposes, marijuana is an illegal controlled substance under the Federal Controlled Substance Act and the distribution of medical marijuana through a medical marijuana dispensary is unlawful, as is the possession, use, and cultivation of marijuana for personal medical purposes (Gonzales v Raich (2005) 545 U.S. 1, United States v Oakland Cannabis Buyers' Cooperative (2001 532 U.S. 483).

Based upon the City's experience since the adoption of Proposition 215, as well as information obtained from other area law enforcement agencies, and with clarification from the Courts and State Legislature regarding the City's continued police powers and land use authority, there is a need to regulate the cultivation of medical marijuana to avoid adverse impacts on the community.

The proposed ordinance will allow personal use cultivation of medical marijuana provided it occurs entirely within a secure, locked, and fully enclosed structure, including a roof. The intent of this provision is to avoid public knowledge of growing marijuana. There have been numerous incidents in Fresno County, and throughout the State of problems with cultivation, including offensive odors, trespassing, theft, and violent encounters between growers and persons attempting to steal plants.

In order to avoid problems from cultivation, the proposed ordinance requires that the cultivation must occur entirely within a private residence, an attached garage, or in an accessory building if the property is detached single family residential. For garages and accessory buildings, the structure must be secure, locked, with a ceiling, roof, or top, be entirely opaque, and have a monitored security system.

This year, there have been two indoor grows, one entire backyard grow with marijuana being sold from the residence and one backyard grow with a theft within the City of Lemoore. Of the two indoor grows both were rental homes that were entirely dedicated to the cultivation of marijuana.

Because growing inside a residence is now expressly authorized, in order to avoid the problems with indoor grows, including fire hazards, problems associated with mold, fungus, and pests, and other hazards, the ordinance requires the following.

- Lighting shall not exceed a total of 1200 watts.
- The use of gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
- The medical marijuana cultivation area shall include a ventilation and filtration system designed to ensure that odors from the cultivation are not detectable beyond the residence, or property line for detached single family residential, and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence and cultivating the marijuana.
- Any chemicals used for medical marijuana cultivation shall be stored outside of the habitable areas of the residence and outside of public view from neighboring properties and public rights-of-way.
- From a public-right-of-way, there shall be no exterior evidence of medical marijuana cultivation occurring on the site.

Under the proposed ordinance, the medical marijuana cultivation area may not exceed thirty two (32) square feet measured by the canopy and not exceed ten (10') feet in height. Staff selected 32 square feet based upon publicly advertised marijuana grow kits and a review of what other cities have done. 32 square feet will more than accommodate most large indoor grow kits.

In addition to limiting the size of the grow area, the following additional provisions will ensure the residential character of properties.

- The qualified patient or person with an identification card shall reside in the residence where the medical marijuana cultivation occurs.
- Any alterations or additions to the residence, including garages and accessory buildings, shall be subject to applicable building codes, including plumbing and electrical, and all applicable zoning codes, including lot coverage, set back, and height requirements.
- The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for medical marijuana cultivation.

Collective or Cooperative Cultivation

The proposed ordinance limits the maximum number of plants to ninety-nine (99), and all members must participate in the cultivation, no sales may occur, no on-site consumption is allowed, and various record keeping requirements must be met.

This Ordinance also adopts the same indoor grow requirements as personal use cultivation. Additionally, staff determined that there are sufficient sites in the Light Industrial (M-1) zone district for collective or cooperative cultivation.

Notification Requirements

In order to assist qualified patients and caregivers with ensuring that their cultivation complies with the law, the Ordinance includes a provision requiring the owner and any lessee of the residence upon which cultivation will occur to inform the Police Department of the intent to cultivate medical marijuana and pick up a handout setting forth the owner and lessee responsibilities under the Ordinance. The Police Department will have an opportunity to direct the owner and lessee to the Planning or Building Department for more information about building code and permit requirements that may be applicable if alterations or additions to the residence are contemplated. The Police Department will keep patient information confidential to the extent required by law.

The Ordinance provides for a six month grace period from the date of Council introduction for existing cultivations to comply with the new cultivation requirements. The grace period will only apply to those qualified patients and persons with identification cards, and primary caregivers, who were cultivating marijuana in the City as of the date the Ordinance is introduced. The existing cultivation must be in strict compliance with the medical marijuana cultivation regulations then in effect, and remain in strict compliance with those regulations during the grace period.

For additional resources, please visit the following web address:

<http://www.brantfordpolice.ca/crime-prevention-and-safety/grow-operations>

<http://www.justice.gov/usao/cae/news/docs/2012.03-02-12MarijuanaMeetings.html>

<http://www.forensic-applications.com/marijuana/growops.html>

<http://www.lazyhydroponics.com/cflstarterkit.html>

Due to some recent experiences at the City and allowances in State law for medical marijuana cultivation, the Police Department worked with the City Attorney, City Manager, and Planning Department to propose amendments to the City's Municipal Code. Additional modifications related to medical marijuana dispensaries were also determined to be needed. Several portions of the draft Ordinance affected the Zoning Ordinance, and therefore required that the Planning Commission hold a public hearing and pass a recommending Resolution to be forwarded to the City Council. (See Attachment 1) At their October 22nd Regular Meeting, the Commission passed a resolution finding that the proposed text changes were consistent with the general plan goals, policies, and implementation programs and recommending the Council approve changes to the Zoning Code as listed in Draft Ordinance #2012-05 Sections 2 and 3 in conformity with the new proposed Chapter 8 of Title 4, listed in Section 1 of the Draft Ordinance. Because the first Section of the draft Ordinance is not related to zoning or land use, the Planning Commission was not asked to make a recommendation on it. No public testimony was offered during the public hearing.

A copy of the Planning Commission reports from Planning Director Smyth and Police Chief Laws are available at the City's website at <http://www.lemoore.com/planning/agendas/2012/oct22.htm> under item 5.

A public hearing was noticed in the Hanford Sentinel on October 26th for the City Council discussion of the draft medical marijuana cultivation and dispensary ordinance.

In making the final preparations for Council's discussion on the topic, it was noticed by staff that the required finding about the consistency with the general plan goals, policies, and implementation programs was not included in the draft Ordinance and therefore has been incorporated in the attached draft.

Budget Impact:

The cost of the two public hearings is approximately \$150 each times two totaling \$300. There will also be a cost to codify the ordinance if it is adopted.

Recommendation:

That the Lemoore City Council accept public comment and waive the first reading of Ordinance 2012-05 adding Chapter 8 to Title 4 of the Lemoore Municipal Code, amend Chapter 9 of Title 9 of the Lemoore Municipal Code and pass to a second reading.