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STAFF REPORT

Item # 5

To: Lemoore Planning Commission
From: Holly Smyth, Planning Director 
Review Date: October 22, 2012
Subject: Zoning Amendment #2012-03 related to Medical Marijuana

Background

Given some recent experiences at the City and allowances in State law for medical marijuana cultivation, the Police Department has worked with the City Attorney to propose amendments to the City's Municipal Code. These changes are summarized in Chief Laws attached staff report and are related to Medical Marijuana Cultivation. Normally these proposals would not be reviewed by the Planning Commission, however some of the changes propose modifications to the Zoning Code as it relates to land uses. Table 9-2A-6-1 and Section 9-2B-22 of the Zoning Code state that changes to the Zoning Code require a public hearing at both the Planning Commission and City Council. A public hearing notice was published in the Hanford Sentinel October 11, 2012 as required by law and another will be published at least 10 days prior to the City Council meeting.

Sections 2 and 3 of the attached draft ordinance propose to make changes to the Zoning code as it relates to land use definitions and the land use table. The addition of medical marijuana cultivation for personal use and collective/cooperative definitions come directly from the Police Department's proposed new ordinance in Chapter 8 of Title 4. The modification to the medical marijuana dispensary definition is proposed by Planning staff as we determined that the new Zoning Ordinance did not fully bring over the old zoning provisions effectively watering down the old ordinance. The revised definition will bring back the regulation to where it previously was.

The two new additions to the land use table include the two cultivation use types and adds the dispensaries with two or fewer clients to the ML district. Given the State law, there has to be allowances for personal use marijuana plants to be grown in the personal "residence" of a person with a medical marijuana identification card or their caregiver. Therefore, staff has proposed it be permitted in residential districts so long as they follow the provisions of Chapter 8 of Title 4 of the Municipal Code and State law. Similarly, State law doesn't allow the prohibition of collective or cooperative medical marijuana cultivation for personal use, therefore staff has proposed permitting the use, as defined, in the light-industrial district as long as it meets the new City codes as well as Health and Safety Code section 11362.768 which have further restrictions.

Dispensaries with two or fewer clients were also added to the collective cultivation section of the land use matrix because, under State law and case law, dispensaries cannot be fully prohibited in a local jurisdiction. Therefore, we must identify where they might be allowed as defined. Dispensary having more than 2 clients would be prohibited in all districts.

PLANNING COMMISSIONERS

Chairperson – Ron Meade Vice-Chair – Jeff Garcia
Dave Brown, Bob Clement, Jim Marvin, Calvin Monreal, Bill Wynne

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Zoning amendments, under Section 9-2B-22 of the municipal code can only be granted "when the city council finds that the zoning amendment (text or map) is consistent with the general plan goals, policies, and implementation programs. None of the General Plan policies address this type of issue and therefore changes to the Zoning Ordinance as proposed in the draft Ordinance on medical marijuana are consistent.

Budget Impact

The cost for the City Attorney's time and the Chief of Police's time are covered under their operating budget. The cost to file a Zoning Amendment with the Planning Department was waived, as the Code only speaks of collecting a fee for property owner initiated zone changes. The cost of the two public hearings is about \$150 each times two totaling \$300 which will be paid for out of the Police Department's budget. There will also be a cost to codify the ordinance if it is adopted.

Recommendation

Listen to staff report by Chief Laws and Director Smyth regarding the proposal, open the public hearing to take public testimony, consider adopting Resolution #2012-14, recommending the City Council approve modifications to the Zoning Code as listed in the Draft Ordinance #2012-05 Sections 2 and 3 in conformity with the new proposed Chapter 8 of Title 4.

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Staff Report

ITEM NO. 5

To: Planning Commission
From: J. R. Laws, Chief of Police 
Date: October 11, 2012
Subject: 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. (See Attachment 1)

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 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 Department of Planning 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/usa/cae/news/docs/2012.03-02-12MarijuanaMeetings.html>

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

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

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 Planning Commission recommend the Lemoore City Council approve modifications to the Zoning Code as listed in the Draft Ordinance #2012-05 Sections 2 and 3 in conformity with the new proposed Chapter 8 of Title 4 and adopt Resolution #2012-14,