DATE: January 12, 2016

TO: City Council

FROM: Stephen M. Fischer, Interim City Attorney

SUBJECT: Ordinance Prohibiting Marijuana Activities

CONTACT: Stephen M. Fischer, Interim City Attorney
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RECOMMENDATION

That City Council approve the first reading by title only and subsequent adoption of an ordinance imposing an express prohibition on marijuana cultivation, deliveries and dispensaries within the City.

BACKGROUND

In 1996 California voters approved Proposition 215, entitled the Compassionate Use Act (CUA), for which the intent was to ensure that seriously ill individuals have the right to obtain and use marijuana for medical purposes when recommended by a physician. The CUA also exempted patients and their primary caregivers from criminal prosecution or sanctions. The Legislature passed Senate Bill 420 in 2003 to create the Medical Marijuana Program (MMPA), which established a voluntary program for the issuance of medical marijuana identification cards for qualified patients; set limits on the amount of marijuana any individual could possess; and provided an exemption from State criminal liability for persons “who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes”. Neither the CUA nor the MMPA 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.

On October 9, 2015, Governor Jerry Brown signed the Medical Marijuana Regulation and Safety Act (MMRSA) with an effective date of January 1, 2016. The MMRSA contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical marijuana to qualified patients throughout the state and establishes a comprehensive State licensing and regulatory framework. The Act contains statutory provisions that allow local governments to enact ordinances prohibiting marijuana cultivation, delivery, and dispensaries. Under the MMRSA, unless local agencies have an ordinance in place by March 1, 2016 that expressly regulates or prohibits the cultivation of marijuana within their jurisdictions, such activities will be permitted and regulated by the State.
The City previously took action on the issue of marijuana in 2007, when the City Council adopted Ordinance 2756 that provides that the sale, supply or provision of marijuana is not authorized within the City. While Ordinance 2756 contains general prohibitions on the sale and supply of marijuana and those activities expressly banned by the proposed ordinance are not currently permitted under the City’s permissive zoning ordinances, the MMRSA requires explicit prohibition language addressing marijuana cultivation and delivery in order for the City to retain local regulatory authority. To avoid having such federally prohibited activities permitted under the authority of the MMRSA, the attached ordinance expressly prohibits the establishment and operations related to marijuana cultivation, processing, delivery, and dispensary activities.

On January 4, 2016 a bill was introduced to remove the March 1st deadline. However, as the League of California Cities points out, the bill’s outcome is not certain and it is prudent for local governments to protect themselves from state pre-emption. (See Attachment #2). The proposed ordinance does not foreclose the City enacting a regulatory program in the future if the City Council should choose to do so.

**FINANCIAL IMPACT**

There is no fiscal impact at this time.

**ATTACHMENTS**

Attachment #1 - Marijuana Ordinance
Attachment #2 - League of California Cities Update 1/5/16
ORDINANCE OF THE CITY OF OXNARD

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD ADDING ARTICLE XVI TO CHAPTER 7 OF THE OXNARD CITY CODE RELATING TO PROHIBITED MARIJUANA ACTIVITIES

WHEREAS, Congress passed the Federal Controlled Substances Act (CSA) in 1970, which prohibits the manufacture, cultivation, distribution and possession of marijuana and classifies it as a Schedule 1 drug meaning it has no accepted medical value in treatment; and

WHEREAS, California law generally makes it a crime to possess and cultivate marijuana under Health and Safety (H&S) Code Sections 11357 and 11358; and

WHEREAS, California voters approved Proposition 215 (Health and Safety Code Sections 11362.5 et seq.), entitled the Compassionate Use Act (CUA), in 1996, for which the intent was to ensure that seriously ill individuals have the right to obtain and use marijuana for medical purposes when recommended by a physician. The CUA also exempted patients and their primary caregivers from criminal prosecution or sanctions under H&S Code Sections 11357 and 11358; and

WHEREAS, the California Legislature passed Senate Bill 420 (H&S Code Sections 11362.7 et seq.) in 2003 to create the Medical Marijuana Program (MMPA), which established a voluntary program for the issuance of medical marijuana identification cards for qualified patients; set limits on the amount of marijuana any individual could possess; and provided an exemption from State criminal liability for persons “who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes”; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act (MMRSA), which took effect January 1, 2016, and establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills 243 and 266 and Senate Bill 643; and

WHEREAS, according to the provisions of the MMRSA, unless local agencies have an ordinance in place by March 1, 2016 that expressly regulates or prohibits the cultivation of marijuana within their jurisdictions, those activities will be permitted and regulated by the State under the MMRSA; and

WHEREAS, the City Council adopted Ordinance 2756 in 2007 providing that the sale, supply or provision of marijuana is not authorized within the City of Oxnard; and
WHEREAS, while Ordinance 2756 prohibits the sale and supply of marijuana, the MMRSA requires explicit prohibition language addressing cultivation and delivery in order for the City to retain local regulatory authority; and

WHEREAS, the City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that the City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, in Kirby v County of Fresno (2015) the California Supreme Court affirmed the ability of local governments to prohibit the cultivation of marijuana; and

WHEREAS, Health and Safety Code section 11362.777(b)(3) provides that the Department of Food and Agriculture may not issue a State license to cultivate medical marijuana within a city that prohibits cultivation; and

WHEREAS, Business and Professions Code section 19340 provides that marijuana delivery may not occur within a city that explicitly prohibits it; and

WHEREAS, the City wishes to add Article XVI (Prohibited Marijuana Activities) to Chapter 7 (“Nuisances”) of the Oxnard City Code to prohibit marijuana dispensaries, cultivation and delivery and any and all associated services, operational activities and businesses within the City of Oxnard.

NOW, THEREFORE, the City Council of the City of Oxnard does ordain as follows:

Part 1. Article XVI of Chapter 7 of the Oxnard City Code is hereby added to read as follows:

“ARTICLE XVI. PROHIBITED MARIJUANA ACTIVITIES

SEC. 7.280. DEFINITIONS.

(A) MEDICAL MARIJUANA DISPENSARY or DISPENSARY - Any facility or location, whether fixed or mobile, where medical marijuana is made available to or distributed by or distributed to one (1) or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. All three of these terms are identified in strict accordance with California Health and Safety Code Section 11362.5 et. seq. A “medical marijuana

ATTACHMENT NO. 1
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dispensary” shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law, a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a healthcare facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law, including but not limited to, Health and Safety Code Section 11362.5 et seq., and the city code.

(B) MARIJUANA CULTIVATION - The planting, growing, harvesting, drying or processing of marijuana plants or any part thereof, and any and all associated business and/or operational activities.

(C) MARIJUANA DELIVERY - The commercial delivery, transfer or transport, or arranging for the delivery, transfer or transport, or the use of any technology platform to arrange for or facilitate the commercial delivery, transfer or transport of marijuana, marijuana edibles, and/or any marijuana products to or from any location within the jurisdictional limits of the city, and any and all associated business and/or operational activities.

7.281. MEDICAL MARIJUANA DISPENSARIES PROHIBITED.

A medical marijuana dispensary as defined in section 7.280(A) is prohibited within the city.

7.282. CULTIVATION OF MARIJUANA PROHIBITED.

Marijuana cultivation by any person or entity, including clinics, collectives, cooperatives and dispensaries, is prohibited within the city.

7.283. DELIVERY OF MARIJUANA PROHIBITED.

Marijuana delivery by any person or entity, including clinics, collectives, cooperatives and dispensaries, is prohibited within the city.

7.284. REMEDIES

(A) A violation of any section of this article and any use or condition caused, or permitted to exist, in violation of any provision of this article shall be, and hereby is declared to be, a public nuisance and may be abated by the city.

(B) A violation of any section of this article may be also be enforced under sections 1.10(B)(2) and (3) of the city code. Sections 1.10(A) and (B)(1) of the city code shall not apply to violations of this article.”
Part 2. The foregoing recitals are true and correct.

Part 3. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Part 4. Pursuant to Government Code Section 36933(c)(1), the City Attorney was designated to prepare, and the City Clerk published, a summary of this ordinance, and a certified copy of the ordinance was posted in the Office of the City Clerk a minimum of five days before the City Council’s adoption of the ordinance.

Part 5. The City Clerk shall certify as to the adoption of this ordinance and shall cause the summary thereof to be published within fifteen calendar (15) days of the adoption and shall post a certified copy of this ordinance, including the vote for and against the same, in the office of the City Clerk, in accordance with Government Code Section 36933. Ordinance No. ______ was first read on ____________, 2016, and finally adopted on ____________, 2016, to become effective ninety days thereafter.

AYES:

NOES:

ABSENT:

ABSTAIN:

Tim Flynn, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Stephen M. Fischer, Interim City Attorney
Medical Marijuana Clean-up Legislation Moves Forward

January 5, 2016

Assembly Member Jim Wood (D- Healdsburg) on Monday, Jan. 4, amended AB 21 to address a provision in his AB 243, one of the three bills Gov. Jerry Brown signed in 2015, that comprise the Medical Marijuana Regulation and Safety Act.

The provision in question, if allowed to remain unchanged, will prevent local governments from enacting ordinances or other regulations regarding medical marijuana cultivation. Without this critical clean-up bill, the provision will pre-empt local governments from enacting any kind of local cultivation regulation if they do not have one in effect as of March 1, 2016.

This effort reflects a commitment that Assembly Member Wood, one of the Assembly's leaders on the issue, made in a Sept. 11, 2015 letter to delete this provision from law. He issued the letter after being alerted to the harm that the pre-emption provision would cause local governments, many of whom may be working to craft regulatory ordinances but need more time than that allotted by the March 1 deadline. Other cities are in the process of researching the issue to determine whether there is sufficient support locally for either some form of local regulation of medical marijuana, or an outright ban on cultivation and sales. Yet another group of cities have expedited the enactment of bans in recent weeks.

The League of California Cities® strongly supports AB 21 and the bill will be on the League's 2016 Hot Bill list. The local pre-emption provision must be eliminated from statute, as it directly contradicts local control. It also conflicts with a critical component of AB 266 (the key measure among the trio of last year's bills enacting medical marijuana regulation), that of dual licensing. Dual licensing requires both state and local governments to authorize medical marijuana business operations in any specific jurisdiction, and is modeled after the regulatory structure in Colorado.
The League intends to spare no effort to get AB 21 to the Governor's desk; however, the bill's outcome is not certain. It would be prudent for local governments that have not already done so to take steps to protect themselves from state pre-emption in the area of medical marijuana cultivation.

In a series of webinars and local informational briefings for city and local law enforcement officials, the League has advised its members that the best way of preserving their local regulatory authority in the area of medical marijuana cultivation is to enact a cultivation ban that is in effect as of March 1, even if only as a placeholder ordinance, and even if it must be done on an urgency basis. This will ensure that after March 1, locals will be free to revisit the issue at their leisure, and craft a different type of regulation if there is local will to do so.

Bans are advised for two additional reasons:

1. A local moratorium may not be sufficient to be considered a bona fide local regulation for purposes of avoiding state pre-emption; and

2. Developing local regulations that have been vetted both by city attorneys and local residents, with an opportunity for input from both groups, may be a time-consuming process that goes well past the March 1 deadline.

Additional information about the Medical Marijuana Regulation and Safety Act is available on the League's website at www.cacities.org/medicalmarijuana.