



Agenda Date: 07/14/2015
Agenda Item: 5.2

STAFF REPORT

Date: June 23, 2015
To: Mayor and Members of City Council
From: William R. Galstan, Special Counsel *William R. Galstan*
Cc: Bryan H. Montgomery, City Manager; Dan Gomez, Chief of Police;
Josh McMurray, Senior Planner; Troy Edgell, Code Enforcement Manager
Subject: Urgency Ordinance Regulating the Cultivation of Marijuana

FOR CONSIDERATION AT THE CITY COUNCIL MEETING ON JULY 14, 2015

Summary and Recommendation

Council is requested to adopt the attached urgency ordinance (4/5th vote required) to establish interim regulations pertaining to the cultivation of marijuana within the Oakley city limits.

Fiscal Impact

None perceived.

Background and Analysis

City staff members have recently received two separate inquiries regarding whether Oakley has any regulations dealing with the cultivation of marijuana. Because such cultivation can lead to adverse impacts, staff believes that it is prudent to propose regulations dealing with this issue.

When marijuana is cultivated outdoors, it commonly produces a strong odor that many find to be unpleasant or noxious. The same is true of indoor cultivation when done improperly. Illicit indoor cultivation often involves excessive and potentially dangerous use of electricity. All cultivation runs the risk of burglaries and robberies as third persons take an interest in the marijuana production.

The appellate courts have been kind to cities as they attempt to regulate or prohibit medical marijuana dispensaries as well as the cultivation of marijuana. One such case is *Maral v. City of Live Oak* (2013) 221 CA4th 975, which upheld the city of Live Oak's general prohibition against the cultivation of marijuana.



California has adopted the Compassionate Use Act of 1996 (“CUA”), Health & Safety Code Sec. 11362.5, and the Medical Marijuana Program (“MMP”), Sec. 11362.7, both generally allowing for the noncriminal consumption of marijuana when authorized by a medical professional for medical reasons.

The California Supreme Court, in the *City of Riverside v. Inland Empire, etc.* case (2013) 56 C4th 729, found that the impact of the CUA and MMP was modest. The decision held that the state laws do not preempt local land use decisions regulating medical marijuana, nor is there an unfettered right of anyone to cultivate medical marijuana.

With these thoughts in mind, it seems prudent to use as a guide the ordinance adopted by the City of Live Oak, as it was held to be valid by the appellate court. The thrust is to prohibit large-scale cultivation of marijuana, while offering a compassionate compromise allowing small cultivations for individual medical users. Thus the ordinance prohibits cultivation, with the following exceptions:

- Indoor cultivation at the residence of a permitted medical marijuana user who resides on the property, cultivation occurring in the interior in an area of less than 50 square feet;
- Marijuana plants are located at least 30 feet from any adjoining structures;
- The location is at least 600 feet from any school property;
- The cultivation is not visible from the exterior;
- Lighting for the cultivation does not exceed 1,200 watts;
- No illicit modifications have been made to the electrical system;
- Plants are for the personal use of the permitted resident;
- The cultivation does not become a commercial enterprise.

Staff recommends that an urgency ordinance with these regulations be put into effect as soon as possible to avoid possible large-scale cultivations. We believe that an interim urgency ordinance would be prudent so that we can judge over the next several months its effectiveness and whether any amendments are necessary. We can then come back within ten months, hold a public hearing, and enact a permanent ordinance, which may have the same, or similar, regulations as contained in this proposed interim ordinance.

Conclusion

Staff recommends adoption of the interim urgency ordinance as a prudent way of addressing the recent inquiries we have received.

Attachment

Ordinance prohibiting the cultivation of marijuana within the city limits on an interim basis.

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY
PROHIBITING THE CULTIVATION OF MARIJUANA WITHIN THE CITY LIMITS
ON AN INTERIM BASIS**

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

SECTION 1. Interim Urgency Zoning Ordinance. This Ordinance is adopted pursuant to the authority of Section 65858 of the California Government Code and other applicable law.

SECTION 2. Findings. The Oakley City Council finds, determines, and declares as follows:

1. The cultivation of marijuana has the potential to adversely significantly impact the City. These impacts include damage to buildings in which cultivation occurs, including improper and dangerous electrical alterations and use, inadequate ventilation, increased home occupation robberies and burglaries, and impacts to neighboring properties from the strong and potentially noxious odors from the plants and increased crime.
2. It is acknowledged that the voters of the State of California have provided a criminal defense to the cultivation, possession and use of marijuana for medical purposes through the adoption of the Compassionate Use Act (“CUA”). However the CUA does not address the land use or other impacts that are caused by the cultivation of marijuana.
3. The purpose of this Ordinance is to place interim restrictions on the cultivation of marijuana while a study is conducted to determine appropriate permanent regulations on a permanent basis. The interim restrictions are aimed at protecting the public health, safety and welfare of the community while preventing adverse impacts which such activities may have on nearby properties and residents, without interfering with the rights of qualified patients and their primary caregivers to possess or cultivate medical marijuana pursuant to State law.

D. The City Council finds that relevant state law does not preempt the City’s exercise of its traditional police powers in enacting land use and zoning regulations, as well as legislation for preservation of public health, safety and welfare, such as this zoning ordinance.

E. The City Council finds that the public health, safety and welfare necessitates and requires adoption of this interim zoning ordinance during the study period, so as to avoid the negative secondary impacts of marijuana cultivation that could otherwise occur without the adoption of this Ordinance.

SECTION 3. Imposition of Moratorium.

1. During the term of this temporary moratorium, no planting, growing, harvesting, drying or processing of marijuana plants, or any part thereof, shall be permitted within the City of Oakley.
2. This temporary moratorium shall not apply to the cultivation, planting, growing, harvesting, drying or processing of marijuana plants if all of the following criteria are met:
 - a. If the marijuana is cultivated in a fully-enclosed and secure structure by a qualified patient or primary caregiver as defined in the CUA in a residential district;
 - b. The marijuana is to be used/consumed by a person residing on the property who is either a qualified patient or primary caregiver;
 - c. The owner of the property, if other than the occupant, has consented in writing to the cultivation;
 - d. The marijuana plants are located at least 30 feet from any habitable structure on any adjacent property;
 - e. The location is at least 600 feet from any school property;
 - f. The area where marijuana is grown shall not exceed 50 square feet of floor area, irrespective of how many qualified patients or primary caregivers live on the property;
 - g. The marijuana cultivation is not visible from any public or other private property;
 - h. The cultivation of marijuana does not occur in the kitchen, bathrooms or occupied bedrooms of the resident(s);
 - i. The lighting for the cultivation does not exceed 1,200 watts;
 - j. The use of flammable or combustible products, including but not limited to, propane and butane, is prohibited;
 - k. No unauthorized or illicit modifications have been made to the electrical system;
 - l. All marijuana cultivated on site shall be for the personal use only of the qualified patient residing on the property and may not be distributed to any other person, collective, cooperative or dispensary;
 - m. The cultivation shall not be a commercial enterprise;
 - n. Cultivation of marijuana in any other zoning district is prohibited.
3. Any marijuana cultivation that occurred prior to the effective date of this Ordinance does not have nonconforming rights otherwise recognized by the zoning code.
4. City staff is directed to undertake a study to review existing regulations dealing with marijuana cultivation and the potential impacts on the community and propose possible regulations of marijuana cultivation.
5. This urgency ordinance shall be of no further force or effect 45 days from and after its adoption; provided, however, that after notice and hearing, the City Council may extend this interim urgency ordinance for an additional period of time as authorized by state law.

SECTION 4. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

SECTION 5. CEQA Findings.

The City Council finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this ordinance may have a significant effect on the environment, since the ordinance does not authorize construction or installation of any facilities. This ordinance is exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA").

SECTION 6. Effective Date.

This ordinance is hereby declared to be an urgency measure and shall become effective immediately upon its adoption by an affirmative vote of at least four-fifths (4/5ths) of the members of the City Council. The City Clerk is directed to public a copy of this Ordinance in accordance with state law.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2015 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Doug Hardcastle, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date