

## **REPORT TO THE PLANNING COMMISSION**

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**DATE:** March 14, 2017

**TITLE:** Discussion regarding Zoning for Certain Medical Marijuana Facilities

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**Reviewed by:** Jennifer Mizrahi, City Attorney and  
Daniel Porras, Acting Community Development  
Director

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### **RECOMMENDATION**

**Planning Commission discussion on the terms of Chapter 17.180, as they related to the zoning for certain medical marijuana facilities.**

### **DISCUSSION**

The Planning Commission and the City Council held a joint meeting in September of 2016 to discuss, among other things, Medical Marijuana, its uses and zoning areas. The City Council ultimately decided to adopt an ordinance which amended Chapter 17.180 of the DHSMC (attached) to enact reasonable regulations pertaining to medical marijuana dispensaries, cultivation facilities, testing facilities, and manufacturing (which includes extraction) and distribution facilities. During the meeting the Planning Commission and the City Council briefly discussed the zoning in which these uses were allowed to occur.

It is Staff's understanding that the Planning Commission would like to discuss the medical marijuana uses and in particular, the zoning in which the uses can occur. Because such discussion is not directed by the City Council, but it is important to the Planning Commissioners to discuss this item, the City Attorney suggested that the Planning Commission outline its suggestions in a letter (or otherwise) to the City Council. Accordingly, should the Planning Commission desire to pass along its discussion points to the City Council, it may do so by letter to the City Council, or otherwise.

### **DHSMC Chapter 17.180 MEDICAL MARIJUANA FACILITIES OPERATION AND LOCATION**

#### **17.180.010. Purpose and Intent.**

The purpose and intent of this Chapter is to regulate the dispensing, cultivation, processing, manufacturing, testing and distribution of medical marijuana in a manner that protects the public health, safety and welfare of the City and mitigates the costs to the community of the oversight of these activities.

Nothing in this Chapter shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use or diversion of marijuana for non-medical purposes; or (3) allow any activity relating to the cultivation, manufacturing, testing, distribution or consumption of marijuana that is otherwise illegal under California state law.

**17.180.020.****Interpretation and Applicability.**

Operation of medical marijuana facilities within the City shall be permitted upon the application and approval of both a City-issued Conditional Use Permit pertaining to the location of the facility and a City-issued regulatory permit pertaining to the operation of the facility, as well as a Development Agreement for unentitled raw land, where applicable, in accordance with the criteria and procedures set forth in this Ordinance and the City's Municipal Code, upon application and subject to such additional regulations as may be promulgated pursuant to this Chapter.

- a. The cultivation, processing and distribution of medical marijuana in the City is controlled by the provisions of this Chapter.
- b. Nothing in this Chapter is intended, nor shall it be construed, to burden any defense to criminal prosecution otherwise afforded by California law.
- c. Nothing in this Chapter is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, consumption or other related activities by tenants.
- d. Nothing in this Chapter is intended, nor shall it be construed, to exempt any marijuana-related activity from any applicable local or state construction, environmental, electrical, plumbing, land use, labor or employment laws or any other building or land use standards or permitting requirements.
- e. Nothing in this Chapter is intended, nor shall it be construed, to make legal any sale, cultivation, transportation, manufacture, or other use of marijuana that is otherwise prohibited or non-compliant under California law, as amended from time to time.
- f. Until otherwise stated under California law, all medical marijuana facilities operating in the City shall be operated by a bona fide non-profit organization such as a cooperative or a collective.
- g. All medical marijuana dispensaries and medical marijuana cultivation, distribution, and manufacturing facilities within City limits shall be subject to the provisions of this Chapter, regardless of whether the use existed or occurred prior to adoption of this Chapter.

**17.180.030 Definitions.**

When used in this Chapter, the following words shall have the meanings ascribed to them in this section. Any reference to California statutes includes any regulations promulgated there under and is deemed to include any successor or amended version of the referenced statute or regulatory provision. Words and phrases not specifically defined in this Chapter shall have the meanings ascribed to them by the following sources:

- a. The CUA of 1996 (California Health and Safety Code Section 11362.5), and as may be amended from time to time;
- b. The MMPA (California Health and Safety Code Sections 11362.7 through 11362.83);
- c. The MMRSA (California Business & Professions Code Sections 19300 through 19355) as may be amended from time to time.

**“Cultivation”** means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

**“Delivery”** means the commercial transfer of medical marijuana or medical marijuana products from a dispensary, up to an amount determined by the State of California, to a primary caregiver or qualified patient, as defined in State Law, or a testing laboratory. “Delivery” also includes the use by a medical marijuana facility of any technology

platform owned or controlled by the dispensary that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical marijuana or medical marijuana products.

**"Distribution"** means the procurement, sale, or transport of medical marijuana or medical marijuana products either within the City limits, or to and from the City from a place outside the City limits, from a permitted business location of a licensed entity to a permitted business location of another licensed entity for the purposes of conducting commercial medical marijuana activity authorized by the MMRSA, or for the purposes set forth in the CUA and the MMPA, and subject to the provisions of this Chapter and the City's Municipal Code.

**"Legal parcel"** means a parcel of land for which one (1) legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels may at the option of the property owner be counted as a single parcel for purposes of this Chapter.

**"Manufacturer"** means a person or entity that conducts the production, preparation, propagation, or compounding of manufactured medical marijuana or medical marijuana products, either directly or indirectly by extraction methods, or independently by means of chemical synthesis, at a fixed location that packages or repackages medical marijuana or medical marijuana products or labels or relabels its container, and that holds a valid state license pursuant to the MMRSA, when the State of California begins issuing state license to medical marijuana manufacturers, a City-issued medical marijuana regulatory permit, and a Conditional Use Permit issued in accordance with this Chapter and the City's Municipal Code.

**"Medical marijuana"** has the same meaning as in California Health and Safety Code Section 11018 as may be amended from time to time. For the purpose of this Chapter, "medical marijuana" does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

**"Medical marijuana Concentrate"** means manufactured medical marijuana that has undergone a process to concentrate or extract the cannabinoid active ingredients.

**"Medical marijuana Cultivation Facility"** means a facility wherein medical marijuana is propagated, planted, grown, harvested, dried, cured, graded, labeled, tagged for tracking, or trimmed, or wherein all or any combination of those activities takes place.

**"Medical marijuana Dispensary"** or **"Dispensary"** means a facility wherein medical marijuana, medical marijuana products, or devices for the use of medical marijuana or medical marijuana products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical marijuana and medical marijuana products as part of a retail sale.

**"Medical marijuana Distribution Facility"** means any facility or location, the primary function of which is the procurement, sale, and/or transport of medical marijuana and/or medical marijuana products between entities operating in strict accordance with the CUA, licensed pursuant to this Chapter and for the purposes set forth in the CUA, the MMPA, and the MMRSA, as may be amended from time to time, and subject to the provisions of this Chapter and the City's Municipal Code.

**"Medical marijuana Facility"** means collectively any medical marijuana dispensary, medical marijuana cultivation facility, medical marijuana distribution facility, medical marijuana testing facility or medical marijuana manufacturing facility, as those terms are defined in this Chapter.

**"Medical marijuana Manufacturing Facility"** means a facility where the production of medical marijuana concentrate, and/or the preparation, propagation, or compounding of manufactured medical marijuana, either directly or indirectly or by extraction methods or independently by means of chemical synthesis, or the packaging or repackaging of medical marijuana or medical marijuana products, or the labeling or relabeling of its containers, occurs, provided the facility holds a valid Medical Marijuana Manufacturing Facility license, a Medical Marijuana Regulatory Permit, a

Conditional Use Permit, and a Development Agreement if applicable, all issued in accordance with this Chapter and the City's Municipal Code, and provided that the facility will qualify for a valid state license pursuant to the MMRSA when the State of California begins issuing state licenses to Medical marijuana Manufacturers.

**"Medical marijuana Testing Facility"** shall mean a facility where test of medical marijuana includes research and development, product safety, diagnostics, and potency, including laboratory testing.

#### **17.180.040 Medical marijuana Dispensaries**

- a. **Permitted Locations.** Medical marijuana Dispensaries shall only be located in any Commercial District in the City.
- b. **Number of plants.** Dispensaries shall not cultivate more than 99 mature flowering medical marijuana plants on site at any one time.
- c. **Conditional Use Permit/Regulatory Permit Required.** Dispensaries shall obtain both a City-issued conditional use permit and regulatory permit.

#### **17.180.050 Medical Marijuana Cultivation Facilities**

- a. **Permitted Locations.** Medical marijuana Cultivation Facilities involving the cultivation of more than 99 mature flowering medical marijuana plants shall only be located in any Industrial District in the City.
- b. **Interior Only.** Medical marijuana cultivation shall be conducted only in the interior of fully enclosed structures, facilities, buildings, or other fully enclosed spaces consistent with the purpose and intent of this Chapter. No medical marijuana cultivation operations, including harvesting and growing plants at any stage, shall be visible from any public right of way.
- c. **Permits.** Medical marijuana Cultivation Facilities shall obtain a City-issued conditional use permit and regulatory permit, and a Development Agreement if the property is raw land.

#### **17.180.060 Medical Marijuana Manufacturing Facilities**

- a. **Permitted Locations.** Medical marijuana Manufacturing Facilities shall only be located in any Industrial District in the City, subject to the regulations set forth in this Chapter and any additional regulations as may be promulgated hereunder by an ordinance or resolution of the City Council or otherwise pursuant to this Chapter.
- b. **Permits.**
  - 1. Medical marijuana Manufacturing – Administrative Approval. A duly approved Medical marijuana Cultivation Facility, with a duly approved Conditional Use Permit, regulatory permit, and a Development Agreement, if applicable, may request modification of the already approved Conditional Use Permit to operate a Medical marijuana Manufacturing Facility provided the Director of Community Development, or his or her designee, finds all of the following:
    - A. There are no impacts or changes to the following:
      - i. On-site circulation and parking, loading and landscaping;
      - ii. Placement and/or height of walls, fences, and structures;
      - iii. Exterior architectural features, including colors, and/or modification of finished materials that do not alter or compromise the previously approved theme;
      - iv. The density or intensity of a development project;
      - v. Size of structure(s) or expansion of use, other than the use of manufacturing;

- vi. Existing or approved grade elevations;
- vii. Paving; and
- viii. Hours of operation.

B. The Medical marijuana Cultivation Facility and its manufacturing use is consistent with the goals, objectives, policies and programs of the general plan;

C. The Medical marijuana Cultivation Facility and its manufacturing use complies with all applicable zoning and other regulations;

D. The Medical Marijuana Cultivation Facility and its manufacturing use will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity;

E. The location, design and operation of the Medical Marijuana Cultivation Facility and its manufacturing use will be compatible with existing and planned land uses in the vicinity.

Applications for a modification of a Conditional Use Permit under this Section shall be on a form proscribed by the Director and shall be filed with the Department, pursuant to Chapter 17.68 (Applications and Fees) and must be approved by the Director, or his or her designee, who may establish additional conditions to further the intent of this Section. Any modification request which exceeds the prescribed limitations outlined in this Section shall comply with requirements set forth in Section 17.180.060(b)(2). Minor modifications shall not apply when a nonconforming use, structure or site is involved. Medical marijuana Manufacturing Facility applications under this section may be referred to the planning commission at the discretion of the Director.

2. Medical Marijuana Manufacturing Facilities Not Operating within a duly Existing Medical Marijuana Cultivation Facility. Medical marijuana Manufacturing Facilities which are not operated within an existing and duly approved Medical Marijuana Cultivation Facility or which results in any additional impact or expansion of use or structure(s) shall obtain a City-issued Conditional Use Permit and regulatory permit, and a Development Agreement if the property is raw land.

c. **Interior Only.** Medical Marijuana manufacturing shall be conducted only in the interior of fully enclosed structures, facilities, buildings, or other fully enclosed spaces consistent with the purpose and intent of this Chapter. No medical marijuana manufacturing shall be visible from any public right of way.

d. **Operational Requirements.**

A. Manufacturers are limited to certain equipment, methods, solvents, gases and mediums when creating medical marijuana extracts.

B. Medical Manufacturing Facilities with a state license of a Type-6 (non-volatile) or a Type 7 (volatile) classification may be allowed to operate under this Chapter.

C. All other methods of extraction shall be conducted in an environment appropriate to the solvent being used, with consideration to proper ventilation and ignition source controls.

D. All equipment, systems and manufacturing processes must meet or exceed all applicable state and federal requirements and regulations regarding air, water, health and safety, and handling, processing and storage of hazardous materials, solvents, gases and waste. No manufacturing facility shall commence operations or be issued any form of certificate of occupancy without first obtaining all required fire, environmental, health and safety, planning, and building certificates, permits and approvals required under City's Municipal Code and all other applicable county, state and federal regulations.

e. **PhD Chemist.** As a condition of obtaining a City-issued medical marijuana regulatory permit and conditional use permit, a licensee of a manufacturing

facility desiring to operate under this ordinance shall first verify that the licensee employs or contracts with a person who has a PhD in chemical sciences who shall supervise the design, installation and operation of the facility's systems and manufacturing processes. Such person shall inspect the premises on a quarterly basis and provide such inspection report to the City. The licensee shall submit to the City a written statement that he or she certifies under penalty of perjury that the name of the employee/contractor is true and correct. The employee/contractor shall also submit a written statement that he or she certifies under penalty of perjury his or her educational qualifications and verifying that the supervisor is employed or contracted to supervise the design, installation and operation of the facility's systems and manufacturing processes.

- g. State Regulations.** In the event the State of California implements health and safety regulations applicable to Medical marijuana Manufacturing Facilities, upon implementation of such state regulations, all Medical marijuana Manufacturing Facilities operators shall immediately implement the state regulations. Should there be a conflict between the provisions of this Chapter and the state regulations, the state regulations shall control.

#### **17.180.070 Medical Marijuana Testing Facilities**

- a. Permitted Locations.** Medical marijuana Testing Facilities shall only be located in any Industrial District in the City.
- b. Interior Only.** Medical marijuana testing shall be conducted only in the interior of fully enclosed structures, facilities, buildings, or other fully enclosed spaces consistent with the purpose and intent of this Chapter. No medical marijuana testing operations shall be visible from any public right of way.
- c. Permits.** Medical marijuana Testing Facilities shall obtain a City-issued conditional use permit and regulatory permit, and a Development Agreement if the property is raw land.

#### **17.180.080 Medical Marijuana Distribution Facilities**

- a. Permitted Locations.** Medical marijuana Distribution Facilities shall only be located in Industrial Districts in the City, upon issuance of a conditional use permit and a medical marijuana regulatory permit issued pursuant to the City's Municipal Code.
- b. Permits.** Medical marijuana Distribution Facilities shall obtain a City-issued conditional use permit and regulatory permit, and a Development Agreement if the property is raw land.
- c. Interior Only.** Other than loading, unloading and transportation, all Distribution of medical marijuana and medical marijuana products shall be conducted only in the interior of enclosed structures, facilities, or buildings.
- d. Labor Peace Agreements.** All applicants for a conditional use permit pursuant to this Chapter shall provide a statement that the applicant will enter into, or shall demonstrate that it has already entered into, and will abide by the terms of a labor peace agreement, as defined in California Business & Professions Code Section 19300.5(v).
- e. Public Safety.** All applicants for conditional use permit to operate a Medical marijuana Distribution Facility under this Chapter shall: (a) demonstrate that such facility will be equipped with adequate security installations and systems to prevent trespassing, theft and diversion of medical marijuana for unlawful purposes, including exterior lighting, an alarm system, and 24-hour, on-site security personnel, tag and trace protocols and video surveillance;

and (b) shall maintain such security installations and systems while in operation.

**17.180.090 Medical Marijuana Facilities—Required License and Permits.**

- a. In addition to those other requirements which may be imposed pursuant to this Chapter, no person or entity shall engage in medical marijuana activity or open or operate a Medical marijuana Facility without possessing and obtaining the following:
  - i. A medical marijuana regulatory permit issued by the City pursuant to Chapter 5.50 of the City's Municipal Code; and
  - ii. A Conditional Use Permit, pursuant to the conditions set forth in this Chapter and the City's Municipal Code; and
  - iii. Any applicable State-required permit.
- b. The fact that a person or entity possesses other types of state or municipal permits or licenses does not exempt the person or entity from the requirement of obtaining a City-issued conditional use permit to operate a Medical marijuana Facility.

**17.180.100 Licenses and Permits Applicable to Location.**

No person or entity shall locate or operate a Medical marijuana Facility under the authority of a license or permit at any place other than the address of the Medical marijuana Facility as stated in the medical marijuana regulatory permit issued by the City and the conditional use permit issued pursuant to this Chapter.

**17.180.110 Signage and Notices.**

In addition to the requirements otherwise set forth in this Chapter, business identification signage for all Medical marijuana Facilities shall conform to the requirements of the City's Municipal Code, including, but not limited to, issuance of a City sign permit.

**17.180.120 Compliance with Laws.**

- a. It is the responsibility of the owners and operators of all Medical marijuana Facilities to ensure that such facilities are, at all times, operating in compliance with all applicable federal (not dealing with medical marijuana) state and local laws and regulations and any additional operating procedures or requirements which may be imposed as conditions of approval of a given Medical marijuana Facility. Nothing in this Chapter shall be construed to authorize any action which violates federal (not dealing with medical marijuana), state law or local law with respect to the operation of a commercial medical marijuana business.
- b. Medical marijuana Facilities shall be permitted only as provided in this Chapter and if not expressly permitted by this Chapter, shall be prohibited.
- c. Any person or entity operating a Medical marijuana Facility shall at all times remain in compliance and operate in accordance with the applicable provisions of this Chapter, the City's Municipal Code, the CUA, the MMPA, the MMRSA, and all other applicable state laws pertaining to medical marijuana facilities.
- d. Failure to abide by any laws mentioned in this subsection shall constitute a public nuisance and shall subject the medical marijuana facility to revocation of any and all entitlements, licenses and permits.

**17.180.130 Administration and Enforcement.**

- a. In addition to the administration of the permitting requirements under this Chapter and the City's Municipal Code, the City Council or its designee may require, as a condition to granting or renewing permits, any information reasonably necessary to implement the intent of this Chapter to ensure that all medical marijuana is grown, processed, manufactured and distributed in a manner not in conflict with this Chapter, and to ensure that any and all related city taxes are being properly reported and paid.
- b. A conditional use permit, and any modifications thereto as provided in Section 17.180.060, approved for a Medical marijuana Facility may be suspended or revoked for any violation of this Chapter and pursuant to the procedures generally applicable to Conditional Use Permits as set forth in the City's Municipal Code. Violations of this Chapter are subject to administrative, civil, and/or criminal penalties, as set forth in the City's Municipal Code, and remedies for such violations include but are not limited to civil injunctive relief, civil or administrative nuisance abatement actions or proceedings, summary abatement of immediately hazardous conditions, and all other applicable fines, penalties and remedies. This Ordinance is adopted to address public health and safety issues, and as such, is expressly intended to be interpreted strictly and enforced rigorously in a manner such as to deter further violations.