



REPORT TO THE CITY COUNCIL

DATE: March 26, 2015

TO: Members of the City Council

FROM: Oliver L. Baines III, Member of the Fresno City Council, District 3
Clinton J. Olivier, Member of the Fresno City Council, District 7
on behalf of the City Council Sub-committee members
on Medical Marijuana

SUBJECT: *Actions pertaining to amending Article 21 of Chapter 12 regarding medical marijuana cultivation within the City of Fresno*

1. BILL (For introduction) - Amending the Fresno City Municipal Code to amend subsection (c) and add subsection (g) to Section 12-2103, amend Section 12-2104, and add Sections 12-2104.1 and 12-2108, offering limited immunity for cultivation of up to four medical marijuana plants

RECOMMENDATIONS

The City Council Subcommittee on Medical Marijuana recommends that the City Council approve the amendments to the current Municipal Code by amending subsection (c) and adding subsection (g) to Section 12-2103, amending Section 12-2104, and adding Sections 12-2104.1 and 12-2108 to offer limited immunity for cultivation of up to four medical marijuana plants within the City.

EXECUTIVE SUMMARY

On June 28, 2012, Council adopted Bill Number B-12, Ordinance Number 2012-13, which added Article 21 to Chapter 12 to the Fresno Municipal Code. Section 12-2103 prohibited the outdoor cultivation of marijuana and did not place a prohibition on the indoor cultivation and/or within an outdoor fully-enclosed and secured structure, approved by special permit. On March 27, 2014, Council adopted Bill Number B-17, Ordinance Number 2014-20, which repealed

Article 21 of Chapter 12 and added Article 21 of Chapter 12 to the Fresno Municipal Code. Section 12-2104 prohibited all marijuana cultivation by any person in all zone districts within the City.

In response to concerns for legal access to marijuana by medical marijuana users as expressed during testimony at the City Council Meeting on March 27, 2014 Council Meeting, a Medical Marijuana Subcommittee was formed on March 27, 2014, to explore options for medical marijuana users to obtain marijuana for medicinal use within the City.

This Subcommittee consisted of Councilmembers Oliver L. Baines, III, Clinton J. Olivier, and then-Councilmember Blong Xiong; Fresno Police Chief Jerry Dyer, Deputy Chief Patrick Farmer, and Lieutenant Mike Brogdon; Fresno City Attorney Douglas Sloan and Deputy Attorney Mary Raterman-Doidge. In addition, several community stakeholders were invited to weigh in on the various specific needs of the medical marijuana community.

Adopting this ordinance would continue to prohibit all cultivation of marijuana, but would offer limited immunity for the indoor cultivation of up to four medical marijuana plants per residence within the City.

BACKGROUND

On June 28, 2012, Council adopted Bill Number B-12, Ordinance Number 2012-13, which added Article 21 to Chapter 12 to the Fresno Municipal Code. Section 12-2103 prohibited the outdoor cultivation of marijuana and did not place a prohibition on the indoor cultivation and/or within an outdoor fully-enclosed and secured structure, approved by special permit. On March 27, 2014, Council adopted Bill Number B-17, Ordinance Number 2014-20, which repealed Article 21 of Chapter 12 and added Article 21 of Chapter 12 to the Fresno Municipal Code. Section 12-2104 prohibited all marijuana cultivation by any person in all zone districts within the City.

In response to concerns for legal access to marijuana by medical marijuana users, as expressed during testimony at the City Council Meeting on March 27, 2014, a Medical Marijuana Subcommittee was formed on March 27, 2014, to explore options for medical marijuana users to obtain marijuana for medicinal use within the City. The Subcommittee met four times. The Subcommittee has been in contact with members of the public regarding the issue and held a meeting to which members of the public were invited on May 5, 2014.

The State of California provides a limited criminal defense to the cultivation, possession, and use of marijuana for medical purposes. This was created through the adoption of the Compassionate Use Act (CUA), which ensures in Division 10, Chapter 6, Article 2 in the Health and Safety Code that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma,

arthritis, migraine, or any other illness for which marijuana provides relief. The CUA also ensures that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. However, the CUA does not address the land use or other impacts that are caused by the cultivation of marijuana.

Furthermore, the Medical Marijuana Program Act (MMPA), through the California Health and Safety Code Division 10, Chapter 6, Article 2.5 [11362.7 - 11362.83], establishes a statewide identification program that provides a limited criminal defense to the transportation, processing, administering, and distributing of marijuana to qualified patients, their primary caregivers, and persons with identification cards. The code also allows any city or other local governing body to adopt and enforce a local ordinance that regulates the location, operation, or establishment of a medical marijuana cooperative or collective so that its citizens may have access to medical marijuana in accordance of the MMPA. However, this act does not create the right to cultivate marijuana.

The Federal Controlled Substance Act (FCSA) makes it unlawful for any person to cultivate, manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense marijuana. The FCSA contains no statutory exemption for the possession of marijuana for medical purposes.

The City has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses and in preserving the peace and quiet of its neighborhoods. The cultivation of marijuana is currently prohibited. Adopting this ordinance would continue to prohibit all indoor and outdoor cultivation of marijuana, but grant a limited immunity for the indoor cultivation of up to four marijuana plants per residence within the City.

ENVIRONMENTAL FINDINGS

Staff has performed a preliminary environmental assessment of this project and, pursuant to CEQA Guidelines, section 15061(b)(3), has determined with certainty that there is no possibility that this project may have a significant effect on the environment. This is because current law prohibits all cultivation of marijuana and the amendments would allow immunity for the indoor cultivation of up to four medical marijuana plants. This would allow medical marijuana patients the ability to cultivate their own medical marijuana and reduce the need to travel outside of the City to procure medical marijuana. Therefore, this project is not subject to CEQA.

LOCAL PREFERENCE

Local preference was not considered because these ordinances do not include a bid or award of a construction or services contract.

FISCAL IMPACT

The fiscal impact may include the use of existing staff to enforce the ordinance, which would include staff from the Police Department, Development and Resource Management, and the City Attorney's Office.

Attachments: Ordinance