



CITY OF MORRO BAY CITY COUNCIL Notice of Special Meeting

The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.

Agenda **Tuesday, August 8, 2017** **Morro Bay Veterans Hall – 4:00 P.M.** **209 Surf Street, Morro Bay, CA**

ESTABLISH QUORUM AND CALL TO ORDER

SPECIAL MEETING AGENDA ITEM:

REVIEW OF MARIJUANA COUNCIL SUBCOMMITTEE RECOMMENDATIONS AND CONSIDERATION OF FUTURE MARIJUANA REGULATIONS

RECOMMENDATION: Receive Council subcommittee report and discuss recommended marijuana regulations. Further discussion and Council direction will occur at the August 8 Regular City Council Meeting.

ADJOURNMENT

DATED: August 3, 2017



Jamie L. Irons, Mayor

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

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AGENDA NO: C-3

MEETING DATE: August 8, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: July 20, 2017

FROM: Marijuana Sub-committee

SUBJECT: Review of Marijuana Council Subcommittee Recommendations and Consideration of and Direction for Future Local Marijuana Regulations

RECOMMENDATION

Council provide input and direction to staff either to: 1) develop an ordinance to implement local regulations concerning Proposition 64 and marijuana uses (including commercial); or, 2) establish a moratorium to postpone implementation of such an ordinance until after January 1, 2018.

The Council sub-committee strongly recommends the Council provide direction addressing Proposition 64 on the following issues:

- 1) Public Marijuana Use / Smoking Regulations,
- 2) Personal Marijuana Cultivation (Indoor and Outdoor),
- 3) Commercial marijuana operations (medical and recreational) which include dispensaries, cultivation, testing, manufacturing and delivery, and
- 4) Possible taxes and fees (if City allows some commercial marijuana operations).

FISCAL IMPACT

The fiscal impact of Proposition 64 on the City is uncertain. Proposition 64 imposes a new statewide excise tax of 15% on purchasers of marijuana as well as a statewide cultivation tax. The Legislative Analyst's Office estimates statewide revenue from a few hundred million dollars to \$1 Billion annually.

Cities are eligible for certain grants funded by the new state revenue "to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of the Control, Regulate and Tax Adult Use of Marijuana Act." (Revenue & Taxation Code § 34019(f)(3)(c).) However, there will be no "grants to local governments which have banned the cultivation, including personal cultivation... or retail sale of marijuana or marijuana products..." (Revenue & Taxation Code § 34019(f)(3)(c).) A very rough estimate is the average city share would be within an approximate range from \$60,000 to \$125,000 - *if* that city does not ban cultivation or retail sale of marijuana. Those amounts, of course, could increase if greater revenues are generated, or could be less if revenues are not as high as predicted by the Legislative Analyst's Office.

Cities may also impose local voter approved taxes on commercial marijuana operations (both medical and recreational), and seek the execution of development agreements with operators. Depending on the direction from Council, there may be staff and legal costs expended to conduct

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Prepared By: IT

Dept Review:

City Manager Review: MRL

City Attorney Review: CFN

further public outreach and prepare the amendments to the Morro Bay Municipal Code. Fees may be imposed to recoup the regulatory and administrative costs associated with any permits required by the City.

Such fee recovery can also include the ongoing costs of regulating specific commercial marijuana operations. For example, the City may pass on the costs of mandatory regular financial audits of any commercial marijuana operations in the City; or, the City may require regular inspections of the operations for continuing compliance with health and safety regulations. The City can likewise recover the costs of those inspections from the business operators.

BACKGROUND

On January 24, 2017, staff presented a summary of Proposition 64 and City Council directed staff to host an educational session addressing the above topics, as well as general issues as they relate to development of appropriate municipal ordinances addressing both medicinal and recreational marijuana, including prospective community outreach and involvement in the discussion.

The Assistant City Attorney presented an educational workshop on Proposition 64 at the March 1st City Council Workshop. The Council sub-committee was formed at that meeting with Council Members Robert Davis and Marlys McPherson being appointed.

At the April 11, 2017, City Council meeting, the Council directed staff to hold a public workshop for community input.

On June 14, 2017, staff and Council reached out to the community through a public forum, allowing individuals the opportunity to express their opinion on Proposition 64. There were approximately 75 individuals who attended.

The Council sub-committee met with staff twice in July 2017 to discuss and prepare recommendations addressing Proposition 64 for Council consideration.

The sub-committee was assisted by the following staff:

- Martin Lomeli (Interim City Manager)
- Chris Neumeyer (Assistant City Attorney)
- Craig Schmollinger (Finance Director)
- Chief Greg Allen (Police Chief)
- Chief Steve Knuckles (Fire Chief)
- Commander Jody Cox (Police Commander)
- Scot Graham (Community Development Director)
- Ikani Taumoepeau (Deputy City Manager)

The Police Department has outlined specific concerns in the attached memo to help Council as it formulates its direction.

DISCUSSION

PERSONAL MARIJUANA USE

1. Public Marijuana Use / Smoking Regulations

Proposition 64 provides that the new laws permitting use and possession of marijuana shall not be interpreted to permit any person to smoke marijuana or marijuana products in public places or in any place where smoking tobacco is prohibited. (Health & Safety Code § 11362.3(a)(1-2).)

Chapter 9.24 (“Secondhand Smoking Regulations”) of the Morro Bay Municipal Code (“MBMC”) provides smoking in Morro Bay is generally prohibited in public places, including in places of employment, in public accommodations (e.g., hotels and restaurants), on public transit, and on City Beaches from Atascadero Road south down to the area abutting, but not including, the Rock Parking lot and including those portions of the Sand Spit governed by the City. MBMC § 9.24.060 provides some limited exceptions to the general prohibition, including private residential properties and certain designated “smoking areas.”

State parkland is located within the City, including Morro Bay State Park, and Morro Strand State Park which includes the beach area north of Atascadero Road. State Parks do allow smoking both in the State Park Campgrounds and on the State Beach, although Senate Bill 386, if passed in its current form, would prohibit smoking in Public Parks and on state beaches.

Sub-committee Recommendation: The City should maintain the current broad prohibitions on public smoking contained in MBMC Chapter 9.24, which now also apply to smoking marijuana. The City may want to reconsider some of the exemptions contained in MBMC § 9.24.060 for possibly tightening them up, especially the exemption applicable to “any unenclosed area in which no nonsmoker is present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive.” (MBMC § 9.24.060(E).)

2. Personal Marijuana Cultivation: Indoor and Outdoor

Proposition 64 allows personal cultivation of up to six living marijuana plants “within a single private residence, or upon the grounds of that private residence, at one time.” (Health and Safety Code §§ 11362.2(a)(3).) A “private residence” is defined as “a house, an apartment unit, a mobile home, or similar dwelling.” (Health and Safety Code §§ 11362.2(b)(5).)

Cities may “enact and enforce reasonable regulations to reasonably regulate” indoor cultivation, which do not act to effectively prohibit indoor cultivation. (Health & Safety Code § 11362.2(b)(1).) Common types of regulation include odor control, security requirements, permits with a nominal fee, fire department inspections and electrical use regulations. Tenants in rental properties can be required to obtain written consent from their landlords.

Cities may ban personal cultivation “**outdoors** upon the grounds of a private residence” through an express prohibition. (Health and Safety Code §§ 11362.2(b)(3).) However, unless outdoor personal cultivation is expressly prohibited, then individuals under State law have the right to cultivate at his/her residence up to six plants outdoors.

Current MBMC § 9.06.040(B) already prohibits “marijuana cultivation by any person... in all zones throughout the city” with the exception of “personal individual cultivation by a primary caregiver or qualified patient for use of medical marijuana, as permitted by the Compassionate Use Act of 1996.” That current code acts to prohibit outdoor recreational marijuana cultivation. However, indoor cultivation (which cannot be banned), at present, is unregulated.

Sub-committee Recommendation: The City should maintain the current ban on personal outdoor cultivation due to public safety and enforcement concerns.

The City should reasonably regulate personal indoor cultivation and adopt reasonable health and safety measures, such as odor control, security requirements, and/or electrical use regulations.

A permit should be necessary for lawful indoor personal marijuana cultivation. Issuance of a permit would require payment of a nominal fee and a one-time inspection by City staff to confirm compliance with local regulations. Permits would be non-transferable, would be valid from the date of issuance, and would require the permit holder to maintain continuing compliance with the City's health and safety regulations. The City should also require that tenants receive property owner permission for the indoor personal cultivation of marijuana.

COMMERCIAL MARIJUANA USE

Both medical marijuana commercial operations and recreational marijuana commercial operations will be licensed by the State of California in 2018. Pursuant to recently passed SB 94 (the Medical and Adult Use Cannabis Regulation and Safety Act, or "MAUCRSA") which was signed by the Governor on June 27, there will be the same twenty different license types available for medical and recreational commercial operations, to be distinguished by either an "A" for adult-use or a "M" for medical use. (Business & Professions Code § 26050.)

To maintain local control, the City must expressly decide what will be the status of each different type of business operation. A failure to affirmatively address that may reasonably allow commercial operations to conduct business in the City pursuant to a valid state license, if the City doesn't expressly prohibit that license type.

1. Marijuana Dispensaries

The City currently bans medical marijuana dispensaries. (MBMC § 9.06.040(A).) However, unless the City takes action before state licenses for recreational marijuana commercial dispensaries begin being issued, then the issuance of a state license for a recreational marijuana dispensary could reasonably entitle the license holder to operate in the City.

When the State begins issuing recreational marijuana dispensary licenses in or before January 2018, the City must have a ban on recreational marijuana dispensaries to prohibit operations in the City. The City can prohibit recreational dispensaries, while separately allowing medical dispensaries.

The Council can impose local regulations for dispensaries in addition to what state law provides. Areas of local regulation the City may consider include those for record keeping requirements, use of security cameras, lighting, water usage, hours of operation, employee training, insurance requirements, alarm systems, guards, odor control, and indemnification of the City.

Concern has been expressed about minors or unsuspecting adults mistakenly consuming marijuana infused edible products that have the appearance of common items like cookies or candy bars. The Council can impose local requirements which govern the sale of marijuana edible products, including their packaging and appearance.

The Council can also seek that proposed medical marijuana dispensaries enter into a development agreement with the City. Development agreements are contracts negotiated between project proponents and public agencies that govern the land uses allowed in a particular project. The

Development Agreement Law (Government Code § 65864, *et seq.*) provides a mechanism whereby cities may impose additional financial, service and regulatory conditions upon a land use by the property owner (the dispensary applicant must be the legal or equitable property owner). In exchange, the City agrees (subject to the terms of the development agreement) to “freeze” certain rules, regulations, and policies (for a specified term) that are in place at the time of the execution of the development agreement.

Development agreements can provide for the generation of certain additional fees for the City. The amount of fees, as well as the rest of the development agreement, are subject to negotiations between the City and the applicant. Development agreements can take up to a year to negotiate and fully implement, thus delaying the opening of lawful medical marijuana dispensaries in the City. The use of development agreements for marijuana dispensaries is a new application of the Development Agreement Law which has not been tested yet in the courts.

Sub-committee Recommendation: The City should allow and regulate no more than **two** fixed location (not mobile) medical marijuana dispensaries vetted through a selection process, but completely ban recreational marijuana dispensaries.

The City should allow medical marijuana dispensaries only in C-1 (Central business) and C-2 (General commercial) districts.

The City should consider seeking that any proposed medical marijuana dispensary enter into a development agreement with the City.

The City should also regulate the packaging and appearance of edible marijuana products for sale to eliminate any possible confusion as to the nature of the product. For example, edible products should not have the appearance of candy which is attractive to minors, and all edible products should be clearly labeled as “medical marijuana.”

2. Commercial Marijuana Cultivation

The Council may restrict, regulate and prohibit all types of commercial cultivation operations, including, but not limited to, restricting those uses to certain zones and limiting their number. MBMC § 9.06.040(B) currently prohibits marijuana cultivation in all zones (with a limited exception for personal medical cultivation by a primary caregiver or a qualified patient).

Sub-committee Recommendation: The City should ban all commercial outdoor cultivation due to limited agricultural property, public safety and enforcement concerns. To ensure an effective ban the MBMC should be amended for consistency with the new state marijuana laws.

3. Manufacturing and Testing

The Council may specify types of manufacturing that may occur within the City, or may completely ban all manufacturing of marijuana products. Those manufacturing activities could include the manufacture of oils, pills or edible products.

Another type of commercial marijuana business activity that will be authorized statewide is the testing of marijuana for contaminants and conformance “to the labeled content of compounds” before retail sales are allowed. (Business & Professions Codes § 26100.) The City may allow or completely prohibit both medical and nonmedical commercial marijuana testing businesses.

Sub-committee Recommendation: The City should ban all commercial manufacturing and testing for both medical and recreational marijuana, due to limited (or nonexistent) suitable industrial/manufacturing property, public safety and enforcement concerns.

4. Marijuana Deliveries

The Council can ban or regulate deliveries of marijuana (both medical and recreational) into the City from outside of the City. Likewise, deliveries from a lawful dispensary in the City to a resident in the City can also be banned or regulated. The City cannot prohibit the use of its public streets by delivery services that pass through Morro Bay.

The City currently does not have an express ban on marijuana deliveries.

The City can distinguish between medical and recreational marijuana deliveries, and, for example, allow only medical marijuana deliveries and prohibit recreational marijuana deliveries. If deliveries are allowed, then local regulations can be imposed on delivery operations such as strict record keeping and licensing of delivery drivers. Recently passed SB 94 imposes certain state mandated requirements on marijuana deliveries, including “during delivery, the licensee shall maintain a physical copy of the delivery request and shall make it available upon request of the licensing authority and law enforcement officers” and a “customer requesting delivery shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers.” (Business and Professions Code § 26090.)

Sub-committee Recommendation: The City should allow medical marijuana delivery services to operate within the City subject to a regulatory permit with requirements such as background checks on the drivers, insurance, proof of association with a lawful licensed dispensary (whether in Morro Bay or elsewhere) and strict record keeping.

The same as for dispensaries, the City should also regulate the packaging and appearance of edible marijuana products for sale by delivery, to eliminate any possible confusion as to the nature of the product. For example, edible products should not have the appearance of candy which is attractive to minors, and all edible products should be clearly labeled as “medical marijuana.”

TIMELINE

Looking ahead, the next step is to receive direction from City Council and set up a workshop for community input on a new comprehensive marijuana ordinance, which would address the new state marijuana laws. That workshop is suggested to take place at the end of August/early September.

The urgency is having something adopted before the date when the state will begin issuing licenses for both medical and recreational commercial operations, currently being January 1, 2018.

After that prospective workshop, the draft marijuana ordinance should be initiated and presented to City Council by late September/early October for the first reading of the ordinance. The second reading should take place no later than November 14, 2017, the first and only City Council meeting that month.

If the ordinance is not complete by the October 24, 2017 Council meeting (2nd Council meeting in

October), then the City should move forward on November 14, 2017 with an Urgency Ordinance or moratorium to prohibit the establishment of any marijuana based business within the City. The moratorium could be put in place for up to 24 months to allow for adequate time for the development and adoption of a well thought out ordinance.

CONCLUSION

Council is requested to provide input and direction to staff either to: 1) develop an ordinance to implement local regulations concerning Proposition 64 and marijuana uses (including commercial); or, 2) establish a moratorium to postpone implementation of such an ordinance until after January 1, 2018.

The following is a summary of recommendations from the sub-committee for marijuana regulations:

1. Public Use / Smoking Regulations:
 - a. Maintain current strict smoking prohibitions in City code, and
 - b. reconsider some of the exemptions to tighten them up.
2. Personal Cultivation (Outdoor) - *prohibit*.
3. Personal Cultivation (Indoor) - *regulate as follows*:
 - a. Adopt local health and safety regulations (e.g., odor control and security),
 - b. require issuance of a local permit,
 - c. non-transferable permit,
 - d. charge nominal fee for permit,
 - e. require property owner consent, and
 - f. one-time City inspection to ensure cultivation site compliant with local law.
3. Dispensaries (Medical) – *allow as follows*:
 - a. Allow two fixed location (not mobile) medical marijuana dispensaries in the City,
 - b. reasonable requirements such as odor control, security, insurance and records,
 - c. seek development agreements with operators, and
 - d. impose local regulations on marijuana edibles (packaging and appearance).
4. Dispensaries (Recreational) - *prohibit*.
5. Commercial Cultivation (Medical and Recreational) - *prohibit*.
6. Manufacturing and Testing (Medical and Recreational) - *prohibit*.
7. Deliveries (Medical) - *allow as follows*:
 - a. require issuance of a local permit, and
 - b. reasonable requirements such as insurance, background checks on drivers, and proof of association with lawful medical marijuana dispensary (either in City or elsewhere).
8. Deliveries (Recreational) - *prohibit*.

ATTACHMENTS

1. Neighboring Jurisdictions Regulations
2. Regional Survey of Local Regulations for Personal Marijuana Cultivation

NEIGHBORING JURISDICTIONS' REGULATIONS

Paso Robles

The City of Paso Robles allows personal indoor cultivation in separate accessory units and allows medical mobile dispensaries. The City bans all other cannabis-related commercial activities.

Atascadero

The City of Atascadero is currently developing their ordinance and expects to present it to City Council in September or October. Preliminary research suggests that City Council is leaning towards allowing personal outdoor cultivation.

Pismo Beach

The City of Pismo Beach bans all cannabis-related commercial activities, both medical and recreational.

City of Arroyo Grande

Arroyo Grande is allowing indoor personal cultivation for medical purposes, as well as for up to three delivery services to operate within the city. The City currently allows medical deliveries and may allow recreational deliveries as well. The City bans all other cannabis-related commercial activities.

City of Grover Beach

The City of Grover Beach has approved 86 acres of land to be zoned for commercial medical cannabis activities, including: cultivation, manufacturing, distribution, testing laboratories, and two dispensaries. Dispensaries are only allowed to be open between the hours of 9 am to 7 pm and requires odor control devices that prohibits odors from being detectable from the property boundary. Dispensaries are required to produce security plans, security systems and the City will check employee background for disqualifying criminal backgrounds. The City began accepting applications for cannabis permits on June 14th, 2017. The City will tax medical cannabis activities at 5% of gross receipts. There will be a separate tax on cultivation and nurseries of \$25 per square foot on the first 5,000 square feet and \$10 per square foot on the remainder.

County of San Luis Obispo

The County of San Luis Obispo is currently updating their cannabis ordinance and has removed the 100-permit limitation on cultivation. Permit applications will be accepted in phases, with registered cultivation sites the first to be eligible for a permit. The County removed the prohibition on volatile manufacturing and leaning towards allowing establishment of dispensaries both inland and in the coastal zone. The County is leaning towards eliminating the medical-only provision, revising setback from sensitive uses, allowing mobile deliveries, and prohibiting mobile dispensaries.

REGIONAL SURVEY OF LOCAL REGULATIONS FOR PERSONAL MARIJUANA CULTIVATION

A survey of approach regional cities are taking for regulation of personal marijuana cultivation (both outdoor and indoor) was conducted. The survey included a review of local ordinances and outreach to various city staff members. Below are the results for personal marijuana cultivation.

1. Paso Robles

- Prohibits marijuana cultivation outdoors.
- Requires a permit for indoor personal marijuana cultivation, allows Council to impose a fee for indoor cultivation permit, and limits indoor cultivation to accessory structures.
- City staff is currently developing administrative regulations to govern indoor cultivation. A fee has not yet been set for the indoor cultivation permit.

2. Atascadero

- Prohibits recreational marijuana cultivation outdoors.
- In April, 2017 the Atascadero City Council directed staff to develop an ordinance for consideration allowing recreational marijuana cultivation outdoors if screened from public view.
- Allows limited medical marijuana cultivation outdoors in residential zones if screened from public view.
- Allows limited medical marijuana cultivation indoors.
- City staff related that at present the City Council does not seem inclined to have a permit required for personal marijuana cultivation indoors.

3. Pismo Beach

- Prohibits marijuana cultivation outdoors.
- Defaults to state law for indoor personal marijuana cultivation. Does not regulate, nor require a permit for, indoor personal marijuana cultivation.

4. Grover Beach

- Prohibits marijuana cultivation outdoors.
- Defaults to state law for indoor personal marijuana cultivation. Does not regulate (other than prohibit nuisance activity such as offensive odors or intrusive lighting), nor require a permit for, indoor personal marijuana cultivation
- City staff indicated no plans to develop additional ordinances to regulate marijuana cultivation.