



City of Rialto

Legislation Text

File #: 16-464, **Version:** 1

For City Council Meeting [July 12, 2016]

TO: Honorable Mayor and City Council

APPROVAL: Michael Story, City Administrator

FROM: Robb Steel, Asst. CA/Development Services Director

Request City Council to Set a Public Hearing for **July 26, 2016**, to consider an Ordinance Implementing Development Code Amendment No. 16-0, a Resolution Making Certain Findings and Approving Modifications to Titles 9 and 18 of the Rialto Municipal Code, Chapters 9.45 Mobile Marijuana Dispensaries and delivery and 18.112 Regulation of Medical Marijuana Dispensaries and Cultivation.

BACKGROUND

Applicant

The Applicant is the City of Rialto, 150 South Palm Avenue, Rialto, CA 92376.

Location

Citywide

History

Under the Federal Controlled Substance Act (CSA) marijuana manufacturing, cultivation, distribution, and possession are deemed unlawful and subject to federal prosecution without regard to a claimed medical need. Marijuana usage, classified as a Schedule 1 drug under the CSA, remains illegal under Federal law. Per the CSA, Schedule 1 drugs are deemed as having the highest potential for abuse, not currently accepted as medical treatment in the US, and lack accepted safety for use of substance even under medical supervision.

Nonetheless, in 1996, the voters of California approved by initiative "The Compassionate Use Act of 1996" (CUA). The purpose of the CUA was to allow seriously ill Californians to obtain and use medical marijuana under certain specified circumstances. In 2003, the Legislature approved the Medical Marijuana Program Act (MMP), which provided additional statutory guidance for those involved with medical marijuana use and authorized cities to enact rules and regulations with regard to medical marijuana consistent with California law.

The California legislature recently adopted legislation identified as the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643) (MMRSA) to comprehensively regulate medical marijuana (medical cannabis). The MMRSA recognizes and preserves local control to regulate or ban

medical cannabis cultivation, transportation, and distribution. The MMRSA confirms and clarifies that, in addition to the complete land use control over retail dispensaries recognized in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, municipalities have the power to regulate or ban the cultivation and distribution of medical marijuana. *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.

Ordinance No. 1453, (adopted in 2009), prohibits medical marijuana dispensaries in several zones of the City, and is codified in several sections of the City's zoning code. In 2014, the City adopted Ordinance No. 1540, which prohibits delivery of medical marijuana through mobile marijuana dispensaries in the City, and is codified at Rialto Municipal Code Chapter 9.45. The proposed Ordinance would amend these two ordinances to also prohibit cultivation and delivery and/or distribution of medical marijuana, whether through a mobile marijuana dispensary or not.

ANALYSIS/DISCUSSION

The proposed Ordinance Amendment will: (1) expressly prohibit the delivery of marijuana in the City, (2) expressly prohibit the cultivation of marijuana in the City; (3) enact and enforce local regulations or other entitlement of the activities prohibited by this chapter; and (4) exercise police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community.

The cultivation of marijuana has significant impacts or the potential for significant impacts on the City. These impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, and the nuisance of strong and noxious odors. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with medical marijuana dispensaries, cultivation, and the mobile delivery of same.

The proposed Ordinance will amend the title and text of Chapter 9.45 "Mobile Marijuana Dispensaries and Delivery" of the Rialto Municipal Code, and a new chapter, Chapter 18.112, entitled "Regulation of Medical Marijuana Dispensaries and Cultivation" will be added to the Rialto Municipal Code. Exhibit A (Draft Ordinance Amendment) provides a strikeout and underline version of the proposed changes to Rialto Municipal Code.

The proposed Ordinance Amendment authorizes the City to enact permanent land use regulations or ordinances regulating or prohibiting the cultivation of marijuana within the City. To protect the public peace, health and safety, the City determined that, in addition to the existing prohibitions against mobile marijuana dispensaries and medical marijuana dispensaries, an express prohibition against the cultivation and delivery of marijuana is needed. In addition, the City desires to clarify the provisions of the Rialto Municipal Code prohibiting mobile medical marijuana dispensaries and medical marijuana delivery in light of the new state law requirements.

GENERAL PLAN CONSISTENCY

The proposed Ordinance Amendment is consistent with the General Plan and complies with all applicable provisions of the Zoning Code and other ordinances and regulations of the City. Medical marijuana dispensaries and mobile medical marijuana dispensaries are a public nuisance by the City of Rialto. Marijuana dispensaries are prohibited in all zones of the City. Additionally, cultivation of medical marijuana is not expressly permitted under the Rialto Municipal Code. Goal 5-8 of the

General Plan is to provide effective and comprehensive policing services that meet the safety needs of the City, which includes Policy 5-8-4, which is to initiate proactive crime suppression and prevention strategies throughout the community. The proposed Ordinance Amendment will curtail the secondary adverse effects of marijuana cultivation, delivery, and dispensaries, thereby reducing instances of crime and meeting the safety needs of the City. Goal 2-19 of the General Plan is to encourage neighborhood preservation, stabilization, and property maintenance. Prohibiting the cultivation and the adverse effects associated with it, including dangerous electrical alterations, noxious odors, and inadequate ventilation, will promote that goal. Furthermore, one of the guiding principles of the General Plan is to provide safe neighborhoods and a place to call home, which the Ordinance Amendment will facilitate in achieving that principle.

ENVIRONMENTAL IMPACT

This proposed Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment. The proposed amendment to the Rialto Municipal Code would only prohibit marijuana dispensaries, delivery, and cultivation, and would not cause a significant effect on the environment.

LEGAL REVIEW

The City Attorney has reviewed and approved this report.

FINANCIAL IMPACT

The proposed Ordinance Amendment will not impact the General Fund.

RECOMMENDATION

Staff recommends that the City Council set the Public Hearing for July 26, 2016.