



City Council Memorandum

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MEMORANDUM: November 30, 2015

AGENDA DATE: December 8, 2015

TO: Mayor and City Council

PREPARED BY: Mic Steinmann, Community Services Director

TITLE: **INTRODUCTION OF ORDINANCE REGULATING
MEDICAL MARIJUANA DISPENSARY, CULTIVATION,
AND MANUFACTURING FACILITIES**

BACKGROUND

Since early 2015 the City has received numerous inquiries on the current status of the medical marijuana law and whether dispensaries, cultivation, and/or manufacturing facilities were allowed within the city of Greenfield. The City Council held a public workshop on March 17, 2015, to discuss this new emerging industry, to understand the current legal status of medical marijuana at both the state and federal levels, to discuss the community implications of allowing medical marijuana dispensaries and cultivation facilities to open in Greenfield, and to better understand the potential benefits for local control and regulation of this new emerging industry. A draft ordinance was presented to the City Council at its April 14, 2015, regular meeting at which time there was considerable public discussion of this topic and many members of the public addressed the City Council. After receiving public comments and Council discussion, the City Council decided to take no action on a potential medical marijuana ordinance and continued further discussion to a later date.

Since these previous Council discussions, the California legislature passed three bills that once fully implemented will establish a comprehensive statewide medical marijuana regulatory structure. These bills – AB 243, AB 266, and SB 643 – known as the Medical Marijuana Regulation and Safety Act, received significant support from local government, law enforcement, labor unions, and portions of the marijuana industry. They become effective January 1, 2016. One of the provisions of AB 243 requires local jurisdictions to have in place by March 1, 2016, land use regulations or ordinances regulating or prohibiting medical marijuana cultivation. If such land use regulation or ordinances are not in place by that date, the State will

become the sole licensing authority for medical marijuana cultivation. Local jurisdictions would still have authority to adopt an ordinance banning cultivation, but it would otherwise have no authority or ability to adopt medical marijuana cultivation regulations to protect the unique interests or circumstances of the local community. All regulatory authority would be abdicated to the State. At a result of this new statewide legislation, deciding to take no action (regarding whether dispensaries, cultivation, and/or manufacturing facilities will be allowed within the city of Greenfield) is not practical or in the best interest of the community.

To aid in the understanding of the current state of the law regarding medical marijuana and its use, possession, cultivation, manufacture, sale, and dispensing, the following timeline may be helpful.

Medical Marijuana Timeline

- 1970 Federal Controlled Substances Act: Established a federal regulatory system designed to combat recreational drug abuse by making it a federal criminal offense to manufacture, distribute, dispense, or possess any controlled substance – which includes marijuana.
- 1996 Proposition 215, Compassionate Use Act: Initiative approved by California voters (a) “to ensure 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” and (b) “to ensure 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.”
- 2003 Medical Marijuana Program: California legislation establishing a State-authorized medical marijuana identification card (MMIC), along with a registry database to verify the validity of a qualified patient or primary caregiver’s MMIC as authorization to possess, grow, transport, and/or use medical marijuana within California.
- 2008 State Department of Justice, Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use: Neither Proposition 215 nor Medical Marijuana Program conflicted with Federal Controlled Substances Act.
- 2009 U.S. Department of Justice Memorandum (Ogden Memo): In exercising investigative and prosecutorial discretion in enforcement of federal Controlled Substances Act, federal resources should not focus on individuals whose actions are in compliance with state laws providing for the medical use of marijuana.

- 2011 U.S. Department of Justice Memorandum (Cole Memo I): Reaffirmed Ogden Memo directive that it was not an efficient use of federal resources to focus enforcement efforts on individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regime consistent with applicable state law or their caregivers.
- 2013 U.S. Department of Justice Memorandum (Cole Memo II): Reaffirmed previous Ogden and Cole Memos and U.S. Department of Justice position that *federal resources should not focus on investigation or prosecution of marijuana related activities in states that have implemented strong and effective regulatory and systems to control the cultivation, distribution, sale, and possession of marijuana* in compliance with those laws and regulations and that those laws and regulations are less likely to threaten federal priorities or pose threats to public safety, public health, and other law enforcement interests.
- 2014 Rohrabacher-Farr Medical Marijuana Amendment to FY 2015 appropriations bill: *Prohibits the federal government from prosecuting medical marijuana patients or distributors who are in compliance with the laws of their states* by prohibiting use of U.S. Department of Justice funds to “prevent [medical marijuana states] from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”
- 2015 U.S. District Court for Northern District of California: Ruled the Rohrabacher-Farr Medical Marijuana Amendment prevents the federal government from prosecuting the Marin Alliance for Medical Marijuana and its founder for violation of the federal Controlled Substances Act.
- 2015 Medical Marijuana Regulation and Safety Act: Established comprehensive medical marijuana regulatory structure, with support from local government, law enforcement, labor unions, and portions of the marijuana industry:
- AB 243: Establishes comprehensive regulatory structure for medical marijuana industry.*
- Places the Department of Food and Agriculture in charge of licensing and regulation of indoor and outdoor cultivation sites.
 - Mandates the Department of Pesticide Regulation develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
 - Mandates the Department of Public Health develop standards for production and labelling of edible medical marijuana products.
 - Specifies various types of cultivation licenses.
 - Local jurisdictions must have land use regulations or ordinances regulating or prohibiting cultivation of marijuana in place by March 1, 2016, or the State becomes the sole licensing authority for medical marijuana cultivation.

AB 266: Establishes medical marijuana facility licensing, testing, and transportation regulatory structure.

- Establishes statewide regulatory and licensing scheme, headed by the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.
- Provides for dual state and local licensing.
- Local jurisdictions that wish to prevent delivery services from operating within their borders must enact an ordinance affirmatively banning this activity.
- Establishes separate license categories: Dispensary, Distributor, and Transport.
- Limits license holder to a single license in up to two separate license categories.
- Requires uniform health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product.
- Requires certification of independent testing labs; specifies minimum testing requirements; testing lab cannot be dispensary, distributor, or transporter.
- Phases out the existing model of marijuana cooperatives and collectives.

SB 643: Establishes physician recommendation and disciplinary standards, track and trace standards, and disqualifying felonies for state licensure.

- Establishes standards for a physician recommending medical marijuana.
- Directs the California Medical Board prioritize investigation of excessive recommendations by physicians and provide for physician discipline.
- Prohibits physicians from having a financial interest in a marijuana business.
- Physician recommending medical marijuana without a prior examination constitutes unprofessional conduct.
- Imposes restrictions on advertising for physician recommendations.
- Requires establishment of a track and trace program.
- Itemizes disqualifying felonies for state licensure.
- Affirms local power to levy fees and taxes.

Current State of Marijuana Law

At the present time it remains a federal offense to manufacture, distribute, dispense, or possess marijuana, whether for medical or recreational purposes. In spite of this prohibition, the U.S. Department of Justice has issued a series of memos to federal prosecutors stating that “federal resources should not focus on investigation or prosecution of marijuana related activities in states that have implemented strong and effective regulatory systems to control the cultivation, distribution, sale, and possession of marijuana.” In 2014 the U.S. Congress went further. The Rohrabacher-Farr Medical Marijuana Amendment to an FY 2015 appropriations bill prohibits the federal government from prosecuting medical marijuana patients or distributors who are in compliance with the laws of their states.

In 1996 the people of the state of California passed an initiative, Proposition 215 – Compassionate Use Act – stating that “seriously ill Californians have the right to obtain and use marijuana for medical purposes.” The Compassionate Use Act established the earliest medical marijuana regulatory structure in California. In 2003 the California legislature enacted the Medical Marijuana Program that established a state-authorized medical marijuana identification card system. In 2008 the State Department of Justice issued additional guidelines for the regulation of the medical marijuana industry. There was no further regulatory action at the state level until 2015.

In September 2015, the California legislature passed the three bills known as the Medical Marijuana Regulation and Safety Act. This Act establishes a new and significantly more comprehensive medical marijuana regulatory structure that encompasses all points along the distribution chain including cultivation, manufacturing, dispensing, testing, and transportation. Significant controls are put in place to more highly regulate the process by which physicians can issue medical marijuana recommendations to patients, and to provide for disciplinary action against physicians who abuse this process. Regulations for the use of pesticides and environmental protections are put in place. The Act requires the establishment of uniform health and safety standards, testing standards, packaging and labeling standards, and the creation of a statewide track and trace program for each medical marijuana product throughout the distribution chain. The Act will also replace the current model of marijuana cooperatives and collectives with a state licensing system that establishes separate licensing categories for dispensaries, distributors, cultivators, manufacturers, and transporters, and places limits on the type and number of different licenses a single licenser holder can have.

When the Medical Marijuana Regulation and Safety Act is fully implemented, the medical marijuana industry in California will operate under a significantly different and much more comprehensive regulatory structure than it has in the past. This new regulatory structure will further protect the right of Californians to obtain and use marijuana for medical purposes while continuing to protect the public health, safety, and welfare. Within this state regulatory system, local jurisdictions continue to have *the right and authority* to develop their own permitting and regulatory systems provided those local regulations do not establish any standards or controls that are less than those required under the Act. In the absence of a local ordinance regulating medical marijuana dispensaries, cultivators, or manufacturers, to the extent such uses and facilities are permissible under local land use ordinances, their licensing and regulation would be subject only to the requirements and controls established by the state.

The requirement for a local ordinance regulating medical marijuana cultivation is especially acute. The Medical Marijuana Regulation and Safety Act states that “if a city...does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana,...or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the [state] shall be the sole licensing authority for medical marijuana cultivation applicants in that city...” For the City to have the right to regulate the medical marijuana cultivation industry, it must have an enabling ordinance in place by March 1, 2016. Otherwise, all regulatory authority, other than the right to prohibit commercial cultivation within its borders, would be abdicated to the state. For dispensary and manufacturing regulations, however, there is no such deadline.

To meet the state deadline, the City Council must take action to introduce an appropriate ordinance no later than at its first meeting in January with a second reading and adoption of a final ordinance by January 29, 2016. However, if an ordinance is not introduced at the City Council's December 8, 2015, meeting, it is possible there would not be sufficient time to revise the initial ordinance and have a final ordinance adopted by the end of January.

Role of City Council

In California, the right of the people to obtain and use marijuana for medical purposes is unaffected by whether medical marijuana can be cultivated, manufactured, or dispensed from within the community in which the people reside. **A local community cannot adopt an ordinance prohibiting, and thereby criminalizing, the possession and use of marijuana for medical purposes.** Such action was prohibited by the Compassionate Use Act enacted by the people of California in 1996. What a community can do, however, is adopt ordinances that prohibit people from exercising that right through purchasing medical marijuana *from a dispensary located in the community* in which they reside, and to prohibit the cultivation and manufacture of medical marijuana products that would be distributed to medical patients or their caregivers from those same dispensaries. Although a local community cannot prohibit the exercise of this right by its residents, it can make it more difficult and inconvenient for its residents to exercise that right.

The true question that must be addressed by the City Council is not whether it has a legal right to prohibit medical marijuana facilities from operating within its borders. Rather, the question is whether doing so is the right thing to do; whether doing so will protect and promote the public health, safety, and welfare; whether doing so is in the best interests of the community; and whether the City Council should take affirmative action that will make it more difficult and inconvenient for the residents of Greenfield to exercise their right to obtain and use marijuana for medical purposes, and in some circumstances may preclude residents from even exercising that right.

The City Council is the city's legislative body. Its primary responsibility is for policymaking, which includes identifying the needs of local residents, formulating programs to meet the changing requirements of the community, protecting the welfare of the city and its residents, and providing community leadership. Councilmembers may seek community input and dialogue on important issues facing the city and consider the opinions of the public during its deliberations. It is then the responsibility of each individual councilmember to exercise his or her own independent judgment on what is in the best interests of the community. It is through the exercise of independent judgment that the council is able to provide community leadership.

BUDGET AND FINANCIAL IMPACT

The cost of administering the regulatory permit system for medical marijuana dispensary, cultivation, and manufacturing facilities will be a recoverable cost through the application and permitting process. The fees will be established to ensure all City costs are recovered. There will be no net cost to the City's general fund in implementing and administering the regulatory permit process.

In addition to the cost recovery application and permit issuance process, the City will receive general sales tax revenue from all dispensary sales. Sales tax revenue will not apply to cultivation and manufacturing facilities. However, through the proposed development agreement process, the City will be able to negotiate with each dispensary, cultivation, and manufacturing operator the payment of annual operating fees, per square foot charges, and other revenue opportunities. The City also has the ability to impose an excise or similar tax on all marijuana sales or distributions. Doing this, however, will require going through the Proposition 218 public notice, hearing, and ballot process.

Through sales taxes and the development agreement process, the City has the opportunity to receive significant general fund revenues. The amount of such revenue cannot realistically be estimated as it is dependent on the amount of actual sales from a dispensary and the development agreement negotiations. Such revenues could, however, be significant.

RECOMMENDATION

Adoption of an ordinance requires at a minimum two separate City Council actions – first its initial introduction and at a subsequent City Council meeting its adoption. This process allows the City Council to request changes or amendments be made to the proposed ordinance between its introduction and its passage.

It is the recommendation of the City Manager, the Community Services Director, and the City Attorney that the attached ordinance regulating medical marijuana dispensary, cultivation, and manufacturing facilities be approved for the following reasons.

1. The Compassionate Care Act of 1996 was enacted by the people of the state of California to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes.”
2. The Medical Marijuana Regulation and Safety Act of 2015 establishes a comprehensive licensing and regulatory system for medical marijuana dispensary, cultivation, and manufacturing facilities designed to protect the public health, safety, and welfare, and to protect the right of patients to obtain and use marijuana for medical purposes.
3. The operation of medical marijuana dispensary, cultivation, and manufacturing facilities is legal under California state law.
4. Federal law prohibits the prosecution of medical marijuana patients or distributors who are in compliance with the laws of their states.
5. Allowing medical marijuana dispensaries in Greenfield will ensure qualified patients and their caregivers have safe and convenient access to medical marijuana to which the people of the state of California have declared they have a right to obtain and use.
6. Significant local revenue can be generated from sales taxes and regulatory permit and inspection fees.

7. Revenues can be used to fund and support local youth prevention and education, mental health, and community-based development programs.
8. Local jobs will be created.
9. New local jobs will be well-paying jobs with benefits.
10. Medical marijuana facilities are not detrimental to the public health, safety, or welfare.
11. The City Council should not adopt or support policies that inhibit the exercise of the right of residents of Greenfield to obtain and use marijuana for medical purposes.
12. There is a statutory deadline to enact local cultivation regulations by March 1, 2016.

If the City Council desires to make changes or amendments to the ordinance, that can be done prior to the next scheduled City Council meeting. A public hearing and second reading of the proposed ordinance will then be conducted at the January 12, 2016, City Council meeting. At that time, if the City Council desires further changes or amendments be made, there is still sufficient time before the City Council's second meeting in January to make the requested changes and have an ordinance adopted by the end of January, thereby being able to comply with the state mandated deadline of March 1, 2016

The Medical Marijuana Regulation and Safety Act of 2015 requires local jurisdictions have in place by March 1, 2016, land use regulations or ordinances regulating or prohibiting marijuana cultivation or the state becomes the sole licensing authority for cultivation facilities. (See Attachment A regarding what other jurisdictions are doing to regulate the use of marijuana.) Without regulations in place, after March 1, 2016, the City will have authority to only allow or prohibit medical marijuana cultivation within its borders. Beyond that, the City will have no opportunity or ability to regulate the operation or licensing of such facilities. So the City must act now with an appropriate regulatory ordinance or all future licensing and regulatory authority would be abdicated to the state.

For dispensary and manufacturing facilities, the Medical Marijuana Regulation and Safety Act does not impose a similar deadline. But in addressing cultivation, the City should also make a final decision on the direction it wishes to take regarding whether to allow or not allow medical marijuana dispensary and manufacturing facilities. It is now time for the City Council to exercise its leadership and establish policy guidelines on whether the City will allow medical marijuana dispensary, cultivation, and manufacturing facilities within its borders. This issue has been discussed at various times by the City Council since early 2015. It is now time to conclude those discussions and take final, definitive action, one way or the other.

The proposed ordinance puts in place a comprehensive permit issuance and regulatory structure that will protect the interests of the City and ensure qualified patients and their caregivers have safe and convenient access to medical marijuana to which the people of the state of California have declared they have a right to obtain and use. The proposed ordinance has been carefully crafted to ensure the proposed regulatory system is in compliance with applicable state and

federal law, regulations, and guidelines. This ordinance will ensure medical marijuana dispensary, cultivation, and manufacturing facilities operate within the confines of state law, provide a safe and secure environment for the employees of each facility and for the general public, and do not operate in a manner that would be detrimental to the public health, safety, or welfare.

PROPOSED MOTION

I MOVE TO READ BY TITLE ONLY AND INTRODUCE AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GREENFIELD ADDING CHAPTER 5.28 TO THE CITY OF GREENFIELD MUNICIPAL CODE ESTABLISHING A MEDICAL MARIJUANA REGULATORY PERMIT PROCESS.

Attachment A

Other Jurisdictional Regulations

In recent years there has been an explosion of marijuana legislation throughout the country and throughout California. At the federal level, Congress has passed legislation prohibiting the Justice Department from enforcing federal drug prohibitions as related to the use, distribution, possession, or cultivation of medical marijuana in those states with a comprehensive medical marijuana regulatory system. Twenty-three states have legalized the use of marijuana for medicinal purposes. Four states and the District of Columbia have legalized marijuana for all uses, both medicinal and recreational. Cities and counties throughout California have enacted medical marijuana enabling legislation. Locally, dispensaries currently operate in Oakland, San Francisco, San Jose, Santa Cruz, and Del Rey Oaks. Salinas is considering regulations to allow medical marijuana dispensaries and cultivation and manufacturing facilities. Monterey County is doing the same. The City of Gonzales is considering an ordinance allowing cultivation. Other cities and counties throughout the state are doing the same.

California cities and counties are following the lead of the public in enacting the Compassionate Care Act in 1996. They are also enacting local regulations in an effort to capture the significant tax revenue generated from the sales of medical marijuana, keep sales tax dollars in the local community, create local jobs, reduce spending on law enforcement related to enforcing the “war on drugs,” and regulate and promote safety in facilities used for the cultivation, manufacture, and dispensing of medical marijuana. These local regulations ensure that qualified patients and their caregivers are afforded safe and convenient access to medical marijuana, while at the same time providing a mechanism to ensure that such uses do not conflict with local general plans, are not inconsistent with surrounding uses, are not detrimental to the public health, safety and welfare, and operate in accordance with state and federal guidelines.

Colorado Experience

- Marijuana possession arrests dropped 84% = millions of dollars saved in criminal prosecutions
- Denver – 2.2% decrease in violent crime, 9.5% decrease in burglaries, 8.9% decrease in property crimes
- No change in rate of under-age, youth marijuana use
- 3% drop in traffic fatalities
- \$40.9 million in tax revenue (not including licenses and fees)
- 16,000 licensed workers in marijuana industry
- \$17 per hour average hourly rate, plus benefits, for typical marijuana industry worker
- Dispensaries contribute 10 times the tax revenue of either a restaurant or retail store
- \$8 million allocated for youth prevention and education, mental health, and community-based development programs including mentoring and drug prevention programs, health workers in schools, and school retention programs

Medical Benefits

Because medical marijuana is classified as a schedule-1 drug under the Federal Controlled Substances Act, there has been limited scientific research into the medical benefits of marijuana. There is, however, considerable anecdotal evidence identifying the benefits of medical marijuana in treating nausea and vomiting from chemotherapy, sleep disturbances, eating disorders, depression, psychosis, Post-Traumatic Stress Disorder (PTSD), glaucoma, Tourette syndrome, autism, Alzheimer's, neuropathic pain and weight loss in HIV/AIDS patients, stiffness and muscle spasms in multiple sclerosis patients, and chronic pain. As medical research continues, it is likely that additional medical uses will be identified and the active ingredients that are most successful in treating various medical conditions identified and isolated. This will enable medical marijuana cultivators and manufacturers to develop additional marijuana strains to more effectively treat appropriate medical conditions. Irrespective of the extent of scientific research, the medical benefits of marijuana are well accepted within the medical community.