



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: DECEMBER 8, 2015

FROM: CITY ATTORNEY'S OFFICE WARDS: ALL

**SUBJECT: AMENDMENT TO TITLE 19 - MEDICAL MARIJUANA CULTIVATION,
PURSUANT TO ASSEMBLY BILL NO. 243**

ISSUE:

The issue presented for consideration by the City Council is whether to direct the Planning Division of the Community & Economic Development Department to initiate an amendment to Title 19 regarding medical marijuana cultivation.

RECOMMENDATIONS:

That the City Council:

1. Direct the Planning Division to initiate an amendment to Title 19 pursuant to Assembly Bill No. 243 regarding medical marijuana cultivation.
2. Determine that the amendment to Title 19 is an urgent matter that may severely impair public health and safety, pursuant to Section 4.05.050(D)(1) of the Sunshine Ordinance, and that the Planning Commission is to consider the amendment at its December 17, 2015 meeting.

BACKGROUND:

In 1996, the voters of the State of California approved Proposition 215, which is codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996". The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq., and referred to as the "Medical Marijuana Program") to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.

On October 9, 2015, Governor Brown signed into law a series of bills that together would establish California's first statewide regulatory system for medical marijuana businesses, which is codified as Business and Profession Code section 19300 through 19360, and entitled "Medical Marijuana Regulation and Safety Act"). AB 266, AB 243, and SB 643 each contain key provisions of the Medical Marijuana Regulation and Safety Act. These laws would govern cultivating, processing, transporting, testing, and distributing medical marijuana to qualified patients.

Pursuant to AB 243, the City can either adopt a zoning ordinance issuing a permit, license or other entitlement permitting the cultivation of medical marijuana or a zoning ordinance prohibiting the cultivation. Should the City fail to take action and adopt a zoning ordinance that is effective before March 1, 2016, the State of California's regulations will apply and all permits for cultivation will be processed by the State. If the City chooses to allow cultivation, it can limit the amount of plants grown, the location, separation from sensitive uses, and zones in which cultivation would be permitted.

To keep control of the City's police powers in connection with local land use control, the City needs to take action and amend Title 19 regarding medical marijuana cultivation.

It is necessary to make the determination that this action is an urgent matter that may severely impair public health and safety, pursuant to section 4.05.050(D)(1) of the Sunshine Ordinance, as expediting the process is necessary because failure to act and implement land use regulations regarding medical marijuana before March 1, 2016, will surrender all control to the State. In order to accomplish an amendment to Title 19 before March 1, 2016, this matter must be heard by the Planning Commission on December 17, 2015, thereby preventing the strict application of the Sunshine Ordinance's twelve-day agenda posting requirement. Council would then consider the amendment to Title 19 at its January 5, 2016, meeting.

FISCAL IMPACT:

There is no fiscal impact at this time.

Prepared by: Gary G. Geuss, City Attorney