



City of San Leandro

Meeting Date: October 3, 2016

Ordinance

File Number: 16-474

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.K.

TO: City Council

FROM: Chris Zapata
City Manager

BY: City Council

FINANCE REVIEW: Not Applicable

TITLE: ORDINANCE Amending Title 4, Chapter 4-33 of the San Leandro Municipal Code Pertaining to Medical Cannabis Dispensary Permits

Section 1. RECITALS

WHEREAS, in 2013, the City Council for the City of San Leandro adopted an ordinance that established a procedure by which it could award permits for the dispensing of medical cannabis, in accordance with State law. That ordinance is Chapter 4-33 of the San Leandro Municipal Code; and

WHEREAS, the City Council also amended the Zoning Code to establish the land use parameters for the location of medical cannabis dispensaries; and

WHEREAS, the City Council analyzed, prepared and adopted its ordinance on the State law prevailing at the time, namely the Compassionate Use Act (Prop. 215, 1996), the Medical Marijuana Program Act (SB 420, 2003), and the California Attorney General's Guidelines for the non-diversion of cannabis (2008); and

WHEREAS, the City Council amended the ordinance as necessary to comply with changes to State law, most recently to comply with AB 243, the Medical Marijuana Regulation and Safety Act, which is an amalgam of three bills that deal with different aspects of licensing and regulating commercial medical cannabis cultivation, manufacturing, distribution, transportation, sales, and testing; and

WHEREAS, the City Council, with the assistance and analysis of staff, has evolved its position on the dispensing of medical cannabis within the City, including the placement of a ballot measure on the 2016 general election ballot to establish a cannabis business tax; and

WHEREAS, the City Council finds that based upon and subject to its ordinance, and current State law, legal and procedural safeguards are in place to mitigate the primary and

secondary effects on public health, and safety that medical cannabis dispensaries present.

Now therefore, the City Council for the City of San Leandro does **ORDAIN** as follows:

SECTION 2. AMENDMENT OF CODE. Title 4, Chapter 4-33 of the San Leandro Municipal Code is hereby amended to read as follows:

CHAPTER 4-33

MEDICAL CANNABIS DISPENSARY PERMITS

4-33-100 - DEFINITIONS.

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

(a) "Attorney General Guidelines" shall mean the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use," issued by the Attorney General's Office in August 2008, as amended from time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.

(b) "Authorized Invitee" shall mean any individual who is not a member of the dispensary who has been invited to the Dispensary by the General Manager or their designee for official business purposes.

(c) "Cannabis" or "Marijuana" shall have the same definition as Health and Safety Code § 11018, as amended from time to time, which defines "cannabis" as all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant incapable of germination.

(d) "Cannabis Dispensary" or "Dispensary" shall mean a collective, cooperative, or business that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana in the City for medicinal purposes to four (4) or more qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 *et seq.*

(e) "City" means the City of San Leandro, and any legislative body granted regulatory authority over Dispensary operations by this ordinance.

(f) "City Manager" means the City Manager of the City of San Leandro or his/her designee.

(g) “Collective” means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in the Attorney General Guidelines.

(h) “Cooperative” means a business organization recognized by the state of California through properly registered articles of incorporation under the Corporations or Food and Agricultural Code that conducts its business for the mutual benefit of its members, as described in the Attorney General Guidelines.

(i) “Medical Marijuana” means marijuana authorized in strict compliance with Health & Safety Code §§ 11362.5, 11362.7 *et seq.*, as such sections may be amended from time to time.

(j) “Parcel of Land” means one piece of real property as identified by the county assessor’s parcel number (APN) that is one contiguous parcel of real property, which is used to identify real property, its boundaries, and all the rights contained therein.

(k) “Primary caregiver” shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended from time to time, and which defines “Primary Caregiver” as an individual designated by a qualified patient or by a person with an identification card who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the California Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the California Health and Safety Code; the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(l) "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which means a person who is entitled to the protections of California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 *et seq.*

(m) "Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which means all of the following medical conditions:

- (1) Acquired immune deficiency syndrome (AIDS);
- (2) Anorexia;
- (3) Arthritis;
- (4) Cachexia;
- (5) Cancer;
- (6) Chronic pain;
- (7) Glaucoma;
- (8) Migraine;
- (9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;
- (10) Seizures, including, but not limited to, seizures associated with epilepsy;
- (11) Severe nausea;
- (12) Any other chronic or persistent medical symptom that either:
 - (i) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
 - (ii) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(n) "Written documentation" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which defines "written documentation" as accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

4-33-200 - DISPENSARY PERMIT REQUIRED AND APPLICATION FOR PERMIT.

(a) Except for hospitals, it is unlawful for any person, corporation, company, entity, owner, operator, collective, cooperative, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to allow to be conducted, operated, or maintained, any Dispensary in the City of San Leandro unless there exists a valid Dispensary permit in compliance with the provisions of this Chapter.

(b) This Chapter does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this Chapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such

group is of three (3) or less individuals, and distributing, cultivating or processing the marijuana from a residential unit or a single non-residential parcel of land. Associations of three (3) or less qualified patients or primary caregivers shall not be required to obtain a Dispensary permit under this Chapter, but must comply with all applicable State Laws and the Attorney General Guidelines.

(c) The City shall issue no more than three (3) valid permits for the operation of dispensaries in the City.

(d) In addition to the requirements specified in Chapter 2-2 related to Business Licenses, the permit application for a Dispensary shall set forth the following information:

(1) Unless it is determined by the City that the location will not impact the peace, order and welfare of the public, evidence that the proposed location of such Dispensary is not within one thousand (1000') feet of a public or private school, public library, youth center (serving youth ages eighteen (18) and under), parks and recreation facilities, facilities for religious worship and incidental religious education and five hundred (500') feet from a residential zone. The proposed Dispensaries must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.

(2) A complete description of the type, nature and extent of the enterprise to be conducted.

(3) A plan of operations that will describe how the Dispensary will operate consistent with State law, the provisions of this Chapter, the City's Municipal and Zoning Codes, and conditions of approval including but not limited to:

(i) Controls to verify medical marijuana will be dispensed only to qualified patients and primary caregivers; and

(ii) Controls to acquire, possess, transport and distribute marijuana to and from members, and plans to ensure marijuana is acquired as part of a closed-circuit of marijuana cultivation and consumption.

(iii) A security plan, as a separate document, outlining the proposed security arrangements for ensuring the safety of persons and to protect the premises from theft and burglary, and employees and customers from robbery. The security plan shall be reviewed by the Police Department and shall be a public record exempt from disclosure pursuant to California Government Code Section 6255(a).

(iv) Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

(e) The City Manager shall designate the investigating official to whom an application shall be referred. In recommending the granting or denying of such permit and in granting or denying the same, such designee shall give particular consideration to the capacity, capitalization, and history of the applicant and any other factors that in the City's discretion it deems necessary to maintain the peace, order and welfare of the public. The City Manager on his or her own power and in addition to any other conditions of approval imposed by any

other City departments, boards, commissions or legislative bodies, may impose any conditions on a Dispensary permit he or she deems necessary to maintain the peace, order, and welfare of the public.

(f) At the time of submission of a Dispensary permit application, the applicant shall pay a non-refundable Dispensary permit application fee. The fee amount shall be set by the City Council.

(g) The issuance of a Dispensary permit shall not be effective until the permit applicant has paid all fees, and received all other permits and approvals required by the City's ordinances, rules and regulations, including but not limited to any conditional use permit and building permit.

4-33-300 - COMPLIANCE WITH STATE LAW AND MUNICIPAL CODE.

(a) A Dispensary must comply with all applicable state and local laws, policies, rules and regulations, including but not limited to the California Health and Safety Code, the City adopted Building Code, Plumbing Code, Electrical Code, Mechanical Code, Fire Code, the San Leandro Municipal Code, the San Leandro Zoning Code, the Medical Marijuana Regulation and Safety Act, and the San Leandro Administrative Code including any and all rules and regulations related to the land use entitlement process, Dispensary operations, annual Dispensary permit fee, annual business license fee, and the Americans with Disabilities Act in order to be in compliance with the Dispensary permit.

The Dispensary must comply with any and all Conditions of Approval imposed upon it pursuant to any land use permit or entitlement granted.

Failure to comply with the Conditions of Approval or any conditions imposed upon a Dispensary permit by the City Manager, and all applicable local and state laws or regulations, and failure to pay when due all fees may result in the imposition of fines, and suspension or revocation of the Dispensary permit after an administrative hearing. The Dispensary may also be subject to enforcement through the City's nuisance abatement process and other administrative enforcement mechanisms, civil action, and criminal prosecution as defined in San Leandro Municipal Code Chapter 1-12.

4-33-400 - RENEWAL OF PERMITS.

(a) Dispensary Permits must be renewed annually. Permit Holders shall contact the City in writing no later than forty-five (45) days before the expiration of the current permit to begin the renewal process. At that time, the Dispensary shall submit verification of a current Business License, audited financial statements for the previous permit term, and any other requested financial documents or information as required by the San Leandro Municipal Code or the Dispensary's Permit.

As part of the annual renewal process the Dispensary shall be inspected by the Building Inspector and Fire Marshall or their designees. Violations of the San Leandro Municipal Code shall be corrected within a reasonable time, as determined by the Building Inspector, Fire Marshal or his/her designee. The Dispensary shall provide proof to the City that there are no

outstanding violations of the San Leandro Municipal Code.

(b) A Dispensary Permit will not be renewed without payment of the annual renewal fee, or any other fees on such operations established by the City Council.

4-33-500 - PERFORMANCE STANDARDS.

(a) Operations. A Dispensary shall operate in conformance with the following minimum standards, and such standards shall be deemed to be part of the conditions of approval on the Dispensary's Permit to ensure that its operation is in compliance with California law, the Attorney General Guidelines, and this Municipal Code, and to mitigate any potential adverse impacts of the Dispensary on the public health, safety, and welfare.

(1) A Dispensary shall provide the City, the Chief of Police, and all neighbors located within fifty (50) feet of the premises with the name, phone number, facsimile number and email address of an on-site community relations staff person that can be contacted related to Dispensary issues, twenty-four hours a day, seven days a week.

(2) Medical marijuana shall only be distributed by a Dispensary at the property identified and approved as the location for the Dispensary on the Dispensary's conditional use permit.

(3) A Dispensary shall only provide, distribute, dispense, or give medical marijuana to qualified patients or primary caregiver members. It is within the City's discretion to limit the number of members allowed per Dispensary.

(4) Only qualified patients, caregivers, or authorized invitees shall be allowed inside of a Dispensary. The Dispensary shall comply with all occupancy rules imposed by State law or the Fire Marshal. While inside of the dispensary authorized invitees shall wear a badge clearly indicating that they are a guest, and not a member of the Dispensary. The Dispensary shall not dispense cannabis to an authorized invitee. The Dispensary shall keep a record of the name and identification number of all authorized invitees who have visited the dispensary, a log of which shall be shared with the City every three months and/or made immediately available to the City Manager or his/her designee upon request.

(5) Retail sales of medical marijuana that violate California law or this ordinance are expressly prohibited.

(6) A Dispensary may only dispense, store, or transport marijuana in aggregate amounts tied to its membership numbers. A Dispensary may possess no more than eight (8) ounces of dried marijuana per qualified patient or caregiver, and maintain no more than six (6) mature and twelve