

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 2
Mtg. Date January 17, 2017
Dept. City Attorney

Item Title: **Ordinance Amending Lemon Grove Municipal Code Chapter 8.64 (Prohibition of Recreational Marijuana Businesses) and Amendment of Lemon Grove Municipal Code Section 17.12.070 (Uncertainty of Use Classifications)**

Staff Contact: James P. Lough, City Attorney

Recommendation:

Adopt Ordinance No. 443 (**Attachment B**) amending Chapter 8.64 of the Lemon Grove Municipal Code ("LGMC") which adopts and reaffirms prohibitions against recreational marijuana dispensaries, deliveries and cultivation in all zones in the City of Lemon Grove and amends LGMC Section 17.12.070 to eliminate the ban on medical marijuana sales. |

Item Summary:

This Ordinance amends Chapter 8.64 to prohibit of recreational marijuana businesses. The Ordinance also amends LGMC Section 17.12.070 to eliminate references to prohibitions against medicinal marijuana businesses. This Ordinance reaffirms the ban on recreational marijuana sales by any means and cultivation under our current zoning rules |

Fiscal Impact:

There is no direct fiscal impact.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Ordinance No. 443
- C. Redline Strike-out version of LGMC Chapter 8.64

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 2

Mtg. Date January 17, 2017

Item Title: Introduction of Ordinance No. 443 an Ordinance Amending Lemon Grove Municipal Code Chapter 8.64 (Prohibition of Recreational Marijuana Businesses) and Amendment to Section 17.12.070 (Uncertainty of Use Classifications)

Staff Contact: James P. Lough, City Attorney

Background

This Ordinance makes changes to the Lemon Grove Municipal Code ("LGMC") to confirm a ban on recreational marijuana businesses in Lemon Grove and to make other code changes that begin the steps to allow medicinal marijuana businesses in Lemon Grove pursuant to Measure V. The current language in the LGMC bans recreational and medicinal marijuana business operations. Adoption of this Ordinance will clarify that the recreational marijuana ban is still in place and that the City is taking the first of several steps to implement Measure V and its legalization of medicinal marijuana land uses.

In November 2016, the voters of California approved Proposition 64, which allowed the cultivation, processing and sale of recreational marijuana in California. The Initiative sets an implementation date for commercial operations of January 1, 2018. Proposition 64 allowed cities to ban all or part of the uses allowed under its provisions. Business & Professions Code section 26200(a), added by Proposition 64, states:

(a) Nothing in this division shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction. (*emphasis added.*)

As explained below, the City has had a ban in place for commercial marijuana businesses. First, the ban was based on nature of the City's Zoning Code. As with most zoning codes, only "permitted uses" are allowed within the City. If a use is not specifically permitted, it is not allowed. Medical marijuana uses have never been allowed in Lemon Grove. In November 2012, the Citizens of Lemon Grove voted on two ballot measures, Measures "P" and "Q", to allow medical marijuana operations in Lemon Grove. The voters rejected both and reaffirmed the ban on medicinal marijuana businesses.

Due to numerous requests to locate marijuana businesses in town, the City Council clarified that the collective sale of medical marijuana was not a permitted use in Lemon Grove. On December 2, 2014, the City added Ordinance No. 425 which added subsection C to Lemon Grove Municipal Code (LGMC) Section 17.12.070. It declares that, based on previous interpretations, marijuana dispensaries or collectives are not allowed in any zone in the City of Lemon Grove. LGMC Section 17.12.060 (Zoning-Compliance with Regulations) expressly provides that uses, which are not

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specifically permitted, are prohibited. As medical marijuana dispensaries were not permitted by right or with a conditional use permit, they were prohibited. Further, as marijuana cultivation was not specifically permitted, it was also prohibited. However, under the 1996 Compassionate Use Act, private growing of medicinal marijuana was allowed in a residence only by a “qualified patient” or the patient’s “primary caregiver”.

On the November 2016 ballot, the voters of Lemon Grove adopted Measure “V”. This voter-sponsored initiative repeals the ban on medical marijuana businesses and allows them under the Conditional Use Permit process. City Staff is working on implementing language that must be put in place within three months of the certification of the election results at the December 20, 2016 City Council meeting. No applications will be accepted until this process is complete as required under the provisions of Measure V. Measure V does not address or limit the City Council’s authority to ban or limit recreational marijuana businesses in Lemon Grove.

State law had banned recreational marijuana until the adoption of Proposition 64. The current language of LGMC Chapter 8.64 bans recreational marijuana, to the extent that state law did not preempt the matter. However, with the adoption of Proposition 64, state law regulates, but no longer bans, commercial marijuana businesses. Therefore, it is recommended that the City Council clarify its intentions regarding recreational marijuana businesses.

Analysis:

Ordinance No. 443 serves two main purposes. First, it reaffirms the City Council policy to prohibit recreational marijuana businesses from locating in Lemon Grove. As stated above, Proposition 64 allows cities to regulate and/or outright ban recreational marijuana businesses from locating in Lemon Grove.

Prior to the adoption of Proposition 64, the City Council had approved language in LGMC Chapter 8.64 that banned marijuana, to the extent that the City could regulate a matter not preempted by the State of California. Now that the state voters have legalized commercial operations for recreational marijuana, Lemon Grove can choose to continue its ban of recreational marijuana. While the Lemon Grove voters approved medical marijuana business establishments, subject to a City Council approved Conditional Use Permit, this approval did not address or limit the authority of the City Council to ban or regulate recreational marijuana businesses.

The second purpose of Ordinance No. 443 is to repeal the portion of the Zoning Code interpretation section, LGMC Section 17.12.070(c), which indicates medical marijuana is not an allowed use. With the passage of Measure V, the voters have lifted the City Council-imposed ban on medical marijuana business operations. LGMC Section 17.12.070(c) is recommended for repeal because it is inconsistent with Measure V. Repealing this subsection does not automatically allow applications for medicinal marijuana businesses. Measure V independently establishes a timetable for implementation of the new medicinal marijuana regulations. No medical marijuana businesses are allowed in Lemon Grove until the City’s regulatory process is put in place. No business can begin operating without a valid Conditional Use Permit issued by the City Council under the provisions of Measure V.

Environmental Impact:

This Ordinance is categorically exempted from environmental review under CEQA Guideline 15321. It is a class 21 exemption in that it implements regulations of code enforcement measures that are declaratory of existing law in Lemon Grove. As a declarative measure of existing prohibitions, the action has no potential to cause either a direct change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore does not require environmental review.

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This Ordinance is also exempt as an implementation of ballot initiatives not subject to CEQA. This Ordinance either implements existing law or does not allow any new uses that would constitute a physical change to the environment.

Costs

There are no fiscal impacts.

Conclusion:

Staff recommends that the City Council introduce Ordinance No. 443 by title and set the matter for adoption at the next regular city Council meeting. Further, that the City Council authorize publication of a summary of the Ordinance in a newspaper of general circulation.

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA, AMENDING LEMON GROVE MUNICIPAL CODE CHAPTER 8.64 (PROHIBITION OF RECREATIONAL MARIJUANA BUSINESSES) AND AMENDMENT OF LEMON GROVE MUNICIPAL CODE SECTION 17.12.070 (UNCERTAINTY OF USE CLASSIFICATIONS)

WHEREAS, the voters of the State of California adopted Proposition 64 on the November 2016 Ballot that legalizes recreational marijuana businesses throughout the state; and

WHEREAS, Proposition 64, under Business & Professions Code Section 26200(a), allow cities to determine whether they will allow commercial recreational marijuana businesses in their communities; and

WHEREAS, the City Council of the City of Lemon Grove has determined that allowing commercial recreational businesses to locate in Lemon Grove would not be in the best interests of the health, safety and general welfare of this community; and

WHEREAS, this Ordinance shall continue the ban on commercial recreational marijuana businesses in this community after the adoption of Proposition 64 and that this Ordinance is declarative of existing law; and

WHEREAS, on December 2, 2014, the City added Ordinance No. 425 that added subsection C to LGMC Section 17.12.070 which declares that, based on previous interpretations, marijuana dispensaries or collectives are not allowed in any zone in the City of Lemon Grove; and

WHEREAS, LGMC Section 17.12.060 (Zoning-Compliance with Regulations) expressly provides that uses which are not specifically permitted are prohibited. As medical marijuana dispensaries, collectives are not permitted by right or with a conditional use permit, they are prohibited. Further, as marijuana cultivation is not specifically permitted, it is prohibited; and

WHEREAS, the voters of Lemon Grove approved Measure V, which allows, subject to a Conditional Use Permit, businesses that provide medical marijuana to locate within the City of Lemon Grove; and

WHEREAS, Lemon Grove Municipal Section 17.12.070(c) and Chapter 8.64 is inconsistent with the language contained in Measure V that allows medical marijuana businesses to locate in Lemon Grove, subject to a valid Conditional Use Permit.; and

WHEREAS, the City Council finds in its independent judgement that the proposed amendments to the Municipal Code are exempt from environmental review under section 15061(b)(3) of the California Environmental Quality Act Guidelines because they entail the

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adoption of regulations intended to maintain and improve the public health, safety and welfare and will not have a significant effect on the environment; and

WHEREAS, the City Council hereby amends Lemon Grove Municipal Section 17.12.070(c) and Chapter 8.64 so that the Lemon Grove Municipal Code is consistent with the provisions of Measure V.

NOW THEREFORE, the City Council of the City of Lemon Grove does ordain as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. This Ordinance amends Chapter 8.64 (PROHIBITION OF RECREATIONAL MARIJUANA BUSINESSES) to the Lemon Grove Municipal Code to read as follows:

Chapter 8.64 PROHIBITION OF RECREATIONAL MARIJUANA BUSINESSES

8.64.010 Definitions.

The following definitions shall be used in this Chapter as follows:

A. “Recreational marijuana business” or “business” means any facility or location, whether fixed or mobile, where Recreational marijuana is made available, grown, processed or sold for any non-medicinal purpose.

B. “Recreational marijuana cultivation” or “cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof, and any and all associated business and/or operational activities, either as a for profit or non-profit operation.

C. “Marijuana delivery” or “delivery” means the commercial delivery, transfer or transport, or arranging for the delivery, transfer or transport, or the use of any technology platform to arrange for or facilities the commercial delivery, transfer or transport of marijuana, marijuana edibles, and/or any marijuana products to or from any location within the jurisdictional limits of the city of Lemon Grove, and any and all associated business and/or operational activities, either as a for profit or non-profit operation. (Ord. No. 443 § 2, 2017; Ord. 437 § 2, 2016.)

8.64.020 Recreational marijuana dispensaries as a prohibited use and/or activity.

A Recreational marijuana business as defined in Section 8.64.010 is prohibited in all zones within the city’s jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such use. This ban includes the cultivation, manufacture, transportation, storage, distribution, processing, sale of recreational marijuana, and associated activities. This Chapter shall not regulate businesses with a valid Conditional Use Permit issued pursuant to Chapter 17.53 of the Lemon Grove Municipal Code. (Ord. No. 443 § 2, 2017; Ord. 437 § 2, 2016.)

8.64.030 Violations.

The provisions of this chapter shall be enforced by means of administrative, civil, and/or criminal remedies. Such remedies are cumulative and not exclusive. (Ord. No. 443 § 2, 2017; Ord. 437 § 2, 2016.)

8.64.040 Cultivation of marijuana as a prohibited use and/or activity.

Except as specifically allowed under a valid permit issued pursuant to Chapter 17.32 of the Lemon Grove Municipal Code, marijuana cultivation by any person or entity, including clinics, collectives, cooperatives and dispensaries, is prohibited in all zones within the city's jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity. Any cultivation that takes place in violation of any provision of this chapter is unlawful, and is hereby declared a public nuisance. This prohibition includes the cultivation, manufacture, transportation, storage, distribution, sale of Recreational marijuana, and associated activities. Nothing in this chapter is intended to, nor shall it be construed to, make legal any cultivation activity that is otherwise prohibited under California law. Nothing in this chapter is intended to, nor shall it be construed to, preclude any landlord from limiting or prohibiting marijuana cultivation by their tenants. (Ord. No. 443 § 2, 2017; Ord. 437 § 2, 2016.)

8.64.050 Delivery of marijuana as a prohibited use and/or activity.

Recreational marijuana delivery by any person or entity, including clinics, collectives, cooperatives and dispensaries, is prohibited in the city. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity. This prohibition includes the cultivation, manufacture, transportation, storage, distribution, sale of Recreational marijuana and associated activities. Any delivery that takes place in violation of any provision of this chapter is unlawful, and is hereby declared a public nuisance. Nothing in this chapter is intended to, nor shall it be construed to, make legal any delivery activity that is otherwise prohibited under California law. Nothing herein prevents the use of public streets within the City of Lemon Grove by lawful businesses pursuant to state law. (Ord. No. 443 § 2, 2017; Ord. 437 § 2, 2016.)

Section 3. Lemon Grove Municipal Code Section 17.12.070 is amended to read as follows:

17.12.070 Uncertainty of use classifications.

A. It is recognized that in the development of a comprehensive zoning ordinance, not all uses of land can be listed, nor can all future uses of lands be anticipated. The listings of uses permitted or permitted subject to a conditional use permit in each zone, or subject to a conditional use permit, are illustrative and meant to indicate the types and scales of development intended for each district. A use may have been omitted from the list of those specified as permissible in each of the various districts herein designated, or ambiguity may arise concerning the appropriate classification of a particular use within the meaning and intent of this chapter. Where such uncertainty exists, the development services director shall determine the appropriate classification for any such use.

B. If the development services director believes that the determination of the appropriateness of a particular use in a zone should be made by the city council, all pertinent facts shall be transmitted to the city council for consideration at its next regular meeting. Any

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decision of the development services director may be appealed pursuant to Section 17.28.020 of this title. (Ord. No. 443 § 2, 2017; Ord. 434 § 2, 2015; Ord. 426 § 2, 2014; Ord. 386 § 3, 2009)

Section 4. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 5. This Ordinance, in its ban on recreational marijuana businesses, is declarative of existing law.

Section 6. This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following its adoption, the City Clerk shall publish this Ordinance, or the title thereof, as a summary as required by state law.

INTRODUCED by the City Council on January 17, 2017. **PASSED AND ADOPTED** by the City Council of the City of Lemon Grove, State of California, on February 7, 2017 by the following vote:

AYES:

NOES:

ABSENT:

Racquel Vasquez, Mayor

Attest: _____

Susan Garcia, City Clerk

Approved as to form:

James P. Lough, City Attorney