



PLANNING DEPARTMENT

ACTION DATE: March 17, 2016

TO: Planning Commission

APPLICANT: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301

CASE NO.: ZOA-01212-2016

LOCATION: Citywide

REQUEST: Request for the Planning Commission to recommend the City Council adopt an ordinance to amend Municipal Code Section 9660 to define and prohibit the delivery of marijuana or medical marijuana products into or out of the City, and making a finding of exemption under the California Environmental Quality Act.

ENVIRONMENTAL DETERMINATION: Exempt from the California Environmental Quality Act (CEQA) per Section 15061(b)(3) of the CEQA Guidelines.

RECOMMENDATION: Staff recommends the Planning Commission adopt the draft Resolution, recommending that the City Council approve Zoning Ordinance Amendment Case No. ZOA-01212-2016.

I. BACKGROUND AND ANALYSIS

In 2008, with Planning Commission's recommendation, the City Council adopted an ordinance to prohibit the operation or establishment of medical marijuana dispensaries within the City. This action was taken to serve the public health, safety and welfare of City residents and businesses. The Governor recently signed in law the Medical Marijuana Regulation and Safety Act ("the Act"). The Act was adopted via three related bills: Assembly Bills 266 and 243, and Senate Bill AB 643. The Act is a comprehensive statewide regulatory scheme for the regulation of medical marijuana. The Act establishes licensing requirements for the cultivation, distribution, and transportation of medical

marijuana, safety and testing standards for medical marijuana and medical marijuana products, and regulates physicians who recommend or prescribe medical marijuana to patients. Significantly, the Act allows cities to maintain control over medical marijuana.

Two components of the Act require attention from cities throughout the State: (1) cultivation of medical marijuana, and (2) delivery of medical marijuana. As referenced above, Section 9660 of the Agoura Hills Municipal Code currently prohibits marijuana cultivation and medical marijuana dispensaries anywhere in the City. A medical marijuana dispensary is defined in the Municipal Code to include "any location, structure, facility, vehicle, store, residence or similar facility used, in full or in part, as a place at or in which marijuana is sold, traded exchanged, bartered for in any way, made available, located, stored, placed or cultivated, including any of the foregoing if used in connection with the delivery of marijuana." Therefore, because the City already prohibits marijuana cultivation, the City Council does not need to take further action on the cultivation issue. Cities that did not have land use regulations prohibiting or regulating cultivation of marijuana in effect by March 1, 2016, were at risk of losing their licensing authority to the State, until the Governor signed AB 21 into law which removed the March 1 deadline.

A city that wishes to ban deliveries of medical marijuana or mobile marijuana dispensaries will need to adopt an ordinance that expressly identifies and prohibits this activity. The Act, specifically Business & Professions Code Section 19340, provides that deliveries can only be made by a dispensary and in a city that does not explicitly prohibit it by local ordinance. Section 9660 of the Agoura Hills Municipal Code generally prohibits the delivery of medical marijuana. It does not, however, specify that all deliveries, including those that originate out of the City and into the City are prohibited. If the Planning Commission wishes to recommend the City Council ban the delivery of medical marijuana and medical marijuana products both in and out of the City, the City Council will need to adopt an ordinance that explicitly prohibits persons or entities from doing so.

The Act does not specify a timeline for when a city ordinance prohibiting delivery of medical marijuana will need to be in effect. However, in keeping with the intent of the City's current prohibition of medical marijuana dispensaries and cultivation while protecting the public health, safety and welfare, and with the support of the City Council Land Use/Economic Development Subcommittee, staff and the City Attorney have prepared the attached Draft Ordinance for the Planning Commission's review. Proposed new text for Municipal Code Section 9660 is underlined within the Draft Ordinance, and proposed deleted text is noted with a strike-thru. The Draft Ordinance prohibits the delivery of any marijuana or medical products into or out of the City (reference Section "D" of the Draft Ordinance). This prohibition would not preclude the delivery of medical

marijuana *through* the City limits (i.e. from one outside jurisdiction to another) as State law generally preempts cities' authority to adopt such prohibitions.

The Draft Ordinance also includes new definitions for "Marijuana" and "Marijuana Product" to have the same meaning as "cannabis" and "cannabis product" defined by the State Business and Professions Code (reference Sections "B(1)" and "B(2)" of the Draft Ordinance). A definition for "delivery" or "deliver" is also included in the Draft Ordinance (reference Section "B4").

If the City Council chooses to allow for medical marijuana dispensaries, the cultivation of medical marijuana, and/or the delivery of medical marijuana, the Act includes State Agencies charged with regulating the licensing for transportation and storage, cultivation, manufacturing and testing of medical marijuana. However, the Act allows for cities to maintain local control over medical marijuana and does not require a city to allow medical marijuana dispensaries within its borders. The City Council will be able to retain and enforce its local regulations or ban. The Act expressly protects local licensing practices, zoning ordinances, and local actions taken under the City's constitutional police power. Courts have upheld local regulation of medical marijuana, including the authority to prohibit cultivation, under a city's police power relating to land use.

The Planning Commission's recommendation on the Draft Ordinance will be forwarded to the City Council for final action. Staff would note that the City Council would retain the ability to amend in the future any provision of the City's Medical Marijuana Dispensaries Prohibition Ordinance as applicable circumstances arise.

Pursuant to the California Environmental Quality Act ("CEQA"), as amended, the CEQA Guidelines, and the City's local CEQA Guidelines, staff determined that the proposed has no possibility of causing a significant impact on the environment, nor would its effects from adoption. Staff concludes that the proposed Ordinance is exempt from the application of CEQA pursuant to CEQA Guidelines Section 15061(b)(3), in that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. This finding is premised on the fact that the project consists of a proposed minor Ordinance amendment to define and clarify the prohibition of delivery of an existing prohibited use, and does not include proposed construction or proposed alteration to the physical environment. The adoption of this Ordinance also imposes greater limitations on uses allowed in the City and therefore will eliminate adverse environmental impacts.

II. RECOMMENDATION

Staff recommends the Planning Commission adopt the attached draft Resolution, recommending that the City Council approve Zoning Ordinance Amendment Case No. ZOA-01212-2016.

III. ATTACHMENTS

- Draft Resolution
- Draft Ordinance
- Existing Municipal Code Section 9660 (Medical Marijuana Dispensaries Prohibited)

Case Planner: Doug Hooper, Planning Director

DRAFT RESOLUTION NO. 16- _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF AGOURA HILLS, CALIFORNIA, RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE, AMENDING SECTION 9660 OF DIVISION 10 (MEDICAL MARIJUANA DISPENSARIES PROHIBITED), OF PART 2 (SPECIAL REGULATIONS), OF CHAPTER 6 (REGULATORY PROVISIONS) OF ARTICLE IX (ZONING), OF THE AGOURA HILLS MUNICIPAL CODE, TO DEFINE AND PROHIBIT THE DELIVERY OF MARIJUANA OR MEDICAL MARIJUANA PRODUCTS INTO AND OUT OF THE CITY, AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CASE NO. ZOA-01212-2016)

THE PLANNING COMMISSION OF THE CITY OF AGOURA HILLS DOES HEREBY RESOLVE, FIND, DETERMINE AND ORDER AS FOLLOWS:

WHEREAS, the City of Agoura Hills initiated and prepared an ordinance to amend Section 9660 of the Municipal Code, to define and prohibit the delivery of marijuana or medical marijuana products into and out of the City (Case No. ZOA-01212-2016). A public hearing was duly held on March 17, 2016, at 6:30 p.m. in the Council Chambers of City Hall, 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, place and purpose of the aforesaid public hearing was duly given and published as required by state law; and

WHEREAS, evidence, both written and oral, including the staff report and supporting documentation, was presented to and considered by the Planning Commission at the aforesaid public hearing; and

WHEREAS, after the close of the public hearing, the Planning Commission considered all public comments received both before and during the public hearing, the presentation by City staff, the staff reports, the recommendations and all other pertinent documents and associated actions regarding the proposed ordinance amendments; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), as amended, the CEQA Guidelines promulgated thereunder, and the City's local CEQA Guidelines, the Planning Commission determines that the ordinance has no likelihood of causing a significant effect on the environment, nor would its effects from adoption. The Planning Commission concludes that the proposed ordinance is exempt from the application of CEQA pursuant to CEQA Guidelines Section 15061(b)(3), in that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. This finding is premised on the fact that the project consists of a proposed minor Ordinance amendment to define and prohibit the delivery of an existing prohibited use,

and does not include proposed construction or proposed alteration to the physical environment. The adoption of this Ordinance also imposes greater limitations on uses allowed in the City and therefore will eliminate adverse environmental impacts; and

WHEREAS, on September 10, 2008, the Agoura Hills City Council adopted Ordinance 08-355, prohibiting medical marijuana, marijuana cultivation and deliveries in City limits; and

WHEREAS, the Governor of California signed into law the Medical Marijuana Regulation and Safety Act (AB 266, AB 243 and SB 643) (the "Act"), establishing licensing requirements for the cultivation, distribution, and transportation of medical marijuana, safety and testing standards for medical marijuana and medical marijuana products, and regulates the physicians who recommend or prescribe medical marijuana to patients. The Act allows cities to maintain control over medical marijuana. The Act, specifically Business & Professions Code Section 19340, authorizes cities to prohibit deliveries of medical marijuana; and

WHEREAS, the proposed Ordinance would retain the City's local control by amending Municipal Code Section 9660 to define and prohibit the delivery of marijuana or medical marijuana products into or out of the City, in keeping with the intent of City Ordinance 08-355; and

WHEREAS, the proposed Ordinance is consistent with City General Plan 2035 Goal S-4: "Protection from Crime. Persons and property in Agoura Hills protected from criminal activities" by retaining local control of the delivery of medical marijuana and medical marijuana products within City limits and protecting the public health, safety and welfare; and

WHEREAS, the custodian of records for all materials which constitute the record of proceedings upon which the Planning Commission's decision was based is the City Clerk of the City of Agoura Hills. Those documents are available for public review in the Office of the City Clerk located at 30001 Ladyface Court, Agoura Hills, California, 91301.

NOW, THEREFORE, BE IT RESOLVED, based on the findings and conclusions set forth above, that the Planning Commission of the City of Agoura Hills recommends the City Council adopt the draft ordinance and make a finding of exemption under the California Environmental Quality Act.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2016, by the following
vote to wit:

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

John O'Meara, Chairperson

ATTEST:

Doug Hooper, Secretary

DRAFT ORDINANCE NO. 16-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING SECTION 9660 OF DIVISION 10 (MEDICAL MARIJUANA DISPENSARIES PROHIBITED), OF PART 2 (SPECIAL REGULATIONS) OF CHAPTER 6 (REGULATORY PROVISIONS), OF ARTICLE IX (ZONING), OF THE AGOURA HILLS MUNICIPAL CODE, TO DEFINE AND PROHIBIT THE DELIVERY OF MARIJUANA OR MEDICAL MARIJUANA PRODUCTS IN AND OUT OF THE CITY, AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CASE NO. ZOA-01212-2016)

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. Pursuant to the California Environmental Quality Act ("CEQA"), as amended, the CEQA Guidelines promulgated thereunder, and the City's local CEQA Guidelines, City staff for the City of Agoura Hills determined that the proposed Ordinance to amend Section 9660 of Article IX, Chapter 6, Part 2, Division 10 (Medical Marijuana Dispensaries Prohibited), of the Agoura Hills Municipal Code, has no possibility of causing a significant impact on the environment, nor would its effects from adoption. Staff concludes that the proposed Ordinance is exempt from the application of CEQA pursuant to CEQA Guidelines Section 15061(b)(3), in that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. This finding is premised on the fact that the project consists of a proposed minor Ordinance amendment to define and clarify the prohibition of delivery of an existing prohibited use, and does not include proposed construction or proposed alteration to the physical environment. The adoption of this Ordinance also imposes greater limitations on uses allowed in the City and therefore will eliminate adverse environmental impacts. The City Council concurs with City staff's determination and therefore directs staff to prepare and file a Notice of Exemption with the County Clerk, pursuant to CEQA Guidelines Section 15061, within five days of the date of this action.

Section 2. Section 9660 of Division 10 (Medical Marijuana Dispensaries Prohibited) of Part 2 (Special Regulations) of Chapter 6 (Regulatory Provisions) of Article IX (Zoning) of the Agoura Hills Municipal Code is hereby amended to read as follows:

A. *Purpose and findings.* The city council finds that federal and state law ~~prohibiting prohibits~~ the possession, sale and distribution of marijuana would preclude the lawful opening and operation of medical marijuana dispensaries sanctioned by the city, cultivation, use and dispensing of marijuana and, in order to serve the public

health, safety, and welfare of the residents and businesses within the city, the declared purpose of this chapter is to prohibit the operation or establishment of medical marijuana dispensaries, the cultivation of medical marijuana, and the delivery of medical marijuana within the city, as provided in this section.

B. Definitions. For purposes of this section, the following terms is are defined:

(1) *Marijuana* shall have the same meaning as “cannabis” as defined by Business and Professions Code section 19330.5(f) and shall mean all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” also means the separated resin, whether crude or purified, obtained from marijuana. “Marijuana” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. “Marijuana” 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 seed of the plant which is incapable of germination. For the purpose of this section, “marijuana” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(2) *Marijuana product* shall have the same meaning as “cannabis product” or “medical cannabis product” as set forth in Business and Professions Code Section 19300.5(ag), as the same may be amended from time to time, and shall include marijuana, as well as concentrates and extractions, intended to be sold for use by medical marijuana patients pursuant to the Compassionate Use Act of 1996 (Proposition 215).

(3) *Medical marijuana dispensary* means any location, structure, facility, vehicle, store, co-op, residence, or similar facility used, in full or part, as a place at or in which marijuana is sold, traded, exchanged, bartered for in any way, made available, located stored, placed or cultivated, including any of the foregoing if used in connection with the delivery of marijuana.

(4) *Delivery or Deliver* shall have the same meaning as “delivery” as set forth in Business and Professions Code section 1300.5(m), as the same may be amended from time to time, and shall include the commercial transfer of medical marijuana or medical marijuana products from a dispensary, up to an amount determined by the State Bureau of Medical Marijuana Regulation to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. “Delivery” or “Deliver” includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under the State Medical Marijuana Regulation and

Safety Act that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical marijuana or medical marijuana products.

C. *Medical marijuana dispensaries prohibited.* A medical marijuana dispensary is not a permitted use anywhere in the city. It shall be unlawful for any person or entity to own, manage, establish, conduct, or operate, or permit to be established, conducted, operated, owned or managed as a landlord or property owner, any medical marijuana dispensary, or to participate as a landlord, owner, employee, contractor, agent or volunteer, or in any other manner or capacity, in any medical marijuana dispensary, in the city. The issuance of a business license or other city permit to any business prohibited by federal law is prohibited and void.

D. *Delivery prohibited.* It shall be unlawful for any person or entity to deliver any marijuana or medical marijuana products into or out of the City.

E. *Use or activity prohibited by state or federal law.* Nothing contained in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

F. *Penalties.* Violations of this Section are subject to the general penalty provisions set forth in Section 1200. No provision of Section 1200 shall authorize a criminal prosecution or arrest prohibited by Health and Safety Code section 11362.71, *et seq.*"

Section 3. If any provision of this ordinance, or the application thereof, to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provisions or applications, and to this end, the provisions of this ordinance are declared to be severable. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof even if one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof is declared invalid or unconstitutional.

Section 4. Certification and Posting. The City Clerk of the City of Agoura Hills shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law. This Ordinance shall go into effect on the 31st day after its adoption.

PASSED, APPROVED, and ADOPTED this _____ day of _____, 2016,
by the following vote to wit:

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

Harry Schwarz, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM

Candice K. Lee, City Attorney

- b. Information shall be provided describing the design, installation and maintenance of water efficient landscapes.

D. Provisions for existing landscapes; water waste prevention. All public and private properties shall prevent water waste resulting from inefficient landscape irrigation by minimizing runoff; low head drainage, overspray or other similar conditions where irrigation water flows or drifts onto adjacent property, nonirrigated areas, walks, roadways or structures.

(Ord. No. 220, § 1, 4-14-93)

Editor's note—It should be noted that Ord. No. 220, § 2, adopted Apr. 14, 1993, provided as follows:

Prior to adopting this ordinance, the city has considered the model water efficient landscape ordinance prepared by the California Department of Water Resources (California Code of Regulations, Title 23, Division 2, Chapter 2.7). This ordinance supersedes the state model ordinance, which took effect in the city on January 1, 1993.

DIVISION 9. EXTERIOR AESTHETIC IMPROVEMENTS

9659. Exterior aesthetic improvements requirement.

No certificate of occupancy shall be issued for any building with a floor area greater than or equal to thirty thousand (30,000) square feet, for the alteration or repair of fifty (50) percent or more of the floor area of such building, or for any building that is part of the development of a subdivision of forty (40) or more lots unless exterior aesthetic improvements have been installed and conform to an arts plan that has been approved by the director of planning and community development.

If the exterior aesthetic improvements required by this section are not maintained in good condition, or are altered without the permission of the director of planning and community development so that the improvements no longer conform to the arts plan approved by the director, the certificate of occupancy for the building served by the improvement, or the certificate of occupancy for any building in the subdivision served by the improvement may be revoked and the owner of

the property on which the improvement is located shall be deemed to have committed a misdemeanor.

(Ord. No. 157, § 1, 8-8-89)

9659.1. Exceptions.

The following development activities shall be exempt from the requirements of section 9659 and section 9659.2:

- (a) Construction, repair, or alteration of buildings to carry out publicly assisted rehabilitation of private property.
- (b) Construction, repair, or alteration of low or moderate income multi-unit housing projects.
- (c) Construction, repair, or alteration of improvements that are not buildings.

(Ord. No. 157, § 1, 8-8-89)

9659.2. Arts plan required.

No building permit shall be issued for any building with a floor area greater than or equal to thirty thousand (30,000) square feet, for alteration or repair of fifty (50) percent or more of the floor area of such a building, or for any building that is part of the development of a subdivision of forty (40) lots or more, unless the director of planning and community development has approved an arts plan for the building or subdivision which meets the requirements set forth by resolution of the city council.

(Ord. No. 157, § 1, 8-8-89)

9659.3. Procedures, guidelines, and requirements.

The city council shall establish, by resolution, the procedure for city review of an arts plan. The city council shall also establish, by resolution, the requirements and guidelines for exterior aesthetic improvements required by section 9659.

(Ord. No. 157, § 1, 8-8-89)

DIVISION 10. MEDICAL MARIJUANA DISPENSARIES PROHIBITED

9660. Medical marijuana dispensaries prohibited.

A. Purpose and findings. The city council finds that federal and state laws prohibiting the possession, sale and distribution of marijuana would

preclude the lawful opening and operation of medical marijuana dispensaries sanctioned by the city, and in order to serve public health, safety, and welfare of the residents and businesses within the city, the declared purpose of this chapter is to prohibit the operation or establishment of medical marijuana dispensaries within the city, as provided in this section.

B. Definitions. For purposes of this section, the following term is defined:

- (1) *Medical marijuana dispensary* means any location, structure, facility, vehicle, store, co-op, residence, or similar facility used, in full or part, as a place at or in which marijuana is sold, traded, exchanged, bartered for in any way, made available, located, stored, placed, or cultivated, including any of the foregoing if used in connection with the delivery of marijuana.

C. *Medical marijuana dispensaries prohibited.* A medical marijuana dispensary is not a permitted use anywhere in the city. It shall be unlawful for any person or entity to own, manage, establish, conduct, or operate, or permit to be established, conducted, operated, owned or managed as a landlord or property owner, any medical marijuana dispensary, or to participate as a landlord, owner, employee, contractor, agent or volunteer, or in any other manner or capacity, in any medical marijuana dispensary, in the city. The issuance of business license or other city permit to any business prohibited by federal law is prohibited and void.

D. *Use or activity prohibited by state or federal Law.* Nothing contained in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.
(Ord. of 08-355, § 1, 9-10-2008)

DIVISION 11. WIRELESS TELECOMMUNICATIONS FACILITIES

9661. Purpose.

The purpose and intent of this division is to provide a uniform and comprehensive set of reg-

ulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the city. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This division provides standards necessary (1) for the preservation of land uses and the public right-of-way in the city, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the general plan, (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations, and (4) to encourage new and more efficient technology in the provision of wireless telecommunications facilities.
(Ord. No. 11-387, § 7, 8-24-2011)

9661.1. Definitions.

[The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Accessory equipment means any equipment associated with the installation of a wireless telecommunications facility, including, but not limited to cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.

Antenna means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals.

Building-mounted means mounted to the side of a building, to the façade of a building, or similar structure, but not to include the roof of any structure.

Cellular means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.