



STAFF REPORT – CITY COUNCIL MEETING

February 17, 2016

TO: Honorable Mayor and City Council Members

FROM: Larry P. Oetker, Director of Community Development

PREPARER: Larry P. Oetker, Director of Community Development

DATE: February 10, 2016

TITLE: **Public Hearing to Consider Adopting the City’s Medical Marijuana Regulatory Program Comprised of Ordinance No.1468 (Land Use Zoning), Ordinance No. 1472 (Use and Regulation of Medical Marijuana) and Resolution No.156-40 (Local Permit Regulations).**

RECOMMENDATION:

It is recommended that the City Council:

1. Introduce Ordinance No. 1468, An Ordinance of the City Council of the City of Arcata Amending the Land Use Code of the Arcata Municipal Code to Create a Medical Marijuana Innovation Zone Combining Zone, Title IX (Planning And Zoning); Chapter 1 (Planning And Zoning Standards); Section 9000 (Land Use Code [LUC]); Section 9.12.020 (Zoning Map And Zoning Districts); Section 9.26.030 (Commercial, Industrial, and Public Facility Zoning Districts); Section 9.28.130 (New) (Medical Marijuana Innovation Zone [:MMIZ] Combining Zone); waive reading of the text and consent to read by title only.
2. Introduce Ordinance No. 1472, An Ordinance of the City Council of the City of Arcata Amending the Arcata Municipal Code Pertaining to the Use and Regulation of Medical Marijuana, Title V (Sanitation and Health); Chapter 10 (Personal Medical Marijuana Use); waive reading of the text and consent to read by title only.
3. Review Resolution No. 156-40, A Resolution of the City Council of the City of Arcata Establishing Regulations Governing the Issuance, Compliance Monitoring, Renewal, and Enforcement of Commercial Cannabis Activity Permits in the City.
4. Review the CEQA Initial Study.
5. Continue the Public Hearing to the March 2, 2016, City Council meeting to adopt the ordinances, resolution and CEQA Negative Declaration, and approve the Inventory Tracking Software System contract.

INTRODUCTION:

On May 20, 2015, the City Council requested that the Planning Commission initiate an amendment to the Land Use Code (LUC) that would allow a specific geographic location where local medical marijuana entrepreneurs could cultivate, manufacture, test, and warehouse their products and for Staff to prepare the required documents to suspend the issuance of any new land use permits for medical marijuana cultivation and processing facilities. On June 17 and July 1, 2016, the Council adopted urgency ordinances imposing a temporary suspension of Section 9.42.105.F of the Land Use

Code—*Medical Marijuana Cultivation for Cooperative or Collective*—until January 1, 2017. After conducting public hearings on July 14, August 22 and September 8, 2016, the Planning Commission unanimously approved Resolution PC-15-02 recommending that the City Council amend the Land Use Code by establishing a Medical Marijuana Innovation Zone (MMIZ) on areas A and C (now referred to as Area 1).

DISCUSSION: The Staff and Planning Commission recommendation is to establish a two part regulatory scheme for Medical Marijuana. Part 1 is the Land Use Zoning requirements which will establish the area where Medical Marijuana businesses will be allowed and establishes Land Use and Development Standards that must be followed. Once the Council adopts Ordinance NO. 1468, Part 1 will be in place. Part 2 is the non-planning local permit. Part 2 includes such topics as fees, zoning requirements, building and fire standards, odor, energy, solid waste, security, license types and mandatory inventory tracking systems. The Part 2 regulations will replace the City's outdated Medical Marijuana Regulations that were enacted almost 20 years ago after the passage of Proposition 215. The Part 2 Permit will be implemented and processed similar to the City's Special Events Permit. Once the Council adopts both Ordinance NO. 1472 and Resolution NO. 156-40, Part 2 will be in place.

Staff's current recommendation differs from the previous recommendation as we are including all of the Industrial Limited and Industrial General zoned properties in the West End Road neighborhood in the MMIZ Combining Zone (Attachment A). The Combining Zone would have 2 sub areas. Area 1 includes the areas previously referred to as Areas A and C and Area 2 includes all the other areas. There are no changes to the Area 1 requirements from the previous recommendation. Area 2 essentially takes the current cap of 4 cultivation and processing facilities that are outlined in LUC Section 9.42.105.F and, rather than allowing them in Industrial or Agricultural Exclusive zones City wide, it assigns them to the Area 2.

State Medical Marijuana Regulation and Safety Act: The California legislature recently adopted comprehensive legislation titled the Medical Marijuana Regulation and Safety Act (MRSA). The MRSA establishes a statewide regulatory scheme, headed by a new Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. The MRSA requires both State and local licenses, inventory tracking, testing, labeling of products, as well as, specific penalties for non-compliance. The State's implementation of the MRSA license requirement is not anticipated to be fully implemented until 2018. The City's Part 2 regulations are based on the definitions, licensing and other requirements that are outlined in the MRSA, and is intended to be operational upon adoption of the City's regulatory program.

Inventory Tracking Software System: Based on Council direction, Staff released a Request for Proposals (RFP) for the Medical Marijuana Inventory Tracking Software System (ITSS) (Attachment E). Proposals for a cloud hosted plant to sale system are due on February 17th and Staff intends to request that the Council award the contract at their March 2nd meeting. Section 6(j) of the proposed City permit regulations (Resolution NO. 156-40, Attachment D) requires all permittees to purchase, implement and maintain updates to the inventory tracking software from the City's ITSS contractor. Section 2.4.3 of the RFP outlines the expected capabilities of the ITSS. The ITSS is necessary in order to 1) prepare our local business to be successful in California's new regulatory climate; 2) ensure that the businesses that the City permit are operating in compliance with State Law; and 3) document to the US Department of Justice that Arcata is taking seriously their August 29, 2013 Memorandum which states that: "The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will

address the threat those state laws could pose to public safety, public health, and other law enforcement interests.”

We do not need to reinvent the wheel. Effective marijuana inventory tracking systems are considered to be “industry standard”. These systems are currently widely available on the market and are currently monitoring medical marijuana businesses throughout the nation. Many of our local underground medical marijuana businesses have fallen behind in this standard business practice and must quickly come up to regulatory speed in order to remain competitive. Companies have expressed interest in providing proven marijuana inventory tracking systems at affordable costs to Arcata businesses.

ENVIRONMENTAL REVIEW (CEQA): Staff reviewed the whole of the public record and based on the comments received, Staff drafted and circulated a CEQA Initial Study for both Part 1 and Part 2. The CEQA document analyzed a project area that included all Industrial Limited and Industrial General Zoned properties in the West End Road neighborhood. Within the MMIZ, the CEQA document assumed that:

1. medical marijuana businesses will be required to apply for and receive both a land use zoning (Part 1) and non-planning local permit (Part 2) from the City;
2. medical marijuana businesses will receive a license from the State as authorized by the (MRSA);
3. there would be no “cap” on the number of medical marijuana businesses that could be permitted;
4. a Zoning Clearance would be required for all permits;
5. a Use Permit would be required for businesses that propose to cultivate Medical Marijuana in an area greater than 4000 sqft per lease/business or more than 25% of the total building floor area per parcel;
6. niche manufacturing businesses that produce medical marijuana related products such as edibles, oils, tincture sprays, lotions will be allowed;
7. medical marijuana cultivation, processing, warehousing, research, and testing, and new medical marijuana product development will also be allowed;
8. medical marijuana will be processed within the :MMIZ that was cultivated in off-site locations that are under the regulatory control of other jurisdictions. It is anticipated that these State and County regulations will help reduce the environmental impacts that currently exist from these unpermitted cultivation and processing operations.

It is important to note that the City’s proposed Part 1 Land Use Zone requirements are more restrictive than what the CEQA document analyzed. Specifically, number 3 above, where the CEQA document did not place a “cap” on the number of permits. Section 5 (9.28.130.B and C) of Ordinance 1468 establishes different permit requirements for Areas 1 and 2 and limits the total number of Conditional Use Permits in Areas 2 to 4.

BUDGET/FISCAL IMPACT: The work is being completed in house by City Staff and no outside consultants have been utilized. The City did not anticipate that the regulations would require a Negative Declaration and multiple noticing of public meetings. Staff is requesting that the Community Development Department’s direct expenditures of \$2,110.25 to California Fish and Wildlife, \$50 to the County Clerk, and \$1,065.74 for noticing and mailings be collected from the Non Planning Permit revenues.

The fee for a Zoning Clearance is currently \$248 and the proposed fee for the Part 2 Non Planning Permit is \$6,500 [\$2,500 application fee and \$4,000 Annual Operating fee] with the annual renewal fee set at \$300. These fees are designed to support the City's costs to operate the program.

ATTACHMENTS:

- A. Medical Marijuana Innovation Zone (MMIZ) Pilot Area(PDF)
- B. Draft Ordinance No. 1468, Land Use Zoning (PDF)
- C. Draft Ordinance No. 1472, Use and Regulation of Medical Marijuana (PDF)
- D. Draft Resolution No. 156-40, Commercial Cannabis Activity Permit Regulations (PDF)
- E. Request for Proposals, Medical Marijuana Inventory Tracking Software System (PDF)
- F. California Environmental Quality Act (CEQA) Initial Study (PDF)
- G. January 29, 2016, letter from Thomas M. Herman regarding Ordinance No. 1468 (PDF)