

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: MARTIN D. KOCZANOWICZ, CITY ATTORNEY  
JOHN PETERS, CHIEF OF POLICE

SUBJECT: INTRODUCTION AND FIRST READING OF AN ORDINANCE AMENDING  
GROVER BEACH MUNICIPAL CODE TO BAN COMMERCIAL CULTIVATION  
OF CANNABIS

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**BACKGROUND**

On October 9, 2015 Governor Brown signed into law new legislation which will institute statewide regulations for delivery, distribution, production and cultivation of marijuana. Cities are provided with the opportunity to adopt local regulations which need to be in effect by March 1, 2016, otherwise state law will control how cannabis is regulated in City limits.

At the last Council meeting, the City Council directed staff to initiate a code text amendment that would prohibit commercial cultivation of cannabis in City limits, but continue to allow personal use cultivation as permitted under Proposition 215, more specifically by a card holder or qualified caretaker. Council did not want to consider any additional code text amendments dealing with dispensaries or delivery of cannabis. City does have an existing ban on stationary dispensaries in all zoning districts in the City. The proposed Ordinance updates that ban to be consistent with current law.

**DISCUSSION**

Attached is the draft Ordinance which would prohibit commercial cultivation of cannabis in any zone in the City. The prohibition would be placed in the Public Health and Safety portion of the Municipal Code (same as the current dispensary prohibition) but it is intended as a land use regulation.

**ALTERNATIVES**

The Council has the following alternatives to consider:

1. Open the public hearing, consider public testimony, introduce and conduct the first reading of the Ordinance, by title only, and schedule second reading and adoption for the January 19<sup>th</sup> Council meeting.
2. Provide alternative direction to staff.

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**APPROVED FOR FORWARDING**

  
\_\_\_\_\_  
ROBERT PERRAULT  
CITY MANAGER

**Please Review for the Possibility of a Potential Conflict of Interest:**

- |  |                                  |
|--|----------------------------------|
| <input checked="" type="checkbox"/> None Identified by Staff | <input type="checkbox"/> Bright  |
| <input type="checkbox"/> Shoals                              | <input type="checkbox"/> Nicolls |
| <input type="checkbox"/> Lee                                 | <input type="checkbox"/> Shah    |

Meeting Date: January 4, 2016

Agenda Item No. 2

### **RECOMMENDED ACTION**

It is recommended that the Council open the public hearing, consider public testimony, introduce and conduct the first reading of the Ordinance, by title only, and set the second reading and adoption for the next regularly scheduled Council meeting of January 19, 2015.

### **FISCAL IMPACT**

There may be some fiscal impact related to potential enforcement of the regulations; however, it is not likely to be significant.

### **PUBLIC NOTIFICATION**

The Public Hearing Notice was published in *The Tribune* on Friday, December 25, 2015 and posted in the City's three bulletin boards on Wednesday, December 23, 2015. The agenda was posted in accordance with the Brown Act.

### **Attachments**

1. Draft Ordinance
2. Power Point presentation

## ORDINANCE NO. 16-\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF CITY OF GROVER BEACH, CALIFORNIA, AMENDING ARTICLE III, CHAPTER 1.2 OF THE GROVER BEACH MUNICIPAL CODE TO PROHIBIT THE COMMERCIAL CULTIVATION OF MARIJUANA IN EVERY ZONE IN THE CITY EXCEPTING THEREFROM CULTIVATION FOR MEDICAL USE BY A QUALIFIED PATIENT OR PRIMARY CAREGIVER AND AMENDING BAN ON DISPENSARIES**

**WHEREAS**, the Federal Controlled Substances Act, 21 U.S.C. Section 801, *et. seq.*, was adopted in 1970, and prohibits the manufacture, cultivation, distribution and possession of marijuana, also known as cannabis; and

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215, which was codified as "The Compassionate Use Act of 1996," at California Health and Safety Code, section 11362.5 ("CUA") which had the stated intent to ensure that seriously ill individuals have the right to obtain and use marijuana for medical purposes when recommended by a physician. The Proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes; and

**WHEREAS**, the ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere"; and

**WHEREAS**, in 2004, the Legislature enacted Senate Bill 420 (codified as California Health & Safety Code § 11362.7 *et seq.* and referred to as the "Medical Marijuana Program" or "MMP" 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 MMP to expressly recognize the authority of counties and cities to "adopt local ordinances that regulate the location, operation, or establishment of a medical; and

**WHEREAS**, in the *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4<sup>th</sup> 729 (2013), the California Supreme Court upheld the right of local public agencies to regulate medical marijuana operations through their land use powers; and

**WHEREAS**, on November 26, 2013, the Third District Court of Appeal issued its opinion in *Maral v. City of Live Oak* 221 Cal.App.4<sup>th</sup> 975, which held cities have the authority to ban marijuana cultivation within their boundaries; and

**WHEREAS**, on October 9, 2015, California Governor Brown approved the Medical Marijuana Regulation and Safety Act ("MMRSA"), which goes into effect on January 1, 2016, and establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana, also known as cannabis, through Assembly Bills 243 and 266 and Senate Bill 643; and

**WHEREAS**, MMRSA will become the governing regulation giving the State full control over the cultivation of marijuana in any city where local regulations were not adopted to regulate cultivation of medical cannabis and in effect on March 1, 2016; and

**WHEREAS**, the City intends to regulate and maintain local control over the dispensing and cultivation of medical cannabis in accordance with this ordinance and other provisions of Grover Beach Municipal Code and intend this Ordinance to install land use regulations necessary toward that intent; and

**WHEREAS**, mindful of the fact that marijuana possession and use is prohibited under federal law and partially decriminalized under state law, it is the Council's intention that nothing in this ordinance shall be construed, in any way, to expand the rights of anyone to use or possess marijuana under state law; engage in any public nuisance; violate federal law, or engage in any activity in relation to the cultivation, distribution, or consumption of marijuana that is otherwise illegal. It is further the intent of the City Council of City of Grover Beach to maintain local control over these matters to the fullest extent permitted by law.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CITY OF GROVER BEACH AS FOLLOWS:**

**Section 1:** Article III Chapter 1.2 shall be amended as follows:

**CHAPTER 1.2 - MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION**

Sec. 3150. Medical Marijuana Dispensaries. A medical marijuana dispensary as defined in Section 3152~~4~~ shall not be a permitted use in any Zone in the within the City, and no Use Permit shall be issued to permit a medical marijuana dispensary to operate within the City limits. (Ord. 1606-016)

Sec. 3151. Commercial Cultivation of Marijuana. Commercial Cultivation of Marijuana, as defined in Section 3152, shall not be a permitted use in any Zone in the City, and no Use Permit shall be issued to permit commercial cultivation of marijuana within City limits. (Ord. 16-01)

Sec. 3152. Definitions. As used herein the term "Medical Marijuana Dispensary" or "Dispensary" " shall have the same meaning as set forth in Business & Professions Code §19300.5(n) as the same may be amended from time to time. For purposes of this Chapter, "Dispensary" shall also include a cooperative.

~~means any facility or location where medical marijuana is made available to and/or distributed by or to two or more persons in the following categories: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "Medical Marijuana Dispensary" shall not include the following uses, as long as the location of such uses is otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a~~

~~residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 *et seq.* and the City of Grover Beach Municipal Code, including but not limited to the City's Zoning Code. (Ord. 06-06) As used herein the term "Commercial Cultivation of Marijuana" shall have the same meaning as set forth in Business & Professions Code §19300.5(l) as the same may be amended from time to time. The term excludes cultivation for personal use by a qualified patient or licensed caregiver so long as such cultivation is within the legal parameters of State law.~~

Sec. 31532. Public Nuisance/Civil Action. Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure §731, Grover Beach Municipal Code or any other pertinent Federal, State or local regulation or any remedy available at law to the City.

In addition to any other enforcement permitted by the Grover Beach Municipal Code, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Chapter. In any civil action brought pursuant to this Chapter, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party. Misdemeanor. A violation of Section 3150 is punishable as a misdemeanor. (Ord. 06-06)

**Section 2:** If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one of more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional. The City Council further declares that the intent of this Ordinance is to retain local control over matters regulated by this Ordinance and in compliance with Assembly Bills 243 and 266 and Senate Bill 643 and the timelines set forth therein.

**Section 3:** Nothing in this Ordinance shall be interpreted to mean that the City's permissive zoning scheme allows any other uses not specifically listed therein.

**Section 4:** This Ordinance does not constitute a "Project" as defined under the California Environmental Quality Act (CEQA), Public Resources Code §21065 and CEQA Guidelines section 15378 which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

**Section 5:** All ordinances and parts of ordinances in conflict herewith are hereby repealed.

**Section 6:** This Ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

The foregoing Ordinance was **INTRODUCED** at a regular meeting of the City Council held on January 4, 2016, and was **PASSED, APPROVED, and ADOPTED** at a regular meeting of the City Council held on \_\_\_\_\_ 2016, by the following vote, to-wit:

AYES: Council Members -  
NOES: Council Members -  
ABSENT: Council Members -  
ABSTAIN: Council Members -

\_\_\_\_\_  
JOHN P. SHAW, MAYOR

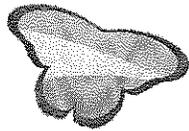
**DRAFT**

ATTEST:

\_\_\_\_\_  
DONNA L. McMAHON, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
MARTIN D. KOCZANOWICZ, CITY ATTORNEY



## City of Grover Beach

### AMENDING ARTICLE III, CHAPTER 1.2 GBMC PROHIBITION OF COMMERCIAL CULTIVATION OF MARIJUANA

Martin D. Koczanowicz, City Attorney  
January 4, 2016



### Amending Article III, GBMC

#### Prohibit Commercial Cultivation of Marijuana

- Various Federal and State Legislative actions regarding medical marijuana since 1970
- Most recent State law requiring actions by the cities



## **Amending Article III, GBMC**

### **Prohibit Commercial Cultivation of Marijuana**

- **2013 – California Supreme Court upheld rights of public agencies to regulate medical marijuana operations – *City of Riverside v. Inland Empire Patients Health and Wellness Center***
- **2013 – Third District Court of Appeals issued opinion giving cities authority to ban marijuana cultivation - *Maral v. City of Live Oak***



## **Amending Article III, GBMC**

### **Prohibit Commercial Cultivation of Marijuana**

- **Council directed staff to draft Cultivation prohibition Ordinance**
- **Exemption for personal and caregiver legal cultivation**



## **Amending Article III, GBMC**

### **Prohibit Commercial Cultivation of Marijuana**

- **Draft Ordinance installs prohibition for commercial cultivation in all zones in the City**
- **Amends existing dispensary ban to make it consistent with the new state law**



## **Amending Article III, GBMC**

### **Prohibit Commercial Cultivation of Marijuana**

#### **Recommended Actions:**

- **Conduct public hearing**
- **Introduce Ordinance first reading, by title only**
- **Schedule for second reading and adoption January 19, 2016 Council Meeting**



# City of Grover Beach

Prohibit Commercial Cultivation of Marijuana

**Questions or Comments?**

