

SUBJECT: ZONE TEXT AMENDMENTS REGARDING MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION, EXPRESSLY PROHIBITING DELIVERIES AND MOBILE MARIJUANA DISPENSARIES WITHIN THE CITY

INITIATED BY: DEPARTMENT OF COMMUNITY DEVELOPMENT  
(Bianca Siegl, Long Range & Mobility Planning Manager)  
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DEPARTMENT OF PUBLIC WORKS  
(Jeffrey Aubel, Code Compliance Manager)

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### STATEMENT ON THE SUBJECT

The Planning Commission will hold a public hearing to consider text changes to the Zoning Ordinance in response to State law to regulate medical marijuana dispensaries and cultivation and to expressly prohibit deliveries and the mobile dispensing of marijuana within the City.

### RECOMMENDATION

Staff recommends that the Planning Commission hold the public hearing, consider all pertinent testimony, and adopt the following:

- 1) Draft Resolution No. PC 16-1164: **“A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WEST HOLLYWOOD, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF A ZONE TEXT AMENDMENT TO REGULATE MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION, AND TO EXPRESSLY PROHIBIT DELIVERIES AND THE MOBILE DISPENSING OF MARIJUANA, CITYWIDE, WEST HOLLYWOOD, CALIFORNIA.”** (EXHIBIT A)

### OVERVIEW OF PROPOSED CHANGES

State law regulating medical marijuana dispensaries and cultivation was amended on October 9, 2015. The proposed text changes amend the Zoning Ordinance to respond to new State regulation and further regulate medical marijuana dispensaries and cultivation in residential and commercial Zoning Districts and expressly prohibit the mobile dispensing of marijuana within the City. The proposed changes are in response to recent State law and must be adopted by March 1, 2016 in order for the City to retain sole authority to issue medical marijuana cultivation licenses. The changes to the Zoning Ordinance will be processed along with other changes to the Business License Ordinance, which do not require Planning Commission review and approval. With the

Planning Commission's recommendation, the City Council will review amendments to the Zoning Ordinance along with the Business License Ordinance.

## BACKGROUND

California is one of two dozen states that have legalized marijuana for medical use; yet the recreational use of marijuana is still unlawful in our state. In order to allow persons in need of medical marijuana to use it without fear of prosecution, California approved the Compassionate Use Act (CUA) in 1996. Similarly, in 2004, California approved the Medical Marijuana Program (MMP) to clarify the scope of the CUA and to provide limited protection under the law for the cultivation of marijuana for qualifying patients and primary caregivers.

However, even though the CUA and MMP provide limited immunity from specified State marijuana laws, this immunity does not grant any land use rights or create the right to maintain a public nuisance.<sup>1</sup> In 2010 and 2011, the MMP was amended to recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances. Moreover, in 2013 the Court of Appeal affirmed the ability of local government entities to prohibit the cultivation of marijuana under its land-use authority, holding that “there is no right – and certainly no constitutional right – to cultivate medical marijuana...”<sup>2</sup>

On October 9, 2015, Governor Brown signed three bills into law – Assembly Bills 266 and 243, and Senate Bill 643 – collectively referred to as the Medical Marijuana Regulation and Safety Act (“MMRSA”). Prior to the passage of the MMRSA, State law provided no legal mechanism for commercial cultivation of marijuana for medicinal purposes and Federal law prohibited all cultivation of marijuana. Until the MMRSA was passed, cultivation of marijuana for medicinal purposes in California was restricted to individual qualified patients or their primary care givers for non-commercial purposes and limited to personal quantities. The MMRSA became effective on January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical marijuana to qualified patients. The MMRSA also contains new statutory provisions that:

- Set up a “dual licensing” scheme which requires dispensaries and cultivators to obtain a local license prior to requesting and obtaining a license from the State; no dispensary or cultivation activity may lawfully operate without both a State and local license.
- Identify a new business model for the distribution of marijuana: “mobile dispensaries.” Mobile dispensaries involve the commercial transportation of medical marijuana to qualified patients or caregivers by a dispensary or via any technology platform, which may be independently licensed or owned by the dispensary. According to the provisions of the MMRSA, **mobile dispensaries must be expressly identified and banned in order to be prohibited.**

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<sup>1</sup> See *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4<sup>th</sup> 729

<sup>2</sup> *Maral v. City of Live Oak* (2013) 221 Cal.App.4<sup>th</sup> 975

- **Allow the City to completely prohibit the delivery of marijuana** by requiring a local government that wishes to prevent marijuana delivery activity from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (see Business & Professions Code §§ 19300.5(m) and 19340(a)).
- Preserves the ability of a qualified patient and/or primary caregiver to cultivate for personal, non-commercial purposes, sets new limits on such cultivation, and excludes such personal cultivation from State cultivation licensing requirements. Furthermore, the MMRSA allows local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program for the cultivation of marijuana (see Health & Safety Code § 11362.777(c)(4)).
- Expressly provide that the MMRSA does not supersede or limit local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (see Bus. & Prof. Code § 19315(a)).
- Expressly provide that the MMRSA does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to local governments' right to make and enforce within its limits all police regulations not in conflict with general laws (see Bus. & Prof. Code § 19316(c)).

**The MMRSA, however, also states that if a city or county has not adopted land use regulations by March 1, 2016, to either regulate or ban cultivation of marijuana for medicinal purposes, the State will be the sole authority that issues cultivation licenses in that jurisdiction, meaning no local license will be required.** Specifically, Health & Safety Code § 11362.777(a)(4) states:

If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

Commercial medical marijuana activities, as well as cultivation for personal medical use as contemplated by the Compassionate Use Act and the Medical Marijuana Program, can adversely affect the health, safety, and well-being of City residents. Several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities. For instance, within the Counties of Los Angeles and Orange, mobile dispensaries have been the targets of armed robbers seeking cash and drugs. In the City of Oakland, the cultivation and processing of medical cannabis has resulted in damages to buildings containing indoor medical cannabis cultivation facilities; such damages include improper and dangerous electrical alternations and use, inadequate ventilation leading to mold and mildew, as well as an increase in the frequency of home-invasion robberies and similar crimes. Unlike indoor cultivation, exterior cultivation activities require large amounts of space and, if operated by a number of primary

caregivers, collectives and cooperatives, may result in a large quantity of plants being cultivated on a single parcel of land. Given the limited quantity of vacant land and high property values in West Hollywood, large-scale commercial cultivation is not likely to occur.

### *Summary of Proposed Changes*

In 2009, the City added Chapter 5.70 to the West Hollywood Municipal Code (WHMC) to regulate the licensing and operation of medical marijuana collectives within the City's jurisdictional limits. Title 19 of the WHMC (the City's Zoning Ordinance) expressly provides that uses which are not specifically permitted are prohibited. The City currently permits the commercial cultivation of medical marijuana by collectives licensed under Chapter 5.70 of the WHMC. Pursuant to the WHMC, a limited number of collectives are expressly permitted within the City's commercial zones. However, until now, the City's land use regulations were not required to expressly prohibit certain medical marijuana activities from its residential zones. The WHMC neither expressly and separately prohibits the commercial cultivation of marijuana within its residential zones, nor the delivery of marijuana within the City of West Hollywood. In order to ensure that full local control over the regulation of commercial cultivation of marijuana for medicinal purposes in the City is preserved, the MMRSA requires the City to adopt an express commercial cultivation ordinance by March 1, 2016 to ensure the State is not the sole regulator of cultivation activities. Additionally, the MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so.

The City Council will collectively review and approve amendments to Chapter 5.70 in addition to **sections 19.90.020, 19.06.030 and 19.10.030 to the Zoning Ordinance, Article 19 of the WHMC to:**

- Expressly prohibit commercial cannabis activities and medical marijuana collectives from the City's residential zones by preventing the inadvertent establishment of dispensaries within these zones by prohibiting the commercial cultivation, sale, distribution, or delivery of marijuana within these zones, while permitting and regulating the non-commercial (i.e. personal) cultivation of medicinal marijuana by qualified patients and primary caregivers; and
- Expressly prohibit deliveries of marijuana both within the City, as well as deliveries to and from the City.

**Thus, the Planning Commission is being asked to make a recommendation to City Council on these proposed amendments to the Zoning Ordinance.**

### Public Notice

The City published a legal notice in the *Beverly Press* and *West Hollywood Independent* on January 21, 2016. In addition to the noticing required by the Municipal Code, the Planning Division noticed all West Hollywood neighborhood groups on January 22, 2016.

### California Environmental Quality Act (CEQA)

The zone text changes are Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 of the CEQA Guidelines. Section 15061 states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

### Public Comment & Correspondence

None received prior to publication of this staff report.

### **EXHIBITS**

- A. Draft Resolution No. PC 16-1164

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## RESOLUTION NO. PC 16-1164

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WEST HOLLYWOOD, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF A ZONE TEXT AMENDMENT TO REGULATE MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION, AND TO EXPRESSLY PROHIBIT DELIVERIES AND THE MOBILE DISPENSING OF MARIJUANA CITWIDE, WEST HOLLYWOOD, CALIFORNIA.**

The Planning Commission for the City of West Hollywood hereby finds, resolves, and orders as follows:

SECTION 1. The City of West Hollywood initiated amendments to the Zoning Ordinance, Article 19 of the Municipal Code to regulate medical marijuana dispensaries and cultivation, and to expressly prohibit deliveries and mobile dispensing of marijuana within the City.

SECTION 2. A public hearing was duly noticed for the Planning Commission meeting of February 4, 2016 by publication in the Beverly Press newspaper, the West Hollywood Independent Newspaper on January 21, 2016, and required state and local agencies, and the City website and by announcement on City Channel 6 by January 21, 2016

SECTION 3. The zone text changes are Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 of the CEQA Guidelines. Section 15061 states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 4. The Planning Commission does hereby find and declare as follows:

- a) On October 9, 2015, Governor Brown signed three bills into law – Assembly Bills 266 and 243, and Senate Bill 643 – collectively referred to as the Medical Marijuana Regulation and Safety Act (MMRSA). The MMRSA became effective on January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical marijuana to qualified patients.
- b) The MMRSA states that if a city or county has not adopted land use regulations by March 1, 2016, to either regulate or ban cultivation of marijuana for medicinal purposes, the State will be the sole authority that issues cultivation licenses in that jurisdiction, meaning no local license will be required.

- c) As explained in the staff report, commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the Compassionate Use Act and the Medical Marijuana Program, can adversely affect the health, safety and well-being of City residents. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.
- d) The West Hollywood Municipal Code (WHMC) does not currently expressly and separately prohibit the cultivation, delivery or mobile dispensing of marijuana within the City. In order to preserve full local control over cultivation of marijuana for medical purposes in the City, the MMRSA requires the City to put an express commercial cultivation ordinance into effect by March 1, 2016 to ensure the State is not the sole regulator of cultivation activities. Additionally, the MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so.
- e) The Zoning Ordinance text amendments are consistent with the goals, policies and objectives of the General Plan because it is in the public interest and there are community benefits resulting from the regulation of medical marijuana, such as preventing crime associated with marijuana activities. Specifically, Policy LU-1, which states that the City should "maintain an urban form and land use pattern that enhances quality of life and meets the community's vision for its future." Regulating these uses protects the health and safety of the community while still allowing for patients to have access to medical marijuana in the City.

SECTION 5. Based on the foregoing, the Planning Commission of the City of West Hollywood hereby recommends approval to the City Council of Zone Text Amendment 2016-0001, which is attached hereto as Attachment A.



**PASSED, APPROVED AND ADOPTED** by the Planning Commission of the City of West Hollywood at a regular meeting held this 4<sup>th</sup> day of February, 2016 by the following vote:

AYES: Commissioner:

NOES: Commissioner:

ABSENT: Commissioner:

ABSTAIN: Commissioner:

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CHAIRPERSON

ATTEST:

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BIANCA SIEGL, PLANNING MANAGER  
LONG RANGE AND MOBILITY PLANNING

*Decisions of the Planning Commission are subject to appeal in accordance with the procedures set forth in West Hollywood Municipal Code Chapter 19.76. Any action to challenge the final decision of the City of West Hollywood made as a result of the public hearing on this application must be filed within the time limits set forth in Code of Civil Procedure Section §1094.6.*

# Attachment A

## ZONE TEXT AMENDMENT 2016-0001 WEST HOLLYWOOD MUNICIPAL CODE SECTIONS TO BE MODIFIED

(New text indicated with underlining, deleted text with strikethrough.)

**Section 1:** Section 19.90.020 of Chapter 19.90 of Title 19 of the West Hollywood Municipal Code is hereby amended to add the following new definitions to the alphabetical list of definitions to read as follows:

**Commercial Marijuana Activity.** Is any activity that includes the possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution or sale of medical marijuana or medical marijuana product, except as set forth in Business and Professions Code section 19319, related to Qualifying Patients and Primary Caregivers.

**Marijuana.** Shall have the same meaning as the definition of that word in Health and Safety Code Section 11018.

**Medical Marijuana Collective.** A collective, cooperative, association or similar entity that cultivates, distributes, dispenses, stores, exchanges, processes, delivers, makes available or gives away marijuana in the city for medical purposes to qualified patients, or primary caregivers of qualified patients pursuant to Health and Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any State regulations adopted in furtherance thereof, including Health and Safety Code Section 11362.7 *et seq.*, (adopted as the "Medical Marijuana Program Act").

**Medical Marijuana Cultivation.** Shall have the same meaning as set forth in Business and Professions Code section 19300.5(l).

**a. Cultivation for commercial use** includes the possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution or sale of medical marijuana or medical marijuana product, except as set forth in Business and Professions Code section 19319, related to Qualifying Patients and Primary Caregivers.

**b. Cultivation for personal use includes:**

**1. A qualified patient, as defined in section 11362.7 of the Health and Safety Code, who cultivates, stores, manufactures or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person.**

**2. A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he/she is the primary caregiver within the meaning of section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for**

compensation in full compliance with subdivision (c) of section 11362.765 of the Health and Safety Code.

**Medical Marijuana Delivery.** The use by a medical marijuana collective of any technology platform owned and controlled by the medical marijuana collective, or independently licensed under Chapter 3.5 of the Business and Professions Code, commencing with section 19300, et seq., (adopted as the “Medical Marijuana Regulation and Safety Act)), which enables persons, qualified patients, and/or primary caregivers to arrange for or facilitate the commercial transfer of marijuana or marijuana products.

**Section 2:** Five new uses are added to the alphabetical list of uses in Table 2-2 of Section 19.06.030 in Chapter 19.20 of Title 19 of the West Hollywood Municipal Code to read as follows:

P – Use Permitted <sup>1</sup>	
MCUP – Minor Conditional Use Permit Required	CUP – Conditional Use Permit Required
RI – Rehabilitation Incentives	— Use Not Allowed

LAND USE <sup>2</sup>	PERMIT REQUIRED BY ZONE				Specific Use Regulations
	R1	R2	R3	R4	
<u>Commercial marijuana activity</u>	—	—	—	—	
<u>Medical marijuana delivery</u>	—	—	—	—	
<u>Medical marijuana collective</u>	—	—	—	—	
<u>Medical marijuana cultivation (personal use)</u>	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	
<u>Medical marijuana cultivation (commercial use)</u>	—	—	—	—	

Notes:

(1) Zone clearance or development permit may be required; see Chapters 19.42 and 19.48.

**Section 3:** Three new uses are added to the alphabetical list of uses in Paragraph F in Section 19.10.030 of Title 19 of the West Hollywood Municipal Code to read as follows:

P	Use Permitted <sup>1</sup>	CUP	Conditional Use Permit Required
MCUP	Minor Conditional Use Permit Required	PCR	Project Conformity Review
RI	Rehabilitation Incentives	—	Use Not Allowed

LAND USE <sup>2</sup>	PERMIT REQUIRED BY ZONE						Specific Use Regulations
	CN	CC/SSP	CA	CR	PDCSP	PF <sup>3</sup>	
<u>Medical marijuana delivery</u>	—	—	—	—	—	—	
<u>Medical marijuana cultivation (personal use)</u>	p1	p1	p1	p1	p1	p1	
<u>Medical marijuana cultivation (commercial use)</u>	p1	p1	p1	p1	p1	p1	

Notes:

(1) Zone clearance, administrative permit or development permit may be required; see Chapters 19.42, 19.44, 19.48 and 19.54.

