



AGENDA ITEM 4

- Public Hearing
- Ordinance
- Consent Calendar
- Discussion/Transaction

WALNUT CITY COUNCIL

AGENDA DATE: MARCH 8, 2017

TO: Mayor Ching and Council Members

VIA: Robert Wishner, City Manager *RW*
Tom Weiner, Director of Community Development *TW*

FROM: Derrick Womble, Senior Management Analyst *DW*

SUBJECT: Ordinance No. 17-01: Amending and restating Walnut Municipal Code Title III, Chapter 17D, regarding the use of marijuana in the City of Walnut.

RECOMMENDATION:

It is recommended that the City Council introduce Ordinance No. 17-01, read by title only and agendize the item for a second reading and Public Hearing on March 22, 2017, "An Ordinance of the City Council of the City of Walnut, California, County of Los Angeles, amending and restating Walnut Municipal Code Title III, Chapter 17D, to establish regulations for the use of marijuana."

BACKGROUND:

On October 9, 2015, Governor Brown signed the Medical Marijuana Regulation and Safety Act ("MMRSA"), into law. MMRSA became effective January 1, 2016, and in order to avoid having federally prohibited activities permitted by the MMRSA, on January 27, 2016, the City Council adopted Ordinance No. 16-01, expressly banning marijuana cultivation, processing, delivery, and dispensaries within City limits.

On November 8, 2016, California voters approved Proposition 64, the California Marijuana Legalization Initiative, referred to as the Adult Use of Marijuana Act ("AUMA"). The AUMA became effective on November 9, 2016, regulating the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by individuals twenty-one (21) years of age and older. The AUMA legalizes the nonmedical use of marijuana and the personal cultivation of six (6) marijuana plants per private residence within an enclosed building.

Additionally, it creates state regulatory and licensing systems for the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products.

Pursuant to the AUMA, it is not permitted for any person(s) to smoke or ingest marijuana or marijuana products:

- in any public place; and
- where smoking tobacco is prohibited; and
- within one thousand (1,000) feet of a school, day care center, or youth center while children are present; and
- while driving or riding in a vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

STAFF ANALYSIS:

The AUMA allows for local governments to regulate, or prohibit commercial marijuana businesses within their jurisdictions through an ordinance that contains language regarding land uses and business regulations. Local governments can reasonably regulate but, cannot ban private indoor cultivation however, a City may regulate or prohibit commercial indoor cultivation and all personal outdoor cultivation operations.

Ordinance No. 17-01, updates the Walnut Municipal Code (WMC) to add the following provisions:

- **Indoor Marijuana Cultivation** – A person may not plant, cultivate, harvest, dry, or process marijuana plants inside any enclosed structure within any zoning district of the City, except indoors within a private residence or an accessory structure to a private residence, and for which such cultivation is limited to no more marijuana plants than the maximum number of marijuana plants allowed under California law.
- **Outdoor Marijuana Cultivation** - A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any zoning district of the City.
- **Personal/Recreational Use of Marijuana** – A person may not purchase, possess, transport, disseminate, smoke, or ingest marijuana or marijuana products where smoking tobacco is prohibited, and/or within one thousand (1,000) feet of City property, including but not limited to, City facilities, parks, or buildings owned, leased, operated, maintained, or occupied by the City.

All commercial, delivery, dispensary, and medical marijuana activity and/or uses will continue to be prohibited in any zoning district within the City of Walnut. Additionally, cities such as, Brea, Chino Hills, Claremont, Diamond Bar, Glendora, La Verne, San Dimas, and

Yorba Linda, have adopted ordinances prohibiting marijuana related activity and/or uses pursuant to the AUMA.

As the City of Walnut desires to continue to ban all marijuana dispensaries and cultivation land uses within City limits to the extent allowed by California law, Staff recommends the City Council introduce Ordinance No. 17-01, and set the Public Hearing for March 22, 2017.

It is important to note that the use, possession, and cultivation of marijuana are still considered federally prohibited activities. As of the date of preparation for this report, the Attorney General has not made a determination regarding the use of nonmedical marijuana under the Federal law for California. Staff will continue to monitor the situation and report back to the City Council if/when the Attorney General issues a determination.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find that the introduction and adoption of Ordinance No. 17-01 is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) – *“the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment”*, and 15060(c)(3) – *“the activity is not a project as defined in Section 15378 of the CEQA Guidelines, California Code Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.”* Additionally, Staff recommends that the City Council find the approval of this Ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

CITY ATTORNEY REVIEW:

The City Attorney has reviewed the proposed changes to the WMC Title III, Chapter 17D, and recommends the City Council approve and introduce said Ordinance in substantially the form presented.

FISCAL IMPACT:

There is no material fiscal impact to introduce and adopt said Ordinance.

RELATION TO MISSION STATEMENT:

We will enhance civic pride by promoting public safety, and ensuring the City is well maintained.

Attachment(s): Draft Ordinance No. 17-01

ORDINANCE NO. 17-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WALNUT, CALIFORNIA, COUNTY OF LOS ANGELES, AMENDING AND RESTATING WALNUT MUNICIPAL CODE TITLE III, CHAPTER 17D, TO ESTABLISH REGULATIONS FOR THE USE OF MARIJUANA.

WHEREAS, on January 27, 2016, the City Council adopted Ordinance No. 16-01, expressly banning marijuana cultivation, processing, delivery and dispensaries within City limits; and

WHEREAS, on November 8, 2016, California voters approved Proposition 64, the California Marijuana Legalization Initiative, referred to as the Adult Use of Marijuana Act (“AUMA”); and

WHEREAS, the AUMA became effective on November 9, 2016, regulating the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by individuals over 21 years of age; and

WHEREAS, the AUMA allows for cities to reasonably regulate without completely prohibiting cultivation of marijuana inside a private residence or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure; and

WHEREAS, the AUMA allows for cities to completely prohibit outdoor cultivation on the grounds of a private residence, and prohibit the establishment or operation of any marijuana business within its jurisdiction, including marijuana dispensaries, marijuana retailers, and marijuana delivery services; and

WHEREAS, the City desires to continue to ban all marijuana dispensaries, retailers, delivery services, and cultivation land uses within City limits to the extent allowed by California law. Ordinance No. 17-01 updates the Walnut Municipal Code to effectuate that aim, and clarify the substantive objectives of the Code regarding the City’s regulation of marijuana within its City limits; and

WHEREAS, a Public Hearing notice was duly noticed at least ten (10) days prior to the March 22, 2017, City Council meeting; and

WHEREAS, on March 22, 2017, the City Council held a Public Hearing to receive testimony relative to Ordinance No. 17-01; and

WHEREAS, the City Council has sufficiently considered all testimony presented to make the following determination.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WALNUT, CALIFORNIA, HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Title III, Chapter 17D of the Walnut Municipal Code is hereby amended and restated in its entirety to read as follows:

“Chapter 17D Marijuana Regulations”

17D-1 Purpose and Intent.

- a) The City Council finds that the regulations on marijuana are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council’s regulation of such activities is within the authority conferred upon the City Council through State law.
- b) The City Council finds that this chapter:
 1. Expresses its intent to prohibit cultivation of marijuana in the City and to not administer a conditional permit program for the cultivation of marijuana in the City; and
 2. Exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; and
 3. Exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; and
 4. Expressly prohibits the delivery of marijuana in the City.
- c) The intent of this chapter is to prohibit commercial marijuana activities and the personal cultivation of marijuana, whether medical or recreational in nature, to the maximum extent allowed under state law. Nothing in this chapter shall be interpreted as allowing behavior otherwise prohibited by state law and nothing in this chapter shall be interpreted as prohibiting conduct that the City is expressly preempted from prohibiting under state law.

17D-2 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- a) “Commercial Marijuana Activity” means the cultivation, possession, manufacturing, distributing, processing, storing, laboratory testing, labeling, transporting, or selling of marijuana and marijuana products.

- b) "Cultivation" means any activity involving the growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana.
- c) "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, which enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.
- d) "Dispensary" means any business, office, store, facility, location, retail storefront, or wholesale component of any establishment, cooperative or collective that delivers whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells, or provides marijuana or marijuana products to any person for any reason, including members of any medical marijuana cooperative or collective.
- e) "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial or medical purposes.
- f) "Licensee" means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.
- g) "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
- h) "Marijuana" means any or all parts of the plant *Cannabis sativa linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated 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, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" and "nonmedical marijuana".
- i) "Marijuana accessories" means any equipment products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.
- j) "Marijuana collective or cooperative" means any group that is collectively or cooperatively cultivating, distributing, manufacturing, or processing marijuana.
- k) "Marijuana processing" means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including, but not limited to, drying, cleaning,

curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

- l) "Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.
- m) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
- n) "Private residence" means a house, an apartment unit, or mobile home, or other similar dwelling.
- o) "Sale" means any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to any order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.

Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, as it may be amended from time to time.

17D-3 Prohibited Activities.

- a) Outdoor Cultivation – A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any zoning district of the City. No use permit, building permit, variance, or any other entitlement, license or permit, whether administrative or discretionary, shall be approved or issued for any such use or activity.
- b) Indoor Cultivation – A person may not plant, cultivate, harvest, dry, or process marijuana plants inside any enclosed structure within any zoning district of the City, except indoors within a private residence or an accessory structure to a private residence, and for which such cultivation is limited to no more marijuana plants than the maximum number of marijuana plants allowed under California law. The private residence or accessory structure to a private resident must be fully enclosed, secure, and adhere to all applicable Health & Safety, Building, and Fire Codes, and reasonable limitations on the use of water consistent with the maximum number of marijuana plants allowed under California law.
- c) Medical Marijuana Activity – The establishment or operation of any medical marijuana collective, cooperative, dispensary, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or

discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, operator, establishment, or provider in any zoning district and no person shall otherwise establish such businesses or operations in any zoning district.

- d) **Commercial Marijuana Activity** – The establishment or operation of any business of commercial marijuana activity is prohibited. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation. Such prohibited businesses or operations may include, but not limited to:
1. The transportation, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories.
 2. The cultivation of marijuana.
 3. The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or
 4. Any other business licensed by the State or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.
 5. The sale of marijuana by businesses that also sell alcohol or tobacco.
- e) **Mobile Marijuana Activity** – A person may not establish a marijuana dispensary or deliver marijuana in any vehicle used for transportation, or by any other means, within any zoning district of the City, even if located within an otherwise permitted use. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of a mobile marijuana dispensary or delivery service.
- f) **Personal or Recreational Marijuana Activity** - A person may not purchase, possess, transport, disseminate, smoke, or ingest marijuana or marijuana products where smoking tobacco is prohibited, and/or within one thousand (1,000) feet of City property, including but not limited to, City facilities, parks, or buildings owned, leased, operated, maintained, or occupied by the City.

17D-4 Public nuisance.

- a) Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the City in accordance with the Walnut Municipal Code Title III, Chapter 16A, and subject to any and/or all available legal remedies, including, but not limited to, civil injunctions.
- b) Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor or an infraction, and upon conviction thereof shall be punishable by a fine

of not more than one thousand dollars (\$1,000), or by imprisonment in the county or City jail for a period of not more than six months or both such fine and imprisonment.

- c) Each person found guilty of a violation shall be deemed guilty of a separate offense for every day during any portion of which any violation of any provisions of this chapter is committed or continued, as provided for in this chapter, and any use, occupation, building or structure maintained contrary to the provisions hereof shall constitute a public nuisance.

17D-5 Violations.

- a) Any violation of this chapter shall be subject to any available legal remedies to the city under any applicable local, state, federal statute, or pursuant to any other lawful power the city may possess.
- b) Each day a violation is allowed to continue and every violation of this chapter shall constitute a separate violation and shall be subject to any and/or all available legal remedies.
- c) In the event of any civil suit or action is brought by the City to enforce the provisions of this chapter, the prevailing party shall be entitled to recover the amount of its reasonable costs incurred in the action or proceeding, including, but not limited to, attorney's fees.

17D-6 Severability.

If any part or subsection of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality by a court of competent jurisdiction, shall not affect the validity, lawfulness or constitutionality of any remaining portions of this chapter.

SECTION 2. The City Council hereby declares it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that the provisions of this Ordinance are severable and, if for any reason any sentence, paragraph, or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this ordinance.

SECTION 3. The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

SECTION 4. This Ordinance shall take effect thirty (30) days after the date of its final passage. The City Clerk shall certify as to the adoption of this Ordinance and cause this Ordinance to be published and posted in the manner required by law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Walnut this 22nd day of March 2017.

Eric Ching, Mayor

ATTEST:

Teresa De Dios, City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF WALNUT)

I, Teresa De Dios, City Clerk of the City of Walnut, California, do hereby certify that the foregoing Ordinance No. 17-01 being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WALNUT, CALIFORNIA, COUNTY OF LOS ANGELES, AMENDING AND RESTATING WALNUT MUNICIPAL CODE TITLE III, CHAPTER 17D, TO ESTABLISH REGULATIONS FOR THE USE OF MARIJUANA.

Said Ordinance was duly introduced by a regular meeting held on March 8, 2017, and was adopted at a regular meeting of the City Council held on March 22, 2017, by the following vote, to wit:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Teresa De Dios, City Clerk