

# City of Brisbane

## Agenda Report

DATE: City Council meeting of March 3, 2016

TO: Mayor and City Council

FROM: Michael Roush, City Attorney  
Teresa L. Stricker, Deputy City Attorney

SUBJECT: Further Discussion Concerning Cultivation of Medical Marijuana for Personal Use

### **PURPOSE**

The purpose of this item is to confirm the Council direction at the Council's last meeting that cultivation of medical marijuana for personal use would be allowed without restriction in all zoning districts, or to provide clarifying direction to staff concerning this item.

### **BACKGROUND**

#### **A. The Medical Marijuana Regulation and Safety Act**

Last fall, the Legislature passed the Medical Marijuana Regulation and Safety Act. The Act consists of three separate pieces of legislation governing the licensing and control of medical marijuana businesses in the state. With certain limitations, the Act generally protects cities' local licensing practices, zoning ordinances and police power.

Among other things, the Act establishes dual licensing structure requiring *both* a state license and any local license or permit required by ordinance for medical marijuana-related businesses.

The Act requires state licensing for businesses engaged in cultivation, retail sales (so called "dispensaries"), distribution, transportation and delivery of medical marijuana or medical marijuana products. The Act restricts the number of categories of state medical marijuana licenses any business may hold, and prohibits medical marijuana licensees from also holding state licenses to sell alcohol. The Act also limits "vertical integration" by requiring third party distribution, transportation and testing of medical marijuana products.

The Act further establishes uniform security requirements for dispensaries and transporters, regulates physicians and recognizes local authority to levy taxes and fees.

## **B. Prior Council Consideration**

At its meeting on February 18, 2016, the Council discussed these medical marijuana regulations and took action, as well as provided direction to staff, concerning the application of these regulations in Brisbane.

The Council adopted a resolution confirming that commercial cultivation of medical marijuana is banned in Brisbane, and decided not to consider amending the zoning ordinance to allow commercial cultivation.

Concerning personal cultivation of medical marijuana, there was a consensus that that personal cultivation, as defined under State law, should be allowed. Council also agreed that deliveries of medical marijuana, as defined under State law, would not be banned.

Council directed staff to initiate a zoning ordinance amendment to (a) add an express ban on medical marijuana dispensaries, (b) allow research, development and testing of marijuana as a matter of right in certain zoning districts and (c) allow manufacturing, processing, warehousing, transporting and distributing of marijuana as a conditional use in certain zoning districts.

## **C. Concerns About Grow Houses Raised by the Mayor**

Following the meeting, the Mayor expressed a concern to staff that by not imposing any restrictions on personal cultivation beyond what state law imposes, the City may open the door for large “grow houses,” i.e., residences where large numbers of marijuana plants are grown. The Mayor asked staff to place this item on the agenda to confirm the Council’s direction, or for Council to provide clarifying direction.

## **DISCUSSION**

The new state law permits cultivation of marijuana for *personal* medical use so long as the cultivation occurs within a 100 square foot area for an individual qualifying patient and within a 500 square foot area for a primary caregiver of up to five patients.

Those engaged in personal cultivation for medical use within these strict limits will *not* need a business license from the state under the new state laws. But cultivation of medical marijuana beyond the limits prescribed by the state constitutes commercial cultivation and will require a state license. And the Act phases out the existing model of marijuana cooperatives and collectives one year after the state commences issuing licenses.

The new state laws did not change existing state law establishing immunity from arrest for patients with medical marijuana cards who possess up to 6 mature or 12 immature plants,

or up to 8 ounces of processed marijuana. These state laws provide immunity from arrest for a greater amount of marijuana with permission from a doctor.

The new state laws do not restrict the authority of cities to adopt zoning regulations to ban or further restrict personal cultivation of marijuana in their local jurisdictions if they choose. Brisbane does not currently regulate cultivation of marijuana for *personal* use. The Mayor has asked whether allowing personal cultivation of medical marijuana would permit “grow houses” in Brisbane.


Under the new state laws, a primary caregiver may cultivate only up 500 square feet without a state-issued commercial cultivation license. It is unclear how many mature plants could be successfully grown in such an area in cases where a doctor has authorized a large number of plants per patient.


One of the issues in the confirmed grow house situation that the Police Department investigated last year was that it appeared no one was actually residing in the house, although all of the tenants on the lease had medical marijuana cards and at least one of the tenants had the property address on his driver’s license. Because the tenants had not exceeded the large number of marijuana plants prescribed on their medical marijuana cards, the District Attorney’s Office would not prosecute.

The City may restrict personal cultivation of medical marijuana to reduce the likelihood of another grow house situation without completely banning all personal cultivation of medical marijuana within its jurisdiction. Should the Council wish to impose restrictions on personal cultivation of marijuana, however, it must do so by amending the zoning ordinance. State law preempts cities from making the possession or cultivation of marijuana a crime.

For example, the City may choose to restrict personal cultivation to residential zones and allow cultivation only at a patient or caregiver’s *primary* residence. Alternatively, the City may restrict the size of the cultivation area allowed in any zone well below the 100 square foot/500 square foot maximums state law establishes for cultivation by patients and caregivers without a state business license. Similarly, a city may be able to limit the number of plants a patient may cultivate in any zone.

Should the Council wish to consider imposing restrictions on personal cultivation of medical marijuana without banning personal cultivation entirely, staff recommends that Council direct staff to initiate a zoning text amendment process before the Planning Commission to consider options for accomplishing that goal.

  
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Teresa L. Stricker, Deputy City Attorney

  
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Clayton Holstine, City Manager