



TOWN OF FAIRFAX

STAFF REPORT

November 4, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager GT

SUBJECT: Discussion/consideration of the effect of new state legislation on local regulations regarding medical marijuana

RECOMMENDATION

Discussion/consideration of the effect of new state legislation on local regulations regarding medical marijuana and direct staff as appropriate.

DISCUSSION

On October 9, 2015, Governor Jerry Brown signed into law three new bills – AB 243, AB 266, and SB 643. This trio fundamentally changes the way in which medical marijuana will be regulated within the State of California. It also has consequences for cities and towns as they exercise their police powers and land use authority within their borders. As the bills were the result of midnight negotiations held prior to the end of the legislative term, attorneys across the state are now working to analyze how these bills will interact with local laws. For your reference, attached is a Q&A sheet from the California League of Cities.

The Town Attorney is studying the question of the effect of this new legislation on local authority, but it is clear that there are a number of obvious consequences for local governments. For example, AB 243 requires the state to develop a Medical Cannabis Cultivation Program to administer the new laws pertaining to medical marijuana cultivation. In order to receive a state license to cultivate medical marijuana, applicants for state licenses will have to obtain a license, permit, or other entitlement specifically allowing such cultivation, from the city or county in which cultivation will occur. (New Health & Safety Code § 11362.777(b)(2).) Cities and counties are free to issue or deny such permits (§ 11362.777(c)(1)), though permits conditionally issued must be at least as stringent in their conditions as the department's state licensing requirements. (§ 11362.777(c)(3).)

AB 243 sets a deadline of March 1 for a town to adopt any new ordinances if a town wishes to exercise its authority in this regard. However, in order for Fairfax to meet this deadline, the Council would need to have the Planning Commission review the ordinance in December. The ordinance would need to be considered by the Council in January. The opportunity does exist for the Council to discuss the matter in more detail at its December meeting so that the Planning Commission can receive more guidance on the subject.

Staff is seeking Council direction on its interest in developing a local ordinance as it pertains to AB243.

FISCAL IMPACT

None at this time.

ATTACHMENT

Q&A sheet from the League of California Cities

Medical Marijuana Regulation and Safety Act¹ What Cities Need to Know About the New Law

Overview -- Here's what you need to know:

- **Local prohibition or regulation:** Cities may prohibit or regulate medical marijuana businesses within their jurisdictions. **Local authority remains intact under the new law.**
- **State license required:** All medical marijuana businesses – dispensary sales, delivery service, cultivation, or transport – must have a State license².
- **State license not enough:** A medical marijuana business in any city may only operate if it has permission from the State **and** permission from the city (“dual licensing”).
- **Enforcement:** Revocation of local permission to operate means a medical marijuana business must terminate operation because the new law requires dual licensing. Upon approval of the State, a city may enforce State law.
- **State law penalties for unlicensed activity:** There are civil penalties and criminal penalties for operating without a State license.

Cultivation -- Here's what you need to know:

If your city does **not** have a land use ordinance in place regulating or prohibiting the cultivation of marijuana, *either expressly or otherwise under the principles of permissive zoning*, or chooses not to administer a conditional permit program, then commencing **March 1, 2016**, the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applicants.

Cultivation -- Here's what you need to do:

Determine if your city fits within City #1 or City #2 as described below:

- **City #1:** Municipal Code that does not expressly prohibit nor expressly regulate cultivation of medical marijuana and is not a “permissive zoning” code. ***Need to take action.***

ACTION REQUIRED: Adopt a land use ordinance regulating or prohibiting the cultivation of medical marijuana. The ordinance must be effective by February 28, 2016. The ordinance may be adopted as an “urgency ordinance,” or second reading must occur on or before January 29, 2016.

¹ AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016.

² The Department of Consumer Affairs estimates it will begin issuing State licenses in January 2018. The Department of Food and Agriculture and the Department of Public Health also have licensing authority under the new law. Businesses operating in compliance with local ordinances will get priority in the State licensing application process.

- City #2: Municipal Code that is a “permissive zoning” code and does not enumerate cultivation of medical marijuana as a permitted or conditional use. ***Need to take action.***

ACTION REQUIRED: (1) Check and confirm that your city’s zoning code is adopted and implemented under the principles of permissive zoning. If not, take action recommended for City #1. (2) If confirmed, adopt a resolution that includes the following provisions:

- States that Health & Safety Code section 11362.777(b)(3) provides that the Department of Food and Agriculture may not issue a State license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning;
- Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
- States this means that cultivation of marijuana is not allowed within City #2 because it is not expressly permitted; and
- Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #2.

Delivery -- Here’s what you need to know:

If a city does not expressly prohibit the delivery of medical marijuana within its jurisdiction, delivery will be allowed (with a State dispensary license). This means that if your city wishes to prohibit the delivery of medical marijuana within its jurisdiction, the city must adopt an ordinance expressly prohibiting delivery services and mobile dispensaries.

Delivery -- Here’s what you need to do:

- Determine whether your city currently bans delivery services for medical marijuana.
- If you have a ban, determine whether it is an affirmative ban, or a ban enacted via permissive zoning (i.e., it is not listed in your zoning or other codes as a permitted activity within the city limits).
- If you have an affirmative ban specifically identifying marijuana deliveries as a prohibited activity, you do not need to take further action.
- If you wish to prohibit delivery services but do not have an express ban, **you need to take further action.**

ACTION REQUIRED: Adopt an ordinance expressly banning deliveries within your jurisdiction. If you do not adopt an express ban ordinance before the State begins issuing any State licenses, a State-licensed dispensary will be able to deliver medical marijuana within your jurisdiction. Therefore, any ordinance must be in place before the State begins issuing State licenses. The State currently estimates that it will begin issuing dispensary licenses in January 2018, but that could certainly happen sooner.

Be sure to consult with your city attorney before taking any of the actions recommended in this document.

League of California Cities®
October 27, 2015