



**CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT**

7/10/2017

SUBJECT:

Adoption of an Ordinance of the City Council of the City of Pacifica Adding a New Chapter 16 of Title 4 (Marijuana Public Safety Licenses) of the Pacifica Municipal Code” - Second Reading

RECOMMENDED ACTION

Move to adopt the ordinance entitled “An Ordinance of the City Council of the City of Pacifica Adding a New Chapter 16 of Title 4 (Marijuana Public Safety Licenses) of the Pacifica Municipal Code” – Second Reading

STAFF CONTACTS

Kathy O’Connell, City Clerk
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DISCUSSION

This ordinance was introduced at the June 26, 2017 regular City Council meeting and is in order for adoption. There were several revisions to the ordinance at the June 26, 2017 City Council meeting and those revisions have been incorporated.

FISCAL IMPACT

No direct fiscal impact associated with the second reading and adoption.

ORIGINATED BY:

City Clerk

ATTACHMENT LIST:

ORDINANCE NO. (ID # 2287)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA ADDING A NEW CHAPTER 16 OF TITLE 4 (MARIJUANA PUBLIC SAFETY LICENSES) OF THE PACIFICA MUNICIPAL CODE

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (the “Compassionate Use Act” or “CUA”); and

WHEREAS, on January 1, 2004, the California Legislature enacted the "Medical Marijuana Program Act" or “MMPA,” to clarify the scope of the Compassionate Use Act, to establish a voluntary program for identification cards issued by counties for qualified patients and primary caregivers, and to provide criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana, including the collective or cooperative cultivation of medical marijuana; and

WHEREAS, on October 9, 2015, Assembly Bills 243 and 266 and Senate Bill 643 (collectively, the “Medical Marijuana Regulation and Safety Act” or “MMRSA”) were enacted to create a state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, the manufacturing of medical marijuana products, and physician recommendations for medical marijuana; and

WHEREAS, on June 27, 2016 Senate Bill 837 was enacted, which included a number of technical changes to the MMRSA, including renaming the act to the Medical Cannabis Regulation and Safety Act (the “MCRSA”)

WHEREAS, on November 8, 2016, the voters of the State of California approved Proposition 64, known as the “Control, Regulate and Tax Adult Use of Marijuana Act” (the “AUMA”), under which a variety of non-medical marijuana businesses can operate subject to local ordinances and individuals may grow, possess and use limited amounts non-medical marijuana; and

WHEREAS, the CUA, MMPA, MMRSA, MCRSA, and AUMA are collectively known as the “State Marijuana Laws”; and

WHEREAS, the City’s Municipal Code does not contain provisions to expressly regulate marijuana-related activities and the City wishes to retain local control of those marijuana-related regulations that the State reserves to local agencies; and

WHEREAS, it is the purpose and intent of this Ordinance to regulate the issuance of licenses for manufacturing, testing, and retail sale and dispensation of medical and non-medical marijuana in order to ensure the health, safety, and welfare of the residents of the City of Pacifica; and

WHEREAS, the regulations in this Ordinance are meant to ensure compliance with the State Marijuana Laws and do not interfere with a patient’s ability to use medical marijuana as

authorized by the State Marijuana Laws or criminalize the possession or cultivation of marijuana for medical or non-medical purposes as permitted by the State Marijuana Laws; and

WHEREAS, any Marijuana Operation within the City must comply with all provisions of the Pacifica Municipal Code for obtaining permits and licenses for a Marijuana Operation and must comply with the State Marijuana Laws and all other applicable local and state laws; and

WHEREAS, nothing in this Ordinance shall permit activities that are otherwise illegal under state or local laws; and

WHEREAS, the City Council is concurrently considering ordinances to establish Marijuana zoning regulations and to impose a tax on commercial marijuana activities, and desires to make the effective date of this Ordinance and the Marijuana zoning ordinance contingent upon adoption of an ordinance by a majority of the electors of the City of Pacifica imposing a tax on commercial marijuana activities; and

WHEREAS, the City Council of the City of Pacifica and the Planning Commission of the City of Pacifica held a joint study session to solicit public input on proposed marijuana regulations on March 6, 2017;

WHEREAS, the Planning Commission held a study session to solicit public input on proposed marijuana zoning regulations and locational standards and provided direction to City staff on May 1, 2017; and

WHEREAS, the City Council of the City of Pacifica held a duly noticed public hearing on the Ordinance on June 26, 2017, at which time it introduced Ordinance No. ###.

NOW, THEREFORE, the City Council of the City of Pacifica does ordain as follows:

Section 1. Recitals. The City Council of the City of Pacifica does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

Section 2. Enacted. Chapter 16 of Title 4 of the Pacifica Municipal Code (Marijuana Public Safety Licenses) is hereby enacted as follows:

Sec. 4-16.01 Purpose and Intent.

It is the purpose and intent of this Article to establish a Marijuana Public Safety License and the procedures for issuance of said license. A Marijuana Public Safety License shall be required as a condition for the continued operation of any Marijuana Operation as set forth in PMC Title 9, Chapter 4, Article 48. The regulations in this Article are meant to ensure the health, safety, and welfare of the residents of the City of Pacifica. Marijuana Operations within the City must comply with all provisions of the Pacifica Municipal Code for obtaining permits and licenses for a Marijuana Operation and must comply with the State Marijuana Laws and all other applicable local and state laws. Nothing in this Article permits activities that are otherwise illegal under State, or local laws.

Sec. 4-16.02 Definitions.

“Applicant” shall mean a person or entity that submits an Application or an Application for Renewal of a Marijuana Public Safety License.

“Application for Renewal” shall mean an application for a renewed Marijuana Public Safety License, which application may be submitted by a Licensee.

“Commercial Cannabis Activity” shall have the meaning set forth in Business and Professions Code section 19300.5(j).

“Commercial Marijuana Activity” shall have the meaning set forth in Business and Professions Code section 26001(d).

“Cultivation” shall mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

“Licensee” shall mean the Marijuana Operation owner identified to the City as such, and to whom a City Marijuana Public Safety License has been issued.

“Marijuana” shall have the meaning set forth in Health and Safety Code section 11018 and Business and Professions Code section 19300.5(f).

“Marijuana Operation” shall mean any Commercial Cannabis Activity or Commercial Marijuana Activity permitted under this Article.

“Operator” shall mean any person or entity responsible for management of the Marijuana Operation, any person listed on the Marijuana Operation’s Articles of Incorporation or Articles of Organization, any person or entity owning an interest in the Marijuana Operation, and any person that supervises another employee of the Marijuana Operation.

(j) “Owner” shall mean:

a. For publicly traded companies “Owner” means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

b. For all businesses other than publicly traded companies, an owner is:

1. An individual that has an aggregate ownership interest, other than a security interest, lien, or encumbrance, of 20 percent or more in the Marijuana Operation;

2. The chief executive officer and all members of the board of directors of an entity when that entity has an aggregate ownership interest other than a security interest, lien or encumbrance of 20 percent or more in the Marijuana Operation; or

3. An individual that will be participating in the direction, control or management of the licensed Marijuana Operation. For the purposes of this section, participating in the direction, control, or management of the licensed Marijuana Operation means that the individual has been delegated discretionary powers to organize, direct, carry on or control the operations of the licensed Marijuana Operation.

(k) “Police Chief” shall mean the Chief of the City of Pacifica Police Department.

(l) “State Marijuana Laws” shall include the Compassionate Use Act, the Medical Marijuana Program Act, the Medical Cannabis Regulation and Safety Act, and the Adult Use of Marijuana Act, and all other State laws regulating Marijuana and Marijuana Products, as they may be amended.

(m) “State License” shall mean a license from the State issued pursuant to sections 19320 *et seq.* and 26050 *et seq.* of the California Business and Professions Code.

Sec. 4-16.03 Marijuana Operations – General Provisions

(a) Marijuana Use Permit and Public Safety License Required to Operate.

It shall be unlawful for any person to engage in, to conduct or carry on (or to permit to be engaged in, conducted or carried on) in or upon Property located within the City, the operation of a Marijuana Operation unless that person has first obtained and continues to maintain in full force and effect a valid Marijuana Use Permit issued by the City for that Property and that type of Marijuana Operation and a valid Marijuana Public Safety License issued by the City to the owner and/or operator of the Marijuana Operation, pursuant to this Article.

Imposition of Public Safety License Fees.

Every application for a Marijuana Public Safety License or renewal of such license shall be accompanied by a license fee in an amount set forth by separate resolution of the City Council, which amount is calculated to recover the City’s full cost of reviewing, issuing and administering said license. The application fee shall include the standard City fees for fingerprinting, photographing, and background check costs and shall be in addition to any other business license fee or permit fee imposed by this Code or other governmental agencies.

A fee for renewal of a Public Safety License will be due annually.

Conditions of Operation

Security Plan. A Licensee shall provide adequate security on the premises of the Marijuana Operation. The following minimum security standards shall be maintained at all times:

Surveillance system.

Each Marijuana Operation shall be monitored at all times by closed-circuit television surveillance system. The camera and video recording surveillance system must be capable of providing surveillance of both interior and exterior areas of the Marijuana Operation and must be of adequate quality, color rendition and resolution to allow the ready identification of an individual on or adjacent to the Property. The recordings shall be maintained at the Marijuana Operation for a period of not less than thirty (30) days and shall be provided to the City Police Department within twenty-four (24) hours of a written request from the Police Department for any recordings. Each Licensee shall notify the Chief of Police immediately after discovering any of the following: diversion, theft, loss, or any criminal activity involving the Marijuana Operation; significant discrepancies identified during inventory; or any other breach of security.

(ab) A sign shall be posted inside and at the entrances to the establishment indicating that the premises are under camera/video surveillance.

Windows and window coverings. Store fronts (front façade of the Marijuana Operation) shall be primarily glass with glass occupying at least 45% of the entire store front and 60% of the horizontal length of the store. Window and door areas shall not be covered, tinted, or made opaque in any way, or obscured in any way by landscaping, floor displays, equipment, or the like.

Loitering Adjacent to a Marijuana Operation. Licensees shall take reasonable measures to reduce loitering by Marijuana Operation members, patrons, guests and invitees in public areas, sidewalks, alleys and areas surrounding the Property and adjacent premises during the business hours of the Marijuana Operation.

Nuisances Prohibited. A Licensee shall take reasonable steps to correct objectionable conditions that constitute a nuisance on any public sidewalk or public space abutting the Marijuana Operation premises.

For purposes of this section, "objectionable conditions that constitute a nuisance" means public consumption of marijuana products, disturbance of the peace, drug trafficking, disposing of litter or trash, or excessive loud noise.

For purposes of this section, "reasonable steps" means all of the following:

Calling the local law enforcement agency. Timely calls to the local law enforcement agency that are placed by the licensee, or his or her agents or employees, shall not be construed as evidence of objectionable conditions that constitute a nuisance.

(bb) Requesting those persons engaging in activities causing objectionable conditions to cease those activities, unless the licensee, or his or her agents or employees, feel that their personal safety would be threatened in making that request.

(cc) Making good faith efforts to remove items that facilitate loitering, such as furniture, except those structures approved or permitted by the local jurisdiction. The licensee shall not be liable for the removal of those items that facilitate loitering.

State License Required to Operate. Operation of a Marijuana Operation shall not commence until a Licensee has obtained a valid State License. Licensees shall maintain a valid State License at all times during operation of a Marijuana Operation.

Inspection of Dispensaries.

City officials may enter and inspect a Marijuana Operation at any time during normal business hours with reasonable notice on any day of the week or at any reasonable time to ensure compliance and enforcement of the provisions of this Article.

No Licensee or any other person shall refuse, impede, obstruct, or interfere with an inspection pursuant to this Article.

(e) Transfer of Marijuana Public Safety Licenses Prohibited. Licenses issued pursuant to this Article shall be non-transferable to a different person or entity. Any attempt to transfer ownership or control of a Marijuana Operation to a different individual or any transfer of at least 51% ownership or title in the original entity that was issued the Public Safety License shall be grounds for revocation of the Marijuana Public Safety License by the Chief of Police.

Sec. 4-16.04 Marijuana Public Safety License – General Provisions

(a) Application Procedures

Public Safety License Application must be approved prior to the Applicant initiating the Marijuana Use Permit application process as set forth more fully in Section 9-4.4804 of this Code.

Public Safety Licenses shall not be issued until after the Planning Commission has approved a Marijuana Use Permit for the proposed Marijuana Operation.

Application Filing Requirements

A complete Marijuana Public Safety License Application or Application for Renewal along with all required fees and materials required by this Article, shall be submitted in order for a person, entity, and/or business to be considered for a Public Safety License. All Marijuana Public Safety License applications or Applications for Renewal shall be filed with the Pacifica Chief of Police using forms and authorizations provided by the City.

Eligibility for Filing. Public Safety License Applications and Applications for Renewal shall be filed by the owner of the Marijuana Operation.

Public Safety License Applications and Applications for Renewal shall include:

For each Licensee, Owner, Operator and employee of the Marijuana Operation, a fully legible copy of one valid government-issued form of photo identification, such as a state driver's license or identification card. Acceptable forms of government-issued identification include, but are not limited to, driver's license or photo identity cards issued by the state Department of Motor Vehicles (or equivalent) that meet REAL ID benchmarks, a passport issued by the United States or by a foreign government, U.S. Military ID cards (active duty or retired military and their dependents) or a Permanent Resident card.

If the Marijuana Operation is a corporation or a cooperative, a certified copy of the Collective's Secretary of State Articles of Incorporation, Certificate(s) of Amendment, Statement(s) of Information and a copy of the Collective's By Laws.

If the Marijuana Operation is an unincorporated association, a copy of the articles of association.

The name, address, electronic mail address and mobile phone number of the Applicant's or Licensee's current designated Agent for Service of Process.

Emergency Contact. The name, electronic mail address, and mobile phone number, of an Owner, Operator, or manager to act as an on-site community relations staff person to whom the City may provide notice of any operating problems associated with the Marijuana Operation.

A statement dated and signed by each Applicant, under penalty of perjury, that the Applicant has personal knowledge of the information contained in the Application, that the information contained therein is true and correct.

In addition to a completed Public Safety License Application or Application for Renewal, Applicants or Licensees shall provide and submit the following information to the Chief of Police:

The Applicant and each Owner, Operator and employee shall consent to fingerprinting and a criminal background investigation, and shall undergo fingerprinting and a criminal background investigation.

Security Plans. Applicants shall provide a plan to provide adequate security on the premises of the Marijuana Operation. The Plan shall include standards showing the Marijuana Operation's ability to comply with the conditions of Section 4-16.03(c)(1) of this Article.

Ongoing Filing Requirements. Where a Marijuana Operation or Licensee replaces, hires, appoints or employees new Operators and/or employees to its Marijuana Operation, all such Operators and employees shall be required to submit to fingerprinting and a criminal background investigation pursuant to Section 4-16.04(b)(3)(i) of this Article.

Sec. 4-16.05 Public Safety License and Public Safety License Renewal – Approval and Denial.

(a) Criteria for Issuance.

Marijuana Public Safety Licenses shall be approved where the Chief of Police confirms that the following criteria have been met:

The Applicant and each Owner, Operator and employee of the Marijuana Operation have authorized and completed fingerprinting.

The Applicant and each Owner, Operator and employee of the Marijuana Operation have authorized the use of their fingerprinting results to run a State and nationwide criminal background check.

The results of the criminal background checks establish that the Applicant, Owner(s), Operator(s), and employees have not been convicted of an offense that is substantially related to the qualifications, functions, or duties of a Marijuana Operation. The following offenses are substantially related to the qualifications, functions, or duties of a Marijuana Operation:

A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

A felony conviction involving fraud, deceit, or embezzlement.

A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

A felony conviction for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8.

Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.

The Applicant has not been convicted, cited, fined, or penalized by the State or any city, county, or city and county, or enjoined by any court of law, in the five years immediately preceding the application for a Marijuana Public Safety License or Marijuana Public Safety Renewal License, for any unauthorized marijuana activities.

The Applicant has not been convicted, cited, fined, or penalized by the State or any city, county, or city and county, or enjoined by any court of law, in the five years immediately preceding the application for a Marijuana Public Safety License or Marijuana Public Safety Renewal License, for cultivation or production of a controlled substance on public or private lands.

Security Plan. The Applicant or Licensee has provided a Security Plan providing the minimum standards set forth in Section 4-16.03(c)(1) of this Code.

Criteria for Denial.

Marijuana Public Safety Licenses shall not be issued or renewed where the Chief of Police confirms that one or more of the criterion set forth in subsection (A) of this section have not been met. If the Chief of Police denies the Marijuana Public Safety License Application or Application for Renewal, he or she shall specify in writing the reasons for the denial of the Application or Application for Renewal, and notify the Applicant that the decision shall become final unless the Applicant seeks an appeal pursuant to Section 4-16.05(C) of this Article.

Appeal from Chief of Police Determination.

An Applicant who disagrees with the Chief of Police's decision to issue or deny a Public Safety License may appeal the Police Chief's decision to the City Council in accordance with the appeal provisions of Title 1, Chapter 4 of this code.

Sec. 4-16.06 Expiration and Renewal of Marijuana Public Safety Licenses

(a) Marijuana Public Safety Licenses shall expire one year after their issuance

(b) Every licensee shall notify the Chief of Police in writing within ten (10) calendar days of any changes to any item listed in the application and upon any transfer of at least 51% ownership or title in the original entity that was issued the Public Safety License. The notification shall be signed and dated by an owner when submitted.

Public Safety Licenses must be renewed on an annual basis prior to expiration by filing with the Police Chief a Public Safety License Application for Renewal and a renewal fee in an amount set forth by separate resolution of the City Council, which amount is calculated to recover the City's full cost of reviewing, issuing and administering said license.

The Application for Renewal and the renewal fee shall be filed at least 30 days, but not more than 60 days, prior to the expiration of the Public Safety License. If a timely renewal application

is filed, the Marijuana Operation's Public Safety License shall not expire until the date that the Chief of Police approves or denies the Public Safety License Application for Renewal.

An Application for Renewal shall be subject to all filing requirements set forth in Section 4-16.04(b) and (c).

The Chief of Police shall issue or deny an Application for Renewal in accordance with the provisions of Section 4-16.05 of this Article.

Sec. 4-16.07 Suspension and Revocation by Chief of Police.

(a) A Marijuana Public Safety License issued under the terms of this Article shall be suspended or revoked by the Chief of Police if he or she concludes any of the following:

The Marijuana Operation has violated any of the requirements of this Article.

The Marijuana Operation is being operated in a manner which violates the Security Plan required by this Article.

The Marijuana Operation is being operated in a manner which constitutes a nuisance.

The Marijuana Operation has failed to comply with the conditions of operation set forth in Section 4-16.03(c) of this Code.

The Marijuana Operation has ceased to operate for thirty (30) days or more.

Results of a criminal background check establish that the Licensee, Owner(s), Operator(s), and/or employees have been convicted of an offense that is substantially related to the qualifications, functions, or duties of a Marijuana Operation. The following offenses are substantially related to the qualifications, functions, or duties of a Marijuana Operation:

A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

A felony conviction involving fraud, deceit, or embezzlement.

A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

A felony conviction for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8.

Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.

Conviction for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

Conviction for unauthorized commercial marijuana activities in any city, county or city and county in the five years immediately preceding the issuance of a Marijuana Public Safety License or Marijuana Public Safety Renewal License.

The Applicant has been convicted, cited, fined, or penalized by the State or any city, county, or city and county, or enjoined by any court of law, in the five years immediately preceding the application for a Marijuana Public Safety License or Marijuana Public Safety Renewal License, for any unauthorized marijuana activities.

The Applicant has been convicted, cited, fined, or penalized by the State or any city, county, or city and county, or enjoined by any court of law, in the five years immediately preceding the application for a Marijuana Public Safety License or Marijuana Public Safety Renewal License, for cultivation or production of a controlled substance on public or private lands.

The Marijuana Operation is being operated in a manner which conflicts with or violates State Marijuana Laws.

A Licensee's Marijuana Use Permit issued pursuant to Title 9, Chapter 4, Article 48 of this Code has been terminated or revoked.

(11) A Licensee has attempted to transfer or has transferred a Marijuana Public Safety License to another person or entity, or has transferred at least 51% ownership or title in the original entity that was issued the Public Safety License.

(12) A Licensee's State License has been suspended, terminated, or revoked.

Expiration. Any Marijuana Public Safety License revoked pursuant to this subsection shall be deemed to be expired and shall no longer entitle the Licensee to any privileges authorized by the Marijuana Public Safety License.

Appeal from Chief of Police Determination.

A licensee who disagrees with the Chief of Police's decision to suspend or revoke a Public Safety License may appeal the Police Chief's decision to the City Council in accordance with the appeal provisions of Title 1, Chapter 4 of this code.

Sec. 4-16.08 No Vested Rights. No person(s) shall have any vested rights to Public Safety License, right or interest under this Article, regardless of whether such person(s) cultivated, sold, distributed or otherwise engaged in acts related to the use of marijuana prior to adoption of the ordinance codified in this Article.

Section 3. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment, either from a direct physical change in the environment, or a reasonably foreseeable indirect physical change. The City Clerk shall file a Notice of Exemption with the San Mateo County Clerk.

Section 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the

remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 5. Publication. The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance by the City Council of the City of Pacifica, California, and cause the same to be published once in The Pacifica Tribune, a newspaper of general circulation, published and circulated in the City of Pacifica, California.

Section 23. Effective Date. This Ordinance shall only become effective on the date of certification of November 7, 2017 election results if the voters of the City of Pacifica do pass a measure on November 7, 2017, imposing an excise tax on Marijuana Operations within the City.

PASSED AND ADOPTED this 10th day of July, 2017, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Mike O'Neill, Mayor

ATTEST:

APPROVED AS TO FORM:

Kathy O'Connell, City Clerk

Michelle Kenyon, City Attorney

* * * * *

(ID # 2287) at 7/10/2017 7:00 PM City Council Regular Meeting