



MINUTES

Regular Meeting of the Planning Commission

MONDAY, February 1, 2016

City Council Chambers

1 Civic Center Drive, San Marcos, CA 92069

CALL TO ORDER

At 6:30 p.m. Chairman Flodine called the meeting to order.

PLEDGE OF ALLEGIANCE

Chairman Flodine led the Pledge of Allegiance to the Flag.

ROLL CALL

The Secretary called the roll:

PRESENT: COMMISSIONERS: FLODINE, JONES, KILDOO, MAAS, MATTHEWS, MINNERY, NORRIS

ALTERNATE COMMISSIONERS IN AUDIENCE: JACOBY, SCHAIBLE

ABSENT: None

Also present were: Planning Manager, Karen Brindley; Deputy City Attorney's, Wendy House & Avneet Sidhu; Office Specialist III, Lisa Kiss

ORAL AND WRITTEN COMMUNICATIONS

None.

CONSENT CALENDAR

1. APPROVAL OF MINUTES, 1/19/16

Action:

COMMISSIONER KILDOO MOVED TO APPROVE CONSENT CALENDAR AS PRESENTED; SECONDED BY COMMISSIONER JONES AND CARRIED BY A UNANIMOUS VOTE.

PUBLIC HEARINGS



2. **Case No:** P16-0003 (Text Amendment TA16-001)

Applicant: City of San Marcos

Request: The Planning Commission of the City of San Marcos will consider ratifying existing medical marijuana regulations under San Marcos Municipal Code Chapter (SMMC) 5.54. The Planning Commission will further consider recommending that the City Council adopt an ordinance amending Section 20.205.030(D) (Prohibited Uses) of the Zoning Ordinance to expressly prohibit marijuana cultivation as a prohibited use in all zones within the City of San Marcos; Section 20.600.030 ("M" Definitions) of the Zoning Ordinance to add the definition of "marijuana cultivation (land use)" as defined in SMMC Chapter 5.54; and to amend Section 20.600.030 ("A" Definitions) of the Zoning Ordinance to expressly preclude marijuana cultivation from the definition of "agricultural/horticultural (land use)" as a permitted use in certain zones. The Planning Commission will consider recommending approval of the ordinances by way of interim urgency pursuant to Government Code Section 65858, urgency pursuant to Government Code 36937, and in regular course in compliance with the requirement for local agencies to adopt regulations governing marijuana cultivation under the Medical Marijuana Regulation and Safety Act.

Categorical Exemption Class: 15378, this is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly. In the event this is found to be a project subject to CEQA, it is exempt from CEQA pursuant to the exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility of a significant effect on the environment.

Staff Presentation (Wendy House):

Discussed the request as described above, background and recent legislation. New State legislation regarding medical marijuana became effective 1/1/16. Unless local agencies have express regulations or prohibitions in place by 3/1/16 governing the cultivation of marijuana within their jurisdiction, these activities will be permitted & regulated by the State under the Medical Marijuana Regulation & Safety Act (MMRSA). On 1/12/16, the City Council approved an Ordinance amending Chapter 5.54 of the SMMC to prohibit the commercial cultivation of marijuana and all related & associated businesses within the City. The proposed resolution ratifies the City's existing prohibition on the commercial cultivation of marijuana under the SMMC, and further recommends that the City Council adopt an ordinance (three) by way of interim urgency, urgency and regular course, amending the Zoning Ordinance to expressly prohibit the cultivation of marijuana as a land use activity in all zones within the City's jurisdictional limits, and to expressly exempt marijuana cultivation from the definition of "agricultural/horticultural" as a permitted land use in certain zones. Marijuana remains illegal under Federal law. It is unknown if AB21 (medical marijuana cultivation clean-up measure) will become law prior to the current 3/1/16 deadline, and therefore necessary to amend the Zoning Ordinance to ensure compliance with the current regulations of the MMRSA. It's recommended that the City adopt express land use provisions under the Zoning Ordinance, in addition to the business regulations in the SMMC, as a comprehensive prohibition on the cultivation of marijuana so that it's clear that the State is not required by the City to act as the licensing authority under the MMRSA. If AB21 has been chaptered by the time the City Council considers the proposed ordinance, the recommended approach will be to adopt the ordinance in due course as the urgency actions will no longer be necessary. The proposed resolution is exempt from CEQA.



Minnery: Inquired if someone with a medical marijuana card is permitted to grow a small amount?

House: What is being prohibited is the commercial and business operations related to marijuana cultivation. City doesn't address the qualified non-commercial applications, such as those by or for individual qualified patients and primary caregivers. Individuals would still be subject to any limitations placed by law enforcement relating to individual cultivation, and would also be subject to potential nuisance claims if the use interferes with their neighbors' use and enjoyment of their property.

Norris: Asked if there are any locations in the City now and if so, what happens to them?

House: Doesn't believe there are any currently. Medical marijuana dispensaries are currently expressly prohibited under the Municipal Code, and any land use not expressly permitted under the Zoning Ordinance is prohibited.

Brindley: Confirmed that is correct.

Norris: Asked if it includes dispensing?

House: The amendment to the Zoning Ordinance discusses the commercial cultivation of marijuana and all associated manufacturing, processing and related or associated commercial uses. City currently has an ordinance in place prohibiting marijuana dispensaries.

Minnery: Inquired how many have opened dispensaries in the County?

House: Indicated she doesn't have that information, but stated she is aware of other jurisdictions in the County that have similarly prohibited the cultivation of marijuana and/or are considering doing so before the March 1 deadline.

Jones: Asked why they're ratifying an existing ordinance?

House: Commission would be confirming an ordinance relating to the commercial/business aspect of marijuana cultivation that has been adopted by the City Council. Additionally, we have since received recommendations to adopt land use regulation to cover all bases to ensure there is no question that the State does not have any authority to regulate or license marijuana cultivation in the City.

Jones: Recommending an ordinance that prohibits growing?

House: Yes.

Kildoo: There has been talk that Federal law may change view. Asked what happens then?

House: City can always amend an ordinance. One provision in 5.54 was recently changed to reflect updated case law. Would go with what is regulated by State and Federal, unless local agencies are permitted to enforce or prohibit marijuana use within their jurisdictions. In that case, it would be up to the City to decide what to do.



Matthews: Already have an ordinance against commercial growing; now adding medical marijuana?

House: Recent City Council ordinance prohibits commercial aspect, now specifying it is prohibited as a land use to make it clear and so there is no question that marijuana cultivation is not a permitted use in any form in the City.

OPEN PUBLIC HEARING

No public comment.

CLOSE PUBLIC HEARING

Action:

COMMISSIONER KILDOO MOVED TO RECOMMEND APPROVAL OF TA 16-001 AS SET FORTH IN RESOLUTION PC 16-4519 WITH MODIFICATIONS AS PER STAFF MEMO DATED 2/1/16; SECONDED BY COMMISSIONER MINNERY AND CARRIED BY THE FOLLOWING ELECTRONIC VOTE:

AYES:	COMMISSIONERS: FLODINE, JONES, KILDOO, MAAS, MATTHEWS, MINNERY, NORRIS
NOES:	COMMISSIONERS: NONE
ABSENT:	COMMISSIONERS: NONE
ABSTAIN:	COMMISSIONERS: NONE

PLANNING MANAGER COMMENTS

None.

PLANNING COMMISSIONERS COMMENTS

None.

ADJOURNMENT

At 6:49 p.m. Commissioner Flodine adjourned the meeting.

ERIC FLODINE, CHAIRMAN
CITY OF SAN MARCOS

ATTEST:

LISA KISS, OFFICE SPECIALIST III
SAN MARCOS PLANNING COMMISSION