



CITY COUNCIL STAFF REPORT

DATE: July 26, 2017

LEGISLATION

SUBJECT: AN INTERIM URGENCY ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, REGARDING "MEDICAL CANNABIS RELATED BUSINESSES AND ACTIVITIES" PURSUANT TO CHAPTER 5.45 OF THE PALM SPRINGS MUNICIPAL CODE TO BE UNDERTAKEN BY MEDICAL CANNABIS COOPERATIVES AND COLLECTIVES PERMITTED PURSUANT TO CHAPTER 5.35 OF THE CODE (4/5^{THS} Vote Required)

FROM: David H. Ready, City Manager

BY: Edward Z. Kotkin, City Attorney

SUMMARY

The City is in the process of amending its cannabis ordinances, and expanding commercial cannabis activities, of both a present medical and future adult-use nature, in Palm Springs. Since the City began regulating medical cannabis business in 2014, it has had a limited number of Medical Cannabis Cooperatives and Collectives operating under a regulatory framework that is outdated and unduly restrictive. To a degree, this framework has limited their ability to generate sufficient revenues to meet the needs of qualified medical patients, ameliorate human suffering, promote health, safety and welfare, comply with all City regulations, and maintain appropriate security measures. Now that the City has updated Chapter 5.45 of the Palm Springs Municipal Code, staff presents the Council with the opportunity to remedy that situation on an almost immediate basis.

RECOMMENDATION

Waive the reading of the text in its entirety, read by title only, and adopt Ordinance No. _____, "AN INTERIM URGENCY ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, REGARDING "MEDICAL CANNABIS RELATED BUSINESSES AND ACTIVITIES" PURSUANT TO CHAPTER 5.45 OF THE PALM SPRINGS MUNICIPAL CODE TO BE UNDERTAKEN BY MEDICAL CANNABIS COOPERATIVES AND COLLECTIVES PERMITTED PURSUANT TO CHAPTER 5.35 OF THE CODE" (4/5^{THS} Vote Required) (**See ATTACHMENT A**)

ITEM NO. 3.A.

STAFF ANALYSIS

On July 19, 2017 the Council introduced amendments to Chapter 5.45 of the Palm Springs Municipal Code to regulate "Medical Cannabis Related Businesses and Activities." To raise revenue and facilitate the City's accommodation of the potential growth and evolution of the cannabis industry, the Council is considering a ballot measure that will create a tax on cannabis business activity. Chapter 5.45 has been amended so that no permits will issue pursuant to its provisions unless and until that tax is approved by the voters. The Council may wish to address the restrictions under which its permitted Medical Cannabis Cooperatives and Collectives have been operating for some time. With the evolution of State law since the adoption of Chapter 5.35, the original cannabis related ordinance that provides the regulatory environment pursuant to which the City's permitted Medical Cannabis Cooperatives and Collectives have operated to date, Chapter 5.35 has become outdated and unduly restrictive. According to representations by the owners/operators of the City's cooperatives/collectives to the Council *ad hoc* subcommittee for cannabis ordinances, the provisions of 5.35 are impacting the business of Palm Springs' cooperatives/collectives, quite literally preventing them from competing in the commercial medical cannabis marketplace up to their full potential to do so pursuant to California law. The proposed interim urgency ordinance changes that.

If adopted, this interim urgency ordinance will:

1. Allow the City's cooperatives/collectives to secure a permit to operate under Chapter 5.45 and thereby significantly expand their sales of products in accord with applicable State law;
2. Provide for the continued payment by the cooperatives/collectives of the tax that they are currently paying by maintaining their 5.35 permits to the limited extent necessary to allow taxation under Chapter 3.35, the City's existing "Cannabis and Marijuana Tax," applicable to permittees under Chapter 5.35; and
3. Allow "early entry" into the regulatory environment of Chapter 5.45 for a limited time, until thirty days after the November 7, 2017 election. If the City's cannabis tax does not pass, the collectives/cooperatives will revert to their status as permittees under Section 5.35 until the Council decides what it wants to do in the long term with respect to the operational status of the cooperatives/collectives in an environment where the only cannabis tax available is that contained in Chapter 3.35, applicable only to "a cannabis or marijuana collective."

ALTERNATIVES

Reject this Interim Urgency Ordinance and continue the restrictions of Chapter 5.35 with respect to operations of the City's permitted collectives/cooperatives.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION:

1. The Ordinance is exempt under Section 15061(b) (3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This Ordinance authorizes additional cannabis business activity only by those lawfully engaged in medical cannabis activity in the City — a small and known number of operators. Authorizing new activities by these businesses cannot be anticipated to significantly change the impacts on the environment of their existing activities without speculation. Should any particular application involve such impacts, those impacts will be more easily analyzed in light of the specific facts of such an application. These medical and adult-use cannabis businesses will have impacts that are similar to the farming, manufacturing, distribution, laboratory, and transportation and distribution activities already authorized within the City. Furthermore, the Ordinance contains requirements that prevent any potential impacts on the environment that may be unique to businesses involving adult-use or medical cannabis. For example, the Ordinance establishes prohibitions on nuisance odors, glare, excess energy usage, and establishes safety protections to prevent crime or deterioration of the business area, prohibition on usages of hazardous chemicals, and a prohibition on usage of excess water in violation of drought laws, etc. Further, there is no possibility that this Ordinance would create cumulative impacts that are significant because this Ordinance does not increase the number of businesses in the City, does not authorize construction or other related activities or any other activities that are not already permitted, except that the Ordinance allows the same activities but with a different material (adult-use or medical cannabis) that is being grown, sold, transported, or otherwise utilized in some form; there are no other significant impacts that could occur as a result of this ordinance, and there are no unusual circumstances that would cause any such significant impacts;
2. The Ordinance is also exempt under Section 15183 (projects consistent with a community plan, general plan, or zoning) since the types of businesses permitted by the Ordinance are consistent with those contemplated by general plan and zoning, such as farming, manufacture, and distribution of other agriculture products and/or products to be used as pharmaceuticals;
3. The Ordinance is also exempt under CEQA Guidelines Section 15301 (existing facilities) since permitted medical cannabis business under the Ordinance may locate in existing facilities, and any additions to structures would be expected to be also exempt under 15301; and

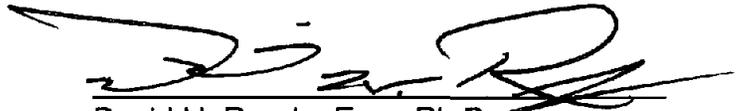
4. The Ordinance is exempt under Section 15303 (new construction or conversion of small structures). The businesses will be established in an urban area, and given the build out of the existing city, and sufficient existing leasable property, the amount of construction that would occur is minimal to non-existent, and any such construction would be less than the thresholds established in Section 15303.

FISCAL IMPACT

To the extent that the City's permitted collectives/cooperatives can achieve more profitable operation, the City's tax revenues, pending the adoption of a new cannabis tax by the voters, will grow by ten cents on every dollar of new profit.



Edward Z. Kotkin,
City Attorney



David H. Ready, Esq., Ph.D.,
City Manager

Attachments:

- A. Interim Urgency Ordinance

ORDINANCE NO. ____

AN INTERIM URGENCY ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, REGARDING “MEDICAL CANNABIS RELATED BUSINESSES AND ACTIVITIES” PURSUANT TO CHAPTER 5.45 OF THE PALM SPRINGS MUNICIPAL CODE TO BE UNDERTAKEN BY MEDICAL CANNABIS COOPERATIVES AND COLLECTIVES PERMITTED PURSUANT TO CHAPTER 5.35 OF THE CODE

City Attorney’s Summary

Another Ordinance to be adopted in conjunction with this Ordinance amends and updates Chapter 5.45 of the Palm Springs Municipal Code Regarding “Medical Cannabis Related Businesses and Activities” including dispensaries, transportation and distribution services, manufacturing, cultivation, and testing, to operate in the City subject to compliance with all applicable city and state laws. That Ordinance prohibits the issuance of permits for such activities unless and until a tax is approved by voters of the City on cannabis business activity. This Ordinance makes a temporary exception to that prohibition to allow existing lawful medical cannabis businesses in the City to be permitted under the Chapter 5.45 to do business in the City until the tax election is held.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS FINDS:

A. The City of Palm Springs is a charter city organized pursuant to Article XI of the California Constitution and, pursuant to the authority granted the City by Sections 5 and 7 of Article XI, the City has the power to make and enforce within its limits all ordinances and regulations in respect to municipal affairs not in conflict with general laws and its own charter. Such police powers include without limitation the ability to adopt comprehensive zoning regulations and regulations of the use of land and property within the City.

B. Pursuant to Article XI, Section 7 of the California Constitution, the City of Palm Springs may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

C. Sections 312 and 315 of the City Charter permit the City Council to adopt an ordinance on one reading and to make it immediately effective if declared to be necessary as an emergency measure for preserving the public peace, health or safety, and

containing a statement of the reasons for its urgency, if passed by at least four affirmative votes.

D. It is the purpose and intent of Chapter 5.45 of the Palm Springs Municipal Code to accommodate businesses allowing Medical Cannabis Related Businesses and Activities while protecting the health, safety, and general welfare of the residents and businesses within the incorporated areas of City of Palm Springs and comply with State law and Federal guidelines.

E. It is the intent of the City Council to have a strong and effective regulatory and enforcement system with regard to Medical Cannabis Related Businesses and Activities that addresses threats to public safety, health and other law enforcement interests through robust controls and effective procedures.

F. Chapter 5.45 of the Palm Springs Municipal Code is intended to establish criteria for issuing local permits pursuant to the MAUCRSA and to establish an effective regulatory and enforcement system consistent with the guidance issued by the United States Department of Justice.

G. Existing medical cannabis businesses lawfully operating in the City pursuant to and consistent with Chapter 5.35 of the Palm Springs Municipal Code provide medical marijuana to qualified patients and their caregivers to ameliorate human suffering and to promote health, safety and welfare. Given that cannabis remains federally illegal, constitutes valuable and portable contraband, and such businesses are barred from banking systems by federal laws and regulations, such businesses have unique security risks and secondary effects on neighboring land uses. These require ample regulation and security measures for the protection of public health, safety and general welfare. Compliance with these regulations and such measures is costly. The City therefore has an interest in the ability of lawful medical cannabis businesses in the City to fund compliance with state and local regulations and to provide a secure and professional environment for those they serve. This requires the City to limit the number of permittees that the community can support, and to cooperate with those businesses to ensure their ability to generate sufficient revenues to meet the needs of qualified medical patients, comply with all City regulations, and maintain appropriate security measures.

H. Neighboring communities have not restricted the number of permitted cannabis businesses and the proliferation of such businesses has undermined their financial wherewithal and pressured the ability of such businesses to comply with regulatory requirements and maintain a safe and lawful business environment.

I. It is therefore imperative that the City allow its lawful cannabis businesses to engage in the activities authorized by Chapter 5.45 of the Palm Springs Municipal Code

as soon as they may lawfully do so. Therefore the time required to allow two readings of this Ordinance and thirty (30) days for its effectiveness threatens the health, safety and welfare of Palm Springs and the City Council hereby finds this Ordinance to be an emergency measure for preserving the public peace, health or safety.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PALM SPRINGS ORDAINS:

SECTION 1. RECITALS INCORPORATED. The City Council hereby adopts the foregoing recitals and those in Ordinance No. ____, which in relevant part amends and updates Chapter 5.45 of the Palm Springs Municipal Code, and incorporates all of said recitals here by this reference as findings in support of adoption of this Interim Urgency Ordinance.

SECTION 2. LIMITED EXEMPTION FROM DEFERRED EFFECTIVENESS OF CHAPTER 5.55. Notwithstanding sections 5.45.055 of the Palm Springs Municipal Code as adopted by Ordinance No. ____, any Applicant for a permit, license, or other authorization under Chapter 5.45 of the Palm Springs Municipal Code as adopted by that Ordinance who operated any permitted Medical Cannabis Cooperative and Collective in the City under the provisions of Chapters 5.35 of the Palm Springs Municipal Code may apply for, and City staff shall process and evaluate such application, and, if the other conditions of that Chapter 5.45 are satisfied, the City may issue such permit, license, or authorization for commercial cannabis activity authorized by that Chapter. Every word used in this Ordinance that is defined in Chapter 5.45 of the Palm Springs Municipal Code as adopted by Ordinance ____ shall have the meaning provided in that chapter unless the context plainly demonstrates another meaning was intended.

SECTION 3. EXPIRATION. This Ordinance shall expire 30 days after the City Council certifies the results of the November 7, 2017 General Municipal Election unless the City Council acts by ordinance before that date to extend it. Upon expiration of this Ordinance, any permit, license, or authorization for commercial medical cannabis activity authorized by virtue of this Ordinance shall also expire, although the permittee, licensee or authorized person may continue to do business if in lawful compliance with another approval granted by the City under Chapters 5.35 of the Palm Springs Municipal Code.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. CONCURRENT LICENSING, CONTINUED LIMITED APPLICABILITY OF CHAPTER 3.35 re CANNABIS AND MARIJUANA TAX. The City requires the continued revenue generated by the City's permitted Medical Cannabis Cooperatives and Collectives pursuant to Chapter 3.35 of the Palm Springs Municipal Code during the effective date of this Ordinance. Accordingly, all permitted Medical Cannabis Cooperatives and Collectives shall remain permitted subject to Chapter 5.35, concurrent with any permit that they or any of them may secure pursuant to Chapter 5.45 during the effective period of this Interim Urgency Ordinance. However, Medical Cannabis Cooperatives and Collectives shall only remain concurrently permitted under 5.35 to the extent required to continue the uninterrupted applicability of Chapter 3.35 pending the expiration of this Ordinance. Furthermore, provisions of Chapter 5.35 inconsistent with operation pursuant to Chapter 5.45 are hereby suspended as to the City's permitted Medical Cannabis Cooperatives and Collectives during this Ordinance's period of effect.

SECTION 6. REVERSION TO STATUS UNDER 5.35 IN THE EVENT OF FAILURE OF CANNABIS TAX. In the event that on November 7, 2017 the voters of the City for any reason fail to approve and adopt an "Ordinance of the City of Palm Springs Imposing a Tax on Cannabis Business Activity," to be codified in Chapter 3.42 of the Palm Springs Municipal Code, the City's permitted Medical Cannabis Cooperatives and Collectives shall revert to their permitted status under Chapter 5.35 and any permitted status achieved or secured pursuant to Chapter 5.45 shall expire on the expiration date of this Ordinance.

SECTION 7. EXECUTION; CERTIFICATION. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect immediately.

SECTION 8. CEQA. The City Council finds that the adoption of this Ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) pursuant to the following provisions of the CEQA Guidelines, 14 Cal. Code of Regulations, Chapter 3:

1. The Ordinance is exempt under Section 15061(b) (3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This Ordinance authorizes additional cannabis business activity only by those lawfully engaged in medical cannabis activity in the City — a small and known number of operators. Authorizing new activities by these businesses cannot be anticipated to significantly change the impacts on the environment of their existing activities without speculation. Should any particular application involve such impacts, those impacts will be more easily analyzed in light of the specific facts of such an application. These medical and adult-use cannabis businesses will have impacts that are similar to the farming, manufacturing, distribution, laboratory, and transportation and distribution activities already authorized within the City. Furthermore, the Ordinance contains requirements that prevent any potential impacts on the environment that may be unique to businesses involving adult-use or medical cannabis. For example, the Ordinance establishes prohibitions on nuisance odors, glare, excess energy usage, and establishes safety protections to prevent crime or deterioration of the business area, prohibition on usages of hazardous chemicals, and a prohibition on usage of excess water in violation of drought laws, etc. Further, there is no possibility that this Ordinance would create cumulative impacts that are significant because this Ordinance does not increase the number of businesses in the City, does not authorize construction or other related activities or any other activities that are not already permitted, except that the Ordinance allows the same activities but with a different material (adult-use or medical cannabis) that is being grown, sold, transported, or otherwise utilized in some form; there are no other significant impacts that could occur as a result of this ordinance, and there are no unusual circumstances that would cause any such significant impacts;

2. The Ordinance is also exempt under Section 15183 (projects consistent with a community plan, general plan, or zoning) since the types of businesses permitted by the Ordinance are consistent with those contemplated by general plan and zoning, such as farming, manufacture, and distribution of other agriculture products and/or products to be used as pharmaceuticals;

3. The Ordinance is also exempt under CEQA Guidelines Section 15301 (existing facilities) since permitted medical cannabis business under the Ordinance may locate in existing facilities, and any additions to structures would be expected to be also exempt under 15301; and

4. The Ordinance is exempt under Section 15303 (new construction or conversion of small structures). The businesses will be established in an urban area, and given the build out of the existing city, and sufficient existing leasable property, the amount of construction that would occur is minimal to non-existent, and any such construction would be less than the thresholds established in Section 15303.

SECTION 8. FINDINGS. The adoption of this Interim Urgency Ordinance is necessary for the immediate protection of the public peace, health, and safety because of the City's interest in limiting the number of cannabis business permittees that the community can support, and to cooperate with those businesses to ensure their ability to generate sufficient revenues to meet their objectives. Failure to adopt this Interim Urgency Ordinance would reflect a lack of cooperation with the City's permitted Medical Cannabis Cooperatives and Collectives by ensuring their ability to generate sufficient revenues to meet the needs of qualified medical patients, ameliorate human suffering, promote health, safety and welfare, comply with all City regulations, and maintain appropriate security measures. In accordance with Section 312 of the Palm Springs City Charter, the City Council of the City of Palm Springs, California finds and determines that the adoption of this Interim Urgency Ordinance is necessary to ensure the immediate protection of the public peace, health, and safety, based upon these findings, and those reflected above in the true and correct recitals incorporated in this Interim Urgency Ordinance.

PASSED, APPROVED, AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL THIS 26th DAY OF JULY, 2017.

ROBERT MOON, MAYOR

ATTEST:

KATHLEEN D. HART, MMC
INTERIM CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, KATHLEEN D. HART, Interim City Clerk of the City of Palm Springs, hereby certify that Ordinance No. _____ is a full, true and correct copy, and was introduced at a regular meeting of the Palm Springs City Council on the 26th day of July, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSED:

KATHLEEN D. HART, MMC
INTERIM CITY CLERK