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Report to Mayor and City Council

Wednesday, June 08, 2016

Discussion

SUBJECT:

REPORT REGARDING THE CITY OF CARSON'S PROHIBITIONS RELATING TO THE SALES OF MEDICAL MARIJUANA IN THE CITY OF CARSON (CITY COUNCIL)

I. SUMMARY

Recently a question has arisen regarding whether or not the City of Carson permits the sale or cultivation of medical marijuana. This staff reports analyzes the City's zoning code and concludes that the City of Carson unequivocally prohibits such activities: no cultivation and no sale of medical marijuana is permitted, whether at a dispensary or via a delivery service. The City need not take any action to amend or clarify its ordinances to ensure that medical marijuana sales are prohibited.

II. RECOMMENDATION

CONSIDER directing staff to investigate complaints relating to the sale of

Medical marijuana within the City and, if appropriate, consider enforcement action.

III. ALTERNATIVES

TAKE any other action the Council deems appropriate.

IV. BACKGROUND

Recently questions have arisen relating to whether the City clearly and unequivocally prohibits the sale or cultivation of medical marijuana: it does. Uses that are not expressly permitted by the City's zoning code are prohibited. Medical marijuana cultivation and sales, either at a fixed location or by delivery, are not enumerated and are therefore prohibited.

The City's zoning code, codified as Title IX of the Carson Municipal Code, enumerates all the uses allowed within the City. The City's zoning code is drafted permissively -- what this means is that only the uses that are expressly enumerated are permitted, and all other uses that are not listed are prohibited. See, e.g., *City of Corona v. Naulls*, 166 Cal. App. 4th 418, 433 (2008) ("[W]here a particular use of land is not expressly enumerated in a city's municipal code as constituting a permissible use, it follows that such use is impermissible.").

Specifically, Sections 9121.1, 9131.1, and 9141.1 of the Carson Municipal Code list the permitted uses in the residential, commercial, and industrial zones, respectively. Medical marijuana dispensaries, cultivation, and delivery services are not currently listed among the permitted uses. Sections 9121.3, 9131.3, and 9141.3 of the Carson Municipal Code additionally provide that all uses are prohibited unless they are expressly permitted by the zoning code.

Uses that are similar to permitted uses may be allowed only pursuant to a decision by the Planning Commission following a public hearing, pursuant to the procedures of Section 9172.24. The Planning Commission has made no decision that permits the sale or cultivation of medical marijuana within the City.

The cultivation or sale of marijuana, whether at a specific location or by delivery, is not an enumerated permitted use in the City's zoning code, and is therefore unequivocally unlawful. The City needs to take no action to amend or clarify its zoning code in this regard.

It should be noted that the City has received complaints relating the delivery of medical marijuana within the City. It is therefore recommended that the City Council consider directing staff to investigate the complaints, and if appropriate, to consider enforcement proceedings.

V. FISCAL IMPACT

None.

VI. EXHIBITS

None.

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