



THE TOWN OF
CORTE MADERA
MARIN COUNTY CALIFORNIA

CORTE MADERA PLANNING COMMISSION STAFF REPORT

REPORT DATE: JANUARY 8, 2016
MEETING DATE: JANUARY 12, 2016

TO: PLANNING COMMISSIONERS

FROM: ADAM WOLFF, DIRECTOR OF PLANNING AND BUILDING
JUDITH PROPP, ASSISTANT TOWN ATTORNEY

SUBJECT: CONSIDER ADOPTION OF A RESOLUTION AFFIRMING THE EXISTING PROHIBITION OF THE COMMERCIAL CULTIVATION OF MEDICAL MARIJUANA IN THE TOWN OF CORTE MADERA AND RECOMMENDING TO THE TOWN COUNCIL THE CONTINUATION OF SUCH PROHIBITION AT THIS TIME.

PURPOSE:

State legislation enacted in late 2015 imposes new regulatory mechanisms related to medical marijuana that includes a comprehensive state-run licensing system for the commercial cultivation, manufacture, retail sales, transport, distribution, delivery, and testing of medical cannabis. These new laws took effect on January 1, 2016. The proposed Resolution recommends allowing the Town of Corte Madera to continue to maintain local control of zoning regulations concerning the commercial cultivation of medical marijuana.

STAFF RECOMMENDATION:

Staff recommends that the Planning Commission, after review of all information and public comment, provide a recommendation to the Town Council to adopt a proposed Resolution Affirming the Prohibition of Commercial Cultivation of Medical Marijuana in the Town of Corte Madera ([Attachment 1](#)).

BACKGROUND:

The Medical Marijuana Regulation and Safety Act (MMRSA), consisting of Assembly Bill 266, Assembly Bill 243, and Senate Bill 643, was enacted on September 11, 2015. The MMRSA imposes new regulatory mechanisms related to medical marijuana that includes a comprehensive state-run licensing system for the commercial cultivation, manufacture, retail sales, transport, distribution, delivery, and testing of medical cannabis. These new laws took effect on January 1, 2016.

Assembly Bill 243 establishes a dual licensing system. Under AB 243, both the state and the local agency may issue licenses for the commercial cultivation of medical marijuana. However, a medical marijuana cultivation business may only operate within a jurisdiction if it is allowed by the local agency. Pursuant to AB 243, local jurisdictions wishing to preserve its ability to regulate the commercial cultivation of marijuana, including the ability to prohibit it, must do so by March 1, 2016. Otherwise, a local agency (city, etc.) could lose its ability to prohibit medical marijuana cultivation businesses in the city as the State would become the sole licensing authority.

ENVIRONMENTAL ASSESSMENT

Adoption of the proposed resolution is not subject to the California Environmental Quality Act (CEQA) pursuant to Guidelines Section 15060(c)(2), as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and Guidelines Section 15060(c)(3) as the activity is not a project as defined in Guidelines Section 15378, because it has no potential for resulting in physical change to the environment directly or indirectly.

STAFF ANALYSIS

The Town of Corte Madera Municipal Code Section 18.02.050 includes a “permissive zoning” provision which has the effect of prohibiting any use or activity that is not listed as a permitted or conditionally permitted use or activity in the Town Code. Section 18.02.050 states, in relevant part: “The requirements of this title are to be interpreted so that if a use or activity is not listed as permitted or conditionally permitted, then that use shall not be permitted.”

In 2012, the Town expressly banned medical marijuana dispensaries (Town Municipal Code Section 18.02.120) in all zoning districts in the Town.

A “medical marijuana dispensary” is defined to include any location, structure, vehicle, store, co-op, residence, storefront or mobile retail outlet (as "storefront" and "mobile retail outlet" are used in Cal. Health and Safety Code Sec. 11362.768) or similar facility used, in full or in part, as a place at or in which or from which marijuana is sold, traded, exchanged, or bartered for in any way, whether or not said sale, trade, exchange or barter is accomplished by or through a club, membership, collective, cooperative, other entity or organization or in any other manner [Town of Corte Madera Municipal Code Section 18.04.500(b)].

Additionally, Town of Corte Madera Municipal Code Section 18.02.110 expressly prohibits any use that is in violation of any lawful federal or state statute. No permit, entitlement, application or approval shall be granted for a use in violation of federal or state law.

The manufacture, distribution, or possession of marijuana remains unlawful and a federal crime under the Federal Controlled Substance Act.

While cultivation of medical marijuana is not expressly addressed in the existing zoning ordinance, it is not identified as a permitted use in the Zoning Code and therefore, under the permissive zoning ordinance, not allowed in the Town of Corte Madera in any zoning district.

Due to the specificity of the new legislation, the League of California Cities recommends those agencies with permissive zoning ordinances adopt a resolution reaffirming the prohibition of cultivation prior to the March 1, 2016 (Attachment 2). More recently and after the League made its recommendation, Assembly Member Jim Wood, the author of the state legislation (MMRSA), acknowledged that in the haste to adopt the legislation prior to the end of 2015, the March 1, 2016 deadline was the result of a drafting error and, that he would be seeking emergency legislation in early January 2016 to allow cities more time. Nevertheless, it is unclear what specifically would be changed and if and when “corrective” legislation would be passed.

Staff recommends adopting a resolution based on principles of permissive zoning prior to March 1, 2016, to preserve the Town’s ability to license cultivation now and in the future by complying with the new legislation. If the Town does not adopt this resolution, the State may have the sole authority under MMRSA to license the cultivation of marijuana in the Town of Corte Madera, depending on interpretation of state law.

The Resolution would include language that affirms the Town’s principles of permissive zoning, that cultivation of marijuana is not allowed in the Town because it is not expressly permitted, and therefore, the State cannot license cultivation within the Town.

If the Town wishes to permit commercial cultivation in the future, the Town could still do so by amending the zoning ordinance to permit such uses where desired. Amending the zoning ordinance requires public hearings at both the Planning Commission and Town Council.

Other jurisdictions in California that have permissive language in their zoning code are moving forward by way of Council Resolution. Several cities in Marin County are also considering this approach including San Anselmo and Belvedere. Many other cities in the Bay Area and across the State are proceeding in this manner.

Even though the Town Code includes permissive zoning language, a more conservative approach is to adopt an ordinance expressly prohibiting commercial cultivation of medical marijuana that will take effect prior to March 1, 2016.

OPTIONS

1. If the Commission believes the proposed Resolution is consistent with the Town's Zoning Ordinance as set forth in Title 18 of the Town of Corte Municipal Code, then make a recommendation to the Town Council to adopt the Resolution.
2. If the Commission believes the proposed Resolution is not consistent with the Town's Zoning Ordinance and, that it has enough information and evidence to make such finding, then make a recommendation to the Town Council to take no action at this time.
3. Recommend that staff draft an ordinance expressly prohibiting the commercial cultivation of medical marijuana.

ATTACHMENTS

1. PROPOSED RESOLUTION AFFIRMING THE PROHIBITION OF COMMERCIAL CULTIVATION OF MEDICAL MARIJUANA IN THE TOWN OF CORTE MADERA
2. CALIFORNIA LEAGUE OF CITIES INFORMATION SHEET "MEDICAL MARIJUANA REGULATION AND SAFETY ACT – What Cities Need to Know About the New Law and Cultivation." (October 27, 2015) and CALIFORNIA LEAGUE OF CITIES FREQUENTLY ASKED QUESTIONS (FAQS) "MEDICAL MARIJUANA REGULATION AND SAFETY ACT." (December 16, 2015)