



CITY OF MENDOTA

"Cantaloupe Center Of The World"

JUAN LUNA
Chair
CARLOS QUINTANAR
Vice-Chair
ALBERT ESCOBEDO
MARTIN GAMEZ
JOSHUA GARCIA
RAMIRO ESPINOZA
Alternate Commissioner

**CITY OF MENDOTA
PLANNING COMMISSION
AGENDA**
City Council Chambers
Mendota, CA 93640
REGULAR MEETING
March 15, 2016
6:30 P.M.

VINCE DiMAGGIO
City Manager
CRISTIAN GONZALEZ
Public Works/Planning Director
JEFF O'NEAL
City Planner

The Mendota City Planning Commission welcomes you to its meetings, which are scheduled for the 3rd Tuesday every month. Your interest and participation are encouraged and appreciated. Notice is hereby given that Planning Commissioners may discuss and/or take action on any or all of the items listed on this agenda. **Please turn your cell phone off. Thank you for your respect and consideration.**

Any public writings distributed by the City of Mendota to at least a majority of the Planning Commission regarding any item on this regular meeting agenda will be made available at the front counter at City Hall located at 643 Quince Street Mendota, CA 93640, during normal business hours.

CALL TO ORDER

ROLL CALL

FLAG SALUTE

FINALIZE THE AGENDA

1. Adoption of final Agenda.

MINUTES AND NOTICE OF WAIVING OF READING

1. Approval of the minutes of the regular meeting of February 16, 2016.
2. Notice of waiving the reading of all resolutions introduced and/or adopted under this agenda.

PUBLIC HEARING

1. Proposed Adoption of **Resolution No. PC 16-02**: Recommending that the City Council of the City of Mendota Adopt an Ordinance Amending Chapter 8.36 of the Mendota Municipal Code Relating to the Establishment and Operation of Medical Marijuana Dispensaries, the Indoor and Outdoor Cultivation of Medical Marijuana, and the Delivery of Medical Marijuana.
 - a. *Receive report from City Attorney Kinsey*
 - b. *Inquiries from Planning Commissioners to staff*
 - c. *Chair Luna opens the public hearing*
 - d. *Once all comment has been received, Chair Luna closes the public hearing*
 - e. *Commission considers Resolution No. PC 16-02 for adoption*

PUBLIC COMMENT ON ITEMS THAT ARE NOT ON THE AGENDA

The public is invited to speak to the Planning Commission at this time about any item that is not on the Agenda. Please limit your comments to five (5) minutes. Please note that the Planning Commission cannot take action on any item not listed on the agenda.

PLANNING DIRECTOR UPDATE

PLANNING COMMISSIONERS' REPORTS

ADJOURNMENT

CERTIFICATION OF POSTING

I, Celeste Cabrera, Deputy City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota Planning Commission Regular Meeting of Tuesday, March 15, 2016 was posted on the outside bulletin board of City Hall, 643 Quince Street on Thursday, March 10, 2016 at 12:20 p.m.


Celeste Cabrera, Deputy City Clerk



CITY OF MENDOTA PLANNING COMMISSION MINUTES

Special Meeting

Monday, February 16, 2016

6:30 p.m.

Meeting called to order by Chairperson Luna at 6:30 PM.

Roll Call

Commissioners Present:

Chairperson Juan Luna, Vice-Chairperson Carlos Quintanar, Commissioners Albert Escobedo, Martin Gamez, and Joshua Garcia (at 6:32 p.m.).

Commissioners Absent:

None.

Staff Present:

Jeff O'Neal, City Planner; Matt Flood, Economic Development Manager; and Celeste Cabrera, Deputy City Clerk.

Flag Salute led by Chairperson Luna.

FINALIZE THE AGENDA

1. Adoption of final Agenda.

A motion was made by Vice-Chairperson Quintanar to adopt the agenda, seconded by Commissioner Escobedo; unanimously approved (4 ayes, absent: Garcia).

At 6:32 p.m. Commissioner Garcia entered the Council Chambers.

MINUTES AND NOTICE OF WAIVING OF READING

1. Approval of the minutes of the regular meeting of January 19, 2016.

A motion to approve item 1 was made by Vice-Chairperson Quintanar, seconded by Commissioner Garcia; unanimously approved (5 ayes).

2. Notice of waiving the reading of all resolutions introduced and/or adopted under this agenda.

A motion to approve item 2 was made by Commissioner Escobedo, seconded by Vice-Chairperson Quintanar; unanimously approved (5 ayes).

PUBLIC HEARING

1. Public Hearing to adopt Resolution No. PC 16-01, forwarding a recommendation to the City Council regarding the City of Mendota 2015-2023 Housing Element and associated negative declaration.

Chairperson Luna introduced the item and City Planner O'Neal summarized the report including that the Housing Element is a component of the General Plan; the Housing Element needs to be updated every 8 years; the Department of Housing and Community Development (HCD) reviewed the Multi-Jurisdictional Housing Element (MJHE); the City participating in the 5th cycle with the County of Fresno and numerous other jurisdictions; the various components of the MJHE; consequences that the City will face if the MJHE is not adopted in a timely manner; various policies and programs that are included in the MJHE that the City has to implement in order to ensure that the City is facilitating and endorsing housing developments with the City; various specifications that are included in the MJHE; and having the Planning Commission hold the public hearing and forward a recommendation to the City Council.

At 6:40 p.m. Chairperson Luna opened the hearing to the public.

Chelsey Payne (Mintier Harnish) – reported that she worked on the MJHE; the Housing Element needs to be updated every 8 years; the timeline of updating the Housing Element; consequences that the City will face if the Housing Element is not updated in a timely manner; the numerous jurisdictions that are participating in the MJHE; the Regional Housing Needs Assessment (RHNA); the City meeting RHNA requirements; the HCD review process ; various revisions that were made to the MJHE; the different programs that the HCD requested to be implemented; and the timeline of the adoption of the HCD.

Discussion was held on an MOU between the County of Fresno and the City to annex land.

At 6:54 p.m. Chairperson Luna closed the hearing to the public.

A motion was made to adopt Resolution No. PC 16-01 by Vice-Chairperson Quintanar, seconded by Commissioner Gamez; unanimously approved (5 ayes).

PUBLIC COMMENT ON ITEMS THAT ARE NOT ON THE AGENDA

None offered

PLANNING DIRECTOR UPDATE

Discussion was held on the status of the construction of McDonalds and Autozone.

Economic Development Manager Flood reported on the status of the construction of McDonalds and Autozone; staff working on completing the development of the Young property; and the possibility of converting City Hall into a police department in the future.

City Planner O'Neal reported on working on the MJHE and working with the developer of the Las Palmas subdivision to construct additional roads.

Discussion was held on the status of the Catholic Church.

PLANNING COMMISSIONERS' REPORTS

Vice-Chairperson Quintanar inquired as to how a resident can go about requesting that a speed bump is installed in a neighborhood.

Commissioner Gamez inquired as to the possibility of installing flashing stop signs and crosswalks on the east side of the City.

Discussion was held on the possibility of acquiring grant funding to install lighted stop signs and cross walks.

ADJOURNMENT

At the hour of 7:08 p.m. with no more business to be brought before the Planning Commission, a motion for adjournment was made by Vice-Chairperson Quintanar, seconded by Commissioner Escobedo; unanimously approved (5 ayes).

Juan Luna, Chairperson

ATTEST:

Matt Flood, City Clerk

A G E N D A I T E M - S T A F F R E P O R T

DATE: March 10, 2016

TO: Honorable Members of the Planning Commission of the City of Mendota

FROM: Vince DiMaggio, City Manager
John P. Kinsey, City Attorney

SUBJECT: Resolution Recommending that the City Council of the City of Mendota Adopt an Ordinance Amending Chapter 8.36 of the Mendota Municipal Code Relating to the Establishment and Operation of Medical Marijuana Dispensaries, the Indoor and Outdoor Cultivation of Medical Marijuana, and the Delivery of Medical Marijuana

RECOMMENDATION:

Adopt a Resolution that:

- A. Recommends that the City Council adopt an ordinance that would provide a comprehensive update to Chapter 8.36 of the Mendota Municipal Code, including provisions (i) prohibiting the cultivation or medical marijuana; (ii) prohibiting the location of medical marijuana dispensaries within the City; (iii) prohibiting the delivery of medical marijuana; (iv) clarifying the City's enforcement of any violations of Chapter 8.36; and (v) providing further amendments needed to clarify the regulation of medical marijuana within the City.
- B. Finds the Proposed Ordinance is not subject to environmental review under the California Environmental Quality Act.
- C. Directs the Secretary to schedule a public hearing before the City Council on the proposed amendments to Chapter 8.36 of the Mendota Municipal Code no less than ten (10) days nor more than forty (40) days after the adoption of the resolution.

BACKGROUND:

In 1996, California voters approved Proposition 215, the Compassionate Use Act, which exempted qualified patients and their primary caregivers from criminal liability for the possession and cultivation of marijuana for medical purposes. In 2003, the California Legislature enacted additional regulations through the passage of Senate Bill 420, the Medical Marijuana Program Act, to establish and implement a program for voluntary registration of qualified patients and their primary caregivers through a statewide identification card.

In late 2015, the Legislature passed, and the Governor signed, three pieces of legislation, AB 266, AB 243 and SB 643, collectively called the Medical Marijuana Regulation and Safety Act (the “Act”). The Act is effective as of January 1, 2016. The Act provides a statewide program for the licensing and regulation of commercial cannabis activity, specifically, the operation of medical marijuana dispensaries and the delivery and cultivation of marijuana. The Act provides that, in accordance with the California Constitution and as expressly held by the California Supreme Court, local authority remains intact, and the City may adopt ordinances to either regulate medical marijuana businesses or to prohibit such operations and related activities altogether.

Previously, the Act contained provisions suggest that, if a city did not have a zoning ordinance expressly addressing cultivation, the State would become the sole licensing and regulatory authority for that activity effective March 1, 2016. That deadline, however, has now been removed by recent legislation signed by the Governor on February 2, 2016.

The Act also provides that if a city does not have an ordinance in effect that expressly bans medical marijuana delivery in conjunction with a dispensary before the State begins issuing licenses, the State will be the sole regulatory body and delivery will be allowed with just a State dispensary license. It is not immediately clear when the State will be ready to issue licenses.

As a result of the foregoing, City Staff has been exploring potential amendments to the City of Mendota Municipal Code concerning the cultivation and delivery of medical marijuana, and the location of medical marijuana dispensaries in the City.

On February 9, 2016, the City Council voted to adopt a Resolution of Intention to initiate amendments to Chapter 8.36 of the Mendota Municipal Code that would (i) prohibit the establishment and/or operation of medical marijuana dispensaries, including mobile dispensaries; (ii) prohibit the indoor or outdoor cultivation of marijuana; (iii) prohibit the delivery of marijuana anywhere within the City’s boundaries; and (iv) make certain other clarifying changes to the existing text of Chapter 8.36.

City Staff prepared a proposed Ordinance Amending Chapter 8.36 of the Mendota Municipal Code Relating to the Establishment and Operation of Medical Marijuana Dispensaries, the Indoor and Outdoor Cultivation of Medical Marijuana, and the Delivery of Medical Marijuana (the “Proposed Ordinance”).

On March 2, 2016, the City published notice in the Firebaugh Mendota Journal advising that the Planning Commission would conduct a public hearing on the Proposed Ordinance at its March 15, 2016, regular meeting.

DISCUSSION:

Staff is recommending that the Planning Commission recommend that the City Council adopt the Proposed Ordinance amending Chapter 8.36 of the Mendota Municipal Code which, if enacted, would (i) prohibit the establishment and/or operation of medical marijuana dispensaries, including mobile dispensaries; (ii) prohibit the indoor or outdoor cultivation of marijuana; (iii) prohibit the delivery of marijuana anywhere within the City’s boundaries; and (iv) make certain other clarifying changes to the existing text of Chapter 8.36.

Although arguably not required, Staff is also recommending that the City follow the procedures set forth in Chapter 17.08.040 of the Mendota Municipal Code for the amendment of Chapter 8.36 (in addition to all other procedures required by law), as the regulations could affect land uses within the City. As a result, as part of its consideration and adoption of the proposed resolution, City Staff recommends that the Planning Commission direct the Secretary to file the resolution with the City Council, and schedule a public hearing on the proposed amendments to Chapter 8.36 of the Mendota Municipal Code no less than ten (10) days nor more than forty (40) days after the adoption of the resolution.

Staff also recommends that the Planning Commission find the Proposed Ordinance is not subject to environmental review under the California Environmental Quality Act.

Purpose and Intent of the Medical Marijuana Urgency Ordinance

In recommending the prohibition of marijuana dispensaries, and the delivery and cultivation of marijuana, as well as related activities, staff is making no judgment on whether individuals obtain some medical benefit from marijuana. The sole purpose of the Ordinance would be to protect the City's residents, business owners, and visitors from the detrimental secondary effects that such activities can create. The adoption of this Ordinance would allow the City to retain local control over the regulation of commercial medical marijuana activities. Adoption of a prohibition now will afford the City the opportunity to see how the State's regulatory structure develops and what unintended consequences, if any, may arise from implementation of the state program.

Secondary Effects of Medical Marijuana Activities

Much of the criminal activity associated with marijuana dispensary operations is due to the fact that federal law still classifies marijuana as a Schedule I drug, considered one of the most dangerous controlled substances along with heroin, LSD, Ecstasy and others. As long as it remains so classified, banks face severe monetary penalties or even closure, and individual bankers can be criminally prosecuted and banned from the industry, if they assist dispensary owners with opening and maintaining bank accounts. As a result, dispensaries must generally operate as a cash-only business. The Los Angeles Times recently reported that the "\$700-million-a-year cannabis industry run[s] almost entirely on cash." (See Exhibit "B.") With so much cash moving around, it is perhaps no surprise that dispensaries and related marijuana activities are a magnet for crime. In addition to robberies at dispensaries, grow houses have been broken into, and the Times reported that gangs in Denver have targeted couriers moving dispensary cash around the city.

Even a very cursory web search confirms that dispensaries are particularly vulnerable to criminal activity: in 2015 alone, at least three Los Angeles dispensaries were robbed; security guards at two of them were injured and an employee was injured at the third. A security guard was shot and killed at a San Bernardino dispensary in February. And an armed robbery of a dispensary in Upland in January 2015 led to a stand-off with the SWAT team at a nearby apartment building.

The City of Mendota Police Department, the County of Fresno, and the Fresno County Sheriff, have each determined that medical marijuana cultivation poses a threat to the public peace, health and safety. Many medical marijuana grows have recently emerged in Fresno County, which are visible to the public, including children and youths. Some of these grows contain booby-trap devices that threaten severe bodily harm or death to those who attempt to access them. There is also a threat of violent crime due to the size, location, and monetary value of these mature medical marijuana grows.

Proposed Features of the Potential Ordinance

Staff's proposed amendments to Chapter 8.36 of the Mendota Municipal Code would prohibit the establishment and operation of a medical marijuana dispensary anywhere within the City's boundaries, regardless of the zone, adopted specific plan, overlay zone or any other development or use classification of the property. The Amendments would also prohibit the indoor and outdoor cultivation of marijuana, and the delivery of marijuana from a fixed or mobile dispensary to another person within the City. The Amendments would also make certain changes to clarify Chapter 8.36 and its implementation.

Conclusion

Based on the foregoing, Staff recommends that the Planning Commission adopt a resolution recommending that the City Council adopt the Proposed Ordinance, which would amend Chapter 8.36 of the Mendota Municipal Code to (i) prohibit the cultivation or medical marijuana; (ii) prohibit the location of medical marijuana dispensaries within the City; (iii) prohibit the delivery of medical marijuana; (iv) clarify the City's enforcement of any violations of Chapter 8.36; and (v) provide any further amendments needed to clarify the regulation of medical marijuana within the City.

Staff also recommends that the Planning Commission direct the Secretary to file the resolution with the City Council, and schedule a public hearing on the proposed amendments to Chapter 8.36 of the Mendota Municipal Code no less than ten (10) days nor more than forty (40) days after the adoption of the resolution.

Staff also recommends that the Planning Commission find the Proposed Ordinance is not subject to environmental review under the California Environmental Quality Act.

Attachments

Ex. "A": [Proposed] Ordinance Amending Chapter 8.36 of the Mendota Municipal Code Relating to the Establishment and Operation of Medical Marijuana Dispensaries, the Indoor and Outdoor Cultivation of Medical Marijuana, and the Delivery of Medical Marijuana

Ex. "B": *Limited by U.S. banking rules, pot businesses rely on bags of cash and armed guards*, Los Angeles Times, December 19, 2015.

Ex. "C": City Council, City of Mendota, Resolution No. 16-08, Resolution of Intention to Initiate an Amendment to Chapter 8.36 of the Mendota Municipal Code Relating to the

Establishment and Operation of Medical Marijuana Dispensaries, the Indoor and Outdoor Cultivation of Medical Marijuana, and the Delivery of Medical Marijuana

**PLANNING COMMISSION
OF THE CITY OF MENDOTA
FRESNO COUNTY, CALIFORNIA**

RESOLUTION NO. PC 16-02

**A RESOLUTION OF THE CITY OF MENDOTA PLANNING COMMISSION
RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF MENDOTA ADOPT
AN ORDINANCE AMENDING CHAPTER 8.36 OF THE MENDOTA MUNICIPAL
CODE RELATING TO THE ESTABLISHMENT AND OPERATION OF MEDICAL
MARIJUANA DISPENSARIES, THE INDOOR AND OUTDOOR CULTIVATION OF
MEDICAL MARIJUANA, AND THE DELIVERY OF MEDICAL MARIJUANA.**

WHEREAS, on February 9, 2016, the City Council voted to adopt a Resolution of Intention to Initiate an Amendment to Chapter 8.36 of the Mendota Municipal Code Relating to the Establishment and Operation of Medical Marijuana Dispensaries, the Indoor and Outdoor Cultivation of Medical Marijuana, and the Delivery of Medical Marijuana (the “Resolution of Intention”); and

WHEREAS, although the Chapter 8.36 is not located in Title 17, the regulation of certain aspects of medical marijuana, including cultivation and dispensaries, imposes potential regulations on land use, and therefore the City in an abundance of caution is employing the procedures set forth in Section 17.08.040 to consider an amendment to Chapter 8.36 of the Mendota Municipal Code; and

WHEREAS, Section 17.08.040(B) of the Mendota Municipal Code provides that “Amendments to this title may be initiated in the following manner . . . The council may propose an amendment by a resolution of intention”; and

WHEREAS, Section 17.08.040(B) of the Mendota Municipal Code provides that the secretary shall set a public hearing on any proposed amendments by the Planning Commission “no less than ten (10) days nor more than forty (40) days . . . after the adoption of a resolution of intention by the commission or the council”; and

WHEREAS, City Staff has prepared a proposed Ordinance Amending Chapter 8.36 of the Mendota Municipal Code Relating to the Establishment and Operation of Medical Marijuana Dispensaries, the Indoor and Outdoor Cultivation of Medical Marijuana, and the Delivery of Medical Marijuana, a copy of which is attached hereto as Exhibit “A” (the “Proposed Ordinance”); and

WHEREAS, on March 2, 2016, the City published notice in the Firebaugh Mendota Journal advising that the Planning Commission would conduct a public hearing on the Proposed Ordinance at its March 15, 2016, regular meeting; and

WHEREAS, on March 15, 2016, the Planning Commission conducted a duly-noticed public hearing on the Proposed Ordinance; and

WHEREAS, Staff has reviewed the Proposed Ordinance, and has determined that the approval of the Proposed Ordinance is not subject to the California Environmental Quality Act, Public Resources Code, § 21000, *et seq.* ("CEQA"), pursuant to Section 15060(c)(2) of the CEQA Guidelines, on the grounds that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines, on the grounds that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly. Staff has also determined that, alternatively, the Proposed Ordinance is not a project under Section 15061(b)(3) of the CEQA Guidelines because it has no potential for causing a significant effect on the environment.

WHEREAS, Section 17.08.040(H) of the Mendota Municipal Code provides that the City Council shall hold a public hearing on the proposed amendments "not less than ten days nor more than forty (40) days after the filing of the commission's resolution by the council," and that notice of said council hearing "shall be given as provided in Section 17.08.040(F)."

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission for the City of Mendota hereby recommends to the City Council approval of the Proposed Ordinance, attached hereto and made a part of this resolution as Exhibit "A."

BE IT FURTHER RESOLVED that the Planning Commission finds the approval of this ordinance is not subject to CEQA, pursuant to Section 15060(c)(2) of the CEQA Guidelines, on the grounds that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines, on the grounds that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the Planning Commission finds the approval of this ordinance is not a project under Section 15061(b)(3) of the CEQA Guidelines because it has no potential for causing a significant effect on the environment.

BE IT FURTHER RESOLVED that the Secretary shall file this Resolution No. PC 16-02 with the City Council, and shall schedule a public hearing before the City Council on the Proposed Ordinance no less than ten (10) days nor more than forty (40) days after the adoption of this resolution. The Secretary shall also provide notice of the City Council hearing as provided under Section 17.08.040 of the Mendota Municipal Code no later than 10 days before the hearing.

PASSED AND ADOPTED by the Planning Commission of the City of Mendota at a regular meeting held on the 15th of March, 2016, upon a motion by _____, a second by _____, and by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Juan Luna, Chair

Matt Flood, City Clerk

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MENDOTA, CALIFORNIA,
AMENDING CHAPTER 8.36 OF THE MENDOTA
MUNICIPAL CODE RELATING TO THE
ESTABLISHMENT AND OPERATION OF MEDICAL
MARIJUANA DISPENSARIES, THE INDOOR
AND OUTDOOR CULTIVATION OF MEDICAL
MARIJUANA, AND THE DELIVERY OF
MEDICAL MARIJUANA.**

ORDINANCE NO. 16-XX

WHEREAS, in 1996, the People of the State of California approved Proposition 215, the Compassionate Use Act, which exempted qualified patients and their primary caregivers from criminal liability for the possession and cultivation of marijuana for medical purposes; and

WHEREAS, in 2003, the California Legislature enacted additional regulations through the passage of Senate Bill 420, the Medical Marijuana Program Act, to establish and implement a program for voluntary registration of qualified patients and their primary caregivers through a statewide identification card; and

WHEREAS, in late 2015, the Legislature passed, and the Governor signed, three pieces of legislation, AB 266, AB 243 and SB 643, collectively called the Medical Marijuana Regulation and Safety Act (the “Act”), which provides a statewide program for the licensing and regulation of commercial medical cannabis activity, specifically, the operation of medical marijuana dispensaries and the delivery and cultivation of medical marijuana; and

WHEREAS, the Act provides that, in accordance with the California Constitution and as expressly held by the California Supreme Court, local authority remains intact, and therefore the City may adopt ordinances to either regulate medical marijuana businesses or to prohibit such operations and related activities altogether; and

WHEREAS, the Act further provides that if a city does not have an ordinance in effect that expressly prohibits the delivery of medical marijuana in conjunction with a dispensary before the State begins issuing licenses, the State will be the sole regulatory body for that activity and delivery will be permissible with just a State license; and

WHEREAS, the City Council takes legislative notice that the use, possession, cultivation, distribution and sale of marijuana remain illegal under the Controlled Substances Act (“CSA,” 21 U.S.C. Section 841), and that federal courts have

recognized that despite California laws, marijuana is deemed to have no accepted medical use and the federal government may properly enforce the CSA in California; and

WHEREAS, in light of the continuing conflict between state and federal law, the City must resolve for itself whether, as a land use matter, cultivation of medical marijuana, delivery of medical marijuana, medical marijuana dispensaries, and related activities should be permitted, regulated or prohibited; and

WHEREAS, the City Council concurs with the City of Mendota Police Department, the County of Fresno, and the Fresno County Sheriff, who have determined that medical marijuana cultivation poses a threat to the public peace, health and safety. Many medical marijuana grows have recently emerged in Fresno County, which are visible to the public, including children and youths. Some of these grows contain booby-trap devices that threaten severe bodily harm or death to those who attempt to access them. There is also a threat of violent crime due to the size, location, and monetary value of these mature medical marijuana grows.

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors;

WHEREAS, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large number of plants could be cultivated on the same legal parcel, or parcels, within the City;

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery;

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants;

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime;

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing and distribution activities;

WHEREAS, based on the foregoing and other evidence, medical marijuana grows can create a nuisance that threatens the safety and property of nearby landowners and their families.

WHEREAS, nothing in Chapter 8.36 of the Mendota Municipal Code shall be deemed to conflict with federal law, as contained in the Controlled Substances Act, 21 U.S.C. § 841, or to license any activity that is prohibited under the act except as mandated by state law.

WHEREAS, nothing in Chapter 8.36 of the Mendota Municipal Code shall be construed to (i) allow persons to engage in conduct that endangers others or causes a public nuisance; (ii) allow the use of marijuana for non-medical purposes; or (iii) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under state or federal law.

WHEREAS, the City Council finds and declares that it is necessary to retain local control over the regulation of medical marijuana activities in order to protect public health, safety and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENDOTA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 8.36 of the Mendota Municipal Code is amended in its entirety to read as follows:

8.36.010 – Purpose & intent.

It is the purpose and intent of this Chapter 8.36, pursuant to Section 25123(d) of the Government Code to immediately prohibit the cultivation and delivery of medical marijuana to preserve the public peace, health, safety and general welfare of the citizens of the City of Mendota. It is also the purpose and intent of this Chapter 8.36 to continue in effect the City of Mendota's prohibition of medical dispensaries and limitations on the places where medical marijuana may be consumed.

8.36.020 – Relationship with other laws.

This chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the City Council that this chapter shall be interpreted to be compatible and consistent with federal and state enactments and in furtherance of the purposes which those enactments express. It is the intention that the provisions of this chapter will supersede any other provisions of this Mendota Municipal Code found to be in conflict.

8.36.030 – Definitions.

Notwithstanding any other provision in the Mendota Municipal Code, for purposes of this Chapter 8.36, the following terms shall have the following meanings:

“Collective or cooperative cultivation” means the association within California of qualified patients, persons with valid identification cards, and the designated primary caregivers of patients and persons with identification cards to cultivate medical marijuana.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, storing or trimming of medical marijuana.

“Delivery” means the commercial transfer of medical marijuana from a dispensary to a qualified patient, primary caregiver or person with an identification card, as defined in Section 11362.7 of the California Health & Safety Code, through any means of transport or delivery service. “Delivery” also includes the use by a medical marijuana dispensary, as defined herein, of any technology platform that enables qualified patients or primary caregivers to arrange for or facilitate the transfer of medical marijuana by a dispensary.

“Medical marijuana” or “medical cannabis” means “medical cannabis” as defined in Section 19300.5, subdivision (ag) of the California Business & Professions Code.

“Medical marijuana dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is offered, provided, sold, made available or otherwise distributed to a qualified patient, primary caregiver, or person with an identification card, as defined in Section 11362.7 of the California Health & Safety Code. For purposes of this section, the following do not constitute a “medical marijuana dispensary” so long as they comply with this section, the Mendota Municipal Code and all other applicable laws, and hold a current and valid state license duly issued in accordance with the applicable California law:

- a. A clinic, as defined in Section 1200 of the Health & Safety Code;
- b. A health care facility, as defined in Section 1250 of the Health & Safety Code;
- c. A residential care facility for persons with chronic life-threatening illness, as defined in Section 1568.01 of the Health & Safety Code;
- d. A residential care facility for the elderly, as defined in Section 1569.2 of the Health & Safety Code;
- e. A home health agency, as defined in Section 1727 of the Health & Safety Code, or a hospice that operates in accordance with Section 1726 of the Health & Safety Code; and

- f. A pharmacy, as defined in Section 4037 of the Business and Professions Code.

“Person” means any individual, partnership of any kind, corporation, limited liability company, association, joint venture, or other organization or entity, however formed.

8.36.040 – Regulations applicable to the consumption of medical marijuana.

No person shall smoke, ingest, or otherwise consume medical marijuana in the city of Mendota unless such person is a qualified patient or person with an identification card, and such smoking, ingesting or consumption occurs entirely within that person’s principal place of residence or on the premises of that person’s principal place of residence but out of public view. “Out of public view” shall mean out of view from public rights-of-way where members of the public are lawfully entitled to be. The phrase “inside a private residence” shall mean inside habitable areas and shall include garages, whether attached or detached, and other accessory buildings.

8.36.050 – Medical Marijuana Dispensaries, Cultivation and Delivery.

The following prohibitions apply to all property within the City’s boundaries, regardless of the zone, adopted specific plan, overlay zone or any other development or use classification or other designation of the property:

1. It is unlawful for any person, to establish or operate, or to allow, cause, create, suffer or permit the establishment or operation of a medical marijuana dispensary.
2. It is unlawful for any person to engage in the indoor or outdoor cultivation of medical marijuana, or to allow, cause, create, suffer or permit the indoor or outdoor cultivation of medical marijuana.
3. It is unlawful for any person to deliver medical marijuana to another person, or to allow, cause, create, suffer or permit the delivery of medical marijuana to another person.

8.36.060 – Violation and enforcement

Each and every violation of this chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by Title 1, Chapter 1.20 of this code. Additionally, as a nuisance *per se*, any violation of this chapter shall be subject to injunctive relief, payment to the city of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, civil penalties as set by the city council by resolution and any other relief or remedy available at law or equity. The city may also pursue any and all remedies and actions available and applicable under local and state laws for any violations of this chapter.

The Mendota Police Department, with administrative assistance from the city manager’s office, shall have primary responsibility for enforcement of the provisions of this chapter;

however, nothing herein shall limit the ability of the City's designated code enforcement officer to enforce the provisions of this chapter as may be necessary from time-to-time.

Nothing in this chapter shall be construed as imposing on the enforcing officer or the city of Mendota any duty to issue any notice to abate, nor to abate, nor to take any other action with regard to any violation of this chapter, and neither the enforcing officer nor the city of Mendota shall be held liable for failure to issue an order to abate, nor for failure to abate, nor for failure to take any other action with regard to any violation of this chapter.

8.36.070 – Severability

If any part of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this chapter.

SECTION 2. The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act, Public Resources Code, § 21000, *et seq.* ("CEQA"), pursuant to Section 15060(c)(2) of the CEQA Guidelines, on the grounds that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines, on the grounds that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under Section 15061(b)(3) of the CEQA Guidelines because it has no potential for causing a significant effect on the environment.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held for any reason to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Mendota hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

Nation

Limited by U.S. banking rules, pot businesses rely on bags of cash and armed guards



Kristi Kelly owns Good Meds, a medical marijuana company. Banks face prosecution for working with marijuana dispensaries, forcing businesses like Kelly's to operate almost entirely on cash. (David Kelly / For The Times)

By **David Kelly**

DECEMBER 19, 2015, 3:00 AM | REPORTING FROM DENVER

The Fourth Corner Credit Union occupies a prime spot in downtown Denver, not far from the state Capitol. It has a big safe, four teller windows, drive-up service and a banner out front that says, "The Fourth Corner Credit Union Coming Soon."

But there's a problem.

The Federal Reserve Bank of Kansas City, which oversees Denver, has refused Fourth Corner's request for a "master account," essentially a bank account allowing it to do business.

"You can't have a bank chartered by the state of Colorado and then nullified by the federal government," said Mark Mason, an attorney for the credit union.

Unless the Fed simply doesn't like the customers.

And in this case, the customers work in the cannabis trade. Fourth Corner hopes to be the first financial institution in the nation catering exclusively to the marijuana business.

But although pot is legal here, it remains a Schedule 1 controlled substance along with LSD and heroin in the eyes of the federal government. That means any bank working with the weed business faces prosecution.

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"Banks face a number of risks if they choose to serve the industry, up to and including closure of their institutions," said Amanda Averch, director of communications for the Colorado Bankers Assn.

"Regulators can impose civil money penalties, cease-and-desist orders, fines and can ban bankers from their careers for life."

Political remedies are being considered but major roadblocks remain, leaving the \$700-million-a-year cannabis industry running almost entirely on cash. Bags of it are taken to grocery stores to buy money orders to pay staff. Houses are rented and filled with safes full of cash. Phony bank accounts are created and then shut down when the money arrives reeking of pot.

Nearly everyone in the marijuana business has had bank accounts closed.

"So far we have lost 25 bank accounts," said Kristi Kelly, owner of the Good Meds medical marijuana dispensaries near Denver. "Our biggest area of exposure is what we do with our cash. Then how do we pay our bills? We are not talking about \$20 but five- and six-figure bills."

Those who can have hired armed private security to guard the product and ferry cash around Colorado in armored vans.

The guards are often former military personnel with combat experience in Iraq and Afghanistan.

On a recent morning, Tom Morton, a towering former Marine, cruised through a warren of faceless warehouses in North Denver before pulling into a side alley, walking up a few steps and ringing a bell.

The doors opened, revealing a bright, cavernous room with dozens of workers busily tending marijuana plants as tall as summer corn. An alcove flickered with 48 cameras trained on every employee.

Morton, 27, is a supervisor with the security company Helix TCS, checking on Travis Dombrowski, 26, a

guard who carries a semiautomatic pistol on his hip.

"I feel comfortable that I can defend the people here from any threat that comes through that door," Dombrowski said.

Morton nodded.

"Travis and I served together in Afghanistan. I know I can trust him with my life," he said. "I know in a gunfight he won't back down."

The day before, Morton was driving \$20,000 in cash and 50 pounds of pot around Denver in a van, a guard toting an AR-15 assault rifle perched in the back.

"It's totally legal," he said. "But it feels sketchy."

Criminals have targeted dozens of pot businesses. Earlier this year, shots were fired during two robberies. In another incident, a man crashed a pick-up through a grow house and chopped down \$15,000 worth of plants. And then there was a gang preying on couriers moving cash around the city.

No one has been killed, but many believe it's just a matter of time. And that's what got 26-year-old Alex Mason thinking.

He had a lot of friends in the marijuana industry and was appalled at the obstacles they faced conducting a legitimate business. So he and his father, Mark Mason, came up with the idea of a credit union servicing the cannabis business. They assembled a staff, a chief executive and a board of directors, and last year they received a state charter.

"Forget whether you are for or against cannabis, there is no rational argument to keep it an all-cash economy," said credit union Executive Vice President Mark Goldfogel. "There is no scenario where black marketing cash from a legal business is sustainable."

According to Mark Mason, the situation pushes the cannabis industry to the margins of legality.

"Most have figured out a workaround to get money to the state and others through friends or under management companies," he said. "But it all comes very close to the textbook definition of money laundering."

Mason has filed suit against the Federal Reserve for denying the credit union a master account and a hearing is set for Dec. 28 in federal court here.

A Fed spokesman declined comment.

Last year, the Obama administration issued new guidelines for banks wishing to do business with marijuana dealers that lessened the threat of prosecution but didn't offer immunity from it.

According to the Colorado Bankers Assn., 12 small banks are now working with the cannabis industry on a limited basis, but they have been warned by federal regulators not to expand those accounts, which are being closely monitored.

Blue Line Protection Group, a security firm, is doing compliance checks for such banks to ensure their cannabis clients are obeying the law.

"We know the dispensary owners, what questions to ask and how much cash and product they produce," said Blue Line Vice President Michael Jerome. "We do on-site compliance for the banks and they provide accounts for the businesses."

Blue Line is also opening a 12,000-square foot fortified "vaulting and cash processing facility" to safeguard their clients' money.

Kelly, the dispensary owner, recently opened an account with a bank that asked not to be identified. She knows it could be shut at any time.

"When my first account was closed I felt indignant," she said, "like I was being discriminated against."

It reminded Kelly of her grandmother, who had moved from China to Washington and stuffed her mattress with money because no one would give her a bank account.

"So these Chinese immigrants got together and opened their own credit union," she said. "I think there are some interesting parallels here. History has shown we can get through this, that we can remedy historical inequities."

The best solution may be an act of Congress.

Lawmakers including Colorado Sens. Michael Bennet, a Democrat, and Cory Gardner, a Republican, have introduced legislation giving marijuana businesses access to banking while barring regulators from punishing banks who legally work with them.

It's supported by the Colorado banking industry and Gov. [John Hickenlooper](#), a Democrat who opposed marijuana legalization.

But until something changes, dispensary owners and growers will continue to play hide-and-seek with criminals and rely on outfits such as Helix to protect their crops and cash.

In Greenwood Village, just south of Denver, Zachary Venegas monitored the movement of his security guards across the region from his office. If one of their unmarked vans carrying cash or marijuana veers off course, he's instantly alerted.

Venegas is a West Point graduate and former infantry officer who has owned security businesses in Africa and the Middle East before becoming chief executive of Helix. Nearly all his employees are former members of the military.

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"We are all comfortable in a mission-oriented culture," he said.

Still, he believes it's just a matter of time before a major crime targeting the cannabis industry results in significant casualties.

"A lot of people are saying, 'Well, let's just see how it goes,' as if there's not an actual threat," he said. "But I think the illegal side is out there just watching and waiting to strike."

Kelly is a special correspondent.

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A version of this article appeared in print on December 19, 2015, in the News section of the Los Angeles Times with the headline "Legal pot shops are a high-risk business to banks" — [Today's paper](#) | [Subscribe](#)

This article is related to: [John Hickenlooper](#)

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**RESOLUTION OF INTENTION TO INITIATE
AN AMENDMENT TO CHAPTER 8.36 OF THE
MENDOTA MUNICIPAL CODE RELATING
TO THE ESTABLISHMENT AND OPERATION
OF MEDICAL MARIJUANA DISPENSARIES,
THE INDOOR AND OUTDOOR CULTIVATION
OF MEDICAL MARIJUANA, AND THE DELIVERY
OF MEDICAL MARIJUANA**

RESOLUTION NO. 16-08

WHEREAS, in 1996, the People of the State of California approved Proposition 215, the Compassionate Use Act, which exempted qualified patients and their primary caregivers from criminal liability for the possession and cultivation of marijuana for medical purposes; and

WHEREAS, in 2003, the California Legislature enacted additional regulations through the passage of Senate Bill 420, the Medical Marijuana Program Act, to establish and implement a program for voluntary registration of qualified patients and their primary caregivers through a statewide identification card; and

WHEREAS, in late 2015, the Legislature passed, and the Governor signed, three pieces of legislation, AB 266, AB 243 and SB 643, collectively called the Medical Marijuana Regulation and Safety Act (the "Act"), which provides a statewide program for the licensing and regulation of commercial medical cannabis activity, specifically, the operation of medical marijuana dispensaries and the delivery and cultivation of medical marijuana; and

WHEREAS, the Act provides that, in accordance with the California Constitution and as expressly held by the California Supreme Court, local authority remains intact, and therefore the City may adopt ordinances to either regulate medical marijuana businesses or to prohibit such operations and related activities altogether; and

WHEREAS, the City Council takes legislative notice that the use, possession, cultivation, distribution and sale of marijuana remain illegal under the Controlled Substances Act ("CSA," 21 U.S.C. Section 841), and that federal courts have recognized that despite California laws, marijuana is deemed to have no accepted medical use and the federal government may properly enforce the CSA in California; and

WHEREAS, in light of the continuing conflict between state and federal law, the City must resolve for itself whether, as a land use matter, cultivation of medical marijuana, delivery of medical marijuana, medical marijuana dispensaries, and related activities should be permitted, regulated or prohibited; and

WHEREAS, the City Council concurs with the City of Mendota Police Department, the County of Fresno, and the Fresno County Sheriff, who have determined that medical marijuana cultivation poses a threat to the public peace, health and safety. Many medical marijuana grows have recently emerged in Fresno County, which are visible to the public, including children and youths. Some of these grows contain booby-trap devices that threaten severe bodily harm or death to those who attempt to access them. There is also a threat of violent crime due to the size, location, and monetary value of these mature medical marijuana grows; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large number of plants could be cultivated on the same legal parcel, or parcels, within the City; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing and distribution activities; and

WHEREAS, based on the foregoing and other evidence, medical marijuana grows can create a nuisance that threatens the safety and property of nearby landowners and their families; and

WHEREAS, based on the foregoing concerns, following the passage of the Act, City Staff commenced a review of its existing ordinances relating to medical marijuana, which are located at Chapter 8.36 of the of the Mendota Municipal Code; and

WHEREAS, following its review of Chapter 8.36, the City has determined that it is in the City's best interest to consider the potential prohibition of (i) the cultivation of medical marijuana, (ii) the delivery of medical marijuana; and (ii) medical marijuana dispensaries within the City; and

WHEREAS, Section 17.08.040 of the Mendota Municipal Code provides the procedure for the enactment of amendments to the City's Zoning Code, which is located at Title 17 of the Mendota Municipal Code; and

WHEREAS, although the Chapter 8.36 is not located in Title 17, the regulation of certain aspects of medical marijuana, including cultivation and dispensaries, imposes potential regulations on land use, and therefore the City in an abundance of caution is employing the procedures set forth in Section 17.08.040 to consider an amendment to Chapter 8.36 of the Mendota Municipal Code; and

WHEREAS, Section 17.08.040(B) of the Mendota Municipal Code provides that "Amendments to this title may be initiated in the following manner . . . The council may propose an amendment by a resolution of intention"; and

WHEREAS, Section 17.08.040(B) of the Mendota Municipal Code provides that the secretary shall set a public hearing on any proposed amendments by the Planning Commission "no less than ten (10) days nor more than forty (40) days . . . after the adoption of a resolution of intention by the commission or the council."

NOW, THEREFORE, BE IT RESOLVED that the City Council for the City of Mendota hereby authorizes Staff to proceed with the preparation of a comprehensive update to Chapter 8.36 of the Mendota Municipal Code to (i) prohibit the cultivation or medical marijuana; (ii) prohibit the location of medical marijuana dispensaries within the City; (iii) prohibit the delivery of medical marijuana; (iv) clarify the City's enforcement of any violations of Chapter 8.36; and (v) provide any further amendments needed to clarify the regulation of medical marijuana within the City.

BE IT FURTHER RESOLVED that the Secretary shall schedule a public hearing before the Planning Commission on the proposed amendments to Chapter 8.36 of the Mendota Municipal Code no less than ten (10) days nor more than forty (40) days after the adoption of this resolution.

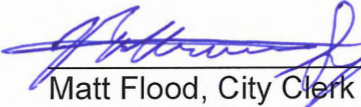


Robert Silva, Mayor

ATTEST:

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 9th day of February, 2016, by the following vote:

AYES: 4 – Mayor Silva, Mayor Pro Tem Valdez, Councilors Amador and Castro.
NOES: 0
ABSENT: 1 – Councilor Riofrio.
ABSTAIN: 0


Matt Flood, City Clerk

