City of Biggs

Agenda Item Staff Report
for the Regular City Council Meeting:
January 12, 2016

TO: Honorable Mayor and Members of the City Council
FROM: Greg Einhorn, City Attorney
Subject: Ordinance Amending Biggs Municipal Code relating to marijuana.

Background:
On October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act (MMRSA), which went into effect on January 1, 2016, and establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills 243 and 266 and Senate Bill 643.

According to the provisions of the MMRSA, unless local agencies have a land use ordinance in place by March 1, 2016 that expressly regulates or prohibits the cultivation of marijuana and/or the delivery of medical marijuana within their jurisdictions, these activities will be permitted and regulated by the State under the MMRSA.

The Council considered the situation at its meeting in December and gave direction to the City Attorney and resulted in the attached ordinance.

Recommendation: Introduce the following ordinance by reading of the title:

AN ORDINANCE OF THE CITY OF BIGGS

ADDING CHAPTER 14.175 (MARIJUANA CULTIVATION AND MEDICAL MARIJUANA DELIVERIES AND DISPENSARIES), AMENDING TITLE 14 (ZONING), AND AMENDING TITLE 6 (NUISANCE) OF THE BIGGS MUNICIPAL CODE PROHIBITING MARIJUANA CULTIVATION, DISPENSARIES AND DELIVERIES

AN ORDINANCE OF THE CITY OF BIGGS ADDING CHAPTER 14.175 (MARIJUANA CULTIVATION AND MEDICAL MARIJUANA DELIVERIES AND DISPENSARIES), AMENDING TITLE 14 (ZONING), AND AMENDING TITLE 6 (NUISANCE) OF THE BIGGS MUNICIPAL CODE PROHIBITING MARIJUANA CULTIVATION, DISPENSARIES AND DELIVERIES

WHEREAS, the City Council of the City of Biggs, pursuant to Chapter 14.175 of the Biggs Municipal Code, hereby intends to and does establish a land use regulation prohibiting the cultivation, dispensary and delivery of marijuana within the City of Biggs; and,

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, codified at California Health and Safety Code Section 11362.5, and entitled "The Compassionate Use Act of 1996" ("the Compassionate Use Act" or "CUA"); and,

WHEREAS, the intent of the Compassionate Use Act was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific circumstances, without being subject to criminal prosecution under certain state statutes; and,

WHEREAS, on January 1, 2004, Senate Bill 420, codified at California Health and Safety Code Sections 11362.7 et seq. and entitled "The Medical Marijuana Program" ("MMP"), became effective to clarify the scope of the Compassionate Use Act; and,

WHEREAS, the MMP provides that specific immunities extend to those who cultivate marijuana for medical purposes; specifically, such individuals "shall not be subject, on that sole basis, to criminal liability" under Health and Safety Code sections 11357 [possession], 11358 [cultivation], 11359 [possession for sale], 11366 [maintaining location for selling, giving away or using controlled substances], 11366.5 [managing location for manufacture or storage of controlled substance], or 11570 ["drug den" abatement law] (Health and Safety Code section 11362.765(a).); and,

WHEREAS, neither the CUA nor the MPP provide the right to cultivate medical marijuana (City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729) and local governments have the authority to prohibit cultivation of all marijuana, including medical marijuana (Maral v. City of Live Oak (2013) 221 Cal. App. 4th 975); and,

WHEREAS, the City of Biggs has adopted a land use regulation Zoning Plan identified as Title 14 (Zoning) of the City of Biggs Municipal Code; and,

WHEREAS, the City of Biggs is authorized under state law to prohibit the cultivation of all marijuana (Health and Safety Code sections 11362.777(b)(3) and 1362.777(c)(4)); prohibit the delivery of marijuana (Section 19300.5. Business and Professions Code sections 19300.5 and 19340) and,

WHEREAS, the City of Biggs/Gridley Police Department, City residents and other public entities have reported adverse impacts from marijuana and medical marijuana cultivation,

including disagreeable odors; increased risk of burglary and other property crimes, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes; and,

WHEREAS, the creation of persistent strong odors as marijuana plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable marijuana plants and creating an increased risk of crime; and,

WHEREAS, the indoor cultivation of substantial amounts of marijuana also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation; and,

WHEREAS, children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants has proven to be an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including schools, parks, and other similar locations; and,

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act (MMRSA), which goes into effect on January 1, 2016, and establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills 243 and 266 and Senate Bill 643; and,

WHEREAS, according to the provisions of the MMRSA, unless local agencies have a land use ordinance in place by March 1, 2016 that expressly regulates or prohibits the cultivation of marijuana and/or the delivery of medical marijuana within their jurisdictions, these activities will be permitted and regulated by the State under the MMRSA; and,

WHEREAS, the City Council finds and determines that the enactment of this Ordinance is exempt from environmental review pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3) in that there is nothing in this Ordinance or its implementation that could have a foreseeable significant effect on the environment; and,

WHEREAS, the City held a duly noticed public hearing on this Ordinance on January 12, 2016.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BIGGS DOES ORDAIN AS FOLLOWS:

Section 1. The above-listed findings and statements of intent are true and correct.

Section 2. Section 6.25.020 of the Biggs Municipal Code is amended as follows:

It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of private property in the city to maintain or to allow to be maintained such property in such manner that any of the following conditions are visible from a public street or right-of-way and/or are found to exist thereon, except as may be allowed by this code:

(9) Marijuana, as defined in California Health and Safety Code Section 11018, ~~Medical marijuana plants, products~~ and/or ~~the cultivation of medical marijuana, visible either to the public or neighboring property~~, or to permit the odor of which to be detected by any member of the public~~, or to cultivate, process or store medical marijuana not in compliance with all of the provisions of BMC 6.25.035~~.

8.24.020 - Definitions.

The following definitions shall apply in this chapter:

~~"Cultivation" means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.~~

"Marijuana Cultivation" means the planting, growing, harvesting, drying, or processing of all Marijuana, including Medical Marijuana.

"Medical Marijuana" means ~~medical~~ ~~m~~Marijuana that has been recommended by a licensed physician in strict accordance with California Health and Safety Code Sections 11362.5 through Section 11362.83, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.

~~"Primary Caregiver" shall have the same definition as California Health and Safety Code Section 11362.7(d), as may be amended.~~

~~"Qualified Patient" shall have the same definition as California Health and Safety Code Sections 11362.7 (c) and (f), as may be amended.~~

Section 3. Section 6.25.035 of the Biggs Municipal Code is deleted in its entirety.

Section 4. Section 6.25.055 of the Biggs Municipal Code is amended as follows:

6.25.055 Nuisance abatement – Marijuana ~~Visible/unsecured odiferous medical marijuana under cultivation.~~

(1) ~~Medical~~ Marijuana Cultivation/Storage Nuisance Circumstances.

Notwithstanding any provision in this chapter, the abatement measures set forth in subsection (2) of this section shall be utilized in the following nuisance circumstances: ~~medical~~ marijuana ~~plants~~, or the cultivation of ~~medical~~ marijuana ~~plants~~, visible from the street or neighboring property; and, the odor of ~~medical~~ marijuana detected by any member of the public. ~~from the street or neighboring property; or the presence, cultivation, processing and/or storage of medical marijuana not in compliance with all of the provisions of BMC 6.25.035.~~

Marijuana shall be as defined in California Health and Safety Code Section 11018, and shall include "Medical Marijuana" as recommended by a licensed physician in strict accordance with California Health and Safety Code Sections 11362.5 through Section 11362.83, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.

"Marijuana Cultivation" means the planting, growing, harvesting, drying, or processing of all Marijuana, including Medical Marijuana.

Section 5. Section 6.25.085 of the Biggs Municipal Code is amended as follows:

6.25.085 Nuisance abatement fines.

(4) Issuance of Fines for Marijuana ~~Visible/Odiferous and/or Nonregulatory—Compliant Medical Marijuana Cultivation.~~

(a) Up to $1,000 per day, upon expiration of time for abatement (BMC 6.25.055(3)(a)).

(b) Frequent violator: up to $500, in addition to subsection (4)(a) of this section.

Section 6. Section 14.10.675 of the Biggs Municipal Code is amended as follows:

14.10.675 Medical Marijuana Dispensary and delivery.

"Medical Marijuana ~~d~~Dispensary" ~~means a facility or location which provides, makes available, or distributes medical marijuana to a primary caregiver, a qualified patient, or a person with an identification card issued in accordance with California Health and Safety Code Section 11362.5 et seq. "Dispensary"~~ means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale,

including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

" Medical Marijuana Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

Section 7. Section 14.75.050 of the Biggs Municipal Code is amended as follows:

14.75.050 Medical Marijuana Dispensaries and Deliveries.

Home occupations exclude medical marijuana dispensaries and deliveries as defined in this title. ~~Health and Safety Code Section 11362.5 et seq. or a successor provision~~

Section 8. Section 14.120.025 of the Biggs Municipal Code is amended as follows:

14.120.025 Medical Marijuana Dispensaries and Deliveries.

Medical marijuana dispensary and delivery, as defined in this title, ~~as defined in Health and Safety Code Section 11362.5 et seq. or a successor provision, is not an~~ are not allowable commercial uses.

Section 9. Section 14.140.025 of the Biggs Municipal Code is amended as follows:

14.140.025 Medical marijuana dispensaries and deliveries.

Medical marijuana dispensary and delivery, as defined in this title, ~~as defined in Health and Safety Code Section 11362.5 et seq. or a successor provision, is not an~~ are not allowable industrial uses.

Section 10. Chapter 14.175 to the Biggs Municipal Code is added as follows:

Chapter 14.175 – MARIJUANA CULTIVATION, DISEPNSARIES AND DELIVERIES

14.175.010 - Definitions.
14.175.020 - Marijuana Cultivation.
14.175.030 - Marijuana Dispensaries and Deliveries.
14.175.040 - Violations—Penalty.

14.175.010 - Definitions.

"Marijuana" shall have the same meaning as that set forth in California Health and Safety Code Section 11018.

"Marijuana Cultivation" means the planting, growing, harvesting, drying, or processing of all Marijuana, including Medical Marijuana.

"Medical Marijuana" means Marijuana that has been recommended by a licensed physician in strict accordance with California Health and Safety Code Sections 11362.5 through Section 11362.83, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.

14.175.020 - Marijuana Cultivation.

Marijuana Cultivation by any person or entity is prohibited in all zone Districts within the City of Biggs.

14.175.030 – Medical Marijuana Dispensaries and Deliveries.

Medical marijuana dispensaries and deliveries, as defined in this title, are prohibited in all zone Districts within the City of Biggs.

14.175.040 - Violations—Penalty.

A. Any use or condition caused or permitted to exist in violation of any provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the city pursuant to the procedures set forth in this code.

B. Each violation of this chapter and each day a violation of this chapter continues to exist shall be considered a separate and distinct violation.

C. All means of enforcement authorized under this code may be used to address violations of this chapter, including but not limited to: Civil penalties, nuisance abatement, civil actions, and administrative citations.

Section 11. Severability.

If any section, subsection, phrase or clause of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 12. This Ordinance shall take effect thirty (30) days after passage and approval by the City Council.

Section 13. The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

I HEREBY CERTIFY that the above and foregoing Ordinance was duly and regularly introduced and read at a regular meeting held on the 12th day of January, 2016, and was passed and adopted by the City Council of the City of Biggs at a meeting thereof duly held on the __ day of January, 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
Roger Frith, Mayor

ATTEST:

_____
Roben Dewsnup, City Clerk

APPROVED AS TO FORM:

_____
Gregory Einhorn,
City Attorney