

## STAFF REPORT

**DATE:** January 23, 2018

**TO:** City Council

**FROM:** Mike Webb, City Manager  
Ashley Feeney, Director, Community Development & Sustainability  
Harriet Steiner, City Attorney

**SUBJECT:** Proposed Urgency Ordinance Authorizing Issuance of Limited, Temporary Administrative Use Permits for Delivery-Only Medical Cannabis Retail Businesses

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*The proposed urgency ordinance was not available at the time of the packet being published but will be posted prior to the City Council hearing. The staff report outlines the salient points of the proposed urgency ordinance.*

### **Recommendation**

Staff recommends that the City Council discuss and consider an urgency ordinance which requires a 4/5 vote to adopt, that would authorize the Community Development & Sustainability Director to issue certain temporary administrative use permits for proposed delivery-only medical cannabis retail businesses, subject to the following requirements:

1. On or before February 16, 2018, applicants for a temporary use permit shall timely submit to the Community Development & Sustainability Director complete applications for a Conditional Use Permit (pursuant to Davis Municipal Code § 40.26B.080) and a Retail Cannabis Business Permit (pursuant to Davis Municipal Code Article 21.04) for the same site and proposed use as the temporary use permit. Failure to timely submit applications for a Conditional Use Permit and Retail Cannabis Business Permit shall result in failure to issue the temporary use permit.
2. Applicants for a temporary use permit shall provide proof, to the satisfaction of the Community Development & Sustainability Director, of operating prior to January 1, 2018 to provide medical cannabis to qualified patients in the City of Davis.
3. Prior to taking action on a temporary use permit application, the Community Development & Sustainability Director shall provide public notice in accordance with existing administrative use permit procedures.
4. The temporary use permit shall be valid for a term of no more than 120 calendar days from the date of issuance, and shall be expressly.
5. The temporary use permit shall be limited to authorize only delivery of medical cannabis to qualified patients from the subject site location, subject to the delivery requirements of Davis Municipal Code section 21.04.140, and shall not authorize any public storefront or other sale or distribution of cannabis.

6. Applicants for a temporary use permit shall not conduct any delivery of medical cannabis unless and until the applicant has obtained the temporary use permit and Retail Cannabis Business Permit.
7. The ordinance shall be repealed and shall no longer be effective on and after July 1, 2018.

### **Background**

Staff has prepared the attached Urgency Ordinance to respond to concerns raised by pending applicants for cannabis retailer conditional use permits that there has been a disruption in the ability to provide medical cannabis to qualified patients in Davis. This need has become urgent as a result of existing medical cannabis patients who may be seriously or terminally ill and are currently unable to receive prescribed medical cannabis due to State law requirements that medical cannabis delivery businesses, even delivery-only businesses, operate from a physical location with local approval.

Pursuant to Davis Municipal Code section 40.26B.080, adopted by the City Council on September 12, 2017, all cannabis retailers located within the City are required to obtain a conditional use permit to operate. Cannabis retailers that will not be open to the public (no retail storefront) and will conduct sales exclusively by delivery are also required to obtain a conditional use permit, and are subject to additional zoning restrictions regarding permitted locations, but are not subject to the 4-dispensary cap established by the ordinance. Public retail, storefront cannabis retailer applications are currently pending review by staff, planning commission, and the City Council, and staff has not received any CUP applications for non-storefront, delivery-only cannabis businesses. Accordingly, no cannabis retailers, including delivery-only businesses, are currently permitted to operate from a physical location in the City.

Staff has received concerns from a pending applicant for a cannabis retailer conditional use permit that, absent a current valid land use approval from the City, the applicant is unable to obtain a temporary State license to perform deliveries of medical cannabis to patients in Davis. The City's existing cannabis ordinances do not provide a mechanism to allow issuance of temporary permits.

### **Proposed Ordinance**

Government Code section 36937 authorizes the City Council to adopt an urgency ordinance, effective immediately, for the immediate preservation of the public peace, health or safety. The ordinance must contain a declaration of the facts constituting the urgency and requires adoption by four-fifths vote of the city council.

In order to ensure that the ordinance remains narrow in scope, and to further ensure that applicants and surrounding property owners are not deprived of the opportunity for notice and a public hearing, the attached Urgency Ordinance has been drafted to specifically authorize limited issuance of non-storefront, delivery-only temporary administrative use permits for the delivery of strictly medical cannabis to qualified medical cannabis patients. Specifically, the Urgency Ordinance contains the following requirements:

1. On or before February 16, 2018, applicants for a temporary use permit shall timely submit to the Community Development & Sustainability Director complete applications for a Conditional Use Permit (pursuant to Davis Municipal Code § 40.26B.080) and a Retail Cannabis Business Permit (pursuant to Davis Municipal Code Article 21.04) for the same site and proposed use as the temporary use permit. Failure to timely submit applications for a Conditional Use Permit and Retail Cannabis Business Permit shall result in failure to issue the temporary use permit.
2. Applicants for a temporary use permit shall provide proof, to the satisfaction of the Community Development & Sustainability Director, of operating prior to January 1, 2018 to provide medical cannabis to qualified patients in the City of Davis.
3. Prior to taking action on a temporary use permit application, the Community Development & Sustainability Director shall provide public notice in accordance with existing administrative use permit procedures.
4. The temporary use permit shall be valid for a term of no more than 120 calendar days from the date of issuance, and shall be expressly.
5. The temporary use permit shall be limited to authorize only delivery of medical cannabis to qualified patients from the subject site location, subject to the delivery requirements of Davis Municipal Code section 21.04.140, and shall not authorize any public storefront or other sale or distribution of cannabis.
6. Applicants for a temporary use permit shall not conduct any delivery of medical cannabis unless and until the applicant has obtained the temporary use permit and Retail Cannabis Business Permit.
7. The ordinance shall be repealed and shall no longer be effective on and after July 1, 2018.

Staff believes the above conditions appropriately address the specific, urgent need to allow cannabis patients access to necessary medicinal cannabis. The Urgency Ordinance is further narrowly tailored to ensure minimal disruption to current and existing medicinal cannabis mobile deliveries, in light of State law requirements that became effective January 1, 2018. As a result, the Urgency Ordinance is necessary for the immediate preservation of the public peace, health or safety and would become effective immediately. However, staff believes it is legally necessary and appropriate to ensure that surrounding property owners are entitled to notice and a public hearing for proposed temporary use permits. As such, the ordinance shall incorporate existing administrative use permit procedures, which requires mailing 10-day notice of the proposed temporary use to all tenants and owners of properties within 500 feet of the proposed site prior to approval of the permit. Use of the existing administrative use permit process, including the 10 day notice period to nearby properties and the potential of a public hearing if there are substantive issues raised by nearby property owners provides due process procedures for the applicant and for the nearby properties (both owners and tenants) and complies with the ten day notice and hearing provisions in the State Planning and Zoning Law for issuance of use permits. (Gov. Code § 65905; 65090)

**Other Considerations**

The City Council may wish to consider the following topics for discussion or consideration related to the proposed urgency ordinance:

1. The intent of the proposed urgency ordinance is to alleviate concerns expressed by existing cannabis patients who are experiencing a disruption to their cannabis access for medicinal purposes as the new State regulations are being implemented. The proposed urgency ordinance and the resulting issuance of any associated Temporary Administrative Use Permits is not intended to provide a signal to any potential permittee that their cannabis mobile delivery business location may be recommended for approval by staff or will be approved by any future hearing bodies as part of the adopted Conditional Use Permit process for such businesses.
2. Though it is not the intent of the proposed urgency ordinance, there may be a perception among other cannabis retail dispensary storefront applicants that are currently under review that any applicant or applicants within the existing application pool for a cannabis retail dispensary storefront that are granted a Temporary Administrative Use Permit for mobile delivery of medical cannabis have an advantage in the ultimate retail dispensary application process.