



DATE: May 23, 2019

CATEGORY: Public Hearing

DEPT.: Community Development and City Attorney's Office

TITLE: **Consider Adoption of Amendments to the Cannabis Regulations**

RECOMMENDATION

The Environmental Planning Commission recommends the City Council:

1. Adopt a Resolution Amending the P-40 (San Antonio) Precise Plan to Prohibit Cannabis Businesses within the San Antonio Precise Plan Boundaries, to be read in title only, further reading waived (Attachment 1 to the Council report).
2. Introduce an Ordinance Amending Article IX, Division 21, to Limit Storefront Retail Businesses to a Maximum of One in the P-19 (Downtown) Precise Plan Boundaries (Chapter 36 of the City Code), to be read in title only, further reading waived, and set a second reading for June 11, 2019 (Attachment 2 to the Council report).
3. Introduce an Ordinance Amending Article IX, Division 21, to Establish a Minimum 600' Distance between Cannabis Businesses (Chapter 36 of the City Code), to be read in title only, further reading waived, and set a second reading for June 11, 2019 (Attachment 3 to the Council report).

Staff also requests the City Council provide policy direction on how to proceed with the cannabis business permitting process.

BACKGROUND

Recreational cannabis activity was legalized in California by voters in November 2016 (Proposition 64). While personal recreational cannabis activities were made immediately legal upon the passage of Proposition 64, commercial cannabis activity (including the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products) requires a State license, which became available January 1, 2018.

Local jurisdictions were required to adopt local zoning regulations of cannabis prior to January 1, 2018, or default to State law.

The possession of cannabis (medical and adult-use) remains illegal under the Federal Controlled Substances Act. Federal enforcement remains at the discretion of the Executive Branch.

Overview of State Law

Proposition 64, also known as the Adult Use of Marijuana Act (AUMA), was approved by California voters on November 8, 2016, with 57 percent of the vote. According to the Santa Clara County Registrar of Voters, approximately 68 percent of Mountain View voters and 58 percent of Santa Clara County voters cast ballots in favor of Proposition 64.

The AUMA legalized recreational cannabis use and cultivation for adults age 21 or older and established a regulatory structure for recreational cannabis businesses. Effective November 9, 2016, the AUMA made it legal for anyone age 21 or older to:

- Smoke or ingest cannabis and cannabis products.
- Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without any compensation, cannabis or cannabis products.
- Possess, plant, cultivate, harvest, dry, or process up to six living cannabis plants for personal use at a private residence.

Since the approval of Proposition 64, the State has consolidated and developed a framework for commercial cannabis regulation. The Bureau of Cannabis Control was created to develop and implement regulation of commercial cannabis (both medicinal and adult-use/recreational).

Local Regulatory Authority

Proposition 64 and subsequent legislation allow local jurisdictions to do the following:

- Adopt business or land use regulations prohibiting or regulating cannabis businesses (cultivation, processing, laboratory testing, and sale).
- Adopt regulations banning or regulating personal outdoor cultivation.

- Adopt regulations “reasonably regulating” personal indoor cultivation.

State licensing authorities are prohibited from approving an application for commercial cannabis activity in violation of a local ordinance. However, the State may unilaterally issue a license for a business to operate in any jurisdiction without a zoning ordinance, expressly regulating or prohibiting commercial cannabis activity.

Past Environmental Planning Commission (EPC) and City Council Direction

On November 1, 2016, the City Council adopted an Interim Urgency Ordinance prohibiting outdoor cultivation of cannabis in preparation for the possible approval of Proposition 64 by voters on November 8, 2016. Following support of Proposition 64 by Mountain View voters, the Council voted to not extend the Interim Urgency Ordinance in December 2016, thereby permitting personal cultivation of cannabis (indoor and outdoor) under the AUMA.

In December 2017, the City Council unanimously adopted an Interim Urgency Ordinance prohibiting all commercial cannabis activity in Mountain View. Council adopted the Interim Urgency Ordinance to provide time for staff to develop regulations allowing commercial cannabis activity and to prevent a regulatory gap in anticipation of the State’s licensing of commercial cannabis businesses beginning January 1, 2018.

On January 16, 2018, the Council extended the temporary moratorium for 10 months and 15 days (until December 1, 2018) to allow the City to consider a regulatory framework. Deliveries from businesses licensed by other jurisdictions into the City of Mountain View were exempted from the extension of the temporary moratorium. The Council unanimously directed staff to develop regulations for the following two retail uses by fall 2018:

1. **Retail (Storefront)** – “Storefront retail” refers to a traditional storefront retail business at which cannabis goods are sold to customers. Storefront retail businesses are often referred to as “dispensaries.”
2. **Retail (Nonstorefront)** – “Nonstorefront retail” refers to a business location from which cannabis goods are stored and delivered to customers. The location is closed to the public and functions much like a warehouse.

The Council declined to allow any other commercial cannabis uses in the City.

The EPC and City Council gave direction on specific provisions of commercial cannabis regulations through two publicly noticed Study Sessions in spring 2018. The primary topics discussed at the Study Sessions included:

- Maximum number of cannabis businesses.
- Proximity of cannabis businesses to one another.
- Buffer distances between schools, child-care centers, and day-care facilities and cannabis businesses.
- Proximity of cannabis businesses to residential and sensitive uses.
- Location of cannabis businesses (by zoning district).
- Permitting process and framework.

Community Outreach

Staff employed several community outreach methods to receive community input early in the development of commercial cannabis regulations in Mountain View and are summarized below.

Survey

A survey was conducted through the City website during the month of February 2018. This survey included seven questions and an opportunity for additional comment. A total of 1,595 people responded to the survey. Out of the 619 respondents who registered and provided demographic information with their survey, approximately 96 percent live or work in Mountain View. A summary of the survey results can be found in Attachment 4.

Community Outreach Meeting

Nearly 100 people attended the community outreach meeting held on the evening of February 15, 2018 in the Council Chambers. The meeting included a staff presentation on key issues concerning commercial cannabis activity; a question-and-answer panel with the Planning Division, City Attorney's Office, and Police Department staff; an activity to answer four key questions; and the opportunity to share thoughts on the issue through comment cards. A summary of the community outreach meeting results is in Attachment 5.

Website

A Cannabis Regulation [web page](#) was created to provide accurate information regarding general questions about commercial cannabis activity and up-to-date information regarding the development and implementation of regulations in Mountain View. Staff contact information is available on the website to allow residents and interested stakeholders to provide input and ask specific questions.

Downtown Committee

On April 3, 2018, staff presented information and survey results regarding development of commercial cannabis regulations to the Downtown Committee and responded to questions. The Downtown Committee asked clarifying questions regarding existing and possible future regulations.

On May 7, 2019, staff presented the potential amendments to the cannabis regulations to the Downtown Committee and requested feedback on the amendment to limit cannabis retail storefront businesses to a maximum of one in the downtown. The Downtown Committee voiced strong support for cannabis businesses in the downtown but discussed a desire to “start slow.” The five members present gave unanimous support for the amendment to allow a maximum of one business in the downtown.

Adoption of Cannabis Regulations

On September 5, 2018, the EPC held a public hearing to consider the draft cannabis regulations and provide a recommendation to the Council. The EPC deliberated about the districts in which storefront retail cannabis businesses should be conditionally permitted and the appropriate number of businesses that should be allowed within the City.

Ultimately, the EPC adopted two resolutions with a 4 to 2 vote, with one EPC member absent:

1. Recommending the City Council adopt the proposed amendments to Chapter 36 regulating commercial cannabis businesses with a modification to limit the total number of cannabis businesses allowed in the City to three businesses.
2. Recommending the City Council adopt the proposed amendments to the P-19 (Downtown), P-27 (Grant-Phyllis), P-38 (El Camino Real), P-39 (North Bayshore),

and P-40 (San Antonio) Precise Plans, to designate and regulate cannabis businesses as a land use.

On October 2, 2018, the City Council held a public hearing to consider the EPC's recommendations regarding the draft cannabis regulations. The Council discussed and considered several topics at this meeting, including the location of retail cannabis businesses, the number of businesses to permit, the permitting process, and the school and child-care buffer distances. The City Council approved the following on a 5-2 vote:

1. The proposed amendments to Chapter 36 regulating commercial cannabis businesses with modifications to allow a maximum of four cannabis businesses, consisting of two storefront retail and two nonstorefront retail businesses, and a provision to require cannabis businesses to be a minimum of 600' from any school (public or private) and 250' from any child-care center or facility. A cannabis business separated by State Highways 101, 237, 85, or Central Expressway must be a minimum of 250' from any school (Ordinance No. 9.18). State law requires cannabis businesses to be a minimum of 600' from schools and child-care centers or facilities unless a local jurisdiction adopts different regulations.
2. The proposed Precise Plan amendments to the P-19 (Downtown), P-38 (El Camino Real), P-39 (North Bayshore), and P-40 (San Antonio) Precise Plans to designate and regulate cannabis businesses as a land use. Based on public comment, the City Council decided to not allow commercial cannabis retail in the P-27 (Grant-Phyllis) Precise Plan (Resolution No. 18248).
3. The proposed amendments to Chapter 9, Article IV to regulate cannabis businesses (Ordinance No. 10.18).
4. The proposed amendments to the Mountain View Master Fee Schedule (Resolution No. 18249).
5. The addition of 1.0 FTE Police Officer position and 0.5 FTE Community Services Officer position for administration and enforcement of cannabis business regulations.

The second reading and adoption of the ordinances occurred on October 23, 2018 at a regularly scheduled City Council public hearing.

Implementation of Cannabis Regulations

The City began the multi-step permitting process, per the adopted cannabis regulations. This process involves the following phases:

1. Cannabis business screening application
2. Application selection lottery
3. Planning application
4. Compliance with Conditions of Approval

During the Phase 1 application period, interested businesses submitted all items in the Cannabis Business Screening Application Checklist and business owners initiated background checks with the Mountain View Police Department.

Between the application period of December 3, 2018 and February 1, 2019, a total of 10 businesses submitted applications to the Planning Division. After the initial screening, only four of these were deemed eligible for the Phase 2 Application Selection Lottery. Of those deemed eligible, three are for storefront retail businesses, and one is for a nonstorefront retail businesses. The lottery has not been held. A map of the eligible applications submitted is located in Attachment 6.

Recent City Council Action

On February 12, 2019, a majority of the City Council agreed to agendaize a future discussion regarding possible amendments to the recently adopted cannabis regulations.

On March 5, 2019, after extensive public input, the City Council discussed potential amendments to the existing cannabis regulations at a public meeting. The Council provided policy direction to delay the permitting process of cannabis businesses until potential amendments to the regulations are presented to the Council for consideration and possible adoption. Council directed staff to study the following:

1. Limit storefront retail businesses to a maximum of one (1) in the P-19 (Downtown) Precise Plan (5-0 vote).
2. Establish a half-mile buffer distance between storefront retail cannabis businesses (7-0 vote).

3. Increase buffers from sensitive uses to match the “San Jose Model.” A summary and visual representation of these buffers is discussed in the following section (4-3 vote).
4. Prohibit cannabis businesses in the San Antonio Precise Plan (6-0 vote).
5. Request a summary update of how the cannabis businesses are functioning after one year of Building Permit issuance (7-0 vote).

EPC Recommendation

The EPC held a public hearing on April 24, 2019 to discuss potential amendments to the existing Cannabis Regulations (staff report located in Attachment 7). Staff presented the potential amendments discussed by the City Council at the March 5, 2019 meeting. Following public comment and deliberation, the EPC made the following recommendations to the City Council:

1. Limit businesses in the downtown to a maximum of one (4-2 vote).
2. Establish a 600’ buffer distance between storefront retail businesses (4-3 vote).
3. Prohibit cannabis businesses in San Antonio (4-3 vote).

The EPC did not recommend any changes to the existing sensitive use buffers (from school and child-care facilities/centers).

ANALYSIS

San Antonio Precise Plan

Current Regulation

The current regulations provisionally permit storefront retail businesses in the P-40 (San Antonio) Precise Plan. Nonstorefront retail businesses are prohibited.

Discussion

Since the cannabis regulations were adopted in fall 2018, several acres at the corner of Showers Drive and California Street were identified by the Los Altos School District as a location for a future school. Based on this new information, the Council unanimously

directed staff to prepare an amendment to the San Antonio Precise Plan to prohibit cannabis businesses. No cannabis businesses submitted applications in the San Antonio Precise Plan area.

The draft resolution is located in Attachment 1.

EPC Recommendation

The EPC recommends the Council adopt a resolution to prohibit cannabis businesses in the P-40 (San Antonio) Precise Plan.

Concentration of Businesses

The State does not regulate commercial cannabis businesses' proximity to one another, except that they cannot be located on the same premises. Some local jurisdictions have adopted regulations to do so.

Key considerations in discussing the concentration of cannabis businesses include:

- The total number of businesses permitted.
- The possible visual impact of businesses clustering near each other.
- The impact to possible locations where businesses could operate.

Downtown Businesses

Current Regulation

Cannabis storefront retail businesses are provisionally permitted in specified areas of the P-19 (Downtown) Precise Plan. There are no existing regulations regarding the concentration of businesses in the Downtown Precise Plan.

Discussion

Four (4) of the 10 Phase 1 Cannabis Business Screening Applications submitted were located in the downtown area. Three of these were deemed eligible to proceed to Phase 2. At the March 5, 2019 Council meeting, the majority of the Council directed staff to amend the regulations to limit the total number of businesses in the downtown area to one. The draft ordinance is located in Attachment 2.

EPC Recommendation

The EPC recommends the Council adopt an amendment to limit storefront retail cannabis businesses to a maximum of one in the downtown.

Distance Between Cannabis Businesses

Current Regulation

Existing regulations only address the concentration of cannabis businesses by prohibiting businesses from operating on the same property.

Discussion

At the March 5, 2019 Council meeting, Council directed staff to study a half-mile buffer distance between cannabis storefront retail businesses. The Council also discussed adopting a provision allowing storefront retail businesses to be within a half-mile of each other if they are separated by State Highways 101, 237, 85, or Central Expressway; but ultimately did not direct staff to include this as a buffer distance criterion to be studied.

A map indicating a half-mile radius around each eligible storefront retail application is located in Attachment 6. Assuming all eligible applications could eventually receive a Planning Permit, only two of the applicants would be able to operate with this provision (one storefront retail business and one nonstorefront retail business). Implementation of this potential regulation would result in fewer than the four maximum businesses currently permitted in the City Code, unless an additional lottery and permitting process took place.

EPC Recommendation

The EPC agreed a distance requirement between storefront retail cannabis businesses should be adopted. The EPC discussed the distance requirement between businesses should be consistent with the distance requirement for buffers between sensitive uses. The EPC recommends the Council adopt an amendment to the cannabis regulations to require a minimum of 600' between storefront retail cannabis businesses.

A map indicating a 600' radius around each eligible storefront retail application is located in Attachment 6. Assuming all eligible applications could eventually receive a Planning Permit, only two of these applications could receive a Planning Permit (one storefront retail business and one nonstorefront retail business).

Buffers from Sensitive Uses

The State establishes a 600' buffer between commercial cannabis businesses and schools, child-care centers, and day-care facilities. Local jurisdictions may adjust this buffer if desired. For example, the City of Pacifica maintained the 600' buffer for schools but decreased the buffer from child-care centers and day-care facilities to 200'. A summary of school/child-care buffers adopted in other jurisdictions is located in Attachment 8.

Based on the State standard, the map in Attachment 9 indicates a 600' buffer around existing schools, child-care centers, and day-care facilities in Mountain View.

Key considerations when considering buffers from sensitive uses include:

- Determining the uses that should be protected from proximity to cannabis businesses.
- The effectiveness of a buffer in achieving the desired effect.
- The availability of area where a cannabis business could be located given the buffer and other zoning restrictions.

Current Regulation

Existing regulations prohibit cannabis businesses from being within 600' from any school (public or private) and 250' from any child-care center or facility. A cannabis business separated by State Highways 101, 237, 85, or Central Expressway must be a minimum of 250' from any school (Ordinance No. 9.18). These buffers are visually represented in a map located in Attachment 7.

Discussion

The City Council directed staff to study implementation of the "San Jose Model" of buffers from sensitive uses. This includes within:

- 1,000' of public or private preschools, elementary schools, or secondary schools; child day-care centers; community and recreation centers; parks; or libraries.
- 500' of substance abuse rehabilitation centers or emergency residential shelters.

- 150' of places of religious assembly; adult day-care centers; or residential uses (including legal nonconforming residential uses).
- 50' of another cannabis business.

A map, located in Attachment 10, illustrates an approximation of the San Jose Model in Mountain View. Please note the map does not show 100 percent of the model due to data limitations. The Council gave other direction on the concentration between businesses (see the previous section); and as a result, the provision prohibiting businesses from being within 50' of each other was not modeled.

Using the San Jose Model, only minimal areas of East Whisman, North Bayshore, and Terra Bella (shown in Attachment 10) would be possible locations for cannabis businesses to operate. It is important to note that while the East Whisman area is currently zoned ML (Limited Industrial), it is anticipated the East Whisman Precise Plan will substantially change the zoning and opportunities available for cannabis businesses with new residential, mixed-use, and park developments planned. None of the businesses that submitted applications would be permitted to operate under this model.

In response to the Council's request to consider the San Jose Model, staff presents the following alternative buffer options for the Council's consideration. These options were developed based on past considerations by the EPC and Council.

1. Recommend the City maintain the existing buffers per the EPC recommendation (Attachment 6).
2. Recommend adoption of the San Jose Model in its entirety or with some modifications (Attachment 10).
3. Recommend the buffer from schools and child-care centers be increased to 750' (Attachment 11).
4. Recommend the buffer from schools and child-care centers be increased to 1,000' (Attachment 11).
5. Recommend the buffer from schools be increased to 1,000' and the buffer from child-care centers remain at 250' (Attachment 12).
6. Recommend the buffer from schools be increased to 1,000' and the buffer from child-care centers be increased to 600' (Attachment 13).

7. Recommend the buffer from schools be maintained at 600' (without the provision of separation by major highways or expressways) and the buffer from child-care centers be increased to 600' (Attachment 9).

Any increase to the buffers would result in the disqualification of some or all eligible applications.

EPC Recommendation

The EPC discussed possible reasons for changing the existing sensitive use buffers and ultimately did not recommend any changes to them. The three EPC members that desired a change in the buffers discussed a desire to further limit the locations where cannabis businesses can locate. The four EPC members that desired no change in the buffers discussed the lack of evidence that the existing buffers are insufficient.

Permitting Process

At the March 5, 2019 public meeting, Council provided policy direction to delay the cannabis business permitting process until potential amendments to the regulations are presented to the Council for consideration and possible adoption. Potential amendments to the existing cannabis regulations could impact the eligibility of applications that have already been submitted.

Between the application period of December 3, 2018 and February 1, 2019, a total of 10 businesses submitted applications to the Planning Division. After the initial screening, only four of these were deemed eligible for the Phase 2 Application Selection Lottery. Of those deemed eligible, three are for storefront retail businesses, and one is for a nonstorefront retail business. The lottery has not been held.

Staff requests Council direction on how to proceed with the permitting process. Some considerations include the impact of the potential amendments on the eligibility of applications and fairness in the permitting process. Four (4) options are outlined below:

1. *Continue with Eligible Applications:* Allow applications deemed eligible to be re-reviewed under the new regulations. Only those that are eligible under the new regulations will be permitted to proceed through the next phase of development.

Please note, this will likely lead to less than the maximum number of permitted businesses proceeding through the application process. After Planning Permits have been issued, a new Phase 1 application period would be opened to allow the opportunity for any interested business to apply.

2. *Allow Eligible Applicants to Find New Sites:* Reopen the Phase 1 application period to allow the opportunity for applicants deemed eligible under existing regulations to submit applications that comply with the new regulations.

If less than the maximum number of businesses permitted (4) receive a Planning Permit, a new Phase 1 application period would be opened to allow the opportunity for any interested business to apply.

3. *Allow All Phase 1 Applicants to Find New Sites:* Reopen the Phase 1 application period to allow the opportunity for all 10 applicants who submitted applications by the deadline to submit applications that comply with the new regulations.

If less than the maximum number of businesses permitted (4) receive a Planning Permit, a new Phase 1 application period would be opened to allow the opportunity for any interested business to apply.

4. *Restart the Application Process:* Reopen the Phase 1 application period to allow any interested business the opportunity to apply regardless of whether the business submitted an application in the past. In this option, the applicants who submitted previously would receive no preference over new applicants.

ENVIRONMENTAL REVIEW

The proposed amendments are exempt from the California Environmental Quality Act (CEQA) per Section 26055(h) of the Business and Professions Code, which states: "Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity."

FISCAL IMPACT

The City initially estimated a possible annual revenue of \$1,000,000 based on an early assumption of five businesses. The ultimate annual revenue received will depend on the number of businesses with an estimated \$200,000 per business in local taxes. In addition to taxes, the City will collect fees from the cannabis businesses, including an annual Police Department Cannabis Business Registration Renewal Fee of \$85,000 per business and annual registration renewal for each cannabis business owner, manager, employee, contractor, and delivery vehicle of \$1,680.

CONCLUSION

On March 5, 2019, the City Council directed staff to study and draft several amendments to the existing cannabis regulations, including amendments pertaining to the concentration of businesses, buffers from sensitive uses, and cannabis businesses in the San Antonio Precise Plan.

The EPC discussed these potential amendments at a public hearing on April 24, 2019, and recommends the Council:

1. Adopt a Resolution Amending the P-40 (San Antonio) Precise Plan to Prohibit Cannabis Businesses within the San Antonio Precise Plan Boundaries, to be read in title only, further reading waived (see Attachment 1).
2. Introduce an Ordinance Amending Article IX, Division 21, to Limit Storefront Retail Businesses to a Maximum of One in the P-19 (Downtown) Precise Plan Boundaries (Chapter 36 of the City Code), to be read in title only, further reading waived, and set a second reading for June 11, 2019 (see Attachment 2).
3. Introduce an Ordinance Amending Article IX, Division 21, to Establish a Minimum 600' Distance between Cannabis Businesses (Chapter 36 of the City Code), to be read in title only, further reading waived, and set a second reading for June 11, 2019 (see Attachment 3).

In addition, staff requests Council direction on how to proceed with the cannabis business permitting process.

ALTERNATIVES

1. Not adopt the proposed amendment as recommended by the EPC regarding concentration of businesses (in the Downtown Precise Plan or between all storefront businesses) or the San Antonio Precise Plan.
2. Modify the proposed amendments regarding concentration of businesses (in the Downtown Precise Plan or between all storefront businesses) or the San Antonio Precise Plan for Council consideration.
3. Modify the proposed amendment to include an amendment to the existing sensitive uses buffers.
4. Provide other direction on any aspect of the Cannabis Regulations.

PUBLIC NOTICING

Notice of this public hearing was posted in accordance with Government Code Section 65090 and published in a newspaper of general circulation. Notice was also included in the standard City Council agenda notice and posting procedures. Mailed notices were sent to interested stakeholders and to all businesses and property owners that submitted a Phase 1 Cannabis Business Screening Application. Interested stakeholders were also notified of this hearing through e-mail, the Cannabis Regulations web page, and through social media.

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- Attachments:
1. Draft Resolution – San Antonio Precise Plan Amendments
 2. Draft Ordinance – Chapter 36 Amendments (Limit Downtown Businesses to One)
 3. Draft Ordinance – Chapter 36 Amendments (Distance between Cannabis)
 4. Survey Results
 5. Community Outreach Meeting Results

6. Map – Existing School/Child-Care Buffers and Eligible Applications
7. [EPC Staff Report – April 24, 2019](#)
8. Sensitive Use Buffers in Other Jurisdictions
9. Map – 600' School/Child-Care Buffer
10. Map – San Jose Model Buffers
11. Map – 750' and 1,000' School/Child-Care Buffers
12. Map – 1,000' School Buffer/250' Child-Care Buffer
13. Map – 1,000' School Buffer/600' Child-Care Buffer