



DATE: October 2, 2018

CATEGORY: Public Hearing

DEPT.: Community Development, City Attorney's Office, Finance and Administrative Services, and Police

TITLE: **Establishment of Cannabis Regulations**

RECOMMENDATION

1. Introduce an Ordinance Repealing Ordinance No. 1.18, an Interim Urgency Ordinance Extending the Prohibition of Commercial Cannabis Activity in All Zoning Districts within the City, Excluding Cannabis Delivery Services from State and Locally Licensed Cannabis Retailers with Physical Premises Located Outside of the City of Mountain View and Provided Deliveries Are Conducted in Accordance with the Licensing Jurisdictions' Rules for Cannabis Delivery for Ten (10) Months and Fifteen (15) Days, and Amending Article V, Division 2, Article VI, Divisions 2 and 3, Article VII, Sec. 36.22.10, Article IX, Division 11, and Article XVII, Division 2, and adding Division 21 to Article XIV to Establish Cannabis Regulations, to be read in title only, further reading waived, and set a second reading for October 23, 2018 (Attachment 1 to the Council report);
2. Adopt a Resolution Approving Precise Plan Amendments to the P-19 (Downtown) Precise Plan, Chapter III; the P-27 (Grant-Phyllis) Precise Plan, Section IV; the P-38 (El Camino Real) Precise Plan, Chapter 2; the P-39 (North Bayshore) Precise Plan, Section 3.3.2; and the P-40 (San Antonio) Precise Plan, Chapter 4, Section A to Designate and Regulate Cannabis Businesses as a Land Use, to be read in title only, further reading waived (Attachment 2 to the Council report);
3. Introduce an Ordinance Repealing Chapter 9, Article IV Regarding Medical Marijuana Dispensaries and Replacing It with a New Chapter 9, Article IV Regarding Cannabis Businesses, to be read in title only, further reading waived, and set a second reading for October 23, 2018 (Attachment 3 to the Council report);
4. Adopt a Resolution Amending the City of Mountain View Master Fee Schedule Related to Cannabis Business Regulations, to be read in title only, further reading waived (Attachment 4 to the Council report); and

5. Authorize the addition of 1.0 FTE Police Officer position and 0.25 FTE Community Service Officer position for administration and enforcement of cannabis business regulations.

BACKGROUND

Recreational cannabis activity was legalized in California by voters (Proposition 64) in November 2016. 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.

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

Medical Cannabis

California voters legalized medical cannabis in 1996. In 2015, the Governor signed the Medical Marijuana Regulation and Safety Act (MMRSA), creating a comprehensive State licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis. The MMRSA allows a city to prohibit or regulate medical marijuana businesses within its jurisdiction.

Adult-Use Cannabis

Proposition 64, also known as the Adult Use of Marijuana Act (AUMA), was approved by California voters on November 8, 2016. 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. Fifty-seven percent (57%) of California voters supported 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; and
- 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).

The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), adopted June 27, 2017, created the general framework for the regulation of commercial medicinal and adult-use cannabis in California.

The Bureau of Cannabis Control, California Department of Public Health, and California Department of Food and Agriculture adopted emergency regulations in December 2017, and readopted in June 2018, were originally issued through the emergency rule-making process to meet the legislative mandate to open California's regulated cannabis market on January 1, 2018. These emergency regulations will remain in effect until the nonemergency rule-making process is complete.

In July 2018, California's three State cannabis licensing authorities announced the publication of proposed regulations in the California Regulatory Notice Register, the first step toward adopting nonemergency regulations.

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; and
- 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.

Summary of City Actions

Medical Cannabis

In 2010, Mountain View adopted an ordinance prohibiting medical cannabis dispensaries and associated business from operating in the City (Sections 9.90 through 9.92 of the City Code). Personal use and possession of medical cannabis is and was legal pursuant to State law.

Adult-Use Cannabis

On November 1, 2016, the City Council adopted an Interim Urgency Ordinance prohibiting outdoor cultivation of cannabis in response to 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 activity beginning January 1, 2018.

On January 16, 2018, the Council extended the temporary moratorium for 10 months and 15 days (until December 1, 2018). Deliveries from businesses licensed by other jurisdictions into the City of Mountain View were exempted from the extension of the temporary moratorium.

Council unanimously directed staff to develop regulation of retail uses by fall 2018. The two types of retail uses being considered are:

1. **Retailer (Storefront)**—“Storefront retail” refers to a traditional storefront retail business at which cannabis goods are sold to customers. A retailer must have a

licensed physical location (premises) where commercial cannabis activities are conducted. Storefront retail businesses are often referred to as “dispensaries.”

2. **Retailer (Nonstorefront)** – “Nonstorefront retail” refers to a business location from which cannabis goods are stored and delivered to customers. A retailer must have a licensed physical location (premises) where commercial cannabis activities are conducted. The location is closed to the public and functions much like a warehouse.

Council expressed they are not interested in allowing any commercial cannabis uses other than retail in the City at this time. All other commercial cannabis uses will be prohibited. The uses to be prohibited include:

- Cultivation;
- Manufacturing;
- Distribution;
- Laboratory testing; and
- Microbusinesses.

The Environmental Planning Commission (EPC) and City Council gave direction on specific provisions of commercial cannabis regulations through Study Sessions in spring 2018. The Council Study Session memo is located in Attachment 5. Discussion of the specific direction given by the EPC and Council is presented in the Analysis section.

Cannabis Tax

On June 26, 2018, Council directed a cannabis tax up to nine percent (9%) be placed on the November 2018 ballot. Development of the cannabis tax was studied as a separate work item and, as such, is not discussed in this report.

Community Outreach

Staff employed several community outreach methods to receive community input early in the development of commercial cannabis regulations in Mountain View. A summary of the community outreach efforts is described below and in further detail in Attachment 5.

Survey

A survey was conducted through the City website during the month of February. 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.

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 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.

Website

A Cannabis Regulation webpage was created to provide accurate information regarding general questions about commercial cannabis activity and up-to-date information regarding the development 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.

EPC Public Hearing

On September 5, 2018, the EPC held a public hearing to consider the draft cannabis regulations and provide a recommendation to Council. Approximately 20 members of the public spoke at the public hearing, with a slight majority voicing opposition to commercial cannabis in Mountain View.

The EPC deliberated extensively 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. Several Commissioners were opposed to locating the businesses in several of the recommended locations, especially in the P-19 (Downtown) Precise Plan and the P-27 (Grant-Phyllis) Precise Plan. Several Commissioners also expressed that three businesses was a more appropriate number to start with and could be increased in the future if the City desired after we had a chance to see how the businesses and regulations were working.

Ultimately, the EPC adopted two resolutions: the first recommending the City Council adopt the proposed amendments to Chapter 36 to include cannabis regulations with the amendment to reduce the total number of cannabis businesses allowed in the City to three businesses; and the second recommending the City Council adopt the proposed amendments to select Precise Plans establishing cannabis retail businesses as a provisionally permitted use. Each resolution was adopted by a 4-2 decision, with one EPC member absent.

The EPC staff report for the September 5, 2018 meeting is located in Attachment 6 and written public comment received in response to the meeting is located in Attachment 7.

ANALYSIS

The proposed regulations will be located in two separate chapters of the City Code – Chapter 36 (Zoning) and Chapter 9 (Cardrooms, Massage Parlors, and Cannabis) – and in five Precise Plans. Amendments to the Master Fee Schedule for fees associated with cannabis business regulation are also recommended. The following sections summarize key provisions of the proposed cannabis regulations. The draft ordinances and resolutions are located in Attachments 1 through 4.

Zoning: Chapter 36 and Precise Plan Amendments

The EPC recommends approval of the proposed Zoning Code and Precise Plan amendments. The proposed amendments include modifications to the staff recommendation made by the EPC, such as limiting the maximum number of businesses permitted to three.

Key topics discussed in the report include the location of businesses, the maximum number of businesses, and the permit process. The draft amendments to the Zoning Code and Precise Plans are located in Attachments 1 and 2.

Zoning: Location of Businesses

The Mountain View Zoning Code permits, conditionally permits, and prohibits uses in each zoning district. Each zoning district (residential, commercial, industrial, and Precise Plan) has a land use section that specifies which uses are permitted, conditionally permitted, or prohibited. The three proposed uses—cannabis business, storefront retail, and nonstorefront retail—are discussed separately below.

Cannabis businesses would be conditionally permitted in select zoning districts and precise plans. Conditional use permits must receive approval by the Zoning Administrator in a public hearing.

A conditional use permit is a zoning mechanism that allows the property owner use of land in a way not permitted by right within a zoning district. Conditional uses are land uses that, because of their special nature, may be suitable only in certain locations or operated in a particular manner. Cannabis businesses are such a use.

A conditional use permit is referred to as a provisional use permit in Precise Plans. There is no difference in processing or review between a conditional use permit and a provisional use permit.

Topic 1: Zoning of Storefront Retail Cannabis Businesses

“Storefront retail” refers to a traditional storefront retail business at which cannabis goods are sold to customers.

Through the survey the public was asked, “If storefront retail businesses are allowed, where should they be located in Mountain View?” Respondents were asked to select the development types (rather than zoning districts) near which they wanted to locate storefront retail businesses.

Respondents were most comfortable with storefront retail businesses in large retail centers (43.9 percent), in downtown (41.8 percent), and near retail or neighborhood services (39.2 percent). Nearly 36 percent of respondents did not want storefront retail permitted in the City.

Zoning districts containing the top three development types (per the survey) are listed in the table below.

Table 1 – Potential Storefront Retail Locations

Large Retail Centers	Downtown	Retail and Neighborhood Services
MM (General Industrial) P-27 (Grant-Phyllis) P-38 (El Camino Real) P-40 (San Antonio)	P-19 (Downtown)	CN (Commercial-Neighborhood) CRA (Commercial-Residential-Arterial) Future East Whisman Precise Plan P-38 (El Camino Real) P-39 (North Bayshore)

Past Direction

The EPC recommended studying storefront retail cannabis business locations in the zoning districts listed as containing large retail centers and retail and neighborhood services in the spring Study Session, but *not* in the Downtown Precise Plan.

At the City Council Study Session, the majority of Council directed staff to study storefront retail businesses in all the zoning districts listed in Table 1.

Discussion and Recommendation

The zoning districts listed in Table 1 were studied for compatibility with the cannabis business storefront retail use.

Some considerations specific to locating storefront retail businesses include:

- Compatibility with typical uses in the area.
- Compatibility with typical retail uses in the area.
- Compatibility with typical existing development in the area.
- Parking supply.
- Convenient access for clients.
- Direction from the public, EPC, and Council.

After further review and analysis, staff recommends cannabis storefront retail businesses be conditionally/provisionally permitted in the following zoning districts, except as limited and explained below. A map illustrating zoning districts recommended for cannabis businesses is located in Attachment 8, and Attachment 9 shows buffer areas around sensitive uses (discussed later).

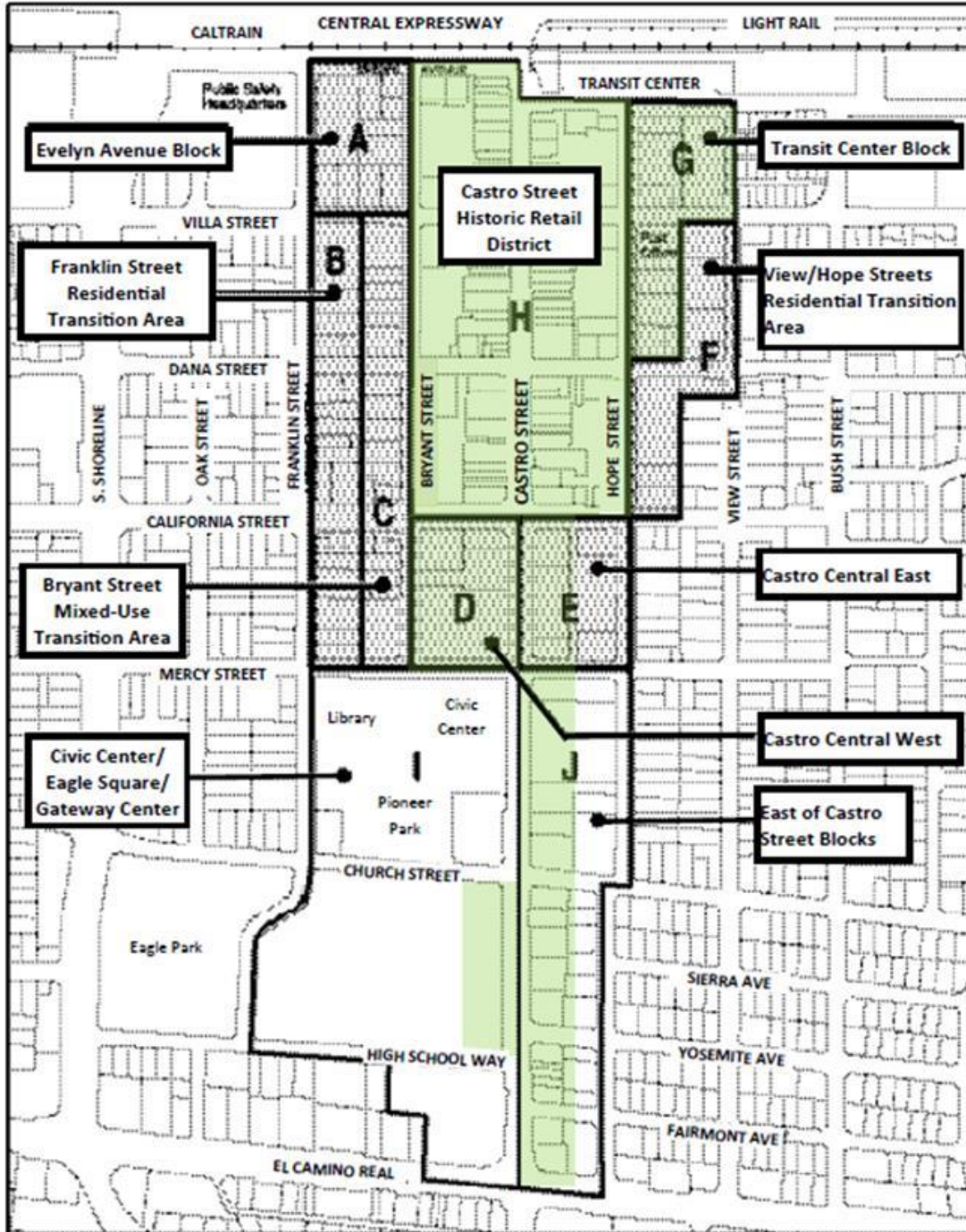
- *CN (Commercial-Neighborhood) District* – The Commercial-Neighborhood District contains neighborhood shopping centers predominantly surrounded by residential neighborhoods, including single-family districts. Locating storefront retail businesses in this district would be consistent with the direction of the public, EPC, and Council.
- *CRA (Commercial/Residential-Arterial) District* – The Commercial/Residential-Arterial District is located along larger thoroughfares and contains a mix of commercial shopping centers and medium-density residential uses. The uses surrounding the district include residential, commercial, and industrial uses. Locating storefront retail businesses in this district would be consistent with the direction of the public, EPC, and Council.
- *MM (General Industrial) District* – The General Industrial District contains primarily research and development uses with some service and manufacturing uses. Retail uses are limited in the General Industrial District and can only be permitted if deemed “appropriate retail commercial and service uses...such as cafés or service stations necessary to serve those districts” (Section 36.20.10). To remain consistent with treatment of other retail uses and past direction by the EPC and Council, staff proposes to limit cannabis storefront retail uses to existing retail shopping centers in the district.
- *P-19 (Downtown) Precise Plan* – The Downtown Precise Plan contains a mix of retail, office, and residential uses that provide an active pedestrian character adjacent to the Transit Center. The Precise Plan includes larger-scale buildings such as the Civic Center, office buildings, and residential developments. The Precise Plan is made up of 10 subareas that recognize the diverse and unique characteristics of each area. Each area was analyzed for compatibility with cannabis storefront retail. The following are some of the criteria used to analyze compatibility:
 - Buffer areas directly adjacent to the adjoining single-family neighborhoods.
 - Areas prohibiting or limiting more impactful uses such as bars and restaurants.

- Areas prohibiting or limiting retail uses.
- Areas with existing development incompatible with cannabis retail (such as the Civic Center block).

Based on these criteria, staff recommends the following downtown areas provisionally permit commercial cannabis storefront retail uses:

- Area D – Provisional Uses
- Area E – Castro Street Half-Block Provisional Uses
- Area G – Provisional Uses
- Area H – Ground-level Provisional Uses (Castro Street and cross streets); Provisional Uses for Bryant Street and Hope Street Frontages and All Upper Levels
- Area I – Provisional Uses (Castro Street Frontage of Eagle Square Block)
- Area J – Provisional Uses (Castro Street Frontage)

The figure below graphically represents the areas where storefront retail uses are proposed to be provisionally permitted. These areas are indicated in green.



- *P-27 (Grant-Phyllis) Precise Plan*—The Grant-Phyllis Precise Plan is bounded by Grant Road, Phyllis Avenue, and Oak Lane. The Precise Plan is comprised of the Grant Road Marketplace and is designed to encourage regional and neighborhood retail services. Surrounding the Precise Plan are predominantly single-family neighborhoods and some commercial uses to the north and east. Some members of the surrounding neighborhood have expressed opinions against locating cannabis businesses in the Grant Road Marketplace. However, locating storefront retail businesses in this Precise Plan would be consistent with the direction of the public in the survey, EPC, and Council.
- *P-38 (El Camino Real) Precise Plan*—The El Camino Real Precise Plan runs along the El Camino Real regional corridor from Sunnyvale to the southeast and Palo Alto and Los Altos to the northwest. The Precise Plan encourages diverse commercial and residential uses in a mixed-use urban environment. Staff recommends cannabis storefront retail be provisionally permitted in all areas of the Precise Plan.
- *P-39 (North Bayshore) Precise Plan*—The North Bayshore Precise Plan is located at the northern end of the City north of Highway 101. While existing development in the area is predominantly office, the Precise Plan has identified areas for new residential neighborhoods and associated commercial uses. The Precise Plan identifies four areas with distinct standards and character. Staff recommends provisionally permitting cannabis storefront retail uses in the areas where other retail services are permitted and encouraged—in the Gateway and Core Character Areas.
- *P-40 (San Antonio) Precise Plan*—The San Antonio Precise Plan is located near the western edge of the City and borders the El Camino Real Precise Plan and residential neighborhoods. The Precise Plan encourages pedestrian-oriented development with an emphasis on diverse commercial and residential uses. Staff recommends cannabis storefront retail be provisionally permitted in all areas of the Precise Plan.
- *Future East Whisman Precise Plan*—The East Whisman Precise Plan is currently under development with adoption anticipated in 2019. Inclusion of cannabis storefront retail will be considered with the public draft of the Precise Plan.

In the September public hearing, the EPC heard from many members of the public and deliberated extensively about the districts in which storefront retail cannabis businesses should be conditionally permitted. The EPC adopted a resolution forwarding staff's recommendation regarding the location of cannabis businesses on a 4-2 vote. Those opposed wanted to limit the location of storefront retail businesses further; specifically

several Commissioners were opposed to locating the businesses in the Downtown Precise Plan and Grant-Phyllis Precise Plan areas.

Topic 2: Zoning of Nonstorefront Retail Cannabis Businesses

“Nonstorefront retail” refers to a business location from where cannabis goods are stored and delivered to customers. The location is closed to the public and functions much like a warehouse or distribution center.

Through the survey, the public was asked, “If nonstorefront retail businesses are allowed, where should they be located in Mountain View?” Respondents were asked to select the development types (rather than zoning districts) near which they wanted to locate nonstorefront retail businesses.

Respondents were most comfortable with locating nonstorefront retail businesses near manufacturing, warehouse, or auto-oriented services (63.8 percent). The other two development types respondents were most likely to select were near offices (39.4 percent) and in large retail centers (32.1 percent). Approximately 32 percent of respondents do not want nonstorefront retail permitted in the City.

Zoning districts containing the top three development types (per the survey) are listed in the table below.

Table 2 – Potential Nonstorefront Retail Locations

Manufacturing, Warehouse, or Auto-Oriented Services	Offices	Large Retail Centers
CS (Commercial Services) MM (General Industrial) P-38 (El Camino Real) P-39 (North Bayshore)	CO (Commercial-Office) Future East Whisman Precise Plan ML (Limited Industrial) MM (General Industrial) P-39 (North Bayshore) P-40 (San Antonio)	P-27 (Grant-Phyllis) P-38 (El Camino Real) P-40 (San Antonio)

Past Direction

At the spring Study Session, the EPC recommended studying nonstorefront retail cannabis business locations in the zoning districts containing manufacturing, warehouse, or auto-oriented services, but *not* in those listed as containing office or large retail centers.

At the spring City Council Study Session, the majority of Council directed staff to study nonstorefront retail cannabis businesses in all the zoning districts listed in Table 2.

Discussion and Recommendation

All zoning districts listed in Table 2 were studied for compatibility with the nonstorefront retail cannabis business use.

Some considerations specific to locating storefront retail businesses include:

- Compatibility with typical uses in the area.
- Compatibility with typical warehouse uses in the area.
- Compatibility with typical existing development in the area.
- Presence of adequate circulation and loading areas.
- Convenient access to major arterials and freeways for delivery vehicles.
- Potential traffic and circulation impacts on surrounding development.
- Direction from the public, EPC, and Council.

Staff recommends nonstorefront retail cannabis businesses be conditionally/provisionally permitted in the following zoning districts, except as limited and explained below. A map illustrating zoning districts recommended for cannabis businesses is located in Attachment 8, and Attachment 9 shows buffer areas around sensitive uses (discussed later).

- *CS (Commercial-Service) District*—The Commercial-Service District is located along Old Middlefield Way, the area south of the Highway 237 and Highway 85 intersection, and an area on the south side of West Evelyn Avenue. The district contains predominantly manufacturing, warehousing, and vehicle service. Nonstorefront retail is similar to other permitted uses in the district.
- *MM (General Industrial) and ML (Limited Industrial) Districts*—The Industrial Districts contain primarily research and development uses with some service, warehousing, and manufacturing uses. Nonstorefront retail is similar to other permitted uses in the district.

- *P-38 (El Camino Real) Precise Plan*—The El Camino Real Precise Plan runs along the El Camino Real regional corridor from Sunnyvale to the southeast and Palo Alto and Los Altos to the northwest. The Precise Plan encourages diverse commercial and residential uses in a mixed-use urban environment. The Precise Plan provides easy access to a regional corridor and a mix of development types that could be conducive to nonstorefront retail; however, areas of the Precise Plan require pedestrian-oriented development incompatible with the proposed nonstorefront retail use. Staff recommends nonstorefront retail be provisionally permitted in Corridor Areas and All Upper Floors, but prohibited in areas requiring ground-floor commercial.
- *P-39 (North Bayshore) Precise Plan*—The North Bayshore Precise Plan is located at the northern end of the City north of Highway 101. While existing development in the area is predominantly office, the Precise Plan has identified areas for new residential neighborhoods and associated commercial uses. The Precise Plan identifies four areas with distinct standards and character. Staff recommends provisionally permitting nonstorefront retail uses in the areas where warehousing and other similar uses are permitted—in the Core, General, and Edge Character Areas.
- *Future East Whisman Precise Plan*—The East Whisman Precise Plan is currently under development with adoption anticipated in 2019. Inclusion of nonstorefront retail will be considered with the public draft of the Precise Plan.

Staff studied the following districts as directed by the Council and found potential compatibility issues with the proposed use. Staff recommends cannabis nonstorefront retail businesses be prohibited in the following zoning districts:

- *CO (Commercial-Office) District*—The Commercial-Office District contains existing office, religious, and public (Veterans Affairs office) developments. Commercial-Office District locations are primarily surrounded by residential uses and limited commercial uses. Warehousing and other similar uses are prohibited in the Commercial-Office District.
- *P-27 (Grant-Phyllis) Precise Plan*—The Grant-Phyllis Precise Plan is bounded by Grant Road, Phyllis Avenue, and Oak Lane. The Precise Plan is comprised of the Grant Road Marketplace and is designed to encourage regional and neighborhood retail services. Surrounding the Precise Plan are predominantly single-family neighborhoods and some commercial uses to the north and east. Warehousing and other similar uses are not permitted in the Grant-Phyllis Precise Plan as they

are incompatible with the intent of providing retail services compatible with the surrounding neighborhood.

- *P-40 (San Antonio) Precise Plan*—The San Antonio Precise Plan is located near the western edge of the City and borders the El Camino Real Precise Plan and residential neighborhoods. The Precise Plan encourages pedestrian-oriented development with an emphasis on diverse commercial and residential uses. Warehousing and other similar uses are not permitted in the San Antonio Precise Plan as they are incompatible with the intent of providing active commercial spaces and pedestrian-friendly neighborhoods.

At the September public hearing, the EPC deliberated extensively about the districts in which cannabis businesses should be conditionally permitted. The EPC adopted a resolution forwarding staff's recommendation regarding the location of cannabis businesses with a 4-2 vote. Those opposed wanted to limit the location of businesses further.

Topic 3: Number of Businesses

Most jurisdictions in California that permit cannabis businesses have adopted a maximum number of businesses allowed in the City. It is possible that as the industry and regulatory frameworks change, the maximum can change or go away altogether.

Adoption of a maximum number of businesses is advised due to the potential for a high number of businesses. Other jurisdictions that have legalized and regulated commercial adult-use/recreational cannabis have experienced a large number of applicants. For example, the City of Santa Ana received about 600 applications, and the City of Pacifica received 34 applications. These jurisdictions permit a maximum of 30 and 6 businesses, respectively. The greatest factor in the number of applications received seems to be the number of sites available. The potential for such a high volume of interested businesses presents the possibility of unknown impacts on other business types in the City, magnifies potential negative impacts from the businesses, and makes permitting and monitoring of the businesses unrealistic given staff resources.

Approximately 25 cities in the Bay Area currently permit cannabis retail or delivery businesses. Nine cities do not have a limit on the number of businesses (some of these only permit storefront retail). Of those businesses surveyed and permitting retail cannabis businesses within the city, the average facilities permitted is approximately one per every 26,000 residents. The highest per-capita-to-business ratio permitted is in Cotati (Sonoma County), which allows a total of two businesses, approximately one per

every 3,700 residents. The lowest per-capita-to-business ratio permitted is in Richmond (Contra Costa County), which allows a maximum of three businesses, approximately one per every 74,400 residents. The only other city in Santa Clara County that has, to this point, permitted cannabis businesses is San Jose. The City of San Jose has a total of 16 cannabis retail facilities, approximately one per every 64,000 residents.

Past Direction

The cumulative community outreach indicates that the majority of people favor allowing cannabis retail businesses and the majority support limits on the initial maximum number of businesses.

At the spring Study Session, the EPC recommended the initial number of businesses be limited to one or two.

The majority of Councilmembers expressed a desire to “start slow” at the spring Study Session and the majority supported staff’s recommendation to place a limit on the number of cannabis retail businesses permitted. Two members expressed support for the initial number of businesses to be limited to five or six, two members supported the EPC’s recommendation, and another supported no limit. One Councilmember did not express support for a specific number but supported a limit; and one Councilmember not present at the meeting provided a written comment supporting five or six initial businesses.

Discussion and Recommendation

A consideration in the maximum number of cannabis retail businesses to permit is resources required to process permits and conduct ongoing enforcement. Under the proposed ordinances, the Community Development Department will manage the permitting process and the Police Department will manage annual registration of businesses, employees, and deliveries.

At the September 5, 2018 public hearing, the EPC revised the proposed ordinance to limit the maximum number of businesses from five to three with a 4-2 decision. The two Commissioners in opposition disagreed with the reduction in the maximum number of permitted businesses.

The ongoing registration and enforcement will require ongoing resources from the Police Department. Enforcement will include processing of initial and annual registration, monitoring of businesses through the means stipulated in the proposed

Chapter 9 Ordinance, and any inspections or investigations deemed necessary by the Police Department.

The proposed ordinance, as recommended by the EPC, permits a maximum of three businesses. If the Council were to permit a maximum of three businesses, a new full-time Police Officer position and a quarter-time Community Services Officer would be required. The Police Department believes one new full-time Police Officer and a half-time Community Services Officer would be required to successfully regulate four to six cannabis businesses. Staff estimates 10 percent of an existing Sergeant position's time will also be required for enforcement of cannabis businesses. These estimates are consistent with staff resources required for enforcement of similar regulations in other cities (i.e., San Jose).

Topic 4: Permit Process

Due to the novel and unique characteristics of commercial cannabis regulations, a permitting process specific to the proposed use is advised. A cannabis business permitting process should consider the following factors:

- Compatibility with State regulations.
- Best Practices learned from other jurisdictions' regulation implementation.
- Compatibility with existing City permitting structures.
- Reasonable resources available in involved City departments.
- Anticipated number of applications.
- The provision of clearly prescribed and specific requirements for easy and consistent implementation.
- Ability to enforce all provisions of the City Code and applicable State law.
- Direction from the public, EPC, and Council.

Past Direction

In past Study Sessions, the EPC supported staff's recommended permitting framework and expressed support of the lottery system.

The City Council was also generally supportive of staff's recommended permitting framework, but expressed concerns regarding staff time and prioritizing serious cannabis business applicants.

Discussion

Based on direction from the EPC and City Council, staff preserved the general aspects of the permitting process (such as the lottery) with some refinement and simplification.

There are two unique aspects of the proposed cannabis permitting process that differ from other zoning permits in the City.

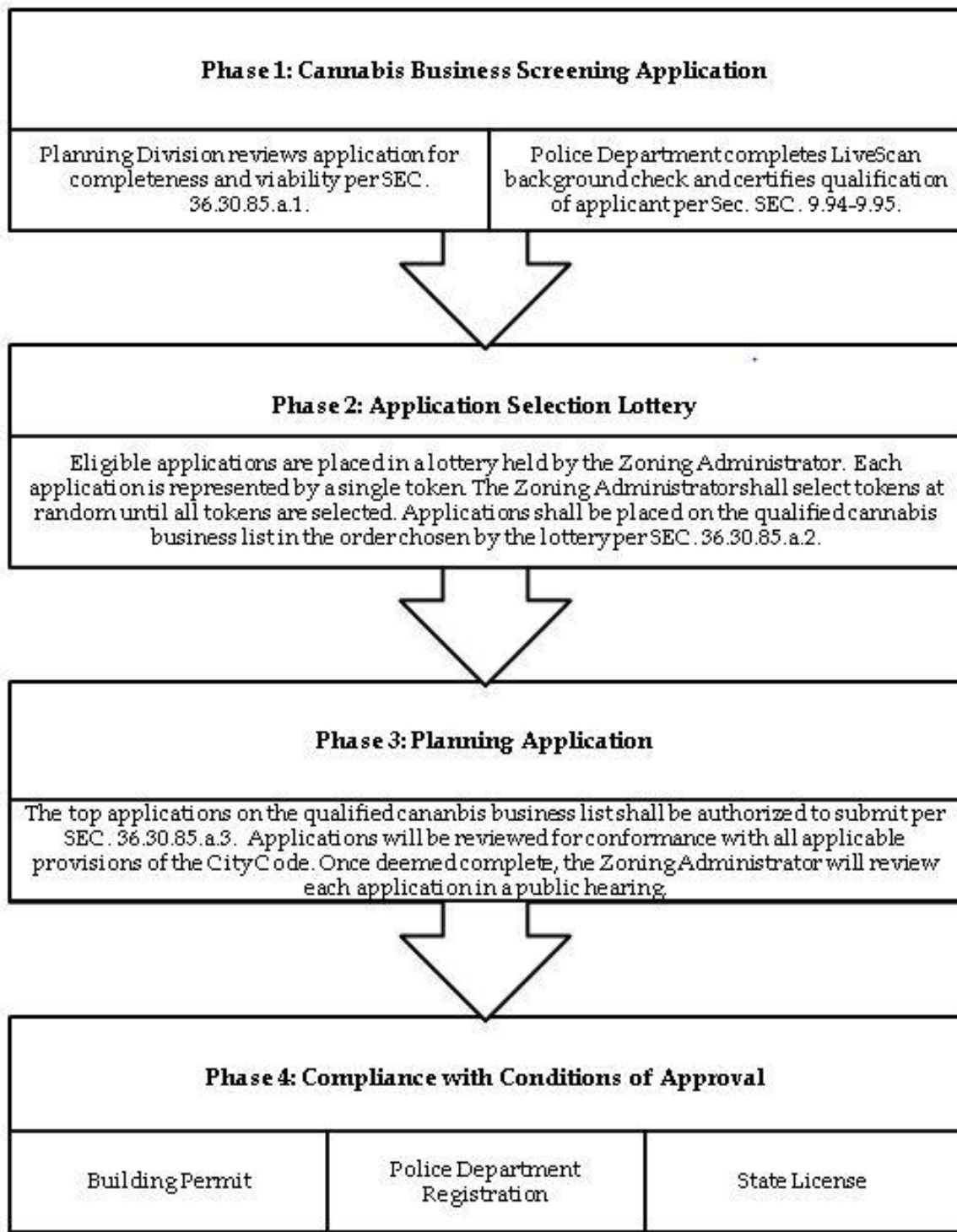
- *Lottery*—Due to the high number of anticipated applications and the proposed limit on the number of cannabis businesses permitted in the City, a selection process is necessary. The selection process determines which applications are permitted to proceed through the application and public hearing processes. Staff recommends a lottery system be used to select applications. The lottery system does not select or approve applications, but rather acts as a gatekeeper for processing of applications. The alternative to a lottery system is a quantitative or qualitative ranking system in which each business is judged against the others based on established criteria, similar to a Request for Proposals process. Staff does not recommend such a ranking system as it requires significant staff resources and risks subjectivity in the selection of businesses that does not exist for any other business type in the City.
- *Police Department Registration*—Many aspects of the cannabis business regulations will be located in Chapter 9 of the City Code and will be enforced by the Police Department. To enforce these provisions, all businesses, owners, managers, and employees will be required to register with the Police Department and renew registration annually. The Police Chief will adopt and publish administrative guidelines as part of the implementation process. The proposed regulations are detailed in the next section.

Recommendation

The graphic below represents the proposed permitting process to review cannabis business applications.

The proposed permitting process is more refined than that reviewed in the Study Sessions. Additionally, the Police Department and Planning Division initial screening of applications prior to the lottery are combined.

A draft submittal checklist for Phase I (Cannabis Business Screening Application) is located in Attachment 10 to provide further clarity to the process. The checklist will not be adopted and can be amended at the discretion of the Zoning Administrator in conformance with the City Code.



In the event an application is withdrawn by the applicant or denied by the Zoning Administrator, applications on the qualified cannabis business list shall be authorized to submit a planning application in the order of ranking as established by the lottery.

The Zoning Administrator shall continue to authorize submittal of planning applications until all applications have been reviewed or until the maximum number of cannabis businesses have received planning permits.

The Zoning Administrator shall review the planning applications, including the conditional use permits, at a public hearing.

In the September public hearing, the EPC supported the proposed permitting process and did not recommend any modifications to it.

Topic 5: Additional Items

The following items are included in the draft ordinance based on best practice, EPC and Council direction, and public interest.

- *School/Child-Care Buffers*—The State establishes a 600' buffer between cannabis businesses and schools, child-care centers, and facilities. Local jurisdictions are permitted to adopt regulations different than the State buffer. In the past Study Session, the majority of Councilmembers directed staff to maintain the 600' buffer from schools, but decrease the buffer for child-care centers and facilities. The draft ordinance establishes a 600' buffer between cannabis businesses and schools and a 250' buffer between cannabis businesses and child-care centers and facilities (Section 36.30.60.c). Attachment 9 illustrates the proposed buffers on the zoning map.
- *Proximity to Residential Uses*—Proximity to residential uses has been considered in the compatibility analysis of cannabis businesses within select zoning districts. Additionally, the draft ordinance requires a provision to mitigate potential adverse impacts to sensitive uses, including residential uses (Section 36.30.65.d). The Planning Division will review possible impacts and mitigations through the use permit process.
- *Mitigation of Adverse Impacts*—Several provisions in the draft ordinance address potential adverse impacts by detailing requirements such as security, lighting, appearance, compatibility with surrounding similar uses, parking, display of goods and advertising, noise and odor, and hours of operation (Sections 36.30.65 through 36.30.80).

At the September public hearing, the EPC supported the proposed ordinance and did not recommend any modifications to the items listed here.

Safety and Enforcement: Chapter 9 Amendments

Many aspects of the cannabis business regulations will be located in Chapter 9 of the City Code and will be enforced by the Police Department. The draft ordinance is located in Attachment 3. As the EPC only provides recommendations on Chapter 36 and issues related to zoning, the EPC did not provide a recommendation on the proposed amendments to Chapter 9.

Recommendation

The draft Chapter 9 ordinance is largely modeled on San Jose's cannabis ordinance to provide regulatory consistency throughout the County. Aspects of the draft ordinance that vary from San Jose's were developed to better fit into the Mountain View framework.

The following summarizes the key provisions of the draft ordinance:

- *Business Registration* – All cannabis businesses will be required to register with the Police Department after receiving an approved Planning Permit. The businesses will be required to provide such things as organizational structure, historical and current business information, financial information, security plans, and tax information for review and approval by the Police Department. Businesses will provide the City with contact information for responsible parties to address any issues that may arise. Businesses will be required to renew registration annually and are subject to inspections.
- *Cannabis Business Owner, Manager, or Employee Registration* – All persons working at a business shall be required to register with the Police Department. Persons will be required to submit to background checks and provide details of past employment and involvement in the cannabis business. Annual renewal of the registration will be required.
- *Grounds for Disqualification* – The draft ordinance establishes grounds for disqualification; that is, circumstances in which the Police Chief must deny an applicant or business registration. These are detailed in Section 9.95 and largely modeled after Los Angeles' grounds for disqualification.
- *Security* – The draft ordinance details minimum security requirements regarding security personnel, alarm systems, lock and access requirements, storage of goods, video surveillance, and property maintenance.

- *Track and Trace*—The State established a Track and Trace System for unique identifiers of cannabis and cannabis products, which all cannabis businesses are required to use. Details of local track and trace requirements are located in the draft ordinance and are consistent with State requirements.
- *Consumption*—Chapter 9 explicitly prohibits consumption of all cannabis on a licensed premise. Per State law, consumption of cannabis is prohibited in public, including on sidewalks, in vehicles, and in restaurants.
- *Age Restriction*—Per State law, businesses are required to verify age eligibility prior to entering the secure area where goods are located. The draft ordinance is consistent with State law in that persons under the age of 21 are not permitted to enter a licensed premise. However, State law has a provision allowing those under 21 to enter a licensed premise with the possession of a medical card. For consistency and enforcement, the local ordinance proposes to limit the eligibility age to 21 regardless of medical card possession. Anyone possessing a medical card will still be permitted to possess and consume cannabis per State law.

In conjunction with the adoption of the draft ordinance, the existing ordinance prohibiting medical marijuana dispensaries in Chapter 9 will be repealed and replaced with the proposed ordinance.

Cannabis Fees

New fees are proposed to recover the cost of cannabis business permitting and enforcement. The proposed fees listed below were developed to recover the cost of services based on discussions with staff of the estimated resources (staff, supplies, administrative overhead) needed to provide the oversight and services as outlined by the proposed ordinances. Staff researched comparable fees of other agencies, but there are limited comparisons of other agencies and each agency has a varying range of objectives for the managing and enforcement of the cannabis industry. The titles and components of fees may also vary. Of the agencies reviewed, the comparable Cannabis Business Registration fees ranged from approximately \$34,000 to \$151,000. It is anticipated the recommended Police Officer position will be focused on compliance and inspection activities related to business registration for the program. Assuming a limit of three permitted businesses, the business registration fee is proposed at \$107,000. If the Council were to modify the proposal to allow a maximum of five businesses, the business registration fee would be approximately \$65,200. The business registration fee will be adjusted if the maximum number of businesses permitted through the proposed ordinance changes.

Staff is requesting the following new fees be adopted and the Master Fee Schedule amended to include them. The proposed resolution and fee amounts are located in Attachment 4.

- *Cannabis Business Screening Application Fee (\$1,700)* – This fee would be collected by the Community Development Department to recover the cost of processing Phase 1 of cannabis business permitting.
- *Cannabis Business Background Screening Fee (\$1,010)* – This fee would be collected by the Police Department to recover the cost of qualifying or disqualifying business owners based on provisions of Chapter 9 in Phase 1 of cannabis business permitting.
- *Cannabis Business Registration Fee (\$107,000)* – This fee would be collected by the Police Department to recover the cost of processing the business registration as well as enforcement of the regulations through the year.
- *Cannabis Business Owner, Manager, or Employee Registration Fee (\$1,860)* – This fee would be collected by the Police Department to recover the cost of processing the registration for each employee.
- *Delivery Registration Fee (\$1,860)* – This fee would be collected by the Police Department to recover the cost processing the registration for each driver.

The fees listed above are the initial fees; the annual renewal fees are included in Attachment 4. Some fees required to be paid by cannabis businesses are already established. These include fees such as those for fingerprinting, conditional use permits, development review permits, and building permits. As the City gains more experience with the cannabis industry and the services provided, the fees can be reviewed and modified as appropriate.

FISCAL IMPACT

All permitting processes would be cost-recovered. The cost of the new Police Department positions requested to enforce cannabis regulations are included in the proposed fees.

The Cannabis Tax Ordinance would establish a maximum tax rate on all cannabis businesses of up to nine percent (9%) on gross receipts to match the revenue measure as proposed by the City Council. If this measure is approved by a majority of the voters, the Cannabis Business Tax Ordinance would become effective only when an ordinance

allowing cannabis businesses to operate in Mountain View is adopted by the City Council and becomes effective.

Voter approval would be required to increase the tax rate above nine percent (9%) or to change the purpose of the ordinance. However, the City Council would have the ability to amend the ordinance to modify the tax rate or establish different rates for medical and recreational cannabis, so long as the rate does not exceed nine percent (9%).

The City estimates this tax could generate approximately \$1 million annually. The cannabis business tax is a general tax enacted for general municipal purposes such as public safety, transportation, Library, park maintenance, and senior services. All tax proceeds would go into the City's General Operating Fund. The City could use the tax revenues for any legitimate governmental purpose.

ENVIRONMENTAL IMPACT

The ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) of the CEQA Guidelines because the activity will not result in a direct or reasonably foreseeable indirect physical change in environment.

CONCLUSION

In December 2017, the Council directed staff to study permitting and regulating commercial cannabis businesses in Mountain View. After additional consideration at a Study Session, the Council directed staff to focus the study on permitting only cannabis retail businesses. The proposed cannabis regulations are the result of extensive study, community input, and collaboration between the Community Development Department, City Attorney's Office, Police Department, and Finance and Administrative Services Department.

The City Council may consider key topics addressed in this Council report, or any other topics related to cannabis businesses in Mountain View. Staff recommends Council take action on all of the following items to adopt comprehensive local cannabis regulations:

1. Introduce an Ordinance Repealing Ordinance No. 1.18, an Interim Urgency Ordinance Extending the Prohibition of Commercial Cannabis Activity in All Zoning Districts within the City, Excluding Cannabis Delivery Services from State and Locally Licensed Cannabis Retailers with Physical Premises Located Outside of the City of Mountain View and Provided Deliveries Are Conducted in Accordance with the Licensing Jurisdictions' Rules for Cannabis Delivery for Ten

(10) Months and Fifteen (15) Days, and Amending Article V, Division 2, Article VI, Divisions 2 and 3, Article VII, Sec. 36.22.10, Article IX, Division 11, and Article XVII, Division 2, and Adding Division 21 to Article XIV to Establish Cannabis Regulations, to be read in title only, further reading waived, and set a second reading for October 23, 2018;

2. Adopt a Resolution Approving Precise Plan Amendments to the P-19 (Downtown) Precise Plan, Chapter III; the P-27 (Grant-Phyllis) Precise Plan, Section IV; the P-38 (El Camino Real) Precise Plan, Chapter 2; the P-39 (North Bayshore) Precise Plan, Section 3.3.2; and the P-40 (San Antonio) Precise Plan, Chapter 4, Section A to Designate and Regulate Cannabis Businesses as a Land Use, to be read in title only, further reading waived;
3. Introduce an Ordinance Repealing Chapter 9, Article IV Regarding Medical Marijuana Dispensaries and Replacing It with a New Chapter 9, Article IV Regarding Cannabis Businesses, to be read in title only, further reading waived, and set a second reading for October 23, 2018;
4. Adopt a Resolution Amending the City of Mountain View Master Fee Schedule Related to Cannabis Business Regulations, to be read in title only, further reading waived; and
5. Authorize the addition of 1.0 FTE Police Officer position and 0.25 FTE Community Service Officer position for administration and enforcement of cannabis business regulations.

NEXT STEPS

Should the Council adopt the proposed ordinances and resolutions, the ordinances shall be heard for a second reading on October 23, 2018. The proposed regulations shall be effective 30 days after the second reading on November 22, 2018. By the effective date of the regulations, the Zoning Administrator shall determine and post the dates of the application periods. The first cannabis business conditional use permits could be approved in summer 2019.

ALTERNATIVES

The City Council may also choose to take the following actions:

1. Modify the proposed cannabis regulations, fees, or permitting framework.
2. Deny the proposed cannabis regulations, fees, or permitting framework.
3. Provide other direction to staff.

PUBLIC NOTICING

Notice of the October 2, 2018 public hearing was published in a newspaper of general circulation and the *Mountain View Voice* in accordance with Government Code Sections 65090 and 66018 through 66019. Notice was also included in the standard City Council agenda notice and posting procedures. Mailed notices were sent to all property owners and residents in the City. Interested stakeholders were notified of this hearing through e-mail and the Cannabis Regulations webpage.

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CB-HA-FSC-KC/2/CAM/891-10-02-18CR

- Attachments:
1. Draft Ordinance – Chapter 36 Amendments
 2. Draft Resolution – Precise Plan Amendments
 3. Draft Ordinance – Chapter 9 Amendments
 4. Draft Resolution – Master Fee Schedule Amendments
 5. [City Council Study Session Memo – May 8, 2018](#)
 6. [EPC Public Hearing Staff Report – September 5, 2018](#)
 7. Written Public Comment to the EPC and Council
 8. Recommended Cannabis Location Map
 9. Zoning Map with School/Child-Care Buffers
 10. Draft Planning Submittal Checklist