

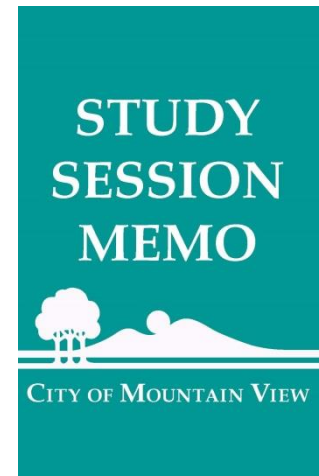
DATE: September 19, 2017

TO: Honorable Mayor and City Council

FROM: Clarissa Burke, Assistant Planner
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Director
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VIA: Daniel H. Rich, City Manager

TITLE: Study Session Regarding Regulation of
Commercial Marijuana Activities



PURPOSE

The purpose of this Study Session is to provide the City Council with an update on current State regulations pertaining to marijuana activities and receive Council feedback on the potential regulation or prohibition of commercial marijuana activity in Mountain View.

BACKGROUND

Recreational marijuana activity was legalized in California by voters (Proposition 64) in November 2016. While personal recreational marijuana activities were made immediately legal upon the passage of Proposition 64, commercial marijuana 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 will be available beginning January 1, 2018.

Over the past year, the State has consolidated and developed a framework for commercial marijuana regulation. The State licensing deadline encourages local jurisdictions to adopt regulations prior to January 1, 2018. In the absence of local ordinances regarding commercial marijuana activity, the State will be the sole regulator of commercial marijuana activity. The following report provides an overview of Federal law, State law, existing City regulations, and options for the City Council to address commercial marijuana activity in Mountain View.

Overview of Federal Law

The possession of marijuana (medical and recreational) remains illegal under the Federal Controlled Substances Act. Federal enforcement remains at the discretion of the executive branch. While prior administrations have not focused on such enforcement, recent statements on behalf of the current administration indicate the Federal government may take a more aggressive approach in enforcing Federal law.

Overview of State Laws

Medical Marijuana

California voters legalized medical marijuana 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.

Recreational Marijuana

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 sixty-eight percent (68%) of Mountain View voters and fifty-eight percent (58%) 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 marijuana use and cultivation for adults age 21 or older and established a regulatory structure for recreational marijuana businesses. Effective November 9, 2016, the AUMA made it legal for anyone age 21 or older to:

- Smoke or ingest marijuana and marijuana products;
- Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without any compensation, marijuana or marijuana products; and
- Possess, plant, cultivate, harvest, dry, or process up to six (6) living marijuana plants for personal use at a private residence.

The AUMA creates a State licensing and regulatory scheme for recreational commercial marijuana activities through expansion of the Bureau of Marijuana Control, the

Department of Consumer Affairs, the Department of Food and Agriculture, and the Department of Public Health.

Senate Bill 94

To consolidate the regulatory framework of medical and recreational marijuana, Governor Brown signed Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MACRSA), on June 27, 2017. The MACRSA essentially merges the MMRSA and the AUMA into one regulatory framework to govern all cannabis use and business. The bill's key components create license types and processes, a method for collecting and remitting taxes, a process for testing and packaging, and a process for collecting data related to driving under the influence.

The MACRSA does not affect the City's ability to prohibit or regulate commercial marijuana activities. A State licensing framework under the MACRSA will be developed by January 1, 2018.

Local Regulatory Authority

The AUMA allows local jurisdictions to do the following:

- Adopt business or land use regulations prohibiting or regulating commercial marijuana businesses (cultivation, processing, laboratory testing, deliveries, 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 marijuana activity in violation of a local ordinance. However, should a jurisdiction have no adopted zoning ordinance expressly regulating or prohibiting commercial marijuana activity, the State may unilaterally issue a license for a business to operate in that jurisdiction.

Overview of City Actions

In 2010, Mountain View adopted an ordinance prohibiting medical marijuana dispensaries and associated business from operating in the City (Sections 9.90-9.92 of the City Code). The consolidation of commercial marijuana activity under the

MACRSA would render the City's prohibition of medical marijuana businesses null and void unless it is moved to the Zoning Code (Chapter 36).

On November 1, 2016, the City Council adopted an Interim Urgency Ordinance prohibiting outdoor cultivation of marijuana in response to possible approval of Proposition 64 by voters on November 8, 2016. Following support of Proposition 64 by Mountain View voters, as well as other factors, the Council voted to not extend the Interim Urgency Ordinance in December 2016, thereby permitting personal cultivation of marijuana (indoor and outdoor) under the AUMA. As such, this report focuses on potential regulation of commercial marijuana activity.

Most cities in Santa Clara County have prohibited commercial marijuana activity, either through temporary moratoriums or permanent zoning ordinance amendments. However, San Jose and five other cities (including Mountain View) have not adopted any regulation of commercial marijuana activity (see Attachment 1—Comparison of Commercial Marijuana Regulations in Santa Clara County).

DISCUSSION

Key Issues for Consideration

There are several key issues to consider in the possible permitting and regulation of commercial marijuana businesses. Should the Council direct staff to draft an ordinance permitting and regulating commercial marijuana activity, the following issues will be studied.

Land Use and Permitting Process

If the Council is interested in permitting and regulating commercial marijuana activities, staff will study suitable locations for marijuana sales, research facilities, manufacturing, and cultivation; draft a permitting process; and establish a cost-recovery permitting fee.

In 2010, the Community Development Department evaluated suitable locations for medical marijuana dispensaries. Staff identified very limited areas in the City suitable for this land use due to zoning limitations and distance requirements from sensitive uses. Given significant land use changes in the City since 2010, Planning staff will need to update this study and will seek Council direction on criteria for identifying suitable locations for commercial marijuana activity.

Safety

The AUMA places some health and safety restrictions on marijuana consumption. It is illegal to drive under the influence or smoke marijuana while driving or riding in a moving vehicle. Additionally, marijuana may not be smoked in public places, anywhere tobacco smoking is prohibited, or within 1,000' of a school or day-care center where children are present. However, marijuana may be smoked within 1,000' of schools or day cares if it occurs at a private residence or at a business licensed to allow for on-site marijuana smoking, and if such smoking is not detectable by people at nearby facilities.

Private property owners and employers may prohibit any permitted personal use and possession activities.

According to the Mountain View Police Department, marijuana is sometimes involved in criminal and nuisance investigations. In 2017 (YTD), marijuana was involved in at least 58 reported incidents, including two burglaries.

Revenue and Taxation

The State created two new excise taxes on marijuana: a cultivation tax of \$9.25 per ounce for flowers and \$2.75 per ounce for leaves, and a 15 percent tax on the average market retail price of marijuana. These taxes will be effective January 1, 2018.

Under the AUMA, the tax revenue is primarily allocated toward reimbursement of State regulatory costs and research related to the impacts of marijuana legalization. The remaining tax revenue is distributed as follows through grants:

- 60 percent for youth programs, substance abuse education, prevention, and treatment;
- 20 percent for environmental cleanup and remediation; and
- 20 percent for State and local programs designed to reduce DUIs or negative health impacts from marijuana legalization.

Local jurisdictions will not receive State tax revenues except through grants for established local programs related to mitigating marijuana-related health and environmental impacts.

Under the MACRSA, the City is allowed to levy additional taxes on commercial marijuana sales. Any additional tax on commercial marijuana activity requires direct approval by the voters. As noted earlier, the City may establish a cost-recovery permitting system. At this time, the City of San Jose is the only jurisdiction in Santa Clara County with a tax on marijuana (ten percent (10%) of gross receipts).

Deliveries

A local agency cannot prohibit transportation of commercial marijuana through its jurisdiction. However, cities may prohibit delivery of marijuana (both recreational and medical) within city boundaries through express prohibition in the Zoning Code. Due to the transitory nature of the activity, enforcement of a delivery prohibition presents significant challenges.

ANALYSIS

The City Council may consider the following three options to address the impacts of commercial marijuana legalization and licensing:

Option 1: Direct staff to develop an amendment to the Zoning Code prohibiting commercial marijuana activity.

Council may direct staff to draft an ordinance prohibiting both medical and recreational marijuana activity. Under such an ordinance, all commercial marijuana activity would be illegal in Mountain View. However, possession, use, and personal cultivation would remain legal. An amendment to the Zoning Code prohibiting commercial marijuana activities would require recommendation from the Environmental Planning Commission (EPC) and adoption by Council prior to January 1, 2018.

Option 2: Direct staff to develop an amendment to the Zoning Code to permit and regulate commercial marijuana activity.

Council may choose to regulate and permit all or some commercial marijuana activity. This option will require significant staff resources to develop a regulatory and permitting framework. As noted earlier, staff would need to study potential locations and permitting processes for land uses related to marijuana activity (sales, research facilities, manufacturing, and cultivation); impacts to health and safety; revenue and taxation; and deliveries of marijuana merchandise. Community outreach and Study Sessions would be included in this effort.

Such studies could not be completed by January 1, 2018. Should the Council decide to permit and regulate commercial marijuana activity, staff recommends adopting a temporary moratorium until the studies are complete and the ordinance adopted to avoid a regulatory gap. If directed, staff anticipates a temporary moratorium will be adopted by December 2017, and an ordinance permitting and regulating commercial marijuana activity presented to the EPC and Council by the end of 2018.

Option 3: Take no action and allow the State to be the sole regulatory body of marijuana related-activities.

Council may decide to take no action in response to the legalization of commercial marijuana activity. In such a circumstance, the State would be the sole regulator of commercial marijuana activity in Mountain View with the following effects:

- Marijuana dispensaries (medical and recreational) would be permitted as a retail use;
- Commercial cultivation would be permitted as an agricultural use;
- Laboratory testing facilities would be permitted as a research and development use; and
- Processing and manufacturing of commercial marijuana would be permitted as an industrial use.

RECOMMENDATION

Staff requests City Council feedback on the following options:

Option 1: Direct staff to develop an amendment to the Zoning Code prohibiting commercial marijuana activity.

Option 2: Direct staff to develop an amendment to the Zoning Code to permit and regulate commercial marijuana activity.

Option 3: Take no action and allow the State to be the sole regulatory body of marijuana-related activities.

NEXT STEPS

Following City Council feedback, staff will implement the Council's selected option.

PUBLIC NOTICING

The City Council's agenda is advertised on Channel 26, and the agenda and this report appear on the City's Internet website. Notice of the public hearing was published in the newspaper pursuant to Government Code Section 65090.

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Attachment: 1. Comparison of Commercial Marijuana Regulations in Santa Clara County