



DATE: December 5, 2017

CATEGORY: Public Hearing

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

TITLE: **Temporary Moratorium Prohibiting
Commercial Cannabis Activity**

RECOMMENDATION

Adopt an Interim Urgency Ordinance Adding Sections 36.06.56 Through 36.06.59 to the Mountain View City Code to Prohibit Commercial Cannabis Activity in All Zoning Districts within the City of Mountain View.

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 will be available beginning January 1, 2018.

Over the past year, the State has consolidated and developed a framework for commercial cannabis regulation. The State licensing deadline encourages local jurisdictions to adopt regulations prior to January 1, 2018. In the absence of local ordinances regarding commercial cannabis activity, the State will be the sole regulator of commercial cannabis activity. Local jurisdictions must adopt local regulations prior to the State's deadline to avoid a regulatory gap.

Summary of Council Direction

At the Study Session regarding regulation of commercial marijuana activities (September 19, 2017), the City Council unanimously directed staff to develop an amendment to the Zoning Code to permit and regulate commercial cannabis activity. Council directed staff to return with a temporary moratorium on commercial cannabis

activity by December 2017 to allow time to develop regulations over the next year (Attachment 2 – [Study Session Memo – September 19, 2017](#))

Interim Urgency Ordinance

The purpose of this Council report is to present an urgency ordinance placing a temporary moratorium on commercial cannabis activity. An urgency ordinance will allow time for studies and community outreach for the development of a permitting and regulatory scheme for the City.

Adoption of an urgency ordinance is authorized by City Charter Section 514 and Government Code Section 65858. A four-fifths vote (equivalent to six votes) is required to pass an urgency ordinance. If passed, the ordinance takes effect immediately and remains in effect for 45 days. Upon expiration of the initial term, an interim urgency ordinance may be extended by either 10 months and 15 days (establishing a 1-year moratorium); or 22 months and 15 days (establishing a 2-year moratorium).

If Council adopts the urgency ordinance, staff will return prior to its expiration in January 2018 with a recommendation for Council to extend the ordinance for 10 months and 15 days to develop a permitting and regulatory ordinance.

ANALYSIS

A temporary moratorium on commercial cannabis activity would allow the City to study key issues pertaining to commercial cannabis without a local regulatory gap. Key issues include land use and permitting processes, safety, revenue and taxation, and deliveries.

Land Use and Permitting Process

Staff will study suitable locations for cannabis sales, research facilities, and manufacturing; draft a permitting process; and establish a cost-recovery permitting fee.

In December 2016, Council voted to allow personal cannabis cultivation. Council expressed that commercial cannabis cultivation would not be a suitable land use in Mountain View at the study session in September 2017.

Safety

State regulations place some health and safety restrictions on cannabis consumption:

- It is illegal to drive under the influence or smoke cannabis while driving or riding in a moving vehicle.
- Cannabis 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. Smoking may occur in the vicinity of a school or day-care center 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.

Staff will study health and safety regulations (e.g. security, lighting, and tracking requirements) to mitigate possible negative impacts of commercial cannabis.

Revenue and Taxation

The State created two new excise taxes on cannabis: a cultivation tax of \$9.25 per ounce of flowers and \$2.75 per ounce of leaves, and a 15 percent tax on the average market retail price of cannabis. These taxes will be effective January 1, 2018. The tax revenue is primarily allocated toward reimbursement of State regulatory costs and research related to the impacts of marijuana legalization. Local jurisdictions will not receive State tax revenues except through grants for established local programs related to mitigating cannabis-related health and environmental impacts.

The City is allowed to levy additional taxes on commercial cannabis sales. Any tax on commercial cannabis activity requires approval by the voters. Staff will study options for taxation of commercial cannabis sales. If Council wishes to place a tax on the November, 2018 ballot, it would need to be done by August, which is likely to be before the regulatory framework is completed.

Additionally, the City may establish a cost-recovery permitting system. Staff will study appropriate cost-recovery fees associated with permitting.

Deliveries

A local agency cannot prohibit transportation of commercial cannabis through its jurisdiction. However, cities may prohibit or regulate delivery of cannabis (both recreational and medical) within or into city boundaries.

At the Study Session on September 19, 2017, Council expressed interest in omitting deliveries from the temporary moratorium. The following factors may be considered in deciding whether to include or omit deliveries in the proposed temporary moratorium.

State Regulation of Cannabis Deliveries

The Bureau of Cannabis Control has not yet released proposed regulation of retail deliveries (medical or recreational). However, staff is reviewing the emergency medical and adult-use cannabis regulations released on November 16, 2017. Under proposed State license types, licensed retailers would be able to sell and deliver cannabis to customers. A business that wishes to sell only through deliveries would be required to have a licensed premises that is not open to the public. Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), sets forth the following direction for the development of delivery regulations:

- The Bureau shall establish minimum security and transportation safety requirements.
- The driver of a vehicle transporting or transferring cannabis shall be directly employed by a licensee authorized to transport or transfer cannabis or cannabis products.
- All vehicles transporting cannabis shall be required to have a valid motor carrier permit and participate in the Basic Inspection of Terminals program enforced by the California Highway Patrol.

The MAUCRSA defines delivery as the “commercial transfer of cannabis or cannabis products to a customer. Delivery also includes the use by a retailer of any technology platform owned and controlled by the retailer.” The definition of “technology platforms” is currently under debate and may include technologies such as vending machines.

Local Regulation of Cannabis Deliveries

Should deliveries be omitted from the temporary moratorium, they would be subject to all applicable State regulations; however, imposing local regulations on deliveries after State licensing would be difficult.

The City of San Jose provides an example of possible regulation of deliveries. Registered collectives are permitted to deliver medical cannabis in San Jose. Prior to beginning delivery operations, the registered collective must complete an additional review process with the San Jose Police Department's Division of Medical Marijuana Control and receive a Delivery Registration notice. The additional review includes requirements for how orders can be placed, a live and historical GPS tracking system on all delivery vehicles, live video surveillance, detailed delivery plans, and records of transfers.

Staff is unable to assess the impact of omitting deliveries from the temporary moratorium until the State has released its regulations and clarified the definition of deliveries. Once additional information is available, impacts and regulatory options can be studied. Omitting deliveries from the temporary moratorium would create a regulatory gap if the City wishes to regulate deliveries in the future. Staff recommends including deliveries in the temporary moratorium of commercial cannabis activity due to the uncertain nature of State regulations and to allow studies of possible local regulation.

FISCAL IMPACT—None, other than staff time to perform analysis and develop a regulatory framework for commercial cannabis activity.

ALTERNATIVES

The following alternative actions are available to the City Council:

1. Adopt an interim urgency ordinance prohibiting commercial cannabis activity, omitting deliveries.
2. Decline to adopt any interim urgency ordinance prohibiting commercial cannabis activity.
3. Provide other direction.

PUBLIC NOTICING

Notice was published in a newspaper of general circulation in accordance with Government Code 65090 at least 10 days before this hearing. Notice of the December 5, 2017 public hearing was also included in the standard Council agenda notice and posting procedures. Interested stakeholders were notified of this hearing.

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Attachments: 1. Interim Urgency Ordinance
2. [Study Session Memo – September 19, 2017](#)