



DATE: January 16, 2018

CATEGORY: Public Hearing

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

TITLE: **Adoption of an Ordinance Extending the Temporary Moratorium Prohibiting Commercial Cannabis Activity**

RECOMMENDATION

Take one of the following actions to extend the Interim Urgency Ordinance (six votes required):

1. Adopt an Interim Urgency Ordinance Extending the Prohibition of Commercial Cannabis Activity in All Zoning Districts within the City of Mountain View for Ten (10) Months and Fifteen (15) Days (Attachment 1); or
2. Adopt 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 (Attachment 2).

BACKGROUND

The City Council unanimously adopted an interim urgency ordinance prohibiting all commercial cannabis activity (including the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products) in Mountain View on December 5, 2017. 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 California's legalization of commercial cannabis and in anticipation of the State's licensing of commercial cannabis activity beginning January 1, 2018.

In addition to adoption of the temporary moratorium, Council directed staff to bring back the option of an ordinance extending the interim urgency ordinance to prohibit commercial cannabis activity, *except* for deliveries from businesses licensed outside the City, in all zoning districts within the City of Mountain View (5-2 vote).

Council also requested staff provide analysis of the prioritization of delivery-only facilities as a separate work item to be completed and permitted prior to the rest of the ordinance regulating commercial cannabis activity (4-3 vote).

Interim Urgency Ordinance

An interim urgency ordinance allows time for studies and community outreach for the development of a permitting and regulatory scheme of commercial cannabis activity.

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 or extend an urgency ordinance. Interim urgency ordinances are effective immediately and remain in effect for an initial term of 45 days. An urgency ordinance may be extended by either 10 months and 15 days (establishing a one-year moratorium) or 22 months and 15 days (establishing a two-year moratorium).

The State statute regulating urgency ordinances requires a written report be issued 10 days prior to its expiration describing measures taken to alleviate the condition that led to the adoption of the ordinance. This report was issued in Council's weekly update on January 5, 2017 (Attachment 3).

The Interim Urgency Ordinance adopted on December 5, 2017 expires on January 19, 2018. Staff recommends adoption of a 10-month and 15-day extension (until December 1, 2018) to allow adequate time for development of a regulatory scheme of commercial cannabis in Mountain View.

ANALYSIS

Extension of the Interim Urgency Ordinance

Council requested two options for the extension of the interim urgency ordinance be presented prior to its January 19, 2018 expiration.

Option 1: Adopt an Interim Urgency Ordinance Extending the Prohibition of Commercial Cannabis Activity in all Zoning Districts within the City of Mountain View for 10 Months and 15 Days (Attachment 1).

Option 1 extends the existing ordinance with no changes. This maintains the status quo of no commercial cannabis activity and preserves local control, while allowing time for a thorough analysis of impacts, public input, and the development of regulations permitting commercial cannabis activity in the City without the possibility of regulatory inconsistency.

Option 2: Adopt an Interim Urgency Ordinance Extending the Prohibition of Commercial Cannabis Activity in all Zoning Districts within the City of Mountain View, 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 10 Months and 15 Days (Attachment 2).

A local agency cannot prohibit transportation of commercial cannabis through its jurisdiction. However, cities may prohibit or regulate delivery of commercial cannabis into its boundaries.

At the Council's direction, staff prepared an alternative ordinance allowing deliveries from businesses licensed by other jurisdictions into the City of Mountain View, while preserving the remainder of the temporary moratorium. These businesses would have both State and local licenses and permits, and are required to follow all applicable regulations set forth per those licenses and permits. As the City of San Jose is the only jurisdiction in Santa Clara County currently permitting commercial cannabis activity, staff anticipates the majority of legal deliveries would be from the 16 registered collectives in San Jose.

Prioritization of Retail

Council directed staff to analyze the prioritization of delivery-only facilities (non-storefront) as a separate work item to be completed prior to the ordinance regulating commercial cannabis activity. Per State law, deliveries may be made by any licensed cannabis retailer. State regulations currently permit three retail license types:

1. Retailer: Sells cannabis goods to customers at its premises or by delivery. A retailer must have a licensed physical location (premises) where commercial cannabis activities are conducted.
2. Retailer (non-storefront): Sells and delivers cannabis goods to customers. A retailer (non-storefront) must have a licensed premises that is closed to the public.

3. Microbusiness: Allows a licensee to engage in at least three (3) of the following commercial cannabis activities: cultivation, manufacturing, distribution, and retail sale.

As the statutory scheme regarding deliveries is intertwined with zoning considerations for retail uses, staff believes the most effective way to prioritize deliveries is to prioritize all retail uses. Staff requests Council provide direction on the following three options in the development of a permitting and regulatory scheme of commercial cannabis activity.

Option 1: Develop comprehensive regulations for all commercial cannabis activity.

Under this approach, staff would continue with the current trajectory of regulation development with a goal of developing a comprehensive ordinance permitting commercial cannabis activity by December 2018. If directed by Council, the ordinance could include regulation of the following uses:

- Cultivation
- Manufacturing
- Distribution
- Laboratory testing
- Research and development
- Retail (including nonstorefront), and
- Microbusinesses

The development of comprehensive regulations requires the analysis of appropriate locations and safety measures for each use, taxation and revenue, and development of land use and potential Police Department permitting processes. The following timeline is planned to accomplish these objectives.

Comprehensive Commercial Cannabis Activity Regulation Timeline

Q1, 2018	Community meeting
	Online survey
	Environmental Planning Commission (EPC) Study Session
Q2, 2018	City Council Study Session
	Community meeting (as needed)
Q3, 2018	City Council Study Session (as needed)
	EPC Study Session (as needed)
Q4, 2018	EPC Public Hearing
	City Council Public Hearing

Option 2: Develop regulation of all retail uses prior the rest of the ordinance regulating commercial cannabis activity.

Under this approach, staff would develop regulations to permit and regulate retailers and non-storefront retailers (as defined above) prior to other commercial cannabis uses, such as cultivation, manufacturing, and laboratory testing. Microbusinesses could not be permitted until other commercial cannabis uses are permitted. If directed by Council, staff anticipates retail regulations will be developed by fall (Q3) 2018, and an ordinance regulating other commercial cannabis activity will be developed by summer (Q2) 2019.

	Retail Use Regulation	Other Commercial Cannabis Regulation
Q1, 2018	Community meeting Online survey EPC Study Session	Community meeting Online survey
Q2, 2018	City Council Study Session	
Q3, 2018	EPC Public Hearing City Council Public Hearing	
Q4, 2018		City Council Study Session EPC Study Session Community meeting (as needed)
Q1, 2019		City Council Study Session (as needed) EPC Study Session (as needed)
Q2, 2019		EPC Public Hearing City Council Public Hearing

The process of developing regulation of retail uses is substantially the same as developing comprehensive commercial cannabis regulations. If the City Council prioritizes retail uses, staff's efforts would be more narrowly focused in terms of research, analysis, and regulatory development and result in the adoption of a permitting process for retail uses, and consequently deliveries, sooner. However, staff would be required to duplicate efforts to some extent in order to prepare comprehensive regulation of other commercial cannabis activity.

Option 3: Develop regulation of non-storefront retail uses prior the rest of the ordinance regulating commercial cannabis activity.

Under this approach, staff would develop regulations to permit and regulate non-storefront retailers prior to all other commercial cannabis uses. If directed by Council, staff anticipates retail regulations would be developed by fall (Q3) 2018; approximately one month sooner than Option 2. The relatively small difference is due to the fact that same zoning issues need to be considered. An ordinance regulating other commercial cannabis activity will be developed by summer (Q2) 2019.

While the prioritization of retail uses (Option 2) or non-storefront retail uses (Option 3) prior to other uses allows efforts to be more narrowly focused initially, the duplication of efforts requires additional staff time and resources over a longer period of time.

FISCAL IMPACT – None, other than staff time.

CONCLUSION AND ALTERNATIVES

Extension of the Interim Urgency Ordinance

An urgency ordinance allows time for the development of a permitting and regulatory scheme of commercial cannabis activity. The City Council may take one of the following actions to extend the current temporary moratorium.

1. Adopt an Interim Urgency Ordinance Extending the Prohibition of Commercial Cannabis Activity in All Zoning Districts within the City of Mountain View for Ten (10) Months and Fifteen (15) Days (Attachment 1); or
2. Adopt 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 (Attachment 2).
3. Provide other direction.

Prioritization of Retail

Staff requests City Council feedback on the following options regarding prioritization of retail uses over other commercial cannabis activity:

1. Develop comprehensive regulations for all commercial cannabis activity.

2. Develop regulation of all retail uses prior to the rest of the ordinance regulating commercial cannabis activity.
3. Develop regulation of nonstorefront retail uses prior the rest of the ordinance regulating commercial cannabis activity.
4. 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 January 16, 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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891-01-16-18CR-E-1

- Attachments:
1. Extension of Interim Urgency Ordinance – Option 1
 2. Extension of Interim Urgency Ordinance – Option 2
 3. Memo Regarding the Development of Commercial Cannabis Regulations