



DATE: March 5, 2019

CATEGORY: New Business

DEPT.: Community Development, City Attorney's Office

TITLE: **Discussion of Potential Future Amendments to Adopted Cannabis Regulations**

RECOMMENDATION

Provide direction on whether the Council would like to consider potential amendments to the cannabis regulations (ordinances and resolutions) at a future meeting.

EXECUTIVE SUMMARY

Over the past two and a half years, the City has worked on items related to cannabis as a result of the State's legalization of recreational cannabis activity in November 2016. In October 2018, the City Council adopted an ordinance regulating cannabis activity in the City. On February 12, 2019, a majority of the City Council asked to agendaize a future discussion regarding the cannabis regulations adopted in 2018. The purpose of tonight's item is to facilitate the discussion requested and seek direction on whether the Council would like to consider potential amendments to the cannabis regulations (ordinances and resolutions) at a future meeting.

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; 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).

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

Environmental Planning Commission 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. Council unanimously directed staff to develop regulation of retail uses by fall 2018. The only two types of retail uses to be considered were:

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.

Council expressed disinterest in allowing any other commercial cannabis uses in the City.

The Environmental Planning Commission (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); and
- 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.

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 1.

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 2.

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.

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 Council. 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.

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; and
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 City 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 Staff Report is available in Attachment 3. The City Council approved the following on a 5 to 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 schools (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); and
5. The addition of 1.0 FTE Police Officer position and 0.5 FTE Community Service 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.

SUMMARY OF ADOPTED REGULATIONS

Through extensive research and analysis, community outreach, and direction from the City Council and EPC, the City adopted comprehensive regulations to permit cannabis retail businesses in Mountain View. The regulations are located in several parts of the City Code and are summarized in the sections below.

Zoning: Chapter 36 and Precise Plans

The cannabis business zoning regulations are addressed in Chapter 36 of the City Code and select Precise Plans. The adopted ordinance amending Chapter 36 and the resolution amending the Precise Plans are located in Attachments 4 and 5, respectively. A summary of the zoning provisions are listed below.

- Maximum number of businesses
- Location of businesses (see Attachment 6)
- School/child-care buffers
- Permit process
- Security
- Appearance
- Compatibility with surrounding uses
- Lighting
- Parking
- Display of goods
- Advertising
- Noise
- Odor
- Hours of operation

Safety and Enforcement: Chapter 9 Amendments

The topics below are addressed in Chapter 9 of the City Code. The adopted ordinance amending Chapter 9 is located in Attachment 7.

- Business registration
- Cannabis business owner, manager, or employee registration
- Grounds for disqualification of an applicant
- Security
- Consumption of cannabis
- Age restriction
- Track and trace system requirements

Cannabis Fees

The cost of permitting and enforcement of cannabis businesses (including 1.5 FTE Police personnel) is recovered through permitting and annual registration fees (based on an assumption of 4 businesses). The base cannabis business-specific fees are as follows:

Title of Fee	Department/Division	Fee
Cannabis Business Screening Application	Community Development/Planning	\$1,700
Cannabis Business Background Screening (per owner)	Police	\$1,010
Cannabis Business Registration, Initial	Police	\$86,000
Cannabis Business Registration Renewal	Police	\$85,000
Cannabis Business Owner, Manager, Employee, or Contractor Registration, Initial (per person)	Police	\$1,860
Cannabis Business Owner, Manager, Employee, or Contractor Registration, Initial (per person)	Police	\$1,680
Delivery Registration, Initial	Police	\$1,860
Delivery Registration Renewal	Police	\$1,680

Applicants will also pay the standard Planning Application fees determined by the permit types required (i.e., Conditional Use Permit, Development Review Permit, etc.). These permit types are not specific to cannabis businesses and, therefore, the same fees apply as to other similar permit requests.

Cannabis Tax

On June 26, 2018, Council directed a cannabis tax up to 9 percent of gross sales be placed on the November 2018 ballot. Mountain View voters approved the tax measure with 81 percent of the vote.

IMPLEMENTATION OF ADOPTED REGULATIONS

The City has implemented the adopted cannabis regulations and has begun the permitting process. The cannabis business application process involves the following phases:

1. Cannabis Business Screening Application
2. Application Selection Lottery
3. Planning Application
4. Compliance with Conditions of Approval

Each phase is summarized below with details about where the City is in the permitting of the initial businesses.

Phase 1: Cannabis Business Screening Application

During the Phase 1 application period, interested businesses submitted all items in the Phase 1: Cannabis Business Screening Application Checklist (Attachment 8) and business owners submitted to background checks by 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. These applications are currently being reviewed.

Phase 2: Application Selection Lottery

The Application Selection Lottery is scheduled for March 27, 2019 at the Zoning Administrator Hearing.

Applications deemed eligible will be placed in the Application Selection Lottery.

At the hearing, the Zoning Administrator will randomly select applications through the lottery. Applications shall be placed on the Qualified Cannabis Business Lists in the order chosen by the lottery. There will be two lists: one for storefront retail applications and one for nonstorefront retail applications.

The lottery does not determine which application is approved, but rather, in what order they are reviewed.

Phase 3: Planning Application

The Planning Application will include a request for a conditional use permit, development review permit, and any other permit deemed necessary by the Planning Division based on the scope of work of the proposed project.

The first two applications on each Qualified Cannabis Business List will be authorized to submit a Planning Application. Applications will be reviewed for compliance with all development standards (Chapter 9 and Chapter 36). The review period is expected to be approximately six months.

If the Zoning Administrator denies an application or an application is withdrawn, then the next application on the Qualified Cannabis Business List shall be authorized to submit a Planning Application until the maximum number of cannabis businesses have obtained planning permits or all applications have been reviewed.

Decisions on the applications submitted will be made by the Zoning Administrator at a noticed public hearing.

Phase 4: Compliance with Conditions of Approval

An approved Planning Permit will include conditions of approval. These conditions of approval may be ongoing conditions or conditions that must be satisfied prior to certain milestones. The following conditions will be placed on all businesses:

- Obtain a building permit prior to occupying the space or commencing any work on the site.
- Obtain Police Department Cannabis Business Registration prior to a building permit issuance (to be renewed annually).
- Obtain Police Department Cannabis Business Owners, Managers, and Members Registration prior to occupancy (to be renewed annually).
- Obtain a State Cannabis Retailer License prior to a building permit issuance (to be renewed annually).

RECENT CITY COUNCIL ACTION

On February 12, 2019, a majority of the City Council agreed to agendaize a future discussion regarding reconsideration of the cannabis regulations adopted in 2018. The purpose of tonight's item is to facilitate the discussion requested and seek direction on whether the Council would like to consider potential amendments to the cannabis regulations (ordinances and resolutions) at a future meeting.

FISCAL IMPACT

All permitting processes are cost-recovered. The cost of the new Police Department positions to enforce cannabis regulations is included in the adopted fees.

The City estimated the cannabis tax could generate approximately \$1 million annually. This estimate was based on a preliminary assumption of five cannabis retail businesses; the City has not determined if the tax will be 9 percent or some lesser amount, so the revenue may be lower. 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.

NEXT STEPS

If a majority of the Council directs staff to study amendments to the cannabis regulations, staff will return to the Council with an interim urgency ordinance to temporarily suspend permitting of cannabis businesses and ban cannabis business activity in Mountain View until the potential amendments are studied and considered by the Council.

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. On October 2, 2018, the City Council approved comprehensive cannabis regulations for the City. The adopted 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. On February 12, 2019, a majority of the City Council agreed to agendaize a discussion regarding reconsideration of the cannabis regulations adopted in 2018 at a future meeting. The purpose of tonight's item is to facilitate the discussion requested and seek direction on whether the Council would like

to consider potential amendments to the cannabis regulations (ordinances and resolutions) at a future meeting.

Staff requests Council direction regarding whether any potential amendments to the adopted cannabis regulations should be studied; and if so, what specific provisions of the cannabis regulations should be studied (e.g., number of businesses, location, school buffer, etc.).

PUBLIC NOTICING

Notice of the March 5, 2019 agenda item was published in a newspaper of general circulation in accordance with Government Code Sections 65090. 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 and the Cannabis Regulations web page. The meeting has been noticed through social media.

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- Attachments:
1. Survey Results
 2. Community Outreach Meeting Results
 3. [City Council Public Hearing Staff Report – October 2, 2018](#)
 4. [Ordinance No. 9.18 \(Chapter 36\)](#)
 5. [Resolution No. 18248 \(Precise Plan Amendments\)](#)
 6. Allowable Location of Businesses
 7. [Ordinance No. 10.18 \(Chapter 9\)](#)
 8. Phase 1: Cannabis Business Screening Application Checklist
 9. Written Public Comment