

Agenda Report

February 26, 2018

TO: Honorable Mayor and City Council

FROM: Planning & Community Development Department

SUBJECT: CONSIDERATION OF AN ORDINANCE TO ALLOW A LIMITED NUMBER OF COMMERCIAL CANNABIS BUSINESSES TO OPERATE IN THE CITY SUBJECT TO BUSINESS, HEALTH AND LAND USE REGULATIONS TO PROTECT PUBLIC HEALTH, SAFETY, RESIDENTIAL NEIGHBORHOODS, AND SENSITIVE LAND USES

RECOMMENDATION:

It is recommended that the City Council:

- 1) Find that the proposed action is not a project subject to the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the State CEQA Guidelines and, as such, no environmental document pursuant to CEQA is required for the action; and
- 2) Approve submittal of the ordinance to the voters of the City of Pasadena.

EXECUTIVE SUMMARY:

At its meeting of January 22, 2018 the City Council directed staff to prepare an ordinance establishing a regulatory framework for commercial cannabis activities that could be considered for placement on the ballot of the June 5, 2018 special election. To that end, the proposed ordinance addresses the major themes and issues raised by the public, Commissioners and Councilmembers over the course of a dozen public meetings. It exhibits best practices and emerging approaches to the permitting and implementation of cannabis regulations and has benefitted from leading industry consultants and outside legal counsel. The proposed ordinance seeks to address a variety of potential community impacts through the collaboration of an interdepartmental working group composed of staff from the City Manager's Office, the City Attorney's Office, the Police Department, the Health Department, the Fire Department, the City Clerk's Office, the Finance Department and the Planning and Community Development Department. Moreover, the ordinance maintains Council's recommended approach to cannabis regulations by taking a cautious and slow approach through limited license types and a limited number of overall permits.

BACKGROUND

At its regular meeting of January 22, 2018, the City Council received a report regarding a recent cannabis operator/proponent sponsored referendum and proposed ballot initiative. The initiative, if passed, would repeal the City's existing ban on cannabis activities and establish new regulations that, among other things, would restrict the City's ability to regulate such uses and allow certain existing unpermitted and illegal cannabis dispensaries to continue operating while eliminating the City's ability to deny these uses or impose any operational conditions. Although the proposed referendum did not attain enough signatures to overturn the City's ban and has failed, the fate of the proposed initiative is uncertain at this point. Given the potential of lucrative profits for the yet to be established cannabis retail outlets combined with the existing, illegal operators' desires to continue operating, it seems likely that as long as the City maintains its ban on these activities, cannabis operator/proponent sponsored initiatives will seek to bypass established processes for policy making and propose their own rules. Placing a City Council approved ordinance on the ballot of the June 5, 2018 special election would maintain the Council's ability to develop important policy, land use regulations and fiscally responsible tax measures to preserve the quality of life that Pasadena's residents, visitors and business community desire and expect.

Outreach and Analysis Conducted

Prior to adoption of the ordinances banning commercial cannabis businesses at the November 6, 2017 Council meeting, extensive public outreach efforts, analysis, and deliberation had taken place at a number of venues. The City conducted three community outreach events in April 2017 to get input from residents and businesses on the prospect of allowing commercial cannabis businesses and how they should be regulated. The Economic Development and Technology Committee ("Ed-Tech") first discussed recreational cannabis at its meeting on October 19, 2016, and again at its August 23, 2017 meeting, when Ed-Tech directed Staff to present the matter to the Planning Commission. The Planning Commission held a study session on the issue on May 24, 2017, and the matter was again presented to the Planning Commission at its September 27, 2017 hearing, which included public comment and resulted in a recommendation that the City Council adopt amendments to the Pasadena Municipal Code prohibiting personal outdoor cultivation of cannabis and commercial cannabis activities, and allowing delivery of cannabis into the City from businesses in other jurisdictions.

Ballot Initiatives and Legislative Options

At the January 22, 2018 Council meeting, Staff notified the Council of efforts from cannabis proponents toward a referendum on the recently adopted prohibitions on commercial cannabis uses, and placing an initiative on the November 2018 ballot which, if passed, would legalize such uses in Pasadena. Such a ballot initiative would include language establishing some form of regulatory framework that would be developed outside the purview of the City's normal legislative process. Therefore, rather than allow the regulations to be determined by a specific set of interests, Staff provided various options to the Council to consider, including placing a competing measure on the November 2018 ballot; placing an earlier measure on the June 5, 2018 ballot; or

continuing to wait and see what the outcome of the referendum or cannabis operator/proponent ballot initiatives might be. An alternative path was also discussed wherein the City Council could pursue its normal legislative course, and adopt ordinances to allow for the establishment of cannabis businesses. At the conclusion of the January 22, 2018 Council meeting, the Council directed Staff to return with proposed language for a city-sponsored ballot measure that would create a regulatory framework to allow some form of commercial cannabis activity for the Council's consideration.

DISCUSSION:

Overview of Regulations

The new state regulations provide for 23 distinct cannabis license types categorized under medical or adult uses, including retail, distribution, transport-only, and laboratory testing. Licenses are either valid under temporary status (120 days) or on an annual basis. The proposed ordinance for Pasadena allows three types of licenses: retail, cultivation, and lab testing. A brief description of these license types, along with key location restrictions and operational requirements for each, is provided below:

- A. Retailer License – Allows a commercial cannabis business to operate where cannabis and/or cannabis products are offered for retail sale, including deliveries as part of retail sale.
 - 1. Maximum of 6 retailers may operate within the City at any one time, and no more than one retailer within any Council District.
 - 2. Limited to only CO, CL, CG, and IG (commercial and industrial) zoning districts and can't be located within 1,000 feet of any other cannabis retailer.
 - 3. Can't be located within 300 feet of any residential zone, or within 600 feet of any park, K-12 school, church, childcare center, substance abuse center, or library.
 - 4. Retailer required to verify the age and all necessary documentation to ensure customers are of legal age for both medical and adult recreational use.
 - 5. Entrances shall be locked at all times and entry strictly controlled with a "buzz-in" system to limit access/entry.
 - 6. Uniformed licensed security personnel required to monitor the site activity, control loitering and access, and serve as visual deterrent to unlawful activities.

- B. Cultivation License – Allows a location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or any combination of those activities is conducted.
 - 1. Maximum of 4 cannabis cultivation facilities may operate within the City at any one time.
 - 2. Limited to only the CG and IG zoning districts and can't be located within 300 feet of any residential zone, or within 600 feet of any park, K-12 school, church, childcare center, substance abuse center, or library.

3. All outdoor commercial cannabis cultivation is prohibited, and all commercial cultivation must occur indoors only with no plants visible to the public.
 4. Operational requirements relating to pesticides, water use and conservation, and odor control, among others.
- C: Testing Laboratory License – Allows a laboratory, facility, or entity that offers or performs tests of cannabis or cannabis products that is both accredited by an independent accrediting body and licensed by the California Bureau of Cannabis Control.
1. Maximum of 4 cannabis testing laboratories may operate within the City at any one time.
 2. Limited to only those zoning districts where laboratories, medical or otherwise, are permitted.
 3. Operational requirements pertaining to compliance with state-mandated laboratory testing procedures, chain of custody protocols, and acquisition of cannabis or cannabis products for testing.

The administrative process for granting approval of any commercial cannabis business was designed specifically to address the concerns of Pasadena residents and businesses, as expressed over the course of numerous public hearings and outreach efforts. As a result, the process for obtaining a commercial cannabis permit would require rigorous evaluation and scoring by an independent panel, and a discretionary public hearing by the Planning Commission. Permits that are issued would be non-transferrable and would not run with the land. All permitted businesses would be subject to a mandatory review after nine months of operation, and all permits would require renewal on an annual basis to ensure operations are compliant with all requirements.

As discussed in this report, the regulatory framework was developed with a high level of collaboration amongst various Departments throughout the City. In particular, the Health Department's guidance on developing regulations to minimize public health concerns were invaluable and led to inclusion of regulations such as a prohibition on liquid drinks, packaging requirements, and limiting signage to ensure youth are not targeted.

Proposed Regulatory Process

The proposed framework begins with the opening of an application window, during which time interested operators would be required to file a complete application and pay necessary fees for processing of such applications. The application would gather necessary information to aid in evaluating the potential business against established selection criteria.

The next step would be selection of high-quality operators and ranking these in order of compliance with the selection criteria. The top ranked operators would then be eligible to identify business locations and seek land use entitlements to establish a business in a particular location. The land use entitlement would be discretionary and reviewed by the Planning Commission, and if approval were granted, it would not be transferrable to any other operator.

Following land use approvals, the operator would be required to obtain any other relevant approvals, including those required by the Public Health Department. Once those approvals are granted, and the operator obtains a business license from the City for tax revenue collection purposes, the operator would then be eligible to complete the State's commercial cannabis license process and begin operation. A flow chart summarizing this process is provided below.



Cannabis Deliveries

With respect to delivery of cannabis and related products, under the proposed ordinance, the limited number of approved retail operators located in the City would be allowed to make deliveries regardless of whether they are for recreational or medical uses.

Current Illegal Cannabis Operators and Enforcement

A recurring issue within the City has been the enforcement of existing prohibitions on cannabis related businesses. Now that the State has established the Bureau of Cannabis Control and has begun issuing licenses to allow various kinds of commercial cannabis businesses, the City has more tools at its disposal to enforce prohibitions within its boundaries. Lending further support to enforcement efforts is the Council's recent adoption of a resolution of legislative intent to prohibit currently illegal cannabis

operators from participating in any future commercial cannabis use permitting processes, including those outlined in this report. Finally, should a permitting process be established, the proposed land use entitlement review component would provide opportunities for the City to impose conditions on approved operators, such as requiring display of permits that would make it easier for Code Enforcement and other law enforcement to distinguish between legal and illegal operators.

ENVIRONMENTAL REVIEW:

The action proposed herein is the consideration of the submittal of a regulatory and permitting scheme to the voters of the City of Pasadena to allow a limited number of new commercial use, cannabis businesses. This action does not actually approve any such business, and therefore is not a "project" subject to the California Environmental Quality Act (CEQA) in accordance with Section 21065 of CEQA and State CEQA Guidelines Sections 15060 (c)(2), 15060 (c)(3), and 15378. Furthermore, the proposed action is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. As each such business might move through the land use permitting process discussed above, its potential environmental effects will be analyzed under CEQA.

CONCLUSION:

While Staff recognizes that it would be preferable to take more time and observe conditions in other cities to better inform potential regulations in Pasadena, the prospect of an independently driven ballot initiative to legalize commercial cannabis uses in the City increases the urgency of developing a regulatory framework that is based on the extensive public outreach, and Commission and Council review that has already taken place on these issues. Staff believes that sufficient analysis and participation has occurred to inform the proposed process for establishing a limited number of commercial cannabis businesses in the City. The limitation on the number and location of these uses, as well as the rigorous review process recommended herein, is anticipated to result in an appropriate balance of local control and compliance with State law.

FISCAL IMPACT:

There is not a direct fiscal impact associated with the consideration of the proposed Municipal Code Amendments. Significant City resources have been devoted to addressing issues associated with illegal dispensaries. Establishing the proposed regulations is expected to reduce the number of illegal dispensaries thus reducing the costs for the City.

Respectfully submitted,



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Concurred by:

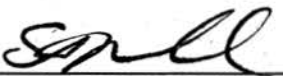


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Approved by:



STEVE MERMELL
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Attachment: (1)

Attachment A – Draft Ordinance