



Agenda Report

October 7, 2019

TO: Honorable Mayor and City Council

FROM: City Attorney's Office
City Manager's Office

SUBJECT: REPORT ON IMPACTS OF INITIATIVE PETITION TO ALLOW OPERATION OF CANNABIS BUSINESSES THAT PREVIOUSLY OPERATED ILLEGALLY, IN VIOLATION OF THE PASADENA MUNICIPAL CODE

RECOMMENDATION:

It is recommended that the City Council:

1. Accept the Report on Impacts of Initiative Petition to Allow Operation of Cannabis Businesses That Previously Operated Illegally, In Violation of the Pasadena Municipal Code; and
2. Direct one of the following:
 - a. Adopt the ordinance set forth in the Initiative Petition within 10 days, or
 - b. Order an election thereon, and direct the City Clerk to prepare the necessary resolutions calling the election (March 3, 2020 as part of the City's regular primary municipal election).

BACKGROUND:

At its meeting on September 16, 2019, the City Council received and accepted the City Clerk's certification of the sufficiency of an initiative petition to allow operation of cannabis businesses that previously operated illegally, in violation of the Pasadena Municipal Code ("proposed measure, see Attachment A"), as confirmed by the examination and verification of signatures by the Los Angeles County Registrar-Recorder/County Clerk's Office. Pursuant to Elections Code Section 9215, the City Council further directed staff to prepare a report on the impacts of the proposed measure within 30 days of such certification. This report addresses the impacts of the proposed measure on the topics requested by the Council.

TOPICS REQUESTED, AND IMPACTS OF MEASURE:

- **What is the impact of the initiative in light of the City's adopted regulations contained in Measure CC?**

The current Zoning Code regulations regarding cannabis retailers restricts the number of retailers to six total throughout the City, and one per Council district. The Zoning Code also sets distance requirements from certain sensitive uses to cannabis retailers. The proposed measure would allow certain retailers who previously operated illegally, in violation of the Pasadena Municipal Code ("illegal operators"), to temporarily continue operation without undergoing the current permitting process, and without having to comply with local distance separation requirements from sensitive uses. In summary, this proposed measure would allow more cannabis retailers to operate in Pasadena and at locations other than those approved by the voters when Measure CC was passed.

- **What happens to the protections to sensitive areas, such as setbacks and limits on overconcentration contained in Measure CC, for neighborhoods, parks, schools, libraries, etc.?**

The proposed measure would allow illegal operators to operate within the setback areas established by the voters when Measure CC was passed, including adjacencies to sensitive uses such as residential areas, parks and places of worship and would be allowed to operate within any zoning district in the City. The only restriction on location would be the minimum distances afforded under state law, which are a 600-foot radius of a K-12, a day care center, or youth center (Section 5026 of the California Code of Regulations, Title 16, Division 42).

It is important to note that the proposed measure does not require that illegal operators stay in the same location that they were operating in at the time they were found to be illegal. In other words, if the proposed measure passes, it appears that an illegal operator could potentially locate anywhere in the appropriate zoning designation. While there is a "whereas" clause in the proposed measure that mentions the present locations of illegal operators, that requirement is not carried forward into the actual text of the amendments to the Pasadena Municipal Code set forth in the proposed measure.

- **In terms of the City's current process, how does this impact the legal operators if the illegal operators are grandfathered in? Do the legal operators need to continue in the City's process? What is the process for illegal operators to secure a City permit if the measure passes?**

The proposed measure would not impact the process currently in effect for the granting of a cannabis retailer permit. Those cannabis retailers wishing to secure a permit must continue through the process adopted by the voters in Measure CC. The proposed measure would require that illegal operators would have to secure a local cannabis permit by January 1, 2025 through our local process, but would not have to go through

the screening permit process, nor would they have to go through the conditional use permit process as they would be allowed to continue to operate at their last location.

It is important to note that the proposed measure would potentially impact those applicants in the process ("legal operators"). The proposed measure amends the Zoning Code so that the distance separations from sensitive uses and other cannabis uses does not apply to illegal operators, but only protects legal operators from the distance separation requirements between cannabis retailers if the legal operator secures a permit before the proposed measure might take effect. In other words, if an illegal operator establishes itself after the effective date of the proposed measure and prior to establishment by a legal operator, the legal operator would have to be 1,000 feet from the illegal operator.

- **Will the illegal operators be able to secure state permits if the initiative is approved?**

All cannabis operators must secure a state license for cannabis or cannabis products pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Cal. Bus. & Prof. Code §§26000 et seq.) and meet all of the requirements therein, one of which is a valid local permit. A determination of whether an illegal operator will be able to secure a state permit can only be made by the Bureau of Cannabis Control.

- **Identify those illegal operators that will stand to benefit from the proposed initiative if approved by the voters?**

There are 18 illegal operators in the City that stand to benefit from the proposed measure should it be passed by the voters. Fourteen of these 18 operators have been shut down. The 18 that would stand to benefit are as follows (see map at Attachment B):

Rose Buds	1291 E. Walnut
419 Collective	1460 E. Walnut
Nu Remedy	1470 E. Walnut
Good Life	1485 N. Lincoln
Golden State	50 N. Mentor
Green Love	1874 E. Washington
Revo	752 N. Lake
Urban Farms	2982 E. Colorado
Undefeated 25	1136 E. Green
Benjamin's 30	775/779 E. Washington
Pasadena Medical	1191 E. Walnut
Church of Walnut	1575 E. Walnut
M.V. Health Solutions	1380 N. Lake
Flavortown	2610 E. Foothill
Bloom Pasadena	1590 E. Walnut
Green Star Dispensary	317 E. Orange Grove

Pasadena Cannabis
House of CBD

2754 E. Walnut
52 N. Mentor

- **How many of the illegal operators that will benefit from the initiative have been cited for illegal operations by the City?**

All 18 of the operators that would stand to benefit have been cited for operating illegal cannabis dispensaries. Nine of these 18 have been or are currently being prosecuted for criminal violations. The City has shut down 19 illegally operating dispensaries in total since July 1, 2018. There are currently four dispensaries that are operating illegally in the City, three of which have been charged criminally.

- **How much has been spent on enforcement of these illegal operators?**

The Police Department has spent approximately \$43,127 and the City Prosecutor has spent approximately \$38,250 since the commencement of suppression operations in August of 2018.

The City Attorney has spent approximately \$752,124 on civil actions against illegal operators. An additional \$82,690 has been spent on investigations in support of those civil actions.

Code Enforcement in the Planning and Community Development Department estimates its costs of enforcement as follows: Total \$282,473

- 2017: approximately 1264 hours; \$91,121
- 2018: approximately 1381 hours; \$110,355
- 2019: approximately 931 hours; \$80,997

TOTAL ACROSS THESE DEPARTMENTS: \$1,198,664

- **What is the legal recourse for the City if the proponents/circulators misrepresented the substance of the petition when collecting signatures?**

Misrepresentations by petition circulators or those having charge or control of circulators could be a misdemeanor under state law. However, the time to have gathered evidence of such misrepresentations would have been during circulation. If the City were to pursue this matter, it would have to file a lawsuit seeking to have the court invalidate the initiative on this basis. The standard for invalidation is high, in that a court will intervene in the initiative process only when there are "clear, compelling reasons to do so." The only court to invalidate a petition based on misleading statements to voters did so where the petition contained on its face written statements that were false, misleading, and calculated to mislead voters to induce them into signing the petition. Assuming evidence of misrepresentation could be established, the City would need to establish that without such false statements the proposed measure would not have obtained a sufficient number of signatures. Given that the proposed measure qualified with about 600 more signatures than necessary, this would be a difficult burden of proof to meet.

- **Can the City resubmit an updated version of Measure CC to serve as a competing ballot measure to the proposed initiative measure? What changes or differences must the City's competing measure include in order for this to be permissible?**

The Elections Code authorizes the City to submit its own measure to the voters. If both measures pass, the measure receiving more votes would go into effect, provided that the two measures directly conflict such that they cannot be reconciled and both go into effect. It would not be advisable to simply place Measure CC back on the ballot, but instead it would be advisable to draft a measure that directly conflicts with the proposed measure.

- **Can a measure validate what a court has already deemed illegal (i.e. when an illegal shop has been ordered closed, can the initiative override the court's order to close?)**

The purpose of the initiative power is to allow voters to create laws or amend existing laws. A subsequent change in law does not affect a court's ruling that the prior conduct was illegal at the time it occurred. A party to that prior litigation would have to request that the court re-examine its past order in light of the change in the law in order to undo any future consequence of the prior court decision. However, if the law were changed such that future conduct of the type that was illegal in the past now becomes legal, any future conduct in line with the changed law would now be legal.

NEXT STEPS:

Pursuant to Elections Code Section 9215, when this report is presented, the City Council shall either adopt the proposed measure within 10 days or order an election. This proposed measure would go on the March 3, 2020 ballot as part of the City's regular primary municipal election.

Respectfully submitted,


MICHELE BEAL BAGNERIS
City Attorney


STEVE MERMELL
City Manager

Attachments (2):

Attachment A: Text of Initiative Measure

Attachment B: Map of Illegal Operator Locations