



# Agenda Report

August 9, 2021

**TO:** Honorable Mayor and City Council

**THROUGH:** Economic Development and Technology Committee (July 15, 2021)

**FROM:** City Manager

**SUBJECT: PROPOSED ZONING CODE AMENDMENTS TO THE CITY'S CANNABIS REGULATIONS**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Find that the actions proposed herein are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption); and 15301(Existing Facilities); there are no features that distinguish this action from others in the exempt class, and there are no unique circumstances; and,
2. Direct the City Attorney's Office to prepare an ordinance to amend the Zoning Code to adopt the proposed Cannabis Regulations with the findings contained in Attachment A as follows:
  1. Allow up to three cannabis retailers per council district instead of one; and
  2. Decrease the required distance between cannabis retailers from 1,000 feet to 450 feet.

## **EXECUTIVE SUMMARY:**

On July 15, 2021 the Economic Development and Technology Committee (EDTECH) of the City Council recommended unanimously that the full City Council direct the City Attorney to prepare a Text Amendment to the City's Cannabis regulations to:

- Allow up to three cannabis retailers per council district instead of one; and
- Decrease the required distance between cannabis retailers from 1,000 feet to 450 feet.

In addition EDTECH discussed opportunities to consider potential future changes to the ordinance that might allow for the issuance of social equity permits, if the Council would like to further expand cannabis businesses in the City.

## **BACKGROUND:**

### **STATE AND LOCAL CHANGES IN THE LAW**

In November 2016, California voters approved Proposition 64 - The Control, Regulate and Tax Adult Use of Marijuana Act ("Prop. 64"). Prop. 64 permits adults 21 years of age and over to possess and grow specified amounts of marijuana for recreational use. Statewide, Prop. 64 was approved by 57% of voters; in Pasadena, the approval rate was even higher, at 63%. Subsequently, the City Council put forward to voters Measures CC and DD, on June 5, 2018. Measure CC allowed for a limited number of cannabis businesses to operate within the City, and Measure DD applied a business license tax on commercial cannabis activity. Measure CC allows for three types of commercial cannabis uses: retail, cultivation and testing laboratories. The regulations permit up to six commercial cannabis retailers, four cultivators and four testing laboratories, citywide, based on location requirements that are specified in the Zoning Code.

### **IMPLEMENTATION OF LOCAL RULES**

Following approval by voters of Measures CC and DD, the City undertook a qualifications-based selection process for cannabis retailers. The top scoring six applicants were subsequently invited to apply for a Conditional Use Permit (CUP) – Cannabis Retailer.

### **CITY COUNCIL MEETING NOVEMBER 25, 2019**

As indicated in the City Council Agenda Report of November 19, 2019 (Attachment B, CC Report 11-25-19) only three retailers were able to move forward in the permitting process. It was staff's belief that this was largely due to the City's distance separation requirements, which are more restrictive than those established by the state, coupled with the additional restriction of not more than one retailer per Council district.

The City Council did not recommend changes to the regulations at this time but directed staff to return to the Council after three stores were operational so that it might better understand the impacts on the City and the cannabis market (Attachment C, Council Minutes 11-25-19).

### **CITY COUNCIL MEETING APRIL 12, 2021**

At the Council's meeting of April 12, 2021, the City Manager presented a report once again recommending changes to regulations that might allow the top five eligible retail applicants (the sixth, MedMen, was disqualified from the process) to secure locations (Attachment D, CC Report 4-12-21). At the time of the April 12<sup>th</sup> report (and currently) there were two retail operators in the City, Varda, located in Council District 4 and Essence, located in Council District 7. A third business, Harvest, has obtained a Cannabis Permit and is proposed to locate in Council District 3 but has not yet opened.

However, due to several legal questions posed by Councilmember Kennedy, the item was not considered by Council and was continued to the following meeting on April 19<sup>th</sup>.

### CITY COUNCIL MEETING OF APRIL 19, 2021

The City Manager did not present a report to the Council at this meeting, which led to discussion from the City Council regarding the process and timing, to consider possible amendments to the City's Cannabis ordinance. Ultimately, the Council agreed to send the matter to EDTECH.

### EDTECH MEETING OF MAY 27, 2021

At its May 27<sup>th</sup> meeting, EDTECH considered the following issues:

1. Potential changes to distance separation requirements; and
2. The potential for future changes to cannabis regulations to allow a social equity program for cannabis permits.

Following discussion, EDTECH directed staff return at a future meeting and consider alternate amendments to the distance separation requirements, e.g. 500 feet instead of 450 feet, etc. In addition, EDTECH inquired about the possibility of allowing the seventh ranked applicant to be allowed to apply for a Cannabis Permit and for staff to continue discussions of a social equity program (Attachment E, EDTECH Memo 5-27-21).

### EDTECH MEETING OF JULY 15, 2021

As indicated in the attached EDTECH Memorandum from July 15, 2021 (Attachment F, EDTECH Memo 7-15-21) alternate separation requirements were presented by staff for consideration. However, there are so many uses that dispensaries must be separated from, changing the distance required from each other had little impact – it did not really open up that many additional spots (see maps attached to the 7-15-21 memo). Moreover, those locations that might meet the required standards may not be available for lease.

With respect to the allowing the seventh ranked applicant to apply for a cannabis permit, the memo provides that, out of a possible 1,575 total points, only a single point separated applicants 6 and 7: MME Pasadena Retail, Inc. (MedMen), the sixth ranked applicant (subsequently disqualified) scored 1,459 points and the seventh ranked applicant, The Brick & Rose, scored 1,458 points. Since MedMen was disqualified from the process, the City Manager could allow the seventh ranked applicant to apply for a CUP. However, since existing regulations severely limit the allowable locations available to establish a dispensary, it would not be advisable to move the seventh applicant forward without amending the distance separation requirements first.

Finally, as it relates to a social equity program, the memo indicated that a new scoring and application process could be developed which places an emphasis on factors other than those developed in the first round. Common factors considered in a social equity program include but are not limited to: local residency, existing annual income, and whether or not an applicant has been harmed by past drug policy/regulations. The legality of any suggested factors would have to be considered. Whatever factors are considered, it is certain that there will be many more qualified applicants than the

number of dispensaries available so, if an equity program is to be considered, the scoring factors and application process must be clear and transparent.

Prior to pursuing any new round of permitting, it is recommended that the Council bring to close the current process either by approving EDTECH's recommendation or indicating that no further consideration will be made to changing the regulations.

At the July 21, 2021 EDTECH meeting staff recommended the following:

1. Amend the cannabis regulations to align with state law and allow the remaining two top scoring applicants to obtain a Cannabis Permit;
2. Subsequently, allow the 7<sup>th</sup> ranked applicant to move through the permitting process;
3. Provide further direction to staff regarding the establishment of an equity program after 6 dispensaries have completed the permitting process; and
4. Amend the technical error to bring consistency to distance separation for labs and cultivators.

After discussion, EDTECH voted unanimously that the full City Council direct the City Attorney to prepare a Text Amendment to the City's Cannabis regulations as outlined below:

1. Allow up to three cannabis retailers per council district instead of one; and
2. Decrease the required distance between cannabis retailers from 1,000 feet to 450 feet.

As this was one of the original recommendations by staff, staff is in support of the EDTECH recommendation.

EDTECH also discussed opportunities to consider potential future changes to the ordinance that might allow for the issuance of social equity permits, if the Council would like to further expand cannabis businesses in the City.

### **CONCLUSION:**

This code amendment will not change any other regulations for cannabis retailers as contained in Section 17.050.066 of the Zoning Code (Attachment G), including the limitation of six commercial cannabis retailers citywide, or the protections from sensitive uses such as schools and churches, or the required distance from residential districts. In addition, the amendments will include some clean-up to language that was codified incorrectly related to distance requirements for lab and cultivator uses only.

### **ENVIRONMENTAL ANALYSIS:**

The proposed action is exempt from the CEQA pursuant to State CEQA Guidelines Section 15061(b)(3), the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Even if the

changes proposed herein were considered a “project,” the changes are exempt from CEQA pursuant to State CEQA Guidelines Section 15301 “Existing Facilities” (Class 1). Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. Given the built-out commercial and mixed use areas of the City where these uses may locate, and the fact that the changes proposed herein do not expand those areas, it is virtually certain that such uses will reoccupy existing structures. Beyond the controversy that may surround this particular use, for environmental analysis purposes it is simply a retail use, and there are no unique circumstances that would exempt these changes from a Class 1 exemption.

As each retailer may come forward for permits, any potential environmental effects from that particular application will be subject to environmental review during the permitting process.

**FISCAL IMPACT:**

The proposed changes to the ordinance may result in two additional cannabis retailers than would exist under current regulations. This would likely result in additional tax revenues from Measure DD in the hundreds of thousands of dollars.

Respectfully submitted,



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STEVE MERMELL  
City Manager

Prepared by:



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Development

Attachments: (7)

- Attachment A - Findings
- Attachment B - CC Report 11-25-19
- Attachment C - Council Minutes 11-25-19
- Attachment D - CC Report 4-12-21
- Attachment E - EDTECH Memo 5-27-21
- Attachment F - EDTECH Memo 7-15-21
- Attachment G - Existing Ordinance Section 17.050.066 of the Zoning Code