



# Agenda Report

January 22, 2018

**TO:** Honorable Mayor and City Council

**FROM:** City Manager

**SUBJECT: CONSIDERATION OF POSSIBLE ACTION REGARDING CANNABIS REGULATIONS**

## **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 clearance is required for the action; and
- 2) Direct Staff to prepare and return to the City Council for its consideration, all documents necessary to place one or more possible ballot initiatives on the June 5, 2018 ballot related to cannabis regulations and taxation.

## **EXECUTIVE SUMMARY:**

Historically, Pasadena has never allowed commercial cannabis activity within the City; commercial cannabis uses are specifically prohibited in the City's Health and Safety Code and medical cannabis uses in the Zoning Code. Without repealing existing bans, on November 13, 2017, the City Council approved the 2<sup>nd</sup> reading of three ordinances related to cannabis use and commercial cannabis activity within the City. These latest ordinances combined to clarify and strengthen the City's existing prohibitions on commercial cannabis activity in response to the passage of the *Adult Use of Marijuana Act* and SB 94 and the legalization in California of recreational/nonmedical cannabis. With the exception of allowing medical cannabis deliveries into the City from licensed cannabis businesses in other jurisdictions, all commercial cannabis uses were prohibited under these ordinances, including cultivation, manufacturing, testing, and distribution (retail and delivery).

The City Council's recent decision to continue its ban on commercial cannabis activities came after a year-long effort to develop cannabis regulations that included community

outreach and public engagement, meetings before the Planning Commission, the Economic Development and Technology Committee and the City Council. Following that process, the City Council determined that Pasadena would take a measured approach to the legalization of cannabis due to concerns about the potential impacts of commercial cannabis activity on the City. This action was intended to preserve local control to make future decisions about the cultivation, manufacturing, and sale of cannabis products in Pasadena and would allow the City to carefully observe how the State's licensing and regulatory mechanism unfolded following its January 1<sup>st</sup> effective date, learn best practices from other cities, and then consider what, if any, changes to the City's cannabis regulations might be appropriate for Pasadena.

Recently, proponents in favor of allowing commercial cannabis activity in the City have initiated both a referendum and an initiative. On December 13<sup>th</sup>, proponents in favor of allowing commercial cannabis uses in the City submitted a referendum petition against Ordinance No. 7313 (AN ORDINANCE OF THE CITY OF PASADENA TO PROTECT ITS RESIDENTS AND RESIDENTIAL NEIGHBORHOODS FROM UNREGULATED AND UNTAXED COMMERCIAL MARIJUANA ACTIVITY (AMENDING TITLE 17, THE ZONING CODE) to the City Clerk's Office. Subsequently on December 20<sup>th</sup>, the proponents submitted a Notice of Intention to circulate an initiative measure to the City Clerk's Office proposing regulations that would allow commercial cannabis businesses to operate in the City, as well as a taxation component for legal cannabis sales.

Given these developments, the City Council may wish to consider whether additional actions on the part of the City would be in the best interests of its residents.

### **BACKGROUND:**

Leading up to January 1, 2018, the date the State had set for the rollout of its cannabis licensing and regulatory mechanism, the City adopted Ordinance Nos. 7313, 7314, and 7315, all of which related to cannabis use and commercial cannabis activity within Pasadena. Ordinances Nos. 7314 and 7315 became effective on December 14, 2017, and operate to clarify that smoking of cannabis is not allowed in City parks and multi-family dwelling units, and only medical cannabis deliveries are permitted within Pasadena and only from legal operators outside of the City.

On December 13<sup>th</sup>, proponents in favor of allowing commercial cannabis submitted a referendum petition against Ordinance No. 7313. That Ordinance strengthens the City's existing prohibition on commercial cannabis activity in the City. If the referendum were found to be sufficient, the City Council would either have to repeal Ordinance No. 7313 or submit the ordinance to a vote of the people for approval. Recently, however, the Los Angeles County Registrar of Voters notified the City Clerk's Office that the referendum contained an insufficient number of valid signatures to be successful. Therefore Ordinance No. 7313 is in effect, further strengthening the City's existing cannabis bans in place.

Shortly after the submittal of the referendum for signature verification, the same proponents submitted a Notice of Intention to circulate a ballot initiative on December

20<sup>th</sup> to the City Clerk's Office, with the proposed measure seeking to permit legalized commercial cannabis activities and cannabis businesses in Pasadena under provisions set by the authors of the initiative. Specifically, the proposed initiative would legalize all dispensaries currently operating illegally in Pasadena subject to compliance with specified requirements. It would designate such illegal dispensaries as non-conforming land uses and prevent the City from applying conditions to their operations. The initiative would allow dispensaries within all General Commercial Zoning Districts (subject only to minimum state distance requirements) in the City with no limit on the number of dispensaries that could open and without capping the total number of dispensaries citywide. The initiative also includes a proposed framework for the taxation of commercial cannabis activities. If the proponents are able to acquire the requisite number of signatures, the vote on the proposed ballot initiative could take place as early as the November 2018 Gubernatorial General election.

### **OPTIONS**

Amending the City's rules to allow the unrestricted or very limited regulation of commercial cannabis activities may result in negative impacts citywide. While the State Marijuana Laws give each jurisdiction the right to regulate these uses as each sees fit, the recent actions by proponents of commercial cannabis activity could effectively remove the City's ability to determine its land use regulations. Staff does not believe that this would result in balanced and fair regulations that would properly consider the needs of businesses and residents. Of course, the current initiative effort could fall short of the required signatures as the referendum has, but there is nothing that would prevent further efforts at an initiative which is why staff is asking the Council to consider possible options. Accordingly, there are several options the City Council may wish to pursue, as outlined below:

Option 1 – Put forth a ballot measure with the City's own proposed land use regulations regarding the sale, cultivation, and delivery of recreational and medical cannabis. This could be done as early as a June 2018 special election. As envisioned, the City would craft marijuana regulations to allow commercial cannabis businesses based on input received during the public outreach process and from the numerous Planning Commission, Economic Development and Technology Committee, and City Council meetings on the subject.

Option 2 – Put forth a ballot measure with the City's own proposed land use regulations regarding the sale, cultivation, and delivery of recreational and medical cannabis at the same time as that of the initiative proponents assuming they are successful in their signature gathering – possibly November 2018. This would potentially allow Pasadena voters a choice between the two proposals; however, as each would permit the sale, cultivation, and delivery of recreational and medical cannabis, it may also create confusion on the part of the voting public as to which measure to choose. Note that if both measures pass, the one with the most votes would take effect.

Option 3 – Take no additional action. Assuming it were to qualify, the initiative proponents would have their ballot initiative considered possibly in November 2018

without a competing measure from the City. Staff does not recommend this approach as it would prevent the City Council from exercising its control over an important land use decision; allows those who have been operating illegally within the City to continue to do so; and prevents the City from applying conditions to the operations of formally illegal dispensaries.

Staff recommends that the City Council select Option 1, above. If this is Council's direction, staff will return with a framework of regulations that will address such issues as: what types of commercial cannabis activity will be permitted (such as dispensaries, cultivation, manufacturing, etc.); limitations on the number and location of these uses, operational standards for each type of use; the administrative guidelines for the implementation of the new regulations that would be approved by the City Manager.

### **TAXATION OPTIONS**

Regardless of the action that may be taken regarding land use regulations pertaining to cannabis, staff recommends seeking voter approval for a cannabis business tax to be applied to cannabis sales. This would be a separate ballot measure not linked to either the proponents' initiative or any City proposed regulations. As has been evidenced in recent years, cannabis dispensaries often create negative impacts for the surrounding neighborhoods. The imposition of a cannabis business tax would help to fund general municipal services, such as police and code enforcement services necessary for the proper administration of regulations. Moreover, such revenues could also be used to promote health education regarding the dangers of smoking cannabis, particularly to young people.

Option 1 – If Council decides to put a ballot measure forward in the June 2018 election, staff also recommends putting forward a separate taxation measure. Assuming the tax revenues are to be used for any municipal purpose, the measure would require simple majority voter approval, provided the Council makes a unanimous finding of "emergency" pursuant to Proposition 218. Depending on the facts, the "emergency" finding could be based on the fiscal and actual impacts that regulating secondary effects from all commercial cannabis operations would have throughout the City. Even if the Council decides not to put forward the land use regulations in June, staff recommends proceeding with a tax measure so as to have something in place in the event marijuana ultimately becomes legal within the City.

Option 2 – If Council decides to put a ballot measure forward in the November 2018 election, it could put forward a separate taxation measure to compete against the taxation component of the proponents' initiative (assuming the proponents' measure were to qualify for the ballot). As with Option 1, if the proposed tax was a general tax for any purpose, the measure would require simple majority voter approval. If the charter amendment in June is passed by voters changing the City's regular election cycle to November of even numbered years, then no unanimous "emergency" finding would be required. If a charter amendment is not approved making November a regular election, then a unanimous finding of "emergency" would need to be declared by the Council. If both measures were to pass, the measure that garnered the most votes would win.

Option 3 – Take no action with regard to taxation. This would likely mean that, if the initiative proponents' measure passes, the taxation component of their measure would take effect. Of note is the fact that the proponents' measure does not include the right of the City to conduct audits to verify it is receiving all the tax revenue it would be entitled to under the measure.

**ENVIRONMENTAL REVIEW:**

The direction provided by the City Council is an administrative action that would not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Therefore, the proposed action is not a "project" subject to CEQA, as defined in Section 21065 of CEQA and Section 15378 of the State CEQA Guidelines. Since the action is not a project subject to CEQA, no environmental document is required.

**FISCAL IMPACT:**

As noted above, the proposed actions under consideration would likely require submitting a number of ballot measures to the voters for approval, with City staff recommending the June 5, 2018 Statewide Primary election as the next targeted election date. Recognizing that other potential ballot measure issues may also be slated for the June Statewide Primary, City staff has already requested and received an estimated cost of \$231,000 for as many as six ballot measures. In the event that the City Council action requires voter approval, City staff will return with the appropriate resolutions calling the election, as well as requesting adequate funding to cover associated election expenses.

Respectfully submitted,



---

Steve Mermell  
City Manager

Prepared by:



---

David M. Reyes  
Director of Planning & Community Development