



DISCUSSION ITEMS

AGENDA ITEM # 6

TO: City Council
FROM: Christopher J. Diaz, City Attorney
SUBJECT: Ordinance No. 2018-439: Commercial Cannabis Uses

RECOMMENDATION:

Recommend waiving further reading and approval of Urgency Ordinance No. 2018-439, entitled:

AN URGENCY INTERIM ZONING ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS, ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858, EXTENDING A MORATORIUM FOR 10 MONTHS AND 15 DAYS IN ALL ZONING DISTRICTS ON THE ESTABLISHMENT, CREATION OR EXPANSION OF ANY AND ALL COMMERCIAL CANNABIS USES, WITH EXCEPTIONS, THROUGH AND INCLUDING NOVEMBER 27, 2018

PURPOSE

This is an urgency interim zoning ordinance to extend the existing moratorium, adopted by the City Council on November 28, 2017, in all zoning districts on the establishment, creation or expansion of any and all medical and adult-use commercial cannabis uses, with exceptions for personal cannabis cultivation. If the City Council opts to extend the existing moratorium, it would continue for 10 months and 15 days unless extended by further action of the City Council.

BACKGROUND

On November 28, 2017, the City Council adopted, by a four-fifths (4/5) vote, an interim urgency ordinance pursuant to Government Code Section 65858. This ordinance temporarily prohibited all medical and adult-use commercial cannabis uses to provide adequate time to prepare and adopt permanent zoning regulations related to medical and non-medical/adult-use commercial cannabis uses.

Under Government Code Section 65858, the initial adoption of an interim urgency ordinance is only effective for 45 days. It can be extended, however, for 10 months and 15 days, after public notice and a public hearing held pursuant to Government Code Section 65090. The City has provided this public notice and the City Council will consider this ordinance during a public hearing.

As further background, if you recall, on January 26, 2016, the City Council adopted Ordinance No. 2016-418 which prohibits marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries in the City as provided in Los Altos Code, Chapter 14.82. This Ordinance was created under, and in reference to, the state statutory framework of the (now repealed) Medical Marijuana Regulation and Safety Act (MMRSA).

On November 8, 2016, voters approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”), which legalized the non-medical use of marijuana by adults over 21 years of age, and provides for state licensing of adult-use marijuana businesses. Senate Bill 94 (“SB 94”) quickly followed on June 27, 2017, repealing the MMRSA, and amending AUMA to consolidate the state licensing scheme applicable to both medical and adult-use commercial marijuana/cannabis activity under a new law entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). MAUCRSA adopted new state licensing categories and definitions related to commercial cannabis activities than previously existed under the MMRSA.

MAUCRSA preserves local control over commercial cannabis uses. It allows local governments to ban all cannabis-related businesses outright, including dispensaries/retailers, delivery services, and any other cannabis commercial use. Further, MAUCRSA prohibits the State licensing authorities from approving an application for a state cannabis license if it would violate the provisions of any local ordinance or regulation. However, the prevailing view is that cities and counties must have ordinances in place, either affirmatively allowing or prohibiting commercial cannabis activities for this restriction to apply.

Based on the above, the Council adopted the interim urgency ordinance in November of 2017 and staff is recommending extending it out 10 months and 15 days as further discussed below.

DISCUSSION

MAUCRSA adopted different state licensing categories and definitions related to commercial cannabis activities, than existed under MMRSA and utilized by the City’s prior Ordinance No. 2016-418. Because the City’s prior ordinance adopted in 2016 was based on prior State law, there was a risk that the State licensing authorities may approve certain medical or adult-use commercial cannabis activities to operate in the City. As such, the City Council did adopt an interim urgency ordinance in November of 2017 to ensure the City clarified uses allowed consistent with the new regulatory scheme under MAUCRSA.

In particular, the urgency interim ordinance clarified and affirmed that all adult-use commercial cannabis businesses are prohibited. It also expanded the City’s prohibition to reflect the full range of commercial activities recognized by MAUCRSA. For example, Los Altos Code defines “marijuana processing” to include drying, cleaning, curing, packaging and extraction, but did not expressly cover chemical synthesis allowed under the cannabis manufacturer license type. As such, the urgency ordinance added to the list of prohibited activities:

- Cannabis distribution, which refers to the procurement, sale, and transport of cannabis and cannabis products as well as cannabis storage, quality control, collection of state cannabis taxes; and
- Cannabis testing laboratories, which test cannabis and cannabis products.

Under Government Code Section 65858, the initial adoption of the interim urgency ordinance is only effective for 45 days. It can, however, be extended for 10 months and 15 days after public notice and a public hearing. Public notice has been provided and the Council will consider this item at a public hearing.

Personal Cultivation.

Los Altos Municipal Code Section 14.02.070 specifically excludes cultivation by an individual qualified patient from the prohibition on marijuana cultivation. The City has no other personal cultivation regulations.

Regarding personal cultivation, MAUCRSA allows local governments to:

- Ban outdoor cultivation of cannabis for personal use, unless the California Attorney General determines cannabis is no longer illegal under federal law. (If cannabis is federally legalized, outdoor cultivation could be regulated, but not prohibited.)
- Reasonably regulate indoor cultivation in private residences and accessory structures for personal use, but not ban it outright. Individuals have the right to grow up to six cannabis plants in their home, and to possess all of the cannabis those plants provide.

Options Moving Forward

At the Council meeting the City Attorney's office will present various options for the Council as we continue to consider permanent zoning regulations regarding this issue. For example, does the City Council wish to consider allowing commercial type uses. Such commercial uses may include cultivation, distribution, testing, manufacturing, retail store fronts, or delivery services. At the Council meeting on November 28, 2017, there was at least one councilmember questioning whether to allow delivery services to operate within the City. If commercial uses are allowed, the Council will need to further contemplate potential location of such uses in the City, along with the types of regulatory control the City may wish to have over these uses. Such regulations may include limiting the total number of such uses and imposing certain public safety requirements.

If the Council opts to not allow commercial type uses, the City Council can still decide how it wants to regulate personal use. The Council could allow outdoor cultivation in one's backyard for personal use. The Council could also choose to regulate indoor cultivation. As previously noted, under the MAUCRSA, indoor cultivation of six plants must be allowed per property for personal use, but some cities have opted to require a permit from the City, or have opted to simply impose a requirement that such indoor grows comply with all applicable state and local health and safety laws. This would include Building Code, Fire Code, Electrical Code and any other local Municipal Code requirements.

ENVIRONMENTAL REVIEW

This urgency ordinance is not a project within the meaning of Section 15378 and is exempt under Section 15061(b)(3) of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The ordinance continues an existing prohibition on commercial cannabis businesses from establishing in the City, and therefore will maintain current levels of development.

RECOMMENDED CITY COUNCIL ACTION

Adopt urgency interim ordinance extension.

Attachments:

- A. Draft Urgency Ordinance

ORDINANCE NO. 2018-439

AN URGENCY INTERIM ZONING ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS, ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858, EXTENDING A MORATORIUM FOR 10 MONTHS AND 15 DAYS IN ALL ZONING DISTRICTS ON THE ESTABLISHMENT, CREATION OR EXPANSION OF ANY AND ALL COMMERCIAL CANNABIS USES, WITH EXCEPTIONS, THROUGH AND INCLUDING NOVEMBER 27, 2018

WHEREAS, on January 26, 2016, the City Council adopted Ordinance No. 2016-418, which prohibits marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries activities in the City; and

WHEREAS, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which legalized the non-medical use of marijuana by adults over 21 years of age, and provides for state licensing of adult-use marijuana businesses; and

WHEREAS, Senate Bill 94 (“SB 94”), a budget trailer bill made effective on June 27, 2017, repealed the Medical Cannabis Regulation and Safety Act, and amended AUMA to consolidate the state licensing scheme applicable to both medical and adult-use commercial marijuana activity (now termed cannabis) under a new law entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and

WHEREAS, Assembly Bill 133 (“AB 133”), effective on September 16, 2017, further amended various provisions of MAUCRSA, including but not limited to changes to the state licensing requirements and procedures; and

WHEREAS, on October 6, 2017, California’s three cannabis licensing authorities announced the official withdrawal of the medical cannabis regulations that were proposed in late spring by the Department of Consumer Affairs’ Bureau of Cannabis Control, Department of Public Health’s Manufactured Cannabis Safety Branch and Department of Food and Agriculture’s CalCannabis Cultivation Licensing. The proposed regulations were geared toward the implementation of the now-repealed MCRSA; and

WHEREAS, the State’s three licensing authorities are using the emergency rulemaking process for new regulations to implement MAUCRSA. The emergency regulations were published on November 16, 2017 and the State’s implementation date for the issuance of medical and adult-use commercial cannabis licenses remains January 1, 2018; and

WHEREAS, the Bureau of Cannabis Control has announced that it plans to begin processing applications for temporary licenses prior to January 1, 2018, likely sometime in December, 2017; and

WHEREAS, the City has received inquiries from the public related to the establishment of commercial cannabis businesses in the City, along with general inquiries related to the passage of Proposition 64; and

WHEREAS, medical and adult-use commercial cannabis activities pose threats to public health, safety, and welfare, including:

- (a) **Illegality under federal law.** The sale and distribution of both medical and nonmedical/adult-use cannabis remains illegal under the federal Controlled Substances Act. While prior administrations have not focused on enforcement in states where such uses are legal, recent statements on behalf of the current administration indicate that the federal government may take a more aggressive approach in jurisdictions that permit cannabis/marijuana use and sale in contravention of federal law.
- (b) **The risk of criminal activity.** Because cannabis remains illegal under federal law, most banks will not provide financial services to cannabis-related businesses. As a result, cannabis businesses largely operate on a cash-only basis. This characteristic makes cannabis businesses unusually attractive for robbery, burglary, and other theft offenses. Additionally, the strong smell and visibility of marijuana cultivated outdoors or even grown or stored indoors creates an “attractive nuisance” that entices others to the cannabis, and increases the risks of crimes such as burglary, trespass, robbery, and armed robbery, potentially resulting in serious injury or death.
- (c) **Increased cannabis use and abuse.** Permitting the establishment of commercial cannabis businesses within the City may increase cannabis consumption and availability within the City, and may increase youth exposure to and use of cannabis. Increased cannabis use may also lead to an increase in severe or fatal car accidents.
- (d) **Other threats to public health, safety and welfare.** The unintended establishment of new commercial cannabis uses unregulated by local law poses a variety of other threats to public health, safety and welfare, such as offensive odors, gases, and other discharges related to commercial scale cultivation, processing, manufacture, and storage of cannabis products; unsafe or disapproved use of volatile and nonvolatile solvents intended to be regulated by the state regulations, unmitigated traffic impacts due to commercial-scale transportation and distribution, as well as excess or dangerous waste, water, and electricity usage.

WHEREAS, in light of the potential known and unknown adverse impacts of commercial cannabis uses that are not clearly prohibited under the current Municipal Code, rapid changes of State law and State Regulations, the City Council found that the current establishment, creation, or expansion of medical or adult-use commercial cannabis uses, would create a current and immediate threat to the health, safety, and welfare of the City, its residents and businesses; and

WHEREAS, the City Council further found that the establishment or creation of such commercial cannabis uses without appropriate regulation, would be inconsistent with surrounding uses and intended zoning requirements, and if allowed to proceed under current

zoning, new commercial cannabis uses would conflict with, and defeat the purpose of, the proposal to study and adopt new regulations, consistent with State law, regarding commercial cannabis uses; and

WHEREAS, based on the above, on November 28, 2017, the City Council adopted, by a four-fifths (4/5) vote, an interim urgency ordinance pursuant to Government Code Section 65858 to temporarily prohibit all medical and adult-use commercial cannabis uses to provide adequate time to prepare and adopt permanent zoning regulations related to medical and non-medical/adult-use commercial cannabis uses, which the City intends to consider within a reasonable time; and

WHEREAS, California Government Code Section 65858 limits the initial adoption of an interim urgency ordinance to 45 days, but such ordinance can be extended for an additional 10 months and 15 days after notice is provided pursuant to Government Code Section 65090 and a public hearing is provided; and

WHEREAS, the City did provide public notice pursuant to Government Code Section 65090 and a public hearing was scheduled for January 9, 2018 to consider the extension of this interim urgency ordinance for 10 months and 15 days through and including November 27, 2018.

NOW, THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

Section 1. Findings, Declaration of Urgency.

The City Council of the City of Los Altos hereby finds and declares that there is a need to enact an urgency interim ordinance establishing a moratorium on the establishment or creation of all medical and adult-use commercial cannabis uses in all zoning districts in the City, subject to the findings and conditions contained in this Ordinance. The City Council of the City of Los Altos hereby incorporates the findings set forth in the recitals stated above. The City makes this declaration of urgency based, in part, on recent inquiries regarding the allowance of cannabis businesses in the City, as well as general inquiries regarding the passage of AUMA/MAUCRSA. Specifically, the City Council makes the following findings:

- (a) If the existing moratorium on the establishment or creation of all medical and adult-use commercial cannabis uses in the City is not extended there is a risk that the state cannabis licensing authorities may approve medical or adult-use commercial cannabis uses to operate in the City.
- (b) If commercial cannabis uses are allowed to proceed without appropriate local review and regulation, such businesses could have deleterious effects on surrounding neighborhoods and businesses that present a clear and immediate danger to the public health, safety and welfare.
- (c) If commercial cannabis uses were allowed to proceed, it would conflict with, and defeat the purpose and intent of, current zoning requirements that prohibit marijuana cultivation,

marijuana processing, marijuana delivery, and marijuana dispensaries in all zoning districts due to land use, nuisance, crime, and aesthetic factors.

- (d) The City Council finds that if establishment or development of medical or adult-use commercial cannabis uses were allowed to proceed while the City is considering zoning ordinances and regulations for such uses, it would defeat the purpose of the adoption of such zoning ordinances.
- (e) Failure to enact this moratorium may result in significant irreversible changes to neighborhood and community character.
- (f) There is a current and immediate threat to the public health, safety, and welfare, and the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.
- (g) Based on the foregoing, the City Council does hereby declare this urgency ordinance extension is necessary to protect the public health, safety, and welfare while the City is considering revisions to existing zoning regulations related to medical and adult-use commercial cannabis uses.

Section 2. Moratorium.

Except as provided in Section 3 of this Ordinance, the City Council hereby continues to declare a moratorium on any and all commercial cannabis uses within all zoning districts in the City. The City shall not approve or issue land use approvals or permits, including but not limited to zoning amendments, conditional use permits, variances, tentative subdivision or parcel maps, site plan approvals, design review approvals, and building permits or other applicable entitlements for the establishment, creation or operation of commercial cannabis uses, or modification or expansion of existing businesses for commercial cannabis uses, during this moratorium.

Section 3. Exemptions.

This moratorium shall not apply to those cannabis uses permitted by operation of state law. Specifically:

- A. The moratorium does not apply to indoor or outdoor cultivation of up to six cannabis plants per private residence for personal use authorized by State law, Health and Safety Code 11362.1 et seq. or for personal medical use of a qualified patient that is exempt from state licensure pursuant to Business and Professions Code, Section 26033. Persons engaging in indoor or outdoor cultivation must comply with all existing or future adopted state and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor or outdoor cultivation and personal use of cannabis.

Section 4. Definitions.

For purposes of this Ordinance, the following definitions shall apply.

- (a) “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also includes marijuana as defined by Section 11018 of the Health and Safety Code. Cannabis also includes “cannabis” as defined in Business and Professions Code, Section 26001. For purposes of this Ordinance, “cannabis” includes both medical and non-medical/adult-use cannabis.
- (b) “Cannabis cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- (c) “Cannabis delivery” means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- (d) “Cannabis distribution” means the procurement, sale, and transport of cannabis and cannabis products and any other activity allowed under the state distributor license(s), including, but not limited to, cannabis storage, quality control and collection of state cannabis taxes.
- (e) “Cannabis manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. Cannabis manufacture includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
- (f) “Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products include “cannabis products” as defined in Business and Professions Code, Section 26001. For purposes of this Ordinance, “cannabis” includes both medical and non-medical cannabis products.
- (g) “Cannabis retailer” means a facility where cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale or conducts sales exclusively by delivery (non-storefront retailer). For purposes of this Ordinance, cannabis retailer includes microbusinesses as well as nonprofits licensed pursuant to Business and Professions Code, Section 26070.5.

- (h) “Cannabis testing laboratory” means a facility, entity, or site in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:
- (1) Accredited by an accrediting body that is independent from all other persons involved in the commercial cannabis activity in the state; and
 - (2) Licensed by the Bureau of Cannabis Control.
- (i) “Commercial cannabis uses” includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes “commercial cannabis activity” as defined in Business and Professions Code, Section 26001, and includes any activity that requires a license from a state licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10) as may be amended from time to time. Commercial cannabis activity does not include possession or indoor cultivation of cannabis for personal use that is not sold and in strict accordance with Health and Safety Code, Section 11362.1 et seq. Commercial cannabis uses does not include those activities of qualified patients and primary caregivers which are exempt from state licensure pursuant to Business and Professions Code, Section 26033.

Section 5. CEQA Finding.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and extension of a moratorium on the establishment or creation of commercial cannabis uses within the City of Los Altos, will have a significant effect on the environment because the Ordinance will maintain current levels of development. It is therefore exempt from any California Environmental Quality Act (CEQA) review pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 6. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

Section 7. Effective Date.

The extension of this Interim Ordinance shall become effective immediately and shall remain in force and effect for 10 months and 15 days until November 27, 2018.

PASSED AND ADOPTED THIS 9TH DAY OF JANUARY, 2018, BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:
ABSTAIN:

Jean Mordo, Mayor

ATTEST:

Jon Maginot, CMC, City Clerk