



DISCUSSION ITEMS

AGENDA ITEM # 10

TO: City Council

FROM: Christopher J. Diaz, City Attorney
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SUBJECT: Cannabis Retailers – An Overview of California's Regulatory Provisions

RECOMMENDATION:

Receive report; provide policy direction to staff whether to prepare regulatory or tax ordinances that would authorize one or more medicinal or adult-use commercial cannabis retailers in the City of Los Altos.

PURPOSE

This is an informational report as requested by the City Council.

BACKGROUND

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 This Ordinance was created under, and in reference to, the now repealed Medical Marijuana Regulation and Safety Act (MMRSA).

On November 8, 2016, California voters approved Proposition 64 to legalize adult-use/recreational cannabis. Subsequently, the State Legislature repealed the MMRSA, and amended Proposition 64 to consolidate the state licensing rules for both medical and adult-use commercial cannabis activity under a single law entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA").

On November 28, 2017, the City Council adopted an interim urgency ordinance to temporarily prohibit all medical and adult-use commercial cannabis uses for 45 days in response to MAUCRSA. Specifically, the interim ordinance prohibits the full range of commercial activities recognized by MAUCRSA. This interim urgency ordinance was extended for an additional 10 months and 15 days, and will expire November 27, 2018 unless further extended.

The City Council is currently considering various options for permanent zoning regulations for commercial cannabis. To aid in this decision, the Council has requested information regarding medicinal and adult-use cannabis retailers.

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DISCUSSION

MAUCRSA preserves local control over commercial cannabis uses. Local governments may continue to adopt and enforce local ordinances to regulate licensed cannabis businesses, such as local zoning and land use requirements, business license requirements, or to completely prohibit the establishment or operation of one or more types of cannabis businesses in the jurisdiction. 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.

State Licenses Providing for Retail Cannabis Sales

There are three license types that allow cannabis retail sales activity:

- Retailer - Type 10: A storefront that sells cannabis to customers at its premises and by delivery. A retailer must have a licensed physical location where commercial cannabis activities are conducted.
- Non-storefront Retailer - Type 9: A retailer that conducts sales exclusively by delivery. The Non-storefront Retailer must have a licensed premises but it is not open to the public.
- Microbusiness - Type 12: A microbusiness must engage in at least 3 of the following 4 activities: cultivation (less than 10,000 sq. ft.), manufacturing, distribution, or retail. A microbusiness could include a retail component and would have to comply with all regulatory requirements for retailers.

Cannabis retailers or microbusinesses approved to engage in retail may also obtain a temporary cannabis event organizer license. Temporary events allow up to 4 days of onsite cannabis sales at a county fair or district agricultural association event. However, if adopted, Assembly Bill 2020 would authorize a state temporary event license for an event to be held at any other venue expressly approved by a local jurisdiction for events.

State Regulations Pertaining to Retail Cannabis Activity

The state Bureau of Cannabis Control (BCC) has the responsibility to license cannabis retailers and microbusinesses. The BCC began issuing licenses on January 1, 2018. At the start, the focus has been primarily on issuing temporary licenses (valid for 120 days) to allow existing cannabis businesses to continue operations while their annual license is processed. Temporary licenses are only available until January 1, 2019, and thereafter only annual licenses will be offered. Annual licenses are valid for one year, thus cannabis businesses will need to renew their licenses with the state each year. All licenses are designated either M (Medicinal) or A (Adult Use) to indicate whether commercial medicinal or adult-use activity is authorized, except testing laboratories (which may test medical and adult use cannabis).

A single location may have two separate commercial cannabis licenses if it is for the same type of commercial cannabis activity, the licensee who holds both licenses is identical, the licensee only conducts one type of commercial cannabis activity on the premises, all cannabis and cannabis products are clearly marked with an “A” or “M” and records are kept separately for each license. In short, one cannabis retailer holding both “A” and “M” Type 10 Retailer licenses could sell both medical and adult use cannabis from a single location, provided the ownership is the same, and the records and inventory are tracked separately.

The requirements for A-licenses and M-licenses are generally the same, however. One key exception pertains to customer access. For A-Retailers, access and sales are limited to those 21 years or older. For M-Retailers, access and sales are limited to those 18 years or older with a valid physician's recommendation or county-issued medical cannabis ID card. If the retailer holds both an M-license and an A-license, then access to the premises would be open to both adults (over 21) and persons aged 18 or older with a medical cannabis ID card/physicians recommendation.

No state cannabis licensee's premises can be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius (BPC § 26054(b); 16 CCR § 5026.) This means the default rule is that cannabis retailers cannot locate within 600 feet of schools, day cares or youth centers, but a city may specify a different buffer, either greater or less than 600 feet. In addition, local jurisdictions may, pursuant to local land use authority, place additional limitations on the permissible locations of commercial cannabis businesses.

BCC regulations provide a number of restrictions on the retail sale and delivery of cannabis, including but not limited to:

- Sales and deliveries may only occur between 6:00 a.m. and 10:00 p.m. Pacific Time
- Cannabis goods may not be displayed in a place where they are visible from outside the licensed premises
- Retailers sell pre-packaged cannabis, they cannot package or label cannabis goods
- Cannabis goods must be placed in an opaque exit package prior to leaving the premises
- Daily customer limits are 28.5 grams non-concentrated cannabis for adults, eight ounces for medical customers (unless a physician's recommendation specifies a different amount) and 6 live, immature plants
- No free cannabis may be given away, except to medical patients with a medical cannabis ID card
- Onsite consumption is only allowed if permitted by the local jurisdiction
- Licensees shall not sell alcoholic beverages or tobacco products
- Retailers must prepare a delivery request receipt for each delivery of cannabis goods
- Deliveries may be made only by employees of the retailer aged 21 or older to a physical address in the State of California
- Delivery vehicles may not contain more than \$3,000 of cannabis goods at any time and the retailer must be able to immediately locate all delivery vehicles through a dedicated GPS (not on a cell phone)

See California Code of Regulations, Title 16, Division 42, Chapter 3 for the state regulations specific to cannabis retailers.

The state regulations contain a number of minimum security and operational requirements that apply to all cannabis businesses, such as the requirements for limited access areas, employee badges, alarm systems, video surveillance and security personnel. See California Code of Regulations, Title 16, Division 42, Chapter 1, Article 5. Additionally, cannabis retailers must perform a reconciliation of their inventory at least once every 14 days. Retailers must also maintain records of sales that

detail the employee that processes the sale, the customer, the date and time of the transaction, the goods purchased, and amount paid.

Key Considerations for Allowing Local Cannabis Retail Uses

In considering whether local cannabis retail uses may be appropriate for Los Altos, it may be helpful to start with the following questions:

- What type(s) of retail cannabis uses may be suitable for the community?
 - Retail storefront? Allow onsite consumption?
 - Non-storefront/delivery only?
 - Microbusinesses? Note that a microbusiness would include a retail component and two of the following three activities: cultivation, manufacturing or distribution.
 - Medical only? Medical or recreational?
- Where would these uses be located?
- Should there be a limit on the total number of cannabis businesses? If so, does the City want to adopt a selection process for granting the permits?
- Does the City want to allow commercial cannabis uses whether or not they are taxed? (Should the zoning/regulatory ordinances be conditioned upon passage of a tax or be adopted following a tax election?)
- What is the appropriate regulatory and permitting structure for this City?
 - Conditional use permits are a standard mechanism to control land use impacts and ensure that a proposed use at a specific location is appropriate. Conditional use permits “run with the land” and thus may be transferred to new owners.
 - Therefore, the City may want to consider (either alone or in conjunction with the CUP) an operator’s permit to provide for review and control over the particulars of the individual business owner and business operations. An operator’s permit could be made non-transferrable.

Appropriate City Departments, including Police and Planning, should be heavily involved in this process. In addition, the City may want to consider a community outreach strategy in order to gain a deeper understanding of community attitudes toward retail cannabis uses and to gauge support for a tax measure, if any.

Local Cannabis Taxes

Statewide there is an excise tax of 15% on the privilege of purchasing cannabis at retail. Additionally, there is a cultivation tax of \$9.25/ounce on cannabis flowers and \$2.75/ounce on leaves. Normal state and local sales taxes also apply to cannabis (with the exception that medical cannabis purchases made with a medical marijuana ID card are exempt from state and local sales tax only but not other state or local taxes).

Combining the state cannabis taxes and the combined state and local sales tax rates means that cannabis sales are effectively taxed at roughly 35%. In response to the heavy state tax burden placed on legal cannabis, pending legislation (Assembly Bill 3157) is proposed to temporarily reduce the excise tax to 11% and suspend the cultivation tax until June 1, 2021. In the meantime, some communities have had to reduce their local cannabis taxes in an effort to attract new commercial cannabis businesses and maintain the businesses they have. For example, the City of Berkeley recently reduced their cannabis taxes from 10% to 5%.

Local cannabis taxes require voter approval: 2/3 vote for special tax and a simple majority vote for general tax. Note however, there is a pending state ballot initiative that could potentially require supermajority approval for a general tax and would apply retroactively to tax measures passed this year.

Local governments' sales taxes may not differ from Bradley-Burns Uniform Sales and Use Tax Law in either what is taxed or the rate of the tax, therefore local cannabis taxes are typically structured as an excise tax. The most common is a business license tax based on gross receipts or square footage of the commercial cannabis activity. Typically, the square footage basis for calculating cannabis taxes is used by communities that allow non-retail cannabis uses, such as manufacturing, cultivation and distribution.

ENVIRONMENTAL REVIEW

Not applicable.

RECOMMENDED CITY COUNCIL ACTION

Receive report; provide policy direction on whether staff should prepare regulatory or tax ordinances to authorize one or more medicinal or adult-use commercial cannabis retailers in the City of Los Altos.

Attachments: None.