



OFFICE OF COMMUNITY DEVELOPMENT
PLANNING DIVISION

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PLANNING COMMISSION STAFF REPORT

Agenda Date: November 14, 2017

SUBJECT

Consider an ordinance to establish regulations regarding adult use (recreational) and medicinal marijuana by adding a new Chapter 10.84, Medicinal and Adult Use of Marijuana, in Title 10, amending Chapter 19.08, Definitions, to repeal definitions related to Marijuana and amending Chapter 19.98, Medical Marijuana, to update and reference the newly established Chapter. (Application No(s): MCA-2017-04; Applicant(s): City of Cupertino; Location: Citywide)

RECOMMENDED ACTION

That the Planning Commission adopt the draft resolution (Attachment 1) recommending that the City Council:

1. Find that the proposed actions are exempt from CEQA; and
2. Adopt an ordinance entitled "An ordinance of the City Council of the City of Cupertino adding Chapter 10.84 titled "Medicinal and Adult Use of Marijuana" to Title 10 of the Cupertino Municipal Code; amending Section 19.08.030 to repeal Definitions related to Marijuana; and amending Chapter 19.98 to reference the newly adopted ordinance"

DISCUSSION:

Background:

Upon adoption of the Medical Cannabis Regulation and Safety Act ("MCRSA") by the State of California in September 2015, the City's Municipal Code was updated to establish regulations regarding medical marijuana businesses, cultivation facilities, transport and deliveries in January 2016. Subsequently, on November 8, 2016, the people of California approved the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA" or Proposition 64), which decriminalized the non-medical (recreational) use, possession, cultivation by individuals 21 years or older and the establishment of commercial marijuana facilities and businesses in California. The AUMA also established a licensing

scheme for non-medical marijuana cultivation and manufacturer, testing, and distribution establishments. The proposed measure, however, allowed local agencies land use control over such uses.

While these uses were prohibited under the principles of permissive zoning (any use not enumerated is deemed prohibited) and illegal under federal law, on October 18, 2016, as a preemptive measure in anticipation of the passage of the AUMA, the City Council adopted a temporary moratorium on non-medical marijuana businesses, cultivation facilities, transport and deliveries (Ordinance No. 16-2153.) This urgency ordinance was adopted to ensure that the City retain as much local control as legally possible over the portions of the proposition that went into effect immediately. The City Council further adopted Ordinance Nos. 16-2160 and 17-2167 to extend the initial urgency due to the desire to understand the regulations further.

In addition to the adoption of the MCRSA and the AUMA, in June 2017, Governor Brown signed SB 94 (the Medicinal and Adult-Use Cannabis Regulation and Safety Act or “MAUCRSA,”) a budget trailer bill that made significant changes to California’s commercial cannabis regulatory structure. SB 94 effectively repealed the MCRSA (medical marijuana regulations) and incorporated some of its provisions into the licensing provisions of AUMA. MAUCRSA effectively set up a new hybrid regulatory structure and created more operator-friendly standards than under MCRSA.

The newly established Bureau of Cannabis Control (BCC) is charged with developing and implementing a regulatory framework for issuing licenses under MAUCRSA. The BCC issued a draft licensing structure in late Summer 2017. However, these were retracted in September 2017 and regulations for a temporary licensing scheme were issued in its stead. It is anticipated that temporary licenses will be issued starting January 1, 2018. Permanent licensing regulations remain under development and it is unclear when these regulations will be available for public review.

While MAUCRSA is new and the licensing structure is not fully established, there has been guidance from the state that cities are required to submit their regulations on adult use and medicinal marijuana to the BCC. If this information is not sent to them in a timely fashion, the BCC could inadvertently issue licenses for activities not desired within the City. Therefore, staff is proposing a regular ordinance on marijuana regulations.

Because some of the proposed amendments will be made to Title 19, the Planning Commission must review the Title 19 amendments and make a recommendation to the City Council. The City Council is scheduled to consider the entire ordinance (establishment of Chapter 10.84 and Title 19) in December 2017.

Analysis:Proposed Marijuana Regulations

Following passage of the MAUCRSA, the city's existing regulations regarding marijuana require updating in the following areas:

1. Addressing adult use marijuana by amending the ordinance to clearly clarify that prohibitions on commercial activities apply to both medicinal and adult use (recreational) marijuana;
2. Allowing transport of marijuana, both medicinal and adult-use marijuana, through the City;
3. Allowing deliveries of marijuana within the City so long as they originate outside the City; and
4. Addressing personal cultivation of marijuana – this includes:
 - a. Banning outdoor personal cultivation of marijuana and
 - b. Establishing regulations on allowing indoor personal cultivation of marijuana to the extent allowed by state law. State law allows cities to establish “reasonable regulations” to regulate indoor cultivation of marijuana. These regulations are recommended in the interest of public health, safety and welfare, and include:
 - i. Ensuring the use is incidental to the primary residential nature and use of the property,
 - ii. Requiring that the property on which cultivation occurs is the primary residence of the grower;
 - iii. Ensuring that renters obtain permission to grow marijuana prior to being allowed to grow;
 - iv. Ensuring the cultivation area is in a secure, locked dwelling unit or associated accessory structure;
 - v. Requiring that no external evidence of cultivation is displayed or visible; and
 - vi. Requiring that alterations to the structures comply with all municipal codes including building, fire, electrical, mechanical and zoning.

The Santa Clara Sheriff's Department shares concerns about the secondary effects and adverse impacts associated with the use of marijuana, including negative public health, life safety, fire safety, and environmental issues. This is also reflected in a memo titled “Issues Surrounding Marijuana in Santa Clara County” from the County of Santa Clara's Office of the District Attorney from 2014 (Attachment 3.) Recent data and trend information from Colorado and Washington states, where recreational marijuana is legal,

has revealed numerous negative consequences including an increase in the number of impaired drivers, emergency room visits, and traffic fatalities. An increase in marijuana usage among youth is another notable consequence.

AUMA and subsequently, MAUCRSA, allows for the cultivation of up to six marijuana plants per residence. It is recommended by the Sheriff's Department to limit allowed marijuana activity to those that the City cannot disallow. Therefore, the proposed ordinance recommends allowing the cultivation of marijuana indoors only to help minimize criminal activities, such as burglaries and robberies, and to reduce access to minors.

In addition to these issues, there are also concerns associated with indoor growing which are also addressed with the proposed regulations. For example, indoor cultivation of marijuana raises concerns about lighting, dehumidification, space heating, cooling, and drying, all of which increase the potential for electrical fires.

Planning Commissions Review

While the proposed ordinance addresses all of the above, the Planning Commission's review is limited to the changes proposed in Title 19, Zoning, of the Cupertino Municipal Code.

The proposed amendments to Title 19 reflect the establishment of the new Chapter in Title 10 including elimination of all definitions related to marijuana and updating Chapter 19.98 to replace the redundant and unnecessary information with a reference to the newly established Chapter 10.84.

Environmental Review

The City has analyzed the actions taken with this proposed Ordinance and determined that it is not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA") Guidelines because it has no potential for resulting in physical change in the environment, either directly or indirectly.

In the event that the actions taken with this proposed Ordinance are found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

Other Department/Agency Review

The proposed changes have been reviewed by the City's other departments and they do not have any concerns with regard to the proposed amendments.

PUBLIC NOTICING AND COMMUNITY OUTREACH

The following table is a brief summary of the noticing for this project:

Notice of Public Hearing and Legal Ad	Agenda
<ul style="list-style-type: none">▪ Legal ad placed in newspaper <i>(at least 10 days prior to hearing)</i>▪ Display ad placed in newspaper <i>(at least 10 days prior to hearing)</i>	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board <i>(five days prior to hearing)</i>▪ Posted on the City of Cupertino's Web site <i>(five days prior to hearing)</i>

No comments have been received about the proposed amendments as of the date of production of this report.

PERMIT STREAMLINING ACT

The Permit Streamlining Act does not apply to legislative acts, including the adoption of the proposed ordinance.

CONCLUSION

It is recommended that the Planning Commission adopt the draft resolution. Should the City not establish appropriate regulations surrounding commercial marijuana activities, the State BCC may issue licenses for marijuana activities within City limits beginning January 2, 2018.

Should the Planning Commission desire to consider limited commercial marijuana activities within the City, it is recommended that the proposed regulations be established first, and then the effects of marijuana activities be evaluated prior to considering whether to allow any commercial activities.

NEXT STEPS

The recommendations made by the Planning Commission will be forwarded to the City Council for consideration. Upon a final decision by the City Council, the ordinance will need a second reading at a subsequent hearing. The ordinance will be effective 30 days after the second reading.

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Approved by:	David Brandt, City Manager

ATTACHMENTS

1 - Draft Resolution

2 - Redlines indicating changes to Municipal Code

3 - Memo from Santa Clara County Office of the District Attorney titled "Issues Surrounding Marijuana in Santa Clara County" from 2014.