



OFFICE OF COMMUNITY DEVELOPMENT
PLANNING DIVISION

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
(408) 777-3308 • FAX (408) 777-3333

CITY COUNCIL STAFF REPORT

Agenda Date: December 5, 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 City Council:

1. Find that the proposed actions are exempt from CEQA; and
2. Conduct the first reading and 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" (Attachment A.)

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 before they start to issue licenses, the BCC could inadvertently issue licenses for activities not desired within the City. Therefore, staff is proposing a regular ordinance on marijuana regulations.

Planning Commission Review:

The Planning Commission reviewed the draft ordinance and recommended adoption of the draft ordinance on a 4-0-1 (Sun- absent) vote with Resolution No. 6841 as follows:

1. A proposed amendment to restricting delivery to marijuana to only medicinal marijuana to the extent allowed by State Law; and
2. A request that the City Council consider options to require a registration process for persons cultivating marijuana for personal use indoors. (*Information about registration is provided later in this staff report.*)

Captain Urena from the West Valley Sheriff's Station spoke on the item and gave a brief presentation on statistics and the adverse effects of marijuana and supported adoption of the proposed draft. A detailed discussion is provided in the report below.

Analysis:

Proposed Marijuana Regulations

Following passage of the MAUCRSA, the city's existing regulations regarding marijuana require updating in the following areas in order to comply with the minimum requirements of state law as well as put into place land use restrictions that local agencies are allowed under state law:

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; (*the City's current regulations only allows this under limited circumstances for medicinal marijuana patients*)
3. Addressing personal cultivation of marijuana – this includes:
 - a. Banning outdoor personal cultivation and only allowing indoor (within enclosed structures) cultivation of marijuana; (*the City's current regulations allow outdoor and indoor cultivation of medicinal marijuana by qualified patients*) and
 - b. Establishing regulations on allowing up to six plants for 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 C.) 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.

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.

Additional Revisions Recommended by the Planning Commission

Delivery of medicinal marijuana

As previously mentioned, the Planning Commission recommended that deliveries of marijuana be restricted to those required to be allowed under state law. Currently, state

law only requires that deliveries of medicinal marijuana be allowed. The Planning Commission has concerns about deliveries since due to restrictions under federal law, transactions related to marijuana are largely conducted in cash. The Sheriff has also indicated that determining whether a delivery is being made for medicinal or recreational use would be difficult and would not be enforceable.

Staff Recommendation - Due to the issue discussed above it is recommended that all deliveries of marijuana be allowed as long as the person delivering has the appropriate state licenses, is authorized to do so, and the trip does not originate within the City.

Registration

The Planning Commission requested staff to present options to the City Council on registration by persons cultivating marijuana indoors for personal use. The Commission was also indicated an interest in having an annual inspection process for persons that register to ensure that the cultivation is in compliance with the City's standards.

There are a few cities, such that require registration by persons that cultivate marijuana for personal use. Many of those also allow commercial growth and sale of marijuana and can justify the cost of a registration and inspection process. For cities that only allow a very limited use of indoor growth for personal use, the cost and staffing for such a program would not be justified. Additionally, the Sheriff has concerns about having a publicly available database of persons cultivating marijuana and related security risks of burglaries.

A registration and inspection process would have budgetary impacts to the Sheriff's Department's contract. Additionally, they believe that inspections for registered personal cultivators may not be very effective. It is unlikely that persons that register with the City would be non-compliant with the City's standards. It is more likely that persons that wish to skirt the City's regulations would not register with the City and be non-compliant.

Staff Recommendation - Due to the concerns expressed above, a registration and inspection process is not being recommended at this time.

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 Public 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.

Sustainability Impact

The ordinance includes standards that require energy efficient lighting should grow lights be used. State law has additional provisions on the use and safe disposal of pesticides used in the cultivation of marijuana.

Fiscal Impact

As proposed, it is not expected that adoption of this ordinance will have a fiscal impact on the City's budget. Adoption of a registration and inspection process, may have impacts.

Conclusion

It is recommended that the City Council adopt the draft resolution. If appropriate regulations surrounding commercial marijuana activities are not established, the State BCC may issue licenses for marijuana activities within City limits beginning January 2, 2018.

Should the City Council 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

Upon introduction and a first reading 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.

Prepared by: Piu Ghosh Principal Planner
Reviewed by: Benjamin Fu, Assistant Director of Community Development
Aarti Shrivastava, Assistant City Manager
Approved by: David Brandt, City Manager

ATTACHMENTS

A - Draft Ordinance

B - Planning Commission Resolution No. 6841 (showing additions and deletions)

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