



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: March 21, 2017

TO: Mayor Donahue and Members of the City Council

FROM: Michael A. Guina, City Attorney
Charles S. Bryant, Community Development Director

SUBJECT: **Cannabis Regulations**

An Ordinance Of The City Council Of The City Of Emeryville Amending The Planning Regulations In Title 9 Of The Emeryville Municipal Code To Add Article 22 To Chapter 5 Concerning Standards For Cannabis-Related Activities And To Make Other Related Modifications To The Planning Regulations; CEQA Determination: Exempt Pursuant To CEQA Guidelines Section 15061(b)(3)

An Ordinance Of The City Council Of The City Of Emeryville Repealing, Replacing, And Retitling Chapter 28 Of Title 5 Of The Emeryville Municipal Code, "Cannabis"; CEQA Determination: Exempt Pursuant To CEQA Guidelines Section 15061(b)(3)

RECOMMENDATION

Staff recommends that the City Council adopt the first readings of the above-referenced ordinances.

BACKGROUND

Beginning in early 2016, the City has been working towards establishing a regulatory framework to allow for commercial cannabis activity. The most recent study session was held on February 7, 2017 (Attachment 1). At the study session, the City Council considered two proposed ordinances, one to amend the Planning Regulations in Title 9 of the Emeryville Municipal Code, and one to amend Chapter 28 of Title 5 of the Emeryville Municipal Code. This would establish a two-permit local regulatory framework that would allow for commercial activity for both recreational and medical cannabis, and which would allow for personal activities associated with recreational cannabis, consistent with Proposition 64 (also referred to as Adult Use Marijuana Act ("AUMA")). The Council directed staff to bring forward the proposed ordinances, with some modifications as discussed in further detail below.

The City Council also provided direction to staff to assist in the development of regulations related to issuance of an operator's permit for a cannabis retail outlet. The City Council remained interested in issuing a request for proposals to determine issuance of an operator's permit. Specifically, the Council indicated it was interested in a regional serving outlet, an outlet of either recreational or medical cannabis, and an outlet that may allow for on-site consumption of cannabis. In addition, the City Council indicated an interest in providing for an equity sharing program. Staff indicated that they would be returning to the City Council for a future study session to discuss the regulations governing the operator's permit as it relates to cannabis retail outlets.

Finally, the City Council indicated it was still interested in learning more about the revenue generation and taxes on the industry. Staff indicated that further research was needed before they could return to the Council for a study session on this topic.

DISCUSSION

With respect to the ordinance proposing to amend the Planning Regulations (see Attachment 2), Council directed three modifications to the proposed ordinance. First, Council indicated that personal cultivation of cannabis should be allowed outside. As a result, Section 9-5. 2207(a)(3) has been modified as follows (with **underline and bold** showing added text and ~~strikethrough~~ showing deleted text):

Cannabis plants shall not be grown or processed in the common areas of a multi-unit residential development nor in common areas of any commercial or industrial building; ~~Cultivation and processing of cannabis plants must occur within a building or a dwelling unit and must not be perceptible from the exterior of the building or dwelling unit including but not limited to: visual observation, including any form of signage; unusual odors, smells, fragrances, or other olfactory stimulus; light pollution, glare or brightness; and excessive noise from ventilation fans;~~

The effect of these changes is that only single family homes and duplex units will be able to cultivate cannabis for personal use in outside areas, because cultivation in outdoor common areas of multi-unit housing remains prohibited.

Second, to eliminate confusion around how many plants could be cultivated per residence, staff had recommended, and Council agreed, to modify Section 9-5. 2207(a)(2) as follows (with **underline and bold** showing added text and ~~strikethrough~~ showing deleted text):

Cannabis plants shall be grown, possessed, and processed within the residence of the person growing, possessing and processing the cannabis plants for personal use. No more than six plants may be cultivated in a ~~dwelling unit~~ **private residence, as defined in Health and Safety Code section 11362.2(b)(5).**

Third, the City Council directed staff to reduce the buffer zone around cannabis sales uses from 500 feet to 250 feet from schools, day care facilities, religious institutions or public parks. Accordingly, Section 9-5. 2207(c) has been amended from 500 feet to 250 feet. (See Attachment 4.) There is no buffer zone around cannabis manufacturing uses. (See Attachment 3.) In addition, staff modified the definitions of public park and school to include the buffer site around sites that are not currently being used for a public park or school, but could be under the City's General Plan.

After the study session, staff received a comment concerning the distance requirement between AUMA and the Medical Cannabis Regulation and Safety Act ("MCRSA"). Under the AUMA, "No licensee under this division shall 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." (See Bus. & Prof. Code, § 26054(b).) The MCRSA requires there to be a minimum of 600 feet from a school or youth center, and does not provide for local agencies to allow for a different radius requirement. (See Health & Safety Code, § 11362.768.) Attachment 5 depicts a buffer zone that is compliant with the MCRSA, that is, 600 feet around schools and day care centers, and 250 feet around religious institutions and public parks. Staff anticipates that the Legislature will need to address this discrepancy when the Legislature modifies the MCRSA to create one state regulatory system. Given that the AUMA provision is a voter-mandate, and provides for greater local control, in staff's opinion, the discrepancy should be resolved in favor of the AUMA's requirement. Therefore, staff recommends going forward with the changes as Council directed, and staff will provide Attachment 5 as information for applicants, and encourage they confirm with the state that the site they are considering is eligible for a state license. In the event that the state Legislature does not resolve the discrepancy in favor of the AUMA, staff will bring forward an amendment to the Planning Regulations to ensure the distance requirement is consistent with any new state laws.

With respect to the ordinance establishing the Operator's Permit (see Attachment 6), the City Council directed staff to make modifications to the ordinance, all related to when the City could deny an application for an operator's permit. The modifications related to incorporating provisions of the AUMA into the City ordinance. As a result of that direction, the proposed ordinance has the following additional sub-sections in Section 5-28.06(d) (with **underline and bold** showing added text and ~~strikethrough~~ showing deleted text):

- (d) Grounds for Denial, Revocation or Suspension of Permit. The granting of a Permit or a renewal thereof may be denied and an existing Permit revoked or suspended if:

- (2) The Cannabis Business Owner has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the Cannabis

Business for which the application is made, which includes but is not limited to:

e. A felony conviction for drug trafficking with an enhancement pursuant to Health and Safety Code section 11370.4 or 113798.

(8) Except as provided in sub-sections d and e of Section 5-28.06(d)(2), an application for a permit shall not be denied if the sole ground for denial is based upon a prior conviction of either Section 11350 or Section 11357 of the California Health and Safety Code. An application for a permit also shall not be denied if the State would be prohibited from denying a state license pursuant to either Section 26057(b)(5) or Section 26059 of the California Business and Professions Code. Conviction of any controlled substance felony subsequent to permit issuance shall be grounds for revocation of a permit or denial of the renewal of a permit.

The first proposed modification explicitly allows for the City to deny a permit if the applicant has a certain felony conviction related to drug trafficking. The second modification is designed to ensure that those who have been harmed by the “war on drugs” enforcement measures are not precluded from participating in the cannabis industry, and is consistent with state law.

In addition, the operator’s permit ordinance has an effective date of September 1, 2017. The delay in the effective date allows staff time to implement the new regulatory program. However, the delay in effective date should not impact businesses. The operator’s permit anticipates that businesses will first obtain their land use permits, prior to obtaining their operator’s permit.

Finally, Attachment 7 includes comment received prior to publication of the agenda. If the Council is inclined to consider commercial cultivation, staff recommends that the Council move forward with adopting the proposed ordinances, and refer the matter of commercial cultivation to the Planning Commission for a recommendation on any proposed modifications to the Planning Regulations to accommodate the use.

FISCAL IMPACT

Staff will be proposing modifications to the Master Fee Schedule so the City may recover its costs in processing and approving applications for an Operator’s Permit. Land use permit processing fees are already included in the Master Fee Schedule.

ENVIRONMENTAL REVIEW

The proposed ordinances are exempt from environmental review under State CEQA Guidelines Section 15061(b)(3), the “general rule” that CEQA does not apply to projects

where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Medicinal and recreational Cannabis Sales activities are anticipated to have characteristics similar to Tobacco Sales activities, and medicinal and recreational Cannabis Manufacturing activities are anticipated to have characteristics similar to Pharmaceutical Manufacturing activities. Both are expected to generate a negligible amount of vehicle trips, and any potential impacts on air quality, light and glare, liquid or solid waste, noise, odor, and vibration will be addressed through adherence to the existing Performance Standards in Article 11 of Chapter 5 of the Planning Regulations. In addition, the proposed standards for personal cultivation would address any potential impacts of this accessory use.

CONCLUSION

Staff recommends that the City Council:

1. Adopt a motion to introduce the proposed ordinances by title only, and read both ordinances by title only;
2. Open the public hearing and take public testimony;
3. Close the public hearing, and adopt the first reading of both proposed ordinances.

Prepared by: Andrea Visveshwara, Assistant City Attorney
Miroo Desai, Senior Planner

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:



Michael Guina, City Attorney

Attachments:

1. February 7, 2017 Staff Report (w/o attachments)
2. Proposed Ordinance for Land Use Regulations (EMC Title 9)
3. Map Depicting Locations for Cannabis Manufacturing
4. Map Depicting Locations for Cannabis Retail (250 ft. buffer)
5. Map Depicting Locations for Cannabis Retail (600 ft. buffer)
6. Proposed Ordinance for Operator's Permit Regulations (EMC Title 5)
7. Comment(s) Received