



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: March 5, 2019
TO: Mayor and City Council Members
FROM: Michael Guina, City Attorney
SUBJECT: **Ordinance To Repeal Section 5-28.10(d) Of The Emeryville Municipal Code, "Cannabis"; CEQA Determination Exempt Pursuant to CEQA Guideline 15061(b)(3)**

RECOMMENDATION

Staff recommends that the City Council adopt the above-referenced ordinance, which would repeal section 5-28.10(d) of the Emeryville Municipal Code.

BACKGROUND

On March 21, 2017, the City Council introduced two separate ordinances to create a local regulatory framework that would create opportunities in Emeryville for the cannabis industry. The first ordinance, Ordinance No. 17-002, amended the City's Planning Regulations to allow for the following commercial cannabis uses: manufacturing, testing, distribution, transport, delivery, research and development, and retail/dispensary. Pursuant to the Planning Regulations, a commercial cannabis business must obtain a conditional use permit from the City's Planning Commission prior to commencing operations. The second ordinance, Ordinance No. 17-003, requires businesses to obtain an annual permit from the Police Chief, often referred to as an Operator's Permit. As of the date of the publication of this staff report, the City has approved five conditional use permits, and issued seven Operator's Permits. One of the sites houses multiple cannabis businesses, which accounts for the difference between the number of conditional use permits issued compared to Operator's Permits.

At the December 10, 2018, City Council meeting, Councilmember Bauters requested consideration of modifications to Chapter 29 of Title 5 of the Emeryville Municipal Code be added as a future agenda item. At the January 15, 2019, City Council meeting, the Council directed staff to prepare an ordinance that would repeal Emeryville Municipal Code § 5-28.10(d), which provides:

Business Conducted within Building. No production, distribution, storage, display or wholesale of cannabis and cannabis-infused products shall be visible from the exterior of the building where the commercial cannabis activity is being conducted.

DISCUSSION

Repealing Section 5-28.10(d)

Attached is a proposed ordinance repealing Emeryville Municipal Code section 5-28.10(d) per Council's direction. Note that Business and Professions Code § 26200(g) requires cannabis consumption to not be visible from any public place or age-restricted area within the dispensary/retail outlet.

On January 16, 2019, the State's Office of Administrative law approved regulations submitted by the three cannabis licensing authorities, the Bureau of Cannabis Control, CalCannabis Cultivation Licensing (division of California Department of Food and Agriculture), and Manufactured Cannabis Safety Branch (CDPH). These regulations take effect immediately, and staff will be reviewing these proposed regulations to determine whether the Council should consider any additional modifications (if any) to Chapter 28 of Title 5 of the Emeryville Municipal Code. Staff will bring recommendations for amendments based on the state regulations as a future agenda item.

CEQA Determination

Adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

STAFF COMMUNICATION WITH THE PUBLIC

A representative from one of the cannabis businesses located in the City reached out to staff in the Economic and Housing Division and City Attorney's Office to request modifications to EMC § 5-28.10(d).

CONCLUSION

Staff recommends that the City Council:

1. Introduce the proposed ordinance by title only.
2. Take public comment on the proposed ordinance.
3. Adopt the first reading of the proposed ordinance.

PREPARED BY: Andrea Visveshwara, Assistant City Attorney

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



Michael Guina, City Attorney