



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: June 20, 2017

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Marijuana Policy Discussion

RECOMMENDATION:

That Council provide direction to staff to draft amendments to the Municipal Code to update or develop regulations regarding medical and non-medical marijuana cultivation, manufacturing, testing, dispensing, distribution, and transportation.

EXECUTIVE SUMMARY

The City of Santa Barbara currently has an ordinance in place regulating medical marijuana dispensaries but lacks a comprehensive policy that would address the recent legalization of other commercial activities related to both medical and non-medical marijuana. Complicated layers of regulation from local, state, and federal government offer conflicting or inconsistent guidance as to the time, place and manner where marijuana-related activities may occur. With the passage of the Medical Marijuana Regulation and Safety Act (renamed the Medical Cannabis Regulation and Safety Act, "MCRSA") and the Adult Use of Marijuana Act (AUMA/Proposition 64), the Bureau of Marijuana Control, formerly the Bureau of Medical Cannabis Regulation (BMCR), is preparing a commercial licensing program for marijuana-related business. Under the new state regulations, if a local government does not prohibit commercial marijuana related activity, and also has a permitting system in place, commercial license applicants must first obtain a local permit before the State will issue a license for commercial activities. Where a local government does not specifically prohibit commercial marijuana activity or no permitting system is in place, the State will issue a commercial marijuana license without the need for local approval. If City Council wishes to regulate marijuana-related businesses and commercial activity, such regulations should be implemented before the State begins issuing these licenses in 2018.

DISCUSSION:

Regulatory Framework

The suite of regulations affecting marijuana policy in the City of Santa Barbara is complicated. Currently, federal, state, and local regulations form the legal framework for marijuana-related activities. For reference, below is a brief summary of relevant federal, state, and City regulations affecting medical and non-medical marijuana activity.

Federal Regulations: The Controlled Substances Act of 1970 (21 USC §812) defines marijuana (tetrahydrocannabinols [THC]) as a Schedule 1 narcotic. Schedule 1 narcotics are defined by the federal government as drugs having a high potential for abuse and no currently accepted medical use in treatment. However, on August 29, 2013, the U.S. Department of Justice, through the Office of the Deputy Attorney General, issued a memorandum to all United States Attorney's giving instruction and guidance on federal marijuana enforcement. The memorandum recognized that marijuana remains an illegal narcotic but effectively deprioritized federal enforcement of criminal penalties in states that had laws legalizing its possession, sale, and use, provided that the state laws do not promote diversion of marijuana to other states, sale of marijuana by drug cartels, distribution to minors, and drugged driving. It is important to note that the federal government's position on marijuana enforcement could change in the future, particularly with the recent change in the administration.

State Regulations: While Proposition 215, the Compassionate Use Act ("CUA") legalized medical marijuana in California in 1996, it failed to provide a regulatory framework necessary for effective implementation by law enforcement and immunity from criminal prosecution. The CUA was followed in 2003 by the Medical Marijuana Program Act ("MMPA"), which provided more expansive regulations regarding the possession and use of medical marijuana. The MMPA allowed qualified patients or their primary caregivers to lawfully possess and/or cultivate marijuana for personal use. While it was still illegal to sell marijuana, a qualified patient or his/her primary caregiver could collectively cultivate marijuana. Until the passage of MCRSA, and subsequently the AUMA, all commercial activity related to the possession and sale of marijuana, with the exception of storefront "collective" medical marijuana dispensaries and "collective" cultivation enterprises, remained illegal.

The Medical Cannabis Regulation and Safety Act of 2015 created six categories of licenses for commercial cultivation, manufacturing, testing, dispensary, distribution, and transportation of medical marijuana. MCRSA also required that medical marijuana businesses obtain local approvals, comply with local zoning regulations, and locate their operations at least 600 feet from the property line of any public or private school.

The Adult Use of Marijuana Act of 2016 was passed by the voters of California as Proposition 64 last November and established an individual right of adults over the age of 21 years to consume marijuana on private property. Similar to MCRSA, the AUMA

created a comprehensive licensing scheme for the operation of commercial marijuana business related activities. The AUMA allows local governments to regulate these commercial activities, consistent with the state licensing scheme, or completely prohibit commercial marijuana related businesses.

The AUMA also includes a grant program funded by the new state excise tax for local governments to apply for law enforcement, fire protection, or other public health and safety program funding, provided the applying local government does not ban commercial cultivation, personal outdoor cultivation, or retail sales of marijuana.

Pending State Regulation: The “Cannabis Trailer Bill” (SB 94) is currently before the California State Assembly for consideration as part of the 2017-2018 State Budget. The bill as amended June 9, 2017 would consolidate the MCRSA and the AUMA under a proposed Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), establishing methods for collecting taxes and reconciling the two laws, restructuring the Bureau of Marijuana Control as the Bureau of Cannabis Control, and consolidating authority currently dispersed among several state agencies. If passed and signed by the governor, non-dispensary delivery (e.g. fulfillment center) and packaging licenses may also be created.

Local Regulations: The City of Santa Barbara currently has three ordinances regulating the sale and cultivation of medical and non-medical marijuana. The City regulates the transfer and/or sale of medical marijuana through its Medical Cannabis Dispensary Ordinance (SBMC Chapter 28.80) (attached), and the Interim Urgency Ordinance Prohibiting Non-Medical Marijuana-Related Businesses (Ordinance No. 5763), which was adopted on September 6, 2016 and will expire on September 5, 2018. SBMC Chapter 28.80 authorizes and establishes the regulations for operation of a storefront medical marijuana dispensary that utilizes a collective or cooperative model. This “collective” style of operation was required when the City’s ordinance was enacted because, at that time, it was illegal to sell marijuana. The prohibition against the sale of marijuana has changed under MCRSA and AUMA. Council may now choose to change to a more traditional commercial based model of retail sale of both medical and non-medical marijuana. In the interim, while Council deliberates on this issue, Ordinance No. 5763 places a temporary prohibition on all non-medical marijuana-related business, and is intended to prevent unregulated or unlicensed businesses from operating in the City of Santa Barbara following the passage of AUMA.

Additionally, on January 26, 2016, the City adopted Santa Barbara Municipal Code section 28.87.300, which allows a qualified patient to cultivate up to 100 square feet of *medical* marijuana, either indoors or outdoors, for personal use at his or her residence within the City. The ordinance expressly prohibits cultivation for non-medical use and for commercial purposes (i.e. sale, transfer, barter, etc.)

Marijuana Business Categories (i.e. Commercial Uses)

The AUMA directs the state to create 19 license types over 6 business categories, with most relating to different cultivation methods. Specifically, the business categories include cultivation, manufacture, transportation, distribution, testing, and retail sales. The MCRSA creates very similar licensing categories for the same six business categories. The state has until January 1, 2018 to implement the licensing program for medical and non-medical marijuana commercial activities; however, experts do not anticipate licenses being available for issuance until April 2018 or later. Attached for reference is a table identifying the six business categories and associated policy considerations and issues.

While cultivation and dispensary uses are the most noticeable to the public, it is important that the City consider the implications of each of the six business categories. Santa Barbara is uniquely located in the state to be a potential site for transportation, manufacturing, and testing uses, which have the advantage of being both aggressively expanding, high-value business types, and having a low public profile and low demand for law enforcement.

Staff requests that Council consider what local regulations or prohibitions should be considered for each category, and direct staff to research and prepare appropriate regulations.

Cultivation:

Ten state license types for commercial cultivation of medical marijuana are established under the MCRSA and thirteen state license types will be available for non-medical commercial cultivation under the AUMA. The AUMA and MCRSA allow commercial cultivation to occur both indoors and outdoors, and the type of license issued is based on the type (indoor or outdoor) and size of the operation. The largest cultivation licenses issued by the State will be for cultivation of up to 22,000 square feet. (Note: the State will not issue licenses for large scale cultivation of up to 22,000 square feet until January 1, 2023.) The City, however, if it chooses to allow cultivation may restrict the size and type (indoor and/or outdoor) of cultivation, and is not required to allow for large scale commercial operations. Issues for consideration when determining whether, and to what extent, to allow cultivation within the City are water and electrical usage, odor, visibility of the plants, and security. The City could consider prohibiting commercial non-medical cultivation in any zone, though this would eliminate the AUMA grant funding eligibility.

Consider: Restriction of commercial cultivation to only a few of the permit types (e.g., indoor only, or only “small scale” cultivation), and consider incorporating security, odor, aesthetic, location, or other criteria.

Manufacturing:

The State will issue two types licenses for commercial manufacturing: one for manufacturing using volatile solvents (e.g. butane, propane, or ethanol), and one for those using non-volatile solvents (e.g. CO₂ compressed gas, water, vegetable oils, or animal fat). Manufacturing is the extraction or refinement of THC for use in consumer products such as baked goods, topical ointments, or aromatics. The use of volatile compounds in THC extraction is generally the less expensive option, but it involves the storage of solvents that can combust or explode if mixed with air. This type of manufacturing is typically done indoors in an industrial setting. Local regulations can limit the type of manufacturing allowed, establish security requirements, and restrict style and location of signage.

Consider: Restrict manufacturing to only non-volatile solvents in indoor facilities, and consider incorporating security and aesthetic criteria.

Testing:

Like manufacturing, testing is an indoor, light industrial activity. A business holding a testing license is not eligible to hold any other license. The purpose of this license is to have an independent third party inspecting and certifying all marijuana products before they are distributed to retailers. Local regulations can establish security requirements, and restrict style and location of signage.

Consider: Restricting to indoor facilities incorporating security and aesthetic criteria.

Dispensary, Retail Sales and Microbusinesses:

Dispensary and retail sales operations are the public face of the marijuana business. Local governments can regulate their operational hours, location, size, design, and security requirements. Local governments also regulate product types or window displays to limit attracting underage interest. While this land use is more noticeable and more likely to engage with customers/residents than the others mentioned, the majority of existing medical marijuana sales in California are handled through delivery.

MCRSA identifies and licenses retail sales operations as “dispensaries” and the AUMA identifies and licenses two types of retail sales as “retail” and “microbusiness.” A person who holds a microbusiness license may cultivate up to 10,000 square feet and also act as distributor, manufacturer, and retailer at a single site. Microbusinesses would be small-scale, vertically integrated businesses that would still be subject to independent testing at a licensed test facility. The microbusiness model is expected to function in the same way medical marijuana collective dispensaries were intended to operate under the Medical Marijuana Program Act, but unlike the collective dispensary they operate for-profit businesses.

The AUMA and MCRSA both allow licensed dispensaries, microbusinesses, and retail operators to engage in delivery of marijuana products to a home or place of business, unless otherwise regulated or prohibited by local governments. The delivery of marijuana must originate from a licensed brick and mortar establishment and will be subject to strict state and local regulation in order to prevent the unlawful diversion of marijuana.

It is important to note and consider that the AUMA does not promote or restrict on-site use of marijuana at retail sales locations. Marijuana cafés could be proposed as ancillary uses to retail sales operations. While these commercial retail operations would remain subject to smoking and vaporization regulations, local governments may permit, regulate or restrict edible, topical, or other non-inhaled means of ingesting marijuana products.

Presently, under SBMC Chapter 28.80, the City allows three medical marijuana dispensaries to operate within the City. Under the current ordinance the operation of the dispensaries must follow a collective or cooperative model. This operating scheme was necessary prior to the enactment of the MCRSA because at that time the commercial sale of medical marijuana (i.e. sale other than for personal use) was illegal under state law.

The collective or cooperative model contemplates qualified patients and/or primary caregivers working together in a closed loop system to cultivate and distribute marijuana on a non-profit cost recovery (subject to reasonable compensation) basis only. This model is difficult to maintain for storefront medical marijuana dispensaries that have hundreds of qualified patients and/or primary caregivers (“collective members”) whose only contribution to the collective is the payment of reasonable compensation for the medical marijuana they receive. This collective model, however, is no longer necessary.

Under MCRSA it is now lawful for medical marijuana dispensaries to commercially cultivate and sell marijuana. While, the City could continue to require the operation of collective and cooperative dispensaries under its existing ordinance, this model adds an unnecessary complexity, and in some ways conflicts with the separate commercial licensing scheme created under the MCRSA.

Consider: Consider allowing and regulating marijuana retail and/or microbusinesses. Amend SBMC Chapter 28.80 to remove the “collective” operational requirement. Consider regulation or prohibition of on-site consumption and use of marijuana. Also consider restrictions on delivery operations/hours.

Distribution:

Distribution licenses will be for the transportation and warehousing of marijuana products. Commercial warehousing typically requires about 10,000 square feet of indoor storage area. A licensed distributor would also need to obtain a transportation license. The purpose of the distribution license is to develop committed partners in maintaining the security and integrity of the product. Introduction of unregulated black market product or diversion of product to the black market to avoid taxation would undermine the legitimate

marijuana market, impact government revenue, and encourage criminal activity. Both distribution and transportation operators will participate in the state's track-and-trace monitoring system as marijuana products are monitored from "seed-to-sale" to ensure quality, origin, and potency are accurately presented to the customer and that taxes are duly collected.

Consider: Restriction of marijuana warehousing to certain land use zones, or consider prohibiting warehousing of marijuana products.

Transportation: Transportation will be a distinct license from distribution because it would not involve warehousing of product. Local governments can decide to regulate or prohibit transportation-related land uses, establish security requirements, and regulate signage. However, the City cannot prohibit licensed marijuana transporters from driving through the City of Santa Barbara or to a licensed business in the City of Santa Barbara. Neither a transportation nor a distribution license will authorize retail delivery.

Consider: Restrict marijuana transportation land uses to certain zones that can accommodate vehicular storage requirements.

Potential Commercial Uses

If passed and signed by the Governor, SB 94 would empower the Bureau of Cannabis Control to create new licenses. These licenses could include packing, direct delivery, fulfillment centers, or non-extraction manufacturing (e.g. baking). While none of these licenses exist in current law, they some or all of them could be implemented in the near future.

Consider: Crafting regulations with enough flexibility to respond to an emerging market and evolving State regulation.

Non-Commercial Uses

As discussed above, the City currently allows a qualified patient (but not his or her primary caregiver) to cultivate 100 square feet of medical marijuana, either indoors or outdoors, at his or her primary residence for personal use. This ordinance is consistent with the personal cultivation provisions allowed under MCRSA (Health & Safety Code section 11362.777). With the passage of the AUMA, however, any person over the age of 21 may now lawfully cultivate up to six marijuana plants for non-medical purposes within a single residence or upon the ground of the residence at one time. While the City may place reasonable restrictions on the cultivation of these six plants, including entirely prohibiting outdoor cultivation, it is preempted from prohibiting *indoor* cultivation of up to six non-medical marijuana plants for personal use. Since the City's current cultivation ordinance limits cultivation only to qualified patients for medical use it is in conflict with the AUMA. This conflict could potentially result in a qualified patient cultivating up to 100 square feet of medical marijuana and six plants indoors for personal non-medical use.

Consider: Amending SBMC section 28.87.300 to allow for the indoor cultivation of up to six medical or non-medical marijuana plants for personal use, and enacting reasonable health and safety restrictions on the cultivation of those six plants.

BUDGET/FINANCIAL INFORMATION:

This agenda item is informational and for discussion only. The eventual adoption of marijuana-related regulations has the potential to alter revenue from marijuana excise tax and expenditures of staff time and resources. Additionally, enacting prohibitions as discussed above could limit the City's eligibility to receive grants for public safety and public welfare projects funded under the state's new marijuana tax.

ATTACHMENTS: 1. Marijuana Commercial Use Issues Summary Table
2. Medical Cannabis Dispensary Ordinance (SBMC Chapter 28.80)

PREPARED BY: Andrew Bermond, Project Planner

SUBMITTED BY: George Buell, Community Development Director

APPROVED BY: City Administrator's Office