



# CITY OF SANTA BARBARA

## ORDINANCE COMMITTEE AGENDA REPORT

**AGENDA DATE:** October 10, 2017

**TO:** Ordinance Committee

**FROM:** Santa Barbara Police Department and City Attorney's Office

**SUBJECT:** Cannabis Regulatory and Zoning Ordinances

**RECOMMENDATION:** That Ordinance Committee consider proposed ordinances:

- A. Amending Title 30 of the Santa Barbara Municipal code to limit the location of commercial cannabis businesses, including storefront retail sales, retail delivery-only, manufacture, distribution, testing, and indoor cultivation, to within the M-I zone, but also allow storefront retail sales of cannabis to occur within the C-G and C-R;
- B. Adopting new Chapter 44 within Title 9 of the Santa Barbara Municipal Code to regulate medical and adult-use commercial cannabis businesses, which includes retail sales, distribution, testing, manufacturing, and indoor cannabis cultivation;
- C. Amending Section 30.185.250 of the Santa Barbara Municipal Code (Ordinance No. 5526), Medical Cannabis Dispensaries, to remove the requirement that the medical cannabis dispensaries operate under a collective or cooperative model, and subsequently repeal 30.185.250 so that medical cannabis dispensaries with issued permits become a legal non-conforming use; and
- D. Amending Section 30.185.110 to allow for indoor cultivation of up to six cannabis plants for personal use within a private residence, or its accessory structure, by persons 21 years or older within any zone of the City, and prohibit outdoor cultivation of cannabis for personal use.

### EXECUTIVE SUMMARY

With the adoption of the Medical Cannabis Regulation and Safety Act ("MCRSA"), the passage of the Adult Use of Marijuana Act (Proposition 64), and their subsequent consolidation by S.B. 94 - the Medicinal and Adult-Use of Cannabis Regulation and Safety Act ("MAUCRSA"), the use of cannabis, and associated commercial activities

was legalized through a state licensing scheme. Under the new state regulations, if a local government does not expressly prohibit commercial cannabis activity, it will be permitted and subject exclusively to state licensing and regulation. A local government may adopt commercial cannabis regulations that are more restrictive than adopted by the state under MAUCRSA.

The City currently has an ordinance in place regulating medical cannabis dispensaries which reflects the laws and policies adopted under the Compassionate Use Act of 1996, and the Medical Marijuana Program Act (S.B. 420); however, it lacks a comprehensive policy that addresses the recent legalization of other commercial activities related to both medical and non-medical cannabis. As such, on June 20, 2017, the City Council directed Staff to research and develop a proposed ordinance that would regulate all cannabis related activities, including medical and non-medical cannabis for personal use, and medical and non-medical commercial cannabis businesses. Council directed staff to return with an ordinance for adoption prior to January 1, 2018.

While the State has indicated that it will begin issuing commercial cannabis business licenses in January 2018, the City has adopted an interim zoning ordinance (Ordinance Nos. 5763 and 5774) prohibiting non-medical commercial cannabis business activities until September 2018. This interim zoning ordinance may be repealed upon the adoption and enactment of a City ordinance regulating commercial cannabis activities. However, unless the interim zoning ordinance is repealed, and a City ordinance is in place, the state may not issue a license for operation of non-medical commercial cannabis businesses within the City until September 2018.

## **DISCUSSION**

### Background

MCRSA became effective on January 1, 2016, and established a state licensing program for commercial medical cannabis related activities, including the dispensing and cultivation of cannabis. It also allowed local jurisdictions to adopt and enforce local regulations and permitting requirements relating to commercial medical cannabis activities, so long as they met the minimum state licensing standards and regulations. Similarly, on November 8, 2016 the citizens of California voted to approve Proposition 64, AUMA. The AUMA allowed, at the discretion of local jurisdictions, the retail sale, cultivation, distribution, production, and testing of non-medical cannabis and cannabis products. It also legalized limited possession, use, and cultivation of non-medical cannabis by persons over 21 years of age.

Subsequently, on June 12, 2017, Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), was enacted to provide a single cohesive

licensing scheme for all cannabis related activities. SB 94 repealed MCRSA, and included certain provisions of MMRSA in the licensing provisions of AUMA. Under Senate Bill 94, these consolidated provisions became known as MAUCRSA.

The State will begin issuing state licenses on January 2, 2018. During the initial months the State has forecasted a possible interruption to the flow of legally-conforming cannabis products to consumers. For that reason, the State plans to issue temporary commercial cannabis licenses. This initial stop-gap would provide a four (4) month license, with an option to extend for 90 days if the licensee remains in good standing with state regulation and local jurisdictions.

These temporary licenses will primarily be issued to operators who have express local regulatory approval to operate, thereby allowing them to continue to operate lawfully in the short term. To qualify for a temporary license the State will require: 1.) a copy of a valid local license; 2.) a copy of a local permit; or 3.) proof of other authorization issued by the local jurisdiction.

Cities will have only 60 days to respond to the State, regarding whether or not an applicant is permitted to operate locally, once notified of a state application to open a business within the jurisdiction.

#### Amendments to Existing City Ordinances

The City of Santa Barbara currently has three ordinances regulating the sale and cultivation of medical and non-medical cannabis; specifically, Santa Barbara Municipal Code (SBMC) sections 30.185.110 – Personal Cannabis Cultivation (Ordinance Nos. 5733 & 5798) and 30.185.250 – Medical Cannabis Dispensaries (Ordinance No. 5526 and 5798), and Ordinance No. 5763 – Interim Urgency Zoning Ordinance Prohibiting Non-Medical Marijuana Related Businesses.

##### A. SBMC sec. 30.185.250

SBMC section 30.185.250 authorizes up to three medical cannabis storefront collective dispensaries to operate within the City at any one time, and establishes regulations for operation these dispensaries under a collective or cooperative model. This “collective” style of operation was required when the ordinance was enacted under the laws relating to the Compassionate Use Act and Medical Marijuana Program Act because at that time it was illegal to sell cannabis. Currently, with the passage and adoption of MCRSA and AUMA (subsequently consolidated by MAUCRSA) the prohibition against the sale of cannabis, and other commercial cannabis related activities has been lifted. The City’s requirement that dispensaries operate under a collective model is outdated and conflicts in part with the new laws established under MAUCRSA. The amendment being

proposed would remove the collective model of operation, and would additionally allow cultivation of cannabis to occur outside the Tri-Counties area so that the dispensaries can more easily comply with the new state laws requiring that cannabis be purchased by a state licensed cultivator.

The existing ordinance, even as amended, however, does not contain the more robust and detailed regulations that are being proposed within the new Commercial Cannabis Business Ordinance. For that reason, Staff recommends that the Ordinance Committee consider repealing SBMC section 30.185.250, and allowing the dispensaries that currently hold an issued medical marijuana storefront dispensary permit to continue to operate under the repealed section 30.185.250 as a legal non-conforming use. All future proposed cannabis retail dispensaries (medical or non-medical) would then be subject to permitting and regulation under the new Commercial Cannabis Business Ordinance.

B. SBMC sec. 30.185.110

Consistent with the legalization and regulation of cannabis for medical use under the MCRSA, on January 26, 2016, the City adopted Ordinance No. 5733 (codified as SBMC sec. 30.185.110) allowing a qualified patient to cultivate up to 100 square feet of medical cannabis, 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.) With the passage of AUMA, however, possession, use, and personal cultivation of certain amounts of cannabis became legal, regardless of whether or not it was for medical or non-medical use. Specifically, California Health and Safety Code sections 11362.1 and 11362.2 provide that it shall not be unlawful for a person over 21 years of age to cultivate up to six (6) cannabis plants at his or her private residence. Section 11362.2 allows local governments to prohibit personal outdoor cultivation at a private residence, but only allows local governments to impose reasonable regulations to reasonably restrict personal indoor cultivation of up to six (6) cannabis plants. Local governments may not completely prohibit personal indoor cultivation.

The proposed amendment to SBMC section 30.185.110, would allow for personal indoor cultivation of up to six (6) plants within a private residence or accessory structure within any zone of the City, subject to the satisfaction of certain conditions, and would completely prohibit personal outdoor cultivation.

### C. Interim Urgency Ordinance

The Interim Urgency Zoning Ordinance Prohibiting Non-Medical Marijuana-Related Businesses (Ordinance No. 5763, extended by Ordinance No. 5774) was adopted on September 6, 2016, and prohibits all non-medical commercial cannabis activities within the City. The Ordinance will expire on September 5, 2018. If the City Council adopts a new ordinance regulating commercial cannabis activities it may choose to repeal the Interim Urgency Zoning Ordinance prior to its expiration.

#### Proposed Commercial Cannabis Businesses Ordinance and Zoning Amendment

Staff recommends regulating commercial cannabis businesses through both zoning restrictions and an exercise of the City's police power. The proposed cannabis regulations would be codified in Chapter 9.44 of the Santa Barbara Municipal Code, and the location where such commercial activities could occur would be restricted through an amendment to Title 30 of the City's new zoning ordinance.

The proposed new Commercial Cannabis Business Ordinance, enacted under Chapter 9.44, would allow for storefront retail, retail by delivery only, manufacture, distribution, testing, and indoor cultivation of cannabis businesses to exist within the City, regardless of whether it is for medical or non-medical use. The ordinance would allow the Council to set by resolution the maximum number of cannabis related businesses within the City. The ordinance would also provide for an application and selection process conducted by the City Administrator for each cannabis related business category. As part of the selection process applicants would be required to submit written applications within a specified time period, followed by a meeting whereby the public could comment on the proposed cannabis businesses. After the public meeting the City Administrator would select a determined number of applicants for further and final consideration, and then could deny or approve issuance of commercial cannabis business permits up to the number authorized by resolution of the Council. The permits would expire on an annual basis unless renewed by the applicant and approved by the City Administrator.

The location in which the commercial cannabis activities may occur will be restricted through an amendment to the City's new zoning ordinance. The proposed amendment to Title 30 would limit all commercial cannabis business activities, including storefront retail, retail delivery-only, manufacture, distribution, testing, and indoor commercial cultivation to the City's Manufacturing Industrial (M-I) zones, with the exception of storefront retail which would also be allowed within the Commercial Restricted (C-R) and Commercial General (C-G) zones. The proposed ordinance does not allow for outdoor commercial cultivation in any zone. Council may also wish to consider extending commercial cannabis activities to the Airport's M-I zone in the future,

however, that would require an amendment to the Airport's Specific Plan and cannot be accomplished by January 1, 2018, when the state begins issuing cannabis business licenses.

**BUDGET/FINANCIAL INFORMATION:**

Although approved by the voters of the City of Santa Barbara in November 2016, the 20% excise tax on commercial cannabis business is not assumed to generate tax revenue in the current two-year budget. If adopted, the ordinance would provide a new potential source of revenue as well as increased staff workload to implement and enforce.

- ATTACHMENTS:**
1. Ordinance Amending Santa Barbara Municipal Code sec. 30.185.110 in its Entirety
  2. Ordinance Adding Chapter 9.44 to the Santa Barbara Municipal Code and Amending Section 20.185.250
  3. Ordinance Amending Santa Barbara Municipal Code Sections 30.20.020, 30.25.020, 30.30.020 and 30.35.020

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**APPROVED BY:** City Administrator's Office