



CITY OF COMMERCE AGENDA REPORT

TO: Honorable City Council

Item No. _____

FROM: City Attorney

SUBJECT: PRESENTATION AND DISCUSSION ON PROPOSITION 64, THE MEDICINAL AND ADULT-USE CANNABIS REGULATION AND SAFETY ACT, ADDITIONAL STATE LAWS AND EMERGENCY STATE REGULATIONS; AND REQUEST TO OBTAIN DIRECTION FROM CITY COUNCIL

MEETING DATE: July 17, 2018

RECOMMENDATION:

Receive and file report from staff regarding voter-approved Proposition 64, the Medicinal & Adult-Use Cannabis Regulation and Safety Act (hereinafter, "MAUCRSA"), additional related state bills and emergency regulations regarding the legalization of commercial medicinal and adult-use cannabis in California and provide direction to staff regarding the regulation of cannabis in the City, in accordance with state law.

The City Attorney is prepared to provide additional information on any topic raised herein, and is prepared to receive any directive issued by City Council, including preparing a draft ordinance to include any provision, terms and standards discussed herein at a future City Council meeting.

DISCUSSION:

On November 8, 2016, California voters passed Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). Effective November 9, 2016¹, AUMA legalized the nonmedical use (herein after, "adult-use") of cannabis by persons 21 years of age and over, and the personal cultivation of up to six marijuana plants per residence. Generally, AUMA created a state regulatory licensing system, which became effective January 1, 2018, governing the commercial cultivation, testing, distribution, and the manufacturing of adult-use cannabis products. Senate Bill 94 became law on June 27, 2017, which merged California's licensing scheme relative to medical cannabis activities and businesses, with the licensing scheme enacted by the AUMA. What was formerly known as the AUMA has now been renamed to the "Medicinal and Adult-Use Cannabis Regulation and Safety Act" (hereinafter, "MAUCRSA").

¹ An initiative statute approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. (Cal Const, Art. II § 10(a)).

This report, and in more detail, the more comprehensive information and discussion that will take place with the City Council at the July 17, 2018 meeting, and at subsequent meetings if so desired by the Council, specify what state law regulates, and the authority pursuant to state law for the City of Commerce (“City”) to regulate medicinal and adult-use commercial cannabis activities within its jurisdiction. The report provides a summary of what the Commerce City Code currently regulates concerning cannabis, including the most recent legislative action the City Council undertook to prohibit commercial medicinal and adult-use business activities pursuant to a moratorium. This report further provides information on what other jurisdictions are regulating, and seeks a directive from City Council should it opt to direct staff to present a draft ordinance to the Planning Commission and/or City Council first.

BACKGROUND:

A. Summary and History of State Cannabis Related Laws, and Commerce’s Legislative Actions

- In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996” or “CUA”).
- The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”
- In 2004 the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 *et seq.* and referred to as to the “Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes.
- Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.
- In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land” Further, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana” The Court in *Maral* affirmed the ability of a local government entity to prohibit the cultivation of marijuana under its land use authority.
- On October 9, 2015 Governor Jerry Brown signed three bills into law (AB 266, AB 243, and SB 643), collectively currently known as the Medical Cannabis

Regulation and Safety Act (“MCRSA”, formerly “MMRSA”). MCRSA establishes a state-licensing scheme for commercial medical marijuana uses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a state license. MCRSA allows the City to completely prohibit commercial medical marijuana activities.

- Business and Professions Code section 19340(a) provides that deliveries of marijuana can only be made in a city that does not explicitly prohibit it by local ordinance.

- In January 2016, Commerce City Council approved Ordinance Number 675, enacting Chapter 5.61 of the Commerce Municipal Code to prohibit medical marijuana dispensaries, and the delivery, processing and cultivation of medical marijuana.

- On November 8, 2016, California voters approved Proposition 64, titled the “Adult Use of Marijuana Act” (the “AUMA”), which became effective immediately, and enacted a state statutory scheme legalizing, controlling, and regulating the cultivation, processing, manufacturing, distribution, testing, and sale of adult-use marijuana, including marijuana products, for use by adults twenty-one (21) years of age and older. The AUMA sets an implementation date for commercial operations of January 1, 2018.

- The AUMA added, among other provisions, subdivision (a)(3) to Section 11362.1 of the Health and Safety Code (which all subsequent statutory references being to such Code) making it legal under state and local law for persons twenty-one (21) years and older to possess, plant, cultivate, harvest, dry, or process not more than six (6) living marijuana plants, and possess the marijuana produced by the plants, upon the grounds of a private residence, provided such personal cultivation activities comply with various requirements set forth in Section 11362.2.

- Notwithstanding the foregoing, in subdivision (b) of Section 11362.2 the AUMA allows cities to completely prohibit persons from engaging in outdoor Personal Cultivation Activities, and while cities may not completely prohibit indoor Personal Cultivation Activities, cities may enact and enforce reasonable regulations on indoor Personal Cultivation Activities.

- Pursuant to Business & Professions Code section 26200(a), the AUMA allows cities to ban all or part of the uses allowed under its provisions:

Nothing in this division shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction. *(Emphasis added).*

- Senate Bill 94 became law on June 27, 2017, which merged California’s licensing scheme relative to medical cannabis activities and businesses, with the licensing

scheme enacted by the AUMA. What was formerly known as the AUMA was renamed to the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (“MAUCRSA”).

- AB 133 became law on September 18, 2017 which, amongst other changes, removed the requirement that different commercial license types of cannabis businesses (e.g., cultivators, manufacturers, retailers, etc.) maintain “separate and distinct” premises. By removing that requirement, a single physical location can now hold multiple state licenses, subject to applicable local ordinances.

- In late November 2017, the three state licensing authorities charged with licensing and regulating commercial cannabis activity in California commenced releasing Emergency Regulations, outlining the standards and licensing procedures for both medicinal and adult-use commercial cannabis. Said Emergency Regulations were readopted in June 2018.

- Federal Controlled Substance Act, 21 U.S.C § 801 et seq., continues to classify marijuana as a Schedule 1 drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. Currently, the Federal Controlled Substances Act contains no exemption for medical purposes.

- In December 2017, in anticipation of the state licensing scheme commencing on January 1, 2018, pursuant to Government Code Section 65858, Commerce City Council passed Urgency Ordinance No. 691, establishing a citywide moratorium of commercial cannabis businesses.

- On January 16, 2018, Ordinance No. 691 was extended another ten (10) months and fifteen (15) days.

B. Regulating Medicinal and Commercial Cannabis Activities Pursuant to State Law

1. State License Types:

There are different state license types, and with the exception for laboratory testing, each license issued will have an “M” for medicinal or an “A” for an adult-use license. The different license types include:

- Cultivation
- Manufacturer
- Distributor
- Testing laboratory
- Retailer, and
- Microbusiness

2. State Licensing Authorities:

There are three state licensing authorities charged with licensing and regulating commercial cannabis activity in California. These include the Bureau of Cannabis Control (“BCC”), California Department of Food and Agriculture (“CDFA”), and the California Department of Public Health (“CDPH”).

- CDFA is designated as the state agency responsible for issuing licenses to commercial cannabis cultivators in California. Cultivation licenses have three main categories: cultivators, nurseries and processors.

- CDPH is responsible for regulating the manufacturing component of the industry. CDPH released Emergency Regulation outlining the standards and licensing procedures for both medicinal and adult-use commercial cannabis manufacturing and products. There are four (4) manufacturing license types.

- BCC is responsible for regulating all other commercial cannabis businesses.

All cannabis businesses must have a state license in order to lawfully operate. State licenses cannot be issued to an applicant whose operations would violate provisions of any local ordinance or regulations. State licenses are valid for one year.

3. *Emergency Regulations:*

The emergency regulations issued by the state are extensive, comprehensive and technical depending on the type of cannabis operation. Notwithstanding, below are some standards worth highlighting:

- Local compliance verification is required before the state issues a license.
- Cannabis operations must be at least 600 feet from sensitive sites, such as schools, youth centers and day care centers. Local ordinances can be more restrictive.
- Owners of a commercial cannabis business must submit fingerprints, information regarding any criminal convictions, and disclose whether they have a financial interest in any other commercial cannabis business licensed under MAUCRSA.
- Security measures are required at licensed premises, including employee badges, designated limited-access areas, and security personnel; 24-hour video surveillance for areas containing cannabis and cannabis products, as well as all entryways and exits; retailers must also have video surveillance in point-of-sale areas and security personnel; and alarm systems.
- Applicant for a license with more than 20 employees must either: attest that they have entered into a labor peace agreement and that they will abide by the terms of the agreement, and provide a copy of the agreement to BCC; or, provide a notarized statement indicating the applicant will enter into and abide by the terms of the labor peace agreement.
- As noted above, there are additional and separate requirements by license type, which the operators are required to adhere, and the state to enforce.

- Cultivation applicants will be required to demonstrate California Environmental Quality Act (CEQA) compliance. This may be achieved by a local jurisdiction completing a site-specific analysis or the applicant providing a CEQA documents to be certified by the lead agency.

- There are specific waste management laws concerning cannabis waste.

4. State Tax:

- Excise tax is fifteen (15) % of the average market price of any retain sale by a cannabis retailer.

- The excise tax is in additions to the sales and use tax imposed by state and local governments.

- The law also imposes a cultivation tax of \$9.25/dry-weight ounce (flowers) and \$2.75/dry-weight ounce (leaves) on the privilege of cultivating cannabis.

- Local agencies that ban cultivation or retail sales of cannabis are not eligible for grants from taxes generated.

C. Federal Preemption, Enforcement and Recent Development at the Federal Level:

Cannabis remains an illegal Schedule 1 drug. In January 2018, Attorney General Jeff Sessions issued a federal memorandum concerning the enforcement of cannabis, rescinding any previous guidance issued by former administrations on the regulation of cannabis. The memorandum explicitly directs all United States Attorneys to use previously established prosecutorial principles to “disrupt criminal organizations, tackle the growing drug crisis, and thwart violent crime.” Federal prosecutors, in essence, are given the discretion to actively enforce, but to also simultaneously take into consideration the Department of Justice’s limited resources, the seriousness of the crime and the deterrent effect that they could impose, when deciding whether charges are appropriate.

However, as recent as June 7, 2018 a bipartisan congressional bill was introduced to remove the federal ban on cannabis, which the passage of same would dramatically reshape the nation’s legal landscape for commercial cannabis businesses. In response, President Donald Trump stated that he would “probably” support the bipartisan congressional bill.

On June 11, 2018, seven mayors formed a coalition to advocate for a federal marijuana policy reform. Specifically, mayors from the cities of Denver, Seattle, Portland, San Francisco, Los Angeles, Las Vegas and West Sacramento sponsored a resolution at the U.S. Conference of Mayors in Boston that asked the federal government to remove cannabis from a list of illegal drugs, among other things.

D. What are other Cities Doing: Sample Summary of City Ordinance:

Please see the attached summary chart for six (6) different municipalities, with applicable ordinances, including from Cudahy, Culver City, El Monte, Long Beach, Montebello, and West Hollywood, to provide the City a fair sampling of how other cities are regulating cannabis businesses within their jurisdiction.

The summary outlines the categories and types of operations allowed; what land use and operational approvals, permits and/or licenses are required; each cities' application, review and approval procedures; zones the businesses are allowed to operate in, and required buffer distances from sensitive uses; and what tax or fee structure each permitting system has. Reviewing these general umbrella provisions in ordinances will provide the City with a fair sampling of the different approaches each City has.

E. Where do we go from Here: City of Commerce's Options and Considerations:

1. Regulate Certain Commercial Cannabis Activities:

The City may opt to allow and regulate some or all commercial cannabis uses and activities, by implementing an ordinance with a permitting and regulatory structure. The City would need to adopt corresponding land use and business regulations, and impose corresponding fees. The City could also impose additional fees on selected and permitted cannabis operators through Development Agreements, which may be negotiated and ultimately mutually agreed upon by the City and said operators. For example, the fees may be in the form of a percentage of gross revenues and/or a rate for the square footage of a facility.

The City may also impose taxes on adult-use businesses to cover costs incurred with licensing, regulation, tax collection, enforcement, auditing, etc. Any tax imposed would require voter approval.

If the City decides to permit and regulate any of the uses or activities currently prohibited in the City's zoning laws, Council would need to direct the City Attorney's office, with the support of City staff, to initiate code amendments. Code amendments may need to be reviewed by the Planning Commission first, such as any zoning law amendments, and ultimately need the approval and adoption by the City Council. This is the recommended approach.

2. Continue to Prohibit All Commercial Cannabis Activities:

If the City opts to continue to ban all commercial cannabis activity citywide, then Ordinance 691 will remain in place. However, said Ordinance is set to expire in November 2018. At that time, City Council has the ability to extend the moratorium for an additional year. The City Council may also adopt an ordinance to permanently ban commercial cannabis activity citywide at any time before the moratorium expires.

F. If the City Council opts to explore regulation of cannabis activities, it could direct staff to review the matter further and return with recommendations or

provide feedback or direction on the major provisions, topics, standards and regulations, which are as follows:

1. Type:

The two types are Medicinal and Adult-Use. The City may consider allowing one type, both types, or the type depending on the allowed business classification(s).

2. Classifications Allowed:

Classifications are based on the state licenses issued: Cultivation, Manufacturer, Distributor, Testing Laboratory, Retailer, and Microbusiness.

3. Explicit Prohibited Cannabis Activities and Businesses:

Explicit prohibitions may be included, if the City Council desires, such as retail storefront businesses.

4. Locations Where Businesses will be Allowed:

The City may allow businesses in specified zones only and/or it may establish a special overlay zone (e.g., similar to the S-Overlay zone).

- Additional Consideration: Distances from sensitive sites, and what is considered a “sensitive site.” Staff is prepared to generate maps showing current state-required buffer zones of 600’ from schools, parks, day care centers, and youth activities based on sites identified. City staff is prepared to generate maps to reflect where businesses would be allowed based on different minimum distance requirements from additional sensitive sites, as well as different distances from such sites (e.g., 1,000’ vs. 600’). Note: buffer zones may change in the future as sensitive uses are established (new uses) or existing uses cease to exist.

5. Minimum Application Requirements:

- General Comment: In addition to the state application requirements, the City may impose additional minimum application requirements, which may be considered as an initial screening process, and/or as part of a merit-based, scoring system.

6. Type of Approval(s), License(s), Permit(s), and/or Land Use Entitlement(s) Required to Establish a Commercial Cannabis Business:

- General Comment: Authorization to establish a business may come in the form of a ministerial license, where it is issued by right; a regulatory permit or license, where the City is allowed to impose terms; and/or through land use approvals that may be negotiated and/or approved by the Planning Commission and/or City Council. This does not affect the requirement to obtain state-issued license which will also be required.

7. Review and Approval Process:

- General Comment: Matters to consider include types of review and approval processes (allowed “by-right”, approved by body, or negotiated); single or multiple stages of review and approvals (*i.e.*, initial screening, if meet minimum requirements move to next phase, *etc.*); individual(s) or bodies reviewing and approving applications, making recommendations to other bodies, and/or issuing final approvals.

8. Tax and Revenue Structures:

- General Comment: The City may impose fee or tax structures (tax requires a ballot measure), or a combination of both; a specific fee or tax may be designated based on a percentage of gross revenue or square footage of a facility, or a fee may be negotiated; and a designation of City fund(s) where revenue will be allocated, including whether the City wants to establish community based program(s), and require applicants to fund same.

9. Compliance and Enforcement Provisions:

- General Comment: Provisions to serve as a deterrent for those businesses operating unlawfully without City approvals, and to ensure compliance is continuous for those approved businesses, as well as the implementation of enforcement tools to allow law enforcement, Code Enforcement, and other City staff to effectively monitor approved businesses, and terminate illegal operations.

10. Any Additional Operational Provisions Important to the City:

- General Comment: additional standards the Council desires to impose as a term in an ordinance under any topic, including those listed hereinabove.

ALTERNATIVES:

1. Approve staff recommendation (E.1 – Regulate Commerce Cannabis Activities)
2. Provide staff with further direction

FISCAL IMPACT:

The recommended action can be carried out without additional impact on the current operating budget.

RELATIONSHIP TO STRATEGIC GOALS:

The subject matter is consistent with Economic Growth Guiding Principle #4 of the City’s Strategic Plan. This Guiding Principle calls for a focus on strategic economic development pursuits that will increase local jobs, generate additional revenue and create demand for supporting businesses.

Approved as to form: Norma Copado, City Attorney
Respectfully submitted: Norma Copado, City Attorney

Attachments:

Summary of Sample Cannabis Ordinance – 1 Chart (6 pages)
Six (6) City Ordinances