Legislation Details (With Text)

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Title:	Action on an Amendment to Zoning Code Chapter 18.102 - Regulation of Marijuana (Cannabis) [Council Pillar: Enhance Community Engagement and Transparency]		
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Attachments:	1. Ordinance Version 1, 2. Ordinance Version 2 Planning Commission Recommendation, 3. POST MEETING MATERIAL, 4. PASS TO PRINT ORDINANCE NO. 2018		

Date	Ver.	Action By	Action	Result
4/28/2020	1	Council and Authorities Concurrent Meeting	Approved	

REPORT TO COUNCIL

SUBJECT

Action on an Amendment to Zoning Code Chapter 18.102 - Regulation of Marijuana (Cannabis) [Council Pillar: Enhance Community Engagement and Transparency]

BACKGROUND

The passage of Proposition 64, the Adult Use of Marijuana Act (AUMA), on November 8, 2016, legalized personal recreational use by persons 21 and over, and regulated commercial activities related to cannabis. Subsequently, the State legislature passed Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), unifying regulations on medical and non-medical commercial cannabis activities and the personal use of cannabis.

Prior to January 2018, the California State Bureau of Cannabis Control (“State”) adopted regulations allowing for six general license types for commercial cannabis businesses: retail (including delivery); cultivation; manufacturing; transportation; distribution; and testing. For issuance of a State license the State requires, among other items, a local license if local regulations have been enacted. The State regulations would apply to any local jurisdictions which did not have local regulations in place prior to January 1, 2018. A local jurisdiction could subsequently relax their regulations to align with the State’s, but not adopt regulations more stringent than those in place on January 1, 2018.

To maintain the City’s ability to develop a local regulatory approach, on November 21, 2017 the City Council adopted an Ordinance which temporarily prohibited all commercial cannabis activity until January 1, 2019 and which also imposed reasonable restrictions on marijuana growth for personal use. (The terms marijuana and cannabis are identified as interchangeable in the Municipal Code.) This Ordinance was further amended on November 27, 2018 and May 21, 2019 to extend the temporary ban of all commercial cannabis activity until June 30, 2020. These extensions were made to allow staff additional time to conduct research and respond to regulatory, taxing, law enforcement

and revenue questions raised by the City Council.

Over the past three years staff has provided the City Council with several updates on potential cannabis regulations. Recently, on February 11, 2020, staff provided information on the following topics: the impact of a potential commercial cannabis program on staffing resources; the City's historical experience with the operations of Angel's Care, an unpermitted medical dispensary previously located in Santa Clara; the implementation and management of cannabis programs in other cities; fiscal impacts; and cash management considerations.

Research conducted by staff indicated that implementation of the commercial cannabis program would require two additional police positions at a total annual cost of $524,112. While the Cannabis Business Permit regulatory fee would provide full cost recovery for direct permitting and regulatory costs, the fee would *not cover* any additional work efforts associated with investigating and responding to illegal cannabis sales activities by unpermitted cannabis businesses, illegal narcotic organizations/groups, tax evasion, or other financial crimes. The fee would also not cover the cost of police response to associated or derivative criminal activity, such as theft. Cannabis-related investigations would also require additional staffing resources from other departments, including the City Attorney's Office, City Manager's Office and Finance Department.

The commercial cannabis industry is traditionally a cash-heavy industry due to a hesitance for many businesses in the industry to deposit profits into federally regulated banks. While some credit and other non-cash payment methods are being developed within the industry, payment of taxes and other regulatory fees still present additional regulatory challenges.

Staff also communicated that significant staffing resources would be needed to develop Health and Safety, Business License, and Land Use (Zoning) regulations to complete the development of a commercial cannabis program in Santa Clara. It was also noted that State and local jurisdictions have not achieved the level of cannabis tax revenue as anticipated. As a result, other jurisdictions have been reducing their budget projections and/or exploring the possibility of relaxing requirements to open and/or operate a commercial cannabis business.

At the February 20, 2020 City Council meeting, the Council reviewed information presented by staff indicating significantly reduced revenue projections and describing the regulation and staffing required to implement commercial cannabis policies. As a result of this information, particularly the reduced revenue expectations and greater law enforcement implications, the Council directed staff to prepare a non-temporary ban on commercial cannabis activity within Santa Clara.

DISCUSSION

Staff has drafted an ordinance response to the direction provided by the City Council. The proposed ordinance would amend two sections of Chapter 18.102 ("Regulation of Marijuana") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California". The proposed amendment to Section 18.102.010 ("Commercial Marijuana Activity Prohibited") would prohibit all commercial cannabis activity in Santa Clara. The proposed amendment to Section 18.102.030 ("Transport and Delivery of Marijuana") would also prohibit marijuana delivery services originating in Santa Clara. The amendment would also modify references in these sections and the chapter to use the term "Cannabis" in place of "Marijuana", consistent with current practices, and add a definition of "Cannabis" to Chapter 18.06 ("Definitions").

The Planning Commission considered the proposed amendment to prohibit commercial cannabis activity in Santa Clara at their meeting on April 8, 2020. No members of the public appeared to speak

on the item. Following staff presentation, the Commission discussed possible modifications to the proposed ordinance and their concerns that the prohibition would result in a loss of potential revenue for the City. The Commission also discussed the implications of the State legalization, concern for youth access to cannabis, the conflict arising from the tacit promotion of drug use for recreational purposes (by creating a permit process) given the City's long standing DARE program, and questions on the estimated costs for enforcement.

Following their discussion, the Commission supported the proposed ordinance to prohibit commercial cannabis activity (6-1-0), but with the stipulation that the ordinance be revisited prior to February 28, 2021. They also noted that potential revenue or cost savings could be achieved while addressing other concerns by limiting the commercial activity to retail storefronts only.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is a potential loss of tax revenue by creating a ban on commercial cannabis activity in the city. As a general estimate, in the past, municipalities expected to generate $10-$20 per capita on an annual basis. Applying this factor to Santa Clara, a local cannabis tax measure was projected to generate $1.2 to $2.4 million annually. However, it should be noted that the amount of revenue generated for local jurisdictions with relatively new commercial cannabis programs has been less than their original projections.

As part of the updated Ten-Year General Fund Forecast presented to the City Council in January 2020, the ongoing revenue estimate of $1.2 million from Cannabis Tax was removed from the Forecast.

COORDINATION

This report has been coordinated with the City Attorney's Office and Police Department.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <mailto:clerk@santaclaraca.gov>.

ALTERNATIVES

1. Approve introduction of Ordinance amending Chapters 18.06 ("Definitions") and 18.102 ("Regulation of Marijuana") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" to prohibit all commercial cannabis activity (Version 1);
2. Do not approve introduction Ordinance amending Chapters 18.06 ("Definitions") and 18.102 ("Regulation of Marijuana") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" to prohibit all commercial cannabis activity; or
3. Approve introduction of Ordinance amending Chapters 18.06 ("Definitions") and 18.102 ("Regulation of Marijuana") of Title 18 ("Zoning") of "The Code of the City of Santa Clara,

California" to prohibit all commercial cannabis activity with an added sunset clause that would cause the commercial cannabis ban to expire on February 28, 2021 (Version 2) as recommended by the Planning Commission.

RECOMMENDATION

Alternative 1:
Approve Introduction of Ordinance amending Chapters 18.06 ("Definitions") and 18.102 ("Regulation of Marijuana") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" to prohibit all commercial cannabis activity.

Reviewed by: Andrew Crabtree, Director of Community Development
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Ordinance (Version 1)
2. Ordinance (Version 2) Planning Commission Recommendation