



## Agenda Report

19-474

Agenda Date: 5/7/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Action on an Amendment to Zoning Code Section 18.102.010 - Commercial Marijuana Activity Prohibited

#### **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.

As of January 2018, California State ("State") licensing of commercial activity, depending on license type, is overseen by the Bureau of Cannabis Control, the Department of Public Health, and the Department of Food and Agriculture. State regulations allow for six general license types for commercial cannabis businesses: retail (including delivery); cultivation; manufacturing; transportation; distribution; and testing. Prior to the issuance of a State license, the State requires, among other items, a local license if local regulations have been enacted.

On November 21, 2017, the City Council adopted Ordinance No. 1973, which amended Chapter 18.102 ("Regulation of Marijuana"; previously, "Medical Marijuana Dispensaries") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" to temporarily prohibit all commercial cannabis activity until January 1, 2019 and to impose reasonable restrictions on marijuana growth for personal use.

On November 27, 2018, the Council adopted Ordinance No. 1990, which amended Chapter 18.06 ("Definitions") and Chapter 18.102 ("Regulation of Marijuana") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" to extend the temporary ban of all commercial cannabis activity until June 30, 2019.

On January 16, 2019, California's three State cannabis licensing authorities announced that the Office of Administrative Law (OAL) approved State regulations for cannabis businesses across the supply chain. The new cannabis regulations were effective immediately. Staff has been working with the City's consultant, SCI Consulting Group, to ensure that the remaining City regulations comply with the new State regulations.

On February 19, 2019, staff presented to the Council an update on current commercial cannabis policy implementation efforts. The Council requested staff to bring back information on key items, such as a cost analysis, potential impacts of a commercial cannabis program on staffing resources, and other cities' implementation and management of a commercial cannabis program. Staff

communicated at the City Council meeting that more time is needed for staff to develop and bring forward the remaining ordinances and resolutions regulating commercial cannabis businesses in the City of Santa Clara and would return with an ordinance to extend the temporary ban on all commercial cannabis activities until 2020. Staff is currently gathering the information requested by Council and will present it at a subsequent meeting.

### **DISCUSSION**

The proposed amendment to Section 18.102.010 ("Commercial Marijuana Activity Prohibited") of Chapter 18.102 ("Regulation of Marijuana") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" will extend the temporary ban of all commercial cannabis activity to June 30, 2020. Due to other time sensitive and competing priorities, staff requires more time to prepare the analysis requested by the City Council and following further Council discussion then to either 1) develop and bring forward the remaining ordinances and resolutions regulating commercial cannabis businesses in the City of Santa Clara or 2) bring forward a permanent ban on commercial cannabis activity.

If Santa Clara's temporary ban is not extended, State law would allow commercial cannabis businesses to seek permits from the State to operate in the City without any local control over such businesses starting July 1, 2019.

The Planning Commission considered the proposed amendment to extend the temporary ban of all commercial cannabis activity at the April 24, 2019 Planning Commission hearing. Following public testimony, the Planning Commission voted 4-1-1 to recommend to the City Council adoption of the proposed amendment. The Commission discussed recommending an earlier date to end the temporary moratorium and the need to create regulations in order to collect tax revenue, reduce the black-market trade, and ensure State law (AB 1356) does not preempt local regulation or prevent the City from crafting regulations better suited for the community. Staff conveyed that the proposed date provides sufficient time for staff to return to City Council with specific information requested at the February 19, 2019 City Council meeting and continue to work on the necessary documents for issuing commercial cannabis permits in Santa Clara. During public testimony, one speaker cautioned the Planning Commission that a delay in the City acting on regulating commercial cannabis may result in preemption by a pending State Assembly bill AB 1356 which would effectively compel cities that prohibit commercial cannabis activities to permit a certain number of commercial cannabis businesses to locate in those cities. It should be noted that the bill is in committee and at the time of this report, expressly states that it would not apply to cities that are creating regulations for cannabis sales.

### **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 loss of potential tax revenue until a regulatory framework is brought forward to Council for consideration, becomes effective, and commercial activity is operational.

**COORDINATION**

This report has been coordinated with the City Attorney's Office and Community Development 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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**ALTERNATIVES**

1. Introduce the Ordinance amending Section 18.102.010 ("Commercial Marijuana Activity Prohibited") of Chapter 18.102 ("Regulation of Marijuana") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" to temporarily prohibit all commercial cannabis activity until June 30, 2020;
2. Do not introduce the Ordinance amending Section 18.102.010 ("Commercial Marijuana Activity Prohibited") of Chapter 18.102 ("Regulation of Marijuana") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" to temporarily prohibit all commercial cannabis activity until June 30, 2020; or
3. Any other action taken by the City Council.

**RECOMMENDATION**

Alternative 1:

Introduce the Ordinance amending Section 18.102.010 ("Commercial Marijuana Activity Prohibited") of Chapter 18.102 ("Regulation of Marijuana") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" to temporarily prohibit all commercial cannabis activity until June 30, 2020.

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Ordinance