



City of San Leandro

Meeting Date: November 20, 2017

Staff Report

File Number: 17-650

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.G.

TO: City Council

FROM: Chris Zapata
City Manager

BY: City Attorney and
Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: Staff Report to Waive First Reading and Introduce an Ordinance of the City of San Leandro City Council adding Chapter 4-38 "Permitted Commercial Cannabis Activity" to the City of San Leandro Municipal Code

RECOMMENDATIONS

Staff recommends that the City Council waive the first reading and introduce the Ordinance adding Chapter 4-38 "Permitted Commercial Cannabis Activity" to the San Leandro Municipal Code

BACKGROUND AND SUMMARY

The intent and purpose of this ordinance is to codify declared and existing City Council policy regarding certain commercial cannabis activity (as defined below) in accordance with State law to promote the health, safety, morals, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to the Medicinal and Adult-Use Cannabis Regulatory and Safety Act (MAUCRSA).

Applicability and Prohibitions:

The ordinance codifies the particular commercial cannabis activities that are permitted within the City, namely the retail dispensing of cannabis for medicinal use, the testing of cannabis and cannabis products for either adult or medicinal use, the delivery of cannabis and cannabis products for medicinal use within the City, and the manufacture of cannabis products for either adult or medicinal use. The City Council has made no affirmative policy, and by this ordinance prohibits, the distribution, dispensing, and delivery of cannabis and cannabis products for Adult Use. This ordinance also explicitly prohibits the commercial cultivation of cannabis for either adult or medicinal use; it preserves the right of patients and primary caregivers to cultivate medicinal

cannabis for personal use. This ordinance is an affirmative statement to comply with State law, and ensures that local City regulations are not preempted by State law. Finally, this ordinance makes clear that dispensaries permitted by the City shall dispense, distribute, and manufacture cannabis and cannabis products for medicinal purposes only.

Enforcement:

Upon passage, this ordinance will be forwarded to the State. MAUCRSA requires a high-level of coordination between the State and the City. The City must provide to the State a copy of its ordinances related to commercial cannabis activity and the name and contact information for the person who will serve as the contact for the State's licensing authorities regarding commercial cannabis activity. The City has done that for the current ordinances, and named Andrew Mogensen, Planning Manager, in the City's Community Development Department as the City's contact person.

Prior to issuing a state license, the State will contact the City's contact that an application has been received for a commercial cannabis business within the City. With the passage of this ordinance, and the other ordinances passed by the City, the City will inform the State that medicinal cannabis dispensing/distribution, delivery services from medical cannabis dispensaries, manufacturing in medical cannabis dispensaries, manufacturing for medical and adult use of cannabis, and laboratory testing are permitted, but distribution and dispensing for adult-use, and cultivation for any purpose other than personal, are not permitted.

By: Richard D. Pio Roda, City Attorney



City of San Leandro

Meeting Date: November 20, 2017

Ordinance

File Number: 17-654

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: City Attorney and
Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: ORDINANCE of the City of San Leandro Adding Chapter 4-38 "Permitted Commercial Cannabis Activity" to Regulate Commercial Cannabis Activity In Accordance with State Law to Promote the Health, Safety, Morals, and General Welfare of the Residents and Businesses Within the City

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("MMRSA"), effective January 1, 2016, which establishes a comprehensive State of California licensing and regulatory framework for the cultivation, manufacturing, testing, distribution, transportation, dispensing, and delivery of medical cannabis, and which recognizes the authority of local jurisdictions to prohibit or impose additional restrictions on any such medical cannabis activity; and

WHEREAS, on June 27, 2016, Governor Brown approved Senate Bill number 837 ("SB 837"), effective immediately, which amends the MMRSA and renames it the Medical Cannabis Regulation and Safety Act ("MCRSA"); and

WHEREAS, on November 9, 2016, the Adult Use of Marijuana Act ("AUMA") was passed into law as a voter initiative by the voters of the State of California; and

WHEREAS, the AUMA legalizes the non-medical adult use of marijuana by adults age 21 and over, imposes taxes on the retail sale and cultivation of marijuana, and reduces penalties for marijuana-related crimes; and

WHEREAS, on June 27, 2017 Governor Brown signed the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The new law reconciles the differences between AUMA and MCRSA, and unifies the adult-use and medicinal markets within the same regulatory regime; and

WHEREAS, the City of San Leandro ("City") wishes to establish Chapter 4-38 to the City

Code to augment the City's current cannabis regulatory framework; and

WHEREAS, it is the purpose and intent of the City to regulate Cannabis in a manner that is consistent with California law and promotes the health, safety, and general welfare of the residents and businesses within the City, while limiting any negative impacts.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN LEANDRO DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein.

SECTION 2. City of San Leandro Municipal Code Chapter 4-38 (Permitted Commercial Cannabis Activity) is hereby added to the City of San Leandro Municipal Code, and is to read in its entirety as follows:

4-38-100 Intent and Purposes. The intent and purpose of this Chapter is to regulate Commercial Cannabis Activity (as defined below) in accordance with State Law to promote the health, safety, morals, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to the MAUCRSA. The goals of this regulation are to ensure the City's regulatory framework is not preempted by State law in the areas of Cannabis Distribution, Dispensing, Manufacture, Testing and Cultivation of Cannabis for Adult Use. It is City policy to permit the dispensing and retailing of medicinal cannabis in accordance with City of San Leandro Municipal Code Chapter 4-33, to permit the manufacture of medicinal cannabis products at City permitted dispensaries, to permit the manufacture and laboratory testing of cannabis products for medicinal and adult use, and to prohibit cultivation of cannabis, except for personal use that comports with State law.

4-38-200 Definitions. For purposes of this Chapter, the following definitions shall apply, unless the context clearly indicates otherwise:

- (a) "A-License" means a State License issued under Division 10, commencing with Section 26000 of the Business and Professions Code, for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician's recommendations or an interim license issued by the State for the same.
- (b) "A-Licensee" means any Person holding a State License under Division 10, commencing with Section 26000, of the Business and Professions Code for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician's recommendations or an interim license issued by the State for the same.
- (c) "Adult Use Cannabis" means the non-medical use of cannabis by adults of age 21 and over as permitted by MAUCRSA and other applicable State and City laws.
- (d) "Cannabis" shall have the same meaning as in Section 26000 of the Business and Professions Code.
- (e) "Cannabis Dispensary" or "Dispensary" shall be as defined in City of San Leandro Municipal

Code section 4-33-100(d), a collective, cooperative, or business that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away cannabis in the City for medicinal purposes to four (4) or more qualified patients and/or primary caregivers pursuant to California [Health and Safety Code <https://qcode.us/codes/othercode.php?state=ca&code=heasaf>](https://qcode.us/codes/othercode.php?state=ca&code=heasaf) Sections 11362.5 and 11362.7 et seq.

(f) “Cannabis Product” shall have the same meaning as in Section 11018.1 of the Health and Safety Code.

(g) “City” shall be the City of San Leandro.

(h) “City Council” means the current members of the City Council of the City.

(i) “City Manager” means the individual duly appointed by a majority of the City Council to serve in the capacity as executive officer of the City on a permanent or interim basis or such other official as designated by the City to fulfill such duties.

(j) “Commercial Cannabis Activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of Cannabis and Cannabis Products as provided for in this chapter and Division 10, commencing with Section 26000, of the Business and Professions Code.

(k) “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis.

(l) “Deliver” or “Delivery” means the commercial transfer or Delivery of Cannabis or Cannabis Products to a customer.

(m) “Distribution” means the procurement, sale, and transport of Cannabis and Cannabis Products between State Licensees.

(n) “Indoor Cultivation” means a Cultivation using exclusively artificial lighting.

(o) “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a Cannabis Product from such blends, extractions, or infusions.

(p) “Medicinal cannabis” or “medicinal cannabis product” means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

(q) “Mixed Light Cultivation” means a Cultivation facility using a combination of natural and supplemental artificial lighting.

(r) “Outdoor Cultivation” means any Cultivation conducted without the use of artificial lighting.

(s) “Person” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

(t) “State License” means a State License issued under Division 10, commencing with Section 26000, of the Business and Professions Code, and includes both an A-License and M-License as well as a testing laboratory License.

(u) “State Licensee” means a Person that has been issued a State License.

(v) “Testing” means the laboratory Testing of the quality, makeup, or purity of Cannabis and Cannabis Products as required by applicable State law.

4-38-300 Adult-Use Cannabis Activity Prohibited. All Commercial Cannabis Activity, including any that would be allowed under an A-License or to an A-Licensee or for Adult Use, and all Cultivation, including any Indoor Cultivation, Mixed Light Cultivation and Outdoor Cultivation, other than Cultivation for personal use in accordance with State law, is prohibited within the City, except as permitted by this Chapter.

4-38-400 Permitted Commercial Cannabis Activity. The following are permitted Commercial Cannabis Activity within the City of San Leandro:

- (a) Cannabis Distribution and Dispensing from a State Licensed medical cannabis dispensary that also has a City issued medical cannabis dispensary operating permit awarded pursuant to City of San Leandro Municipal Code Chapter 4-33, and a City-issued conditional use permit awarded pursuant to City of San Leandro Zoning Code Article 22;
- (b) Delivery of Medicinal Cannabis to patients and primary caregivers within the City of San Leandro from State Licensed Medical Cannabis Dispensaries;
- (c) The manufacture of Cannabis Product by a State Licensee in accordance with all City of San Leandro ordinances and regulations, including but not limited to the City of San Leandro Zoning Code and the City of San Leandro Administrative Code;
- (d) The testing of Cannabis and Cannabis Product within a laboratory by a State Licensee in accordance with all City of San Leandro ordinances and regulations, including but not limited to the City of San Leandro Zoning Code and the City of San Leandro Administrative Code.

4-38-405 State Licenses. Subject to the requirements of this Chapter, and in accordance with the MAUCRSA and Division 10, commencing with Section 26000 of the Business and Professions Code, the following State License classification types, including temporary licenses, will be allowed within the City:

- (a) Type 6-A or M - Manufacturer 1. (A - Adult Use; M - Medicinal) (Type 1 denotes manufacturers that do not use solvents in the manufacturing process)
- (b) Type 7-A or M - Manufacturer 2. (A - Adult Use; M - Medicinal) (Type 2 denotes manufacturers that do use solvents in the manufacturing process)
- (c) Type 8-A or M - Testing laboratory. (A - Adult Use; M - Medicinal)
- (d) Type 10-M - Retailer. (M - Medicinal)
- (e) Type 11-M - Distributor. (Distributor. (M - Medicinal)
- (f) Cannabis Dispensaries may also operate with a Type 6 M - Manufacturer 1 State License. Cannabis Dispensaries shall not operate with a Type 7 M - Manufacturer 2 State License.
- (g) Cannabis Dispensaries shall not operate with a Type 8 - Testing Laboratory, A or M State License.
- (h) Cannabis Dispensaries shall not operate with a Type 10 - A or M - Retailer (non-storefront) State License.
- (i) Unless determined by the City Manager that cross-permitting would negatively impact public safety, and unless otherwise provided herein, State License Types 6, 7, and 8 are for both commercial Adult-Use Cannabis activity and commercial Medicinal Cannabis activity.

4-38-500 Enforcement.

- (a) Any Commercial Cannabis Activity within the City in violation of this Chapter is hereby declared to be unlawful and a public nuisance.
- (b) Any Person who willfully or knowingly (i) engages in a violation of this Chapter or (ii) owns, possesses, controls, or has charge of any parcel of real property in the City upon which a violation of this Chapter is maintained and who has actual knowledge of such violation (or would have actual knowledge of such violation after a reasonable inquiry), shall be subject to the penalties and remedies provided by this Chapter.

(c) Any violation of this Chapter shall constitute a separate offense for each day the violation occurs or persists.

(d) Any Person in violation of any provision of this Chapter or who causes another Person to be in violation of this Chapter shall have committed a misdemeanor. In addition, such violation may be punishable by a fine of up to one thousand dollars (\$1,000) for each violation and for each day the applicable violation continues to persist.

(e) Any Person in violation of any provision of this Chapter may be subject to an administrative fine of up to \$1,000 per offense.

(f) These penalties and remedies are cumulative, and in addition to any other penalties and remedies available to the City.

(g) Any Person in violation of any provision of this Chapter shall be reported to the State Bureau of Cannabis Control, or other applicable licensing authority as defined in Section 26000 of the Business and Professions Code.

SECTION 3. Recognizing that there is a potential conflict between federal and State law, it is the City Council's intention that this Ordinance shall be deemed to comply with applicable State Law.

SECTION 4. The City Council determines that it is in the best interest of the residents of the City to allow Commercial Cannabis Activities in compliance with applicable State Law, including MAUCRSA, to be established and operated as permitted uses within certain areas of the City subject to the regulations and restrictions provided in this Ordinance, the City of San Leandro Municipal Code, the City of San Leandro Zoning Code, and the City of San Leandro Administrative Code. It is the City Council's intention that nothing in this Ordinance shall be construed to:

1. Allow a Person to engage in conduct that endangers others or causes a public nuisance.
2. Allow any activity relating to Cannabis that is otherwise not permitted under State law.

SECTION 5. The City Council finds that the actions contemplated by this Ordinance are exempt from the California Environmental Quality Act pursuant to Sections 15061 and 15305 of Title 14, Division 6, Chapter 3 of the California Code of Regulations, in that the Ordinance alone does not have the potential for causing a significant effect on the environment. Further permits and approvals will be required before any activity that will affect the environment will be permitted.

SECTION 6. If any section or provision of this Ordinance is for any reason held to be invalid, unconstitutional, illegal, or unenforceable by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, then such section or provision shall be severed and shall be inoperative, and the remainder of this Ordinance shall remain in full force and effect.

SECTION 7. By regulating Commercial Cannabis Activity, the City is only undertaking to preserve the general welfare through implementing the MAUCRSA. The City Council is not assuming, nor is it imposing on its officers and employees, an obligation for which a breach thereof would expose the City to liability in money damages to any Person who claims that such breach proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to any provision of this Ordinance or for the activities of any Person engaging in activities under this Ordinance. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Ordinance shall not become a personal liability of any public officer or employee of the City. Nothing in this Ordinance shall be deemed or considered in any respects to constitute authorization to violate any law.

SECTION 8. Publication and Effective Date. This Ordinance shall take effect thirty (30) days after adoption. The City Clerk of the City of San Leandro shall cause the Ordinance to be published in accordance with section 36933 of the Government Code of the State of California.