



City of Culver City

Staff Report

File #: 18-0234, **Version:** 1

Item #: A-1.

CC - (1) Discussion of Potential Regulations for Commercial Cannabis Businesses and Direction to Staff Regarding Commercial Cannabis Zoning and Regulatory Ordinances; and (2) Direction to the City Manager as Deemed Appropriate.

Meeting Date: September 11, 2017

Contact Person/Dept: Jesse Mays/Assistant to the City Manager

Phone Number: (310) 253-6000

Fiscal Impact: Yes No

General Fund: Yes No

Public Hearing: **Action Item:** **Attachments:**

Commission Action Required: Yes No **Date:**

Public Notification: (E-Mail) Meetings and Agendas - City Council (09/07/17); Marijuana GovDelivery e-mail list (09/08/17)

Department Approval: John Nachbar, City Manager (09/08/17)

RECOMMENDATION

Staff recommends the City Council (1) discuss the potential cannabis regulations and provide direction to the City Manager regarding the zoning and regulatory ordinances, discussed herein, that would permit regulated commercial cannabis activity in Culver City; and/or (2) provide other direction as deemed appropriate.

BACKGROUND

On February 13, 2017, the City Council considered a report on the City's options under the 2015 Medical Cannabis Regulation and Safety Act (MCRSA) and the 2016 Adult Use of Marijuana Act (AUMA), also known as Proposition 64. AUMA made major changes to cannabis policy throughout the state. For example, retail outlets for the sale of medicinal use and adult-use cannabis, along with other cannabis based businesses will be licensed by the state of California beginning January 2, 2018. In June, 2017, the governor signed the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"), in effect combining the medical and adult use cannabis schemes into one regulatory framework.

Culver City has previously not permitted cannabis businesses within the city. The City Council's Strategic Plan, Goal Five ("Identify New Revenue Sources to Maintain Financial Stability"), Objective One ("Potential Retail Marijuana Excise Tax") states that City Council will consider whether cannabis retailers/dispensaries will be permitted in Culver City. If permitted, the City Council would consider a cannabis business tax for placement on the ballot during the April 2018 municipal election.

Marijuana Task Force

The City Council created the Marijuana Task Force on February 27, 2017 to obtain community input and help the City develop an approach to regulating cannabis. The Task Force includes two City Council Members, a Planning Commissioner, a Finance Advisory Board member, and a Disability Advisory Board member, supported by the City Manager, the City Attorney's office, and staff with expertise in finance, planning, economic development, code enforcement, fire and life safety, police, and public works. On May 8, 2017, the City Council also engaged a consultant with marijuana policy expertise, Hinderliter, de Llamas and Associates (HdL) in order to assist with the development of regulations.

The Marijuana Task Force has held six meetings, which were all widely advertised, open to the public, and broadcast live on television. The meetings were held at a variety of times (including on Saturday and two night meetings) in order to accommodate as many people as possible who might want to attend. Each meeting was attended by approximately 50 members of the public, many of whom attended every meeting. Extensive public comment was received at every meeting.

Online Public Input

The City webpage established to collect input on this issue (<http://www.culvercity.org/marijuana>) has garnered 14 public comments. City posts to Facebook and Nextdoor.com about the issue have generated many comments and a relatively high-level of public discussion among commenters. The Task Force has also received numerous emails.

DISCUSSION

The Marijuana Task Force is recommending the City Council permit regulated commercial cannabis activity in Culver City. This includes permitting businesses in each of five different types of commercial cannabis activity:

1. **Retail Sales:** Cannabis retailers include both storefront and delivery only retailers. Storefront retailers would offer cannabis and cannabis products for sale to customers at a fixed location, and may also provide deliveries. Delivery only retailers would not operate a storefront, however, they would operate out of a fixed facility, but conduct sales exclusively via delivery.
2. **Manufacturing:** State law separates Manufactures into two types: (1) those who use non-volatile solvents for extraction, or no solvents (businesses that infuse the extracted concentrates into "edibles"), and (2) those who use volatile solvents in the extraction process. The state will be issuing different types of licenses depending on the process used.
3. **Distribution:** Cannabis distributors procure, sell, and transport cannabis and cannabis products between licensees. In other words, they are business to business (not to be confused with deliverers, who are business to consumer). Distributors are licensed by the state to perform transport, collect state excise tax, and verify quality control (including testing). A city cannot

prevent a distributor from using its roads.

4. *Cultivation*: Cultivation businesses are engaged in the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. Such activities can take place indoors, outdoors, or in mixed-light conditions.

5. *Testing*: A cannabis testing laboratory is a facility that tests cannabis or cannabis products, for potency, purity, and chemical composition, among others.

The Marijuana Task Force has provided comments and suggestions to staff and HdL on possible commercial cannabis and zoning regulations, including reviewing two drafts of a commercial cannabis regulatory ordinance. A summary of the proposed regulatory structure is presented below.

Policy Considerations

1. *Maximum Number of Businesses*: The proposed regulatory ordinance allows the City Council to determine via resolution a maximum number for each type of cannabis business. The City Council could also approve no maximum number for each business type. The numbers discussed by the Marijuana Task Force are as follows:

<i>Business Type</i>	<i>Maximum Number of Businesses</i>
Storefront Retail	6
Delivery Only Retail	10
Manufacturing	6
Distribution	6
Cultivation (Indoors)	3
Testing	4

Note that the 10 delivery retailers would be inclusive of any of the storefront retailers that may also deliver. Thus, if six storefront retailer permits are issued, and all six include delivery, only four permits would be available for delivery only.

2. *Buffer between Retail Businesses*: The Marijuana Task Force discussed two options: requiring 600 feet between any two cannabis retail storefronts, or not requiring a certain distance between retail cannabis outlets.

3. *Buffer between Residential Zones and Retail Businesses*: The Marijuana Task Force discussed two options: (a) requiring a buffer between residential zones and cannabis retail storefronts (such as 100-200 feet); or (b) not requiring any buffer between residential zones and cannabis retail storefronts.

4. *Parks and Playgrounds*: The state does not include parks and playgrounds in its list of sensitive receptors. The Task Force discussed the option of including parks and playgrounds on its list of sensitive receptors, which would require a 600 foot buffer between any cannabis business and a park or playground.

Proposed Commercial Cannabis Zoning Code Amendment

In order to permit cannabis related businesses within the City, the business types must be included in the Culver City Municipal Code (CCMC), Title 17 - Zoning Code. Since the existing zoning code is “permissive” (permits only what is listed), cannabis uses are not currently permitted in the City. Concurrent with the consideration of the Regulatory Ordinance explained below, the proposed zoning text amendment will integrate the cannabis related business types (i.e. retail, distribution, manufacturing, testing, and cultivation) into the City’s existing definitions of land uses that are already addressed within the CCMC.

Attachment 1, “Incorporation of Cannabis Business Types into CCMC,” outlines where the cannabis related business types are proposed to be incorporated into existing permitted land uses within the CCMC, and in what corresponding zone designations such uses are permitted.

Although the cannabis business types are proposed to be listed as a “permitted use” within the respective existing land use type, such uses will not be permitted without adhering to the process established by the below Regulatory Ordinance and subsequent resolution adopted by City Council.

Proposed Commercial Cannabis Regulatory Ordinance

The purpose of the City’s commercial cannabis ordinance is to impose reasonable regulations on the use of and to protect the City’s residents, neighborhoods, and businesses from disproportionately negative impacts of cannabis. In addition, the regulations protect the public’s health, safety, and welfare, while at the same time provide access to cannabis for medicinal purposes, and provide access to adult-use of cannabis for persons over the age of 21.

A summary of the components of the proposed Regulatory Ordinance is as follows.

1. **Permit Required:** Commercial cannabis businesses are required to obtain a permit from the City to engage in commercial cannabis business within the City’s jurisdiction. They are also required to operate in compliance with all state and local laws, including obtaining a state license. Finally, they are required to obtain a City business tax certificate.
2. **Maximum Number and Type of Business:** The maximum number of businesses of each type will be determined by City Council resolution. The City Council will retain the discretion to permit fewer than the maximum, or none of each type of business. The City Council may reassess the maximum number of permits annually.
3. **Application Procedure:** City Council will adopt via resolution the application process and the manner the decision will ultimately be made regarding the issuance of permits, including a set of objective review criteria for each type of business. Applicants will submit an application fee that will cover the City’s costs associated with reviewing and processing the permit application. Part of the application process will be obtaining all required land use approvals from the Community Development Department. Applicants will have to provide evidence of a legal right to use their proposed location. Applicants must submit fingerprints and other information to the Culver City Police Department in order to clear a background check.
4. **Permittee Selection Process:** Applicants who are found qualified based on the review criteria will be presented to the City Council for a final determination at a public City Council meeting, where Applicants may be invited to give a presentation. Prior to the City Council meeting, a separate open meeting will be held where the public may comment on the proposed businesses.

Notice of the public meeting will be sent to all property owners and occupants within 1000 feet of the proposed business location. Issuance of the permit will not constitute a land use entitlement. No permit will be issued until all relevant departments have approved the location, site plan, etc., and all inspections are conducted by Building & Safety, Fire Prevention, and any other relevant agency.

The City may reject any application if it is in the interest of the health, safety, and welfare of the community, or for an enumerated list of reasons, such as the application is late, incomplete, the applicant has failed to pay the application fee, the applicant has included false, misleading, or fraudulent statements, or omitted fact. Additionally, the application may be denied if the applicant, owner, or manager has within the past three years operated a cannabis retailer in the state without necessary permits; the applicant has been convicted of serious crimes; or the applicant is under 21 years of age. If denied, the applicant may not file another application for one year from the date of the denial. Each successful applicant will also be required to submit a permit fee that will cover the costs of administering the program. Permits will expire 12 months after issuance.

5. *Permit Renewal and Permit Revocation:* Permittees are required to apply for a renewal on an annual basis. The renewal application will contain all the information required in the initial application. The applicant will pay a renewal application fee set by City Council to cover the costs to process the permit application renewal. The City Manager will determine whether to renew a permit, and denials are appealable to City Council. There will be an annual permit fee. Renewal permits may be denied on certain enumerated grounds, including if the business has not been continuous business for the four months prior, if the business is unable to renew a state license, and other grounds if facts are discovered that are different from what was in the initial application.

The City may revoke a permit if the Permittee fails to comply with the City's commercial cannabis ordinance or state law, if the state license is revoked, if the permittee, owner or manager has operated within the past three years a cannabis retailer in the state without the necessary permits; or conviction within the past certain number of years of enumerated serious crimes. If any state agency suspends or revokes any of the permittees licenses, then the Culver City permit is automatically suspended or revoked.

6. *Appeals Process:* Appeals may be filed by permittees who have had their permit revoked or suspended, or permit renewals denied. If the appeal is filed in a timely manner, termination, suspension, or denial is stayed until the resolution of the appeals process. The City Council may preside over the appeal hearing, or appoint a hearing officer under certain circumstances. The City Council or hearing officer will hear the appeal and issue a decision, which is final, but appealable to the Superior Court.

7. *Transfer and Change in Location:* Under the proposed ordinance, commercial cannabis business permits are non-transferrable, and only valid at the approved location. The permits are non-saleable. The ordinance will contain provisions to allow for changes in business location, but only upon the approval of City Council. Changes in ownership require the proposed owner to submit a new application and meet all the criteria required of the original owner. The proposed ordinance will also contain provisions for partial changes in ownership, stock transfers, partnership changes, changes in business name, and the like.

8. Limits on City's Liability: Permittees must agree to indemnify, defend, and hold harmless the City for any claims related to the City's issuance of the commercial cannabis business permit. They must maintain certain levels of insurance, and agree to reimburse the City for any attorneys' fees.
9. Records and Recordkeeping: Permittees are required to maintain financial documents and submit them annually to the City. They are required to complete an annual third-party audit, which is submitted to the City. The names and contact information for any owners or employees are to be kept and provided to the City on request. All records are required to be kept for seven years, consistent with state law. An inventory control system is required. The business is required to open its books for the City on request.
10. Security Measures: In order to deter theft and prevent crime, commercial cannabis businesses are required to have robust security measures which include the following:
- Prevent individuals from remaining on site who are not engaging in activity directly related to the operations of the business.
 - Establish limited access areas of the business accessible only to authorized personnel.
 - Secure all non-live-growing cannabis and cannabis products in a secured room or safe.
 - Install 24-hour security surveillance cameras that are remotely accessible by the Culver City Police Department (CCPD).
 - Install entry/exit sensors.
 - Install panic buttons.
 - Maintain a monitored alarm system.
 - Install any bars on the inside of the building only.
 - Have licensed security personnel on-site 24 hours a day, subject to the prior review and approval of the CCPD.
 - Have the capability to remain secure during a power outage.
 - Designate a security contact available to meet with the CCPD.
 - Submit a storage and transportation plan during the application process.
 - Cooperate with the City when it asks to inspect or audit the business' security plan.
 - Notify the Culver City Police Department of any actual or suspected criminal activity.
11. Alcohol and Tobacco Sales: Consistent with state law, commercial cannabis businesses are prohibited from selling alcohol or tobacco products or allowing their use on the premises.
12. Operating Requirements - All Businesses: The proposed ordinance will contain operating requirements that pertain to all businesses, and separate requirements that are particular to each type of business. Some of the general operating requirements are as follows:
- No operation within 600 feet of a K-12 school, day care, or youth center in operation at the time the permit is issued. This is consistent with the state requirement. Day care center and youth center are defined in state law.
 - Operation will only be during the hours established by City Council resolution.
 - No on-site consumption is allowed.
 - Cannabis or cannabis products cannot be visible from the exterior of the property.
 - A point-of-sale or management inventory tracking system must be used.

- All state laws, regulations and standards must be followed.
- No physician evaluations are allowed to be done on site (for medicinal cannabis).
- A manager must be on site at all times.
- Signage must conform to the CCMC.
- Persons under the age of 21 will not be allowed on the premises, except in the case of medical marijuana patients, where the age is 18.
- Employees must be over the age of 21.
- Odor control devices and techniques must be used.

13. Operating Requirements - Storefront Retail: Storefront retail businesses, including both medicinal and adult-use, will be subject to the following additional operating requirements:

- No operation within 600 feet of another commercial cannabis storefront retailer.
- Medicinal retail must verify patients with the recommending physician.
- Age verification is required. No sales are allowed to anyone under the age of 21 years, or 18 years with a recommendation in the case of medicinal marijuana.
- Entrances must be locked with a “buzz-in” electronic/mechanical entry system used.
- Only the amount of cannabis anticipated to meet the day’s demand is allowed in the display area.
- Restroom facilities must remain locked.
- Devices for consuming cannabis, such as rolling papers and pipes, may also be sold.
- Certain advisory notices must be posted (such as warning that sale without a permit is prohibited, resale is prohibited, onsite consumption is prohibited, use of cannabis impairs ability to drive a motor vehicle, and a Proposition 65 warning).
- If the storefront retailer will also offer deliveries, the requirements pertaining to delivery must also be met.

14. Operating Requirements - Delivery Only Retailers: Delivery only retail businesses, as well as storefront retail businesses who also deliver, are subject to the following operating requirements:

- Deliverers may only deliver to those customers in a city or county that does not expressly prohibit delivery.
- The business’ security plan must include provisions related to vehicle security and protection of employees and product during loading, unloading, and while in transit.
- Delivery vehicles must be equipped with point-of-sale technology to track and record each delivery and transaction, and a GPS system to track every vehicle.
- A list of all individuals conducting deliveries must be provided to the City, who must have valid driver’s licenses.
- Deliverers must have the delivery request, as well as a copy of the City permit, in their vehicle and make it available to the City on request.
- Vehicles used must be insured, allow the cannabis to be locked within the vehicle, has temperature controls, and does not display any advertising suggesting that it is used for cannabis delivery.
- The deliverer must verify the identification of the purchaser and the validity of the any patient’s physician recommendation.

15. Operating Requirements - Cultivation Facilities: Cannabis cultivation businesses are subject to the following operating requirements:

- Outdoor and mixed-light cultivation is prohibited.
- Except for signage, no exterior evidence of cannabis distribution from the public right-of-way.
- Except for employees, the general public is not allowed on the permittee's premises.
- The square feet of canopy cultivated is limited to the space permitted by state law and in the permit issued for the premises.
- Cultivation must be conducted in accordance with state and local laws on electricity, water usage, water quality, and discharges; and in accordance with federal, state, and local laws regulating pesticide and fertilizer use and disposal.
- Pesticides and fertilizers must be properly labeled and stored.
- Cultivation must be done in such a way so as to protect the health, safety, and welfare of the public and the environment, and to prevent diversion.
- Cannabis and cannabis products must be packaged and sealed in tamper-evident packaging and uniquely identified before transportation.
- Cannabis cultivators must submit along with their permit application: a cultivation and operations plan, including a plan for addressing odor and other public nuisances.

16. Operating Requirements - Manufacturing: Cannabis manufacturing businesses are subject to the following operating requirements:

- Except for signage, no exterior evidence of cannabis manufacturing from the public right-of-way.
- Except for employees, the general public is not allowed on the permittee's premises.
- Manufacturing must occur in compliance with state law and the detailed state regulations pertaining to the use of extraction with solvents, and adhere to other safety and manufacturing best practices, as specified by the Culver City Fire Department.

17. Operating Requirements - Distribution: Cannabis distribution businesses are subject to the following operating requirements:

- Except for signage, no exterior evidence of cannabis distribution from the public right-of-way.
- Except for employees, the general public is not allowed on the permittee's premises.
- The distributor may only procure, sell, or transport cannabis that is packaged and sealed in tamper-evident packaging that uses a unique identifier.
- The distributor must maintain a database of the names and vehicles it uses to conduct transportation.
- Individuals conducting transport must have a valid California driver's license, and maintain a physical copy of the transportation request and the City permit during transportation.
- Vehicles used must be insured, allow the cannabis to be locked within the vehicle during transportation, and be temperature controlled if used to transport perishable cannabis products.

18. Operating Requirements - Testing: Cannabis testing businesses are subject to the following operating requirements:

- Testing must take place in an enclosed, locked structure.
 - Except for signage, no exterior evidence of cannabis testing from the public right-of-way.
 - All testing is to be performed in accordance with state law and industry standard practices.
19. *Community Relations*: Each commercial cannabis business is to distribute the name and contact information for a community contact to whom problems can be reported to all businesses and residences within 100 feet of the business. During the first year of operation, and afterwards as requested by the City Manager, the business is required to attend quarterly meetings with the City Manager to discuss costs, benefits, and community issues.
20. *Violations, Penalties, and Enforcement*: Permittees and their responsible persons and managers are responsible for violations of the ordinance committed by any employee. Violations of the ordinance are a misdemeanor.

Changes to CCMC 11.01.075

The CCMC currently prohibits the City from issuing a business tax certificate to any use that is “illegal or unlawful under federal, state or City laws or regulations.” Since federal law still considers cannabis to be illegal, this section of the CCMC needs to be modified to allow the City to issue a business tax certificate to cannabis businesses operating with a City permit.

Timing Considerations

Commercial cannabis businesses may apply for a state license beginning January 2, 2018. However, due to the overwhelming number of applications, it is anticipated that it will take significant time for the state to issue permanent licenses. In order to accommodate businesses and consumers, state law provides for state agencies to issue temporary state licenses to business operating with a local permit. Commercial cannabis businesses of many types (including retailers, manufacturers, and delivery companies) have expressed significant interest in locating in Culver City.

Tax Ordinance

Based on the City Council Strategic Plan, City staff is currently working to prepare a draft tax ordinance, which is expected to be presented to the Finance Advisory Committee on September 13, 2017, for its input and discussion.

Personal Cultivation Ordinance

The aspects of AUMA regulating personal use and cultivation went into effect on November 9, 2016. Each private residence in Culver City is currently allowed to cultivate up to six cannabis plants. The City of Culver City is allowed to reasonably regulate personal indoor cultivation, and either regulate or ban outdoor personal cultivation. In order to ensure Culver City has timely, reasonable regulations in place for this activity which is newly permitted under state law, City staff is currently preparing a proposal for personal cultivation regulations for City Council’s considerations.

FISCAL ANALYSIS

There is no fiscal impact associated with this discussion item.

ATTACHMENTS

1. 2017-09-11 - ATT Cannabis Uses Zoning Table

MOTION

That the City Council:

1. Provide direction to the City Manager regarding the following:
 - A) An ordinance amending the Culver City Zoning Code to modify certain land use definitions to include commercial cannabis; and
 - B) A commercial cannabis regulatory ordinance; and
 - C) Accompanying resolutions necessary to enact the zoning and regulatory ordinances; and/or
2. Provide other direction to the City Manager, as deemed appropriate.