



City of Culver City

Staff Report

File #: 19-299, Version: 1

Item #: A-1.

CC - Adoption of an Urgency Ordinance Amending Section 11.17.115.A.5.a of Chapter 11.17 of the Culver City Municipal Code Clarifying When a Sensitive Receptor is Considered “in Existence” for the Purpose of Storefront Retail Cannabis Business Permitting (Four-Fifths Vote Required).

Meeting Date: September 24, 2018

Contact Person/Dept: Jesse Mays/Assistant to the City Manager
Lisa Vidra/Senior Deputy City Attorney

Phone Number: City Manager’s Office (310) 253-6000
City Attorney’s Office (310) 253-5660

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 (09/19/18); Cannabis (9/12/18)

Department Approval: Serena Williams, Assistant City Manager (09/19/18)

RECOMMENDATION

Staff recommends the City Council:

Adopt an urgency ordinance amending Section 11.17.115.A.5.a of Chapter 11.17 of the Culver City Municipal Code (“CCMC”) to clarify when a sensitive receptor is considered in existence for the purposes of storefront retail cannabis business permitting (**four-fifths vote required**).

BACKGROUND

In 1996, California voters approved Proposition 215, also known as the Compassionate Use Act (CUA), allowing medical marijuana use by qualified patients within the state, and providing qualified immunity against criminal prosecution in certain circumstances. In 2015, the California state legislature adopted the Medical Cannabis Regulation and Safety Act in 2015 (MCRSA), which provided comprehensive regulations for the operation of medical marijuana businesses. In

November 2016, California voters approved Proposition 64, known as the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), legalizing adult-use (recreational) marijuana within the state; and providing a regulatory scheme for adult-use marijuana businesses.

On June 27, 2017, the Governor signed Senate Bill 94, which repealed MCRSA and included provisions from MCRSA regarding medical marijuana in the AUMA, so that the regulations governing both medical and non-medical marijuana were contained under one regulatory structure. Senate Bill 94 renamed the AUMA as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). What was previously referred to as marijuana is now generally referred to as cannabis in state law and regulations. As of January 2, 2018, the state has been processing applications and issuing licenses for both medical and adult use cannabis businesses.

MAUCRSA expressly preserves a local jurisdiction’s ability to adopt and enforce local ordinances to regulate medicinal and adult-use cannabis businesses. On December 11, 2017, the City Council adopted a regulatory ordinance and a zoning ordinance to regulate the locations and operation of commercial cannabis businesses. Section 11.17.205.A of the regulatory ordinance established distancing requirements from schools providing instruction in kindergarten or any grades one (1) through twelve (12), day care centers, youth centers, or parks or playgrounds (collectively “sensitive receptors”) for cannabis storefront retail businesses. On March 26, 2018, the City Council amended the City’s commercial cannabis ordinance and moved the sensitive receptor distancing requirements to CCMC §11.17.115. Currently, the relevant sentence of §11.17.115.A.5.a reads as follows:

CCMC §11.17.115(A)(5)(a): “No storefront retailer shall be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, youth center, or park or playground, that is in existence at the time of the initial issuance of a Commercial Cannabis Business Permit from the City.”

The language “in existence at the time” is the same as used in the state law, Business and Professions Code Section 26054(b).

No cannabis storefront retailers are currently permitted in the City. Due to Culver City’s detailed and careful application review and scoring process adopted by the City Council, there will be a significant period of time from when cannabis permit applications are submitted and when any commercial cannabis business permit is actually issued (potentially six months or more). This could result in a sensitive receptor business accidentally or purposefully locating within 600 feet of a proposed cannabis retail storefront after the cannabis storefront has submitted an application, and/or proceeded through the majority of the application process, and/or after the cannabis storefront has received a conditional use permit from the City.

If this were to happen, under the current wording in the CCMC, the City would be prohibited from issuing the commercial cannabis business permit, even after significant time and resources had been expended. Another unintended consequence of the current ambiguity of the phrase “in existence” is that it might allow a cannabis storefront to open for business within 600 feet of a sensitive receptor that has a signed lease and received a City business tax certificate but has not yet formally opened for business.

DISCUSSION

Pursuant to Government Code Section 36937(b) and Culver City Charter Section 614, the City may introduce and adopt an urgency ordinance by a four-fifths vote on the same date, to preserve the public peace, health or safety, if the ordinance contains a statement of the reasons for the urgency.

In this instance, there are sufficient circumstances to support the adoption of the proposed urgency ordinance this evening. The application period for cannabis storefront retail applications closes on September 27, 2018. Staff wishes to ensure that this measure is in place by the time all applications are received. Staff believes this ordinance is necessary in order to protect sensitive receptor businesses as well as provide fairness to cannabis permit applicants. Keeping the current wording in place could create confusion over the interpretation of “in existence” and result in unintended consequences and an incompatible use if a storefront retailer locates within 600 feet of an unknown sensitive receptor.

To protect the public health, safety and welfare and the City’s rights to regulate cannabis businesses, and to promote the orderly development of any cannabis businesses in the City, staff recommends the City establish a different “cut off point” for the existence of sensitive receptors within 600 feet, as well as clarification as to when a sensitive receptor is considered to be “in existence.” A change in the language of Section 11.17.115.A.5.a will provide certainty-both to commercial cannabis storefront applicants and to sensitive receptors.

Staff, with the support of the City Council Cannabis Subcommittee, recommends that this point in time be the time at which the City receives the completed cannabis business permit application. At this point in time, to qualify as a sensitive receptor, staff proposes that a business show that it has been in operation as a sensitive use at the specific location; or show that it has a Culver City business tax certificate for the sensitive use at the specific location; or the City has received an application for a Culver City business tax certificate for the sensitive use at the specific location. In addition, staff recommends clarity for situations where a sensitive receptor may be planning to cease operation or relocate prior to the storefront retailer applicant being approved for permits.

CCMC Section 11.17.115.A.5.a would be revised as follows:

No storefront retailer shall be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, youth center, or park or playground (“sensitive receptor”), that is in existence at the time of the initial issuance of the City receives a Commercial Cannabis Business Permit application from the proposed storefront retailer City. One or more of the following factors may be considered by the City to determine if the sensitive receptor was in existence at the time of the City’s receipt of the commercial cannabis business permit application:

- (1) The sensitive receptor is open and operating;*
- (2) The sensitive receptor has a Culver City Business Tax Certificate for the specific location and sensitive use;*
- (3) The sensitive receptor has submitted a business tax certificate application to the City for the specific location and sensitive use and is undergoing construction or other tenant improvements at the specific location in question; and*

(4) Other factors that may indicate a sensitive receptor was in existence as determined by the City Manager.

Notwithstanding the foregoing, an application for a storefront retail Commercial Cannabis Business Permit may be deemed in compliance with this Section 11.17.115.A.5.a if evidence is submitted, to the satisfaction of the City Manager, that the sensitive receptor will cease operation at the location prior to the issuance of a building permit for the storefront retail location.

FISCAL ANALYSIS

There is no fiscal impact associated with this item.

ATTACHMENTS

1. 2018-09-24 - ATT Proposed Ordinance
2. Current CCMC Section 11.17.115

MOTION

That the City Council:

Adopt an urgency ordinance amending Culver City Municipal Code Section 11.17.115.A.5.a pertaining to sensitive receptors for cannabis retail storefront businesses.