



City of Culver City

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Staff Report

File #: 18-0508, Version: 1

CC - Public Hearing: (1) Introduction of an Ordinance Amending Culver City Municipal Code, Title 17, Zoning, Section 17.700.01 - Definitions of Specialized Terms and Phrases, Section 17.220.015 - Commercial District Land Uses and Permit Requirements, and 17.210.015 - Residential Zoning District Land Uses and Permit Requirements, Pertaining to Commercial Cannabis Activity and Personal Cannabis Cultivation; (2) Adoption of a Resolution Adopting Negative Declaration P2017-0149-ZCA "Amendments to the City's Municipal Code Regarding Cannabis Activities"; (3) Introduction of an Ordinance Amending Title 11, "Business Regulations," of the Culver City Municipal Code to (A) Add a New Chapter 11.17 "Commercial Cannabis Business;" and (B) Amend Section 11.01.075 "Unlawful Businesses Prohibited" of Chapter 11.01

Meeting Date: November 27, 2017

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Fiscal Impact: Yes ☐ No ☒

General Fund: Yes ☐ No ☒

Public Hearing: ☒

Action Item: ☒

Attachments: ☐

Commission Action Required: Yes ☒ No ☐ **Date:** 11/15/17 (Planning Commission)

Public Notification: (E-Mail) Meetings and Agendas - City Council (11/22/17); GovDelivery e-mail lists: Marijuana, Chamber of Commerce, Planning Commission, Press (11/20/17); Culver City News (11/09/17)

Department Approval: John Nachbar, City Manager (11/14/17)

RECOMMENDATION

Staff recommends the City Council:

(1) Introduce an Ordinance Amending Culver City Municipal Code, Title 17 - Zoning Section 17.700.01 - Definitions of Specialized Terms and Phrases, Section 17.220.015 - Commercial District

Land Uses and Permit Requirements, and 17.210.015 - Residential Zoning District Land Uses and Permit Requirements, pertaining to commercial cannabis activity and personal cannabis cultivation;

(2) Adopt a resolution adopting Negative Declaration P2017-0149-ZCA “Amendments to the City’s Municipal Code Regarding Cannabis Activities” based on the Initial Study finding there is no substantial evidence that the project may have a significant effect on the environment; and

(3) Introduce an Ordinance amending Title 11, “Business Regulations,” of the Culver City Municipal Code to (A) add a new Chapter 11.17 “Commercial Cannabis Business; and (B) amend Section 11.01.075 “Unlawful Businesses Prohibited” of Chapter 11.01.

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, including allowing retail outlets for the sale of adult-use cannabis, along with other cannabis based businesses, to be licensed by the state of California beginning January 2, 2018. 65% of Culver City voters voted in favor of Proposition 64. In June, 2017, the governor signed the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), in effect combining 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.

Marijuana Task Force and Community Input

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 included 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.

The Marijuana Task Force 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.

At the first meeting of the Marijuana Task Force on May 17, 2017, the Task Force considered the question of whether Culver City should continue to ban or allow cannabis businesses. The Task Force considered several options: a temporary ban, a permanent ban, or allowing cannabis businesses. Public input was taken at this meeting. The discussion carried over to the second meeting of the Marijuana Task Force, on Saturday, June 3, 2017. The Task Force again considered

whether to ban or allow cannabis businesses. After additional discussion and public input at that meeting, the Task Force reached consensus to recommend to City Council to permit commercial cannabis in Culver City.

The City webpage established to collect input on this issue (<http://www.culvercity.org/marijuana>) has garnered public comments both in favor of and opposed to commercial cannabis businesses in Culver City. City posts to Facebook and Nextdoor.com about the issue have generated many comments and a relatively high-level of public discussion among commenters, both in favor of and opposed to commercial cannabis.

City Council Direction

At its meetings on September 11, 2017 and September 25, 2017, the City Council considered recommendations from the City's Marijuana Task Force, as well as the City Council subcommittee, to permit commercial cannabis activity in Culver City.

At these two meetings, City Council directed staff to return with proposed zoning and regulatory ordinances, along with associated regulations, that would:

1. Allow up to three (3) medicinal and adult-use cannabis storefront retail businesses ("dispensaries") in retail and industrial zones within the City.

- Retail storefronts must be located at least 600 feet from sensitive receptors, including K-12 schools, day care centers, youth centers, parks, and playgrounds.
- Storefront retail cannabis business permits are to be awarded through a competitive, multi-phased, merit-based process, with the City Council ultimately approving the awarding of the permit.
- A conditional use permit will also be required for storefront retail cannabis businesses.
- Prohibit cannabis businesses from hotels, regional malls, and mobile home parks.

2. Allow the following medicinal and adult-use cannabis businesses in industrial zones within Culver City:

- Delivery Only Retail ("Home Delivery")
- Manufacturing
- Distribution
- Testing
- Indoor commercial cultivation (within specific areas identified by the City Council Subcommittee).
- Applications for the above-listed commercial cannabis business types should be reviewed and approved through a ministerial permit process.

3. Prohibit the following medicinal and adult-use cannabis businesses within Culver City:

- Commercial outdoor cultivation
- Commercial mixed-light cultivation

4. Limit the maximum number of cannabis businesses permitted in Culver City by business type, as follows: storefront retail (3), delivery-only retail (5), inclusive of any storefront retailers that also provide delivery; manufacturing (6); distribution (6); cultivation (indoors) (3); and testing laboratories (4).

5. Businesses will be allowed to apply for and receive permits in multiple business categories (e.g. manufacturer/distributor), as long as they meet all the requirements of each category and are located in the appropriate zone.

Sensitive receptors are defined in the California Health & Safety Code:

- Day Care Centers (defined in California Health & Safety Code Section 1596.76)
 - Any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers.
- Youth Centers (defined in California Health & Safety Code Section 11353.1)
 - Any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

Included as an attachment is a summary of key changes, made in response to public comment, between the initial proposal first considered by City Council on September 11, 2017 and the proposal for consideration on November 27, 2017.

DISCUSSION

Ordinances Overview

Responding to the direction provided by City Council and the subcommittee, staff has prepared an ordinance amending Culver City Municipal Code Title 17 (the “Zoning Ordinance”). This ordinance incorporates commercial cannabis land uses into existing land use types permitted within the zoning code and reasonably regulates personal cannabis cultivation.

Staff has also prepared an ordinance adding Chapter 11.17 “Commercial Cannabis Business” to Title 11 of the Culver City Municipal Code (the “Regulatory Ordinance”). This ordinance allows the City to regulate commercial cannabis businesses.

Zoning Ordinance

The proposed Zoning Ordinance, attached, amends Culver City Municipal Code Section 17.220.015, Section 17.210.015, and Section 17.700.010 to allow commercial cannabis activities in zones related to their non-cannabis counterparts. It first establishes definitions for commercial cannabis activities,

then it adds those cannabis terms to the definitions of existing uses which are already permitted in certain zones outlined below:

Cannabis Term	Existing Use	Permitted Zones
"Dispensary, retail-storefront, and ancillary delivery service"	"General Retail Stores"	Commercial Neighborhood Commercial General Commercial Community Commercial Downtown Commercial Regional Retail Commercial Regional Business Park Industrial- General Industrial-Light
"Retail-delivery only"	"Wholesaling and Distribution"	Industrial-General Industrial- Light Commercial Regional Business Park
"Cultivation"	"Chemical product manufacturing"	Industrial-General
"Manufacturer"	"Chemical product manufacturing"	Industrial-General
"Distribution"	"Wholesaling and Distribution"	Industrial-General Industrial- Light Commercial Regional Business Park
"Testing laboratory"	"Research and Development"	Industrial-General Industrial- Light Commercial Regional Business Park

All cannabis businesses will be required by the Regulatory Ordinance to obtain a revocable commercial cannabis permit in order to operate. The Zoning Ordinance requires that all retail storefront cannabis businesses require a conditional use permit in addition to the commercial cannabis permit (17.220.015).

Additional regulations limiting or prohibiting commercial cannabis businesses from operating within specific land uses (i.e. hotels, mobile home parks, shopping centers/malls) is not necessary, as they are or will be restricted by other provisions in the Culver City Municipal Code (CCMC) and/or the permitting process. For example, commercial cannabis business permits for storefront retail uses will be regulated and licensed through the regulatory process, awarded by City Council, which will determine on a case by case basis the location of such uses, and the City Council may determine that these types of locations are not desirable. In addition, cultivation, manufacturing, testing, distribution, and delivery-only services would not be permitted as part of a hotel, mobile home, or shopping center, as these land uses do not permit commercial cannabis businesses as an ancillary use, as defined by the CCMC (i.e. a restaurant would be permitted as an ancillary use to a hotel, but not a cannabis business).

Commercial Cultivation

At its September 11, 2017 meeting, the City Council directed staff to allow indoor cultivation of commercial cannabis in specific areas of the City to be identified by the subcommittee at a later date. The subcommittee subsequently met and recommended to allow indoor commercial cultivation in all areas of the city zoned "Industrial General".

Personal Cultivation

State law (as modified by Proposition 64) requires that municipalities permit indoor personal

cultivation of up to six marijuana plants per residence. Local governments may reasonably regulate, but cannot ban, indoor personal cultivation. At least one California city, Fontana, has already encountered litigation because its permitting scheme was considered by some to be overly onerous. Reasonable regulations on indoor cultivation are meant to reasonably address concerns about public health and safety, while not becoming onerous for the resident or City enforcement. The State allows municipalities to prohibit outdoor personal cultivation. Many cities prohibit outdoor personal cultivation due to concerns about nuisance complaints, especially related to odor.

State regulations (Health and Safety Code 11362.2) require personal cannabis cultivation to occur in an area that is “not visible by normal unaided vision from a public place”) (i.e. not on a balcony or in an open front yard or side yard). The State regulations also require personal cannabis cultivation to take place either inside a private residence, or if in the backyard in a “locked space”, which would include a backyard with a locked gate.

The subcommittee recommendations for reasonable regulations related to personal cultivation are reflected in the Zoning Ordinance. They supplement the State regulations listed above. Key provisions include:

- Personal cultivation must take place within a residence, or within a fully enclosed and secured structure. This goes a step further than the State law by requiring that plants not simply be behind a locked gate, but in an enclosed structure in the back yard (e.g. a greenhouse), in order to address both odor and security concerns.
- The owner of the property must consent (i.e. renters must get the owner’s permission).
- Lighting must remain below 1200 watts, for the purposes of safety.
- Gas products cannot be used, for the purposes of safety.
- Personal cultivation cannot occur in a home’s kitchen, bathroom, or primary bedrooms.
- Any adverse impacts must be mitigated so that it does not become a public nuisance (e.g. odor).

These regulations would be enforced on a complaint-driven basis.

Regulatory Ordinance

The Regulatory Ordinance, attached, serves as a detailed framework for the regulation of commercial cannabis in Culver City. It will work in combination with several resolutions referenced in the Ordinance that are to be reviewed and approved by the City Council at a later date, including a resolution limiting the number of businesses and a resolution detailing the application and selection process. Other key functions of the ordinance:

- Requires a non-transferable revocable permit for commercial cannabis operations.
- Sets a system for permit renewal and revocation.
- Requires public noticing and a public meeting as a part of the selection process for storefront-retail businesses.
- Establishes an appeal process for when permit renewals are denied or revoked.
- Accounts for change in business location if approved by the City.
- Limits City liability.
- Establishes security measures.
- Lists operating requirements for businesses, by category.

- Sets requirements for records and recordkeeping.
- Requires community relations.
- References violations, penalties, and enforcement.

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, staff is recommending that City Council modify section 11.01.075 to allow the City to issue a business tax certificate to cannabis businesses operating lawfully under California law and with a City permit.

Planning Commission

At its meeting on November 15, 2017, the Planning Commission considered the proposed Zoning Code Amendment and Negative Declaration. As a result of the Public Hearing and subsequent discussion among the Planning Commission members, the Zoning Code Amendment and Negative Declaration were recommended with the following revisions to Exhibit A:

- Proposed Cannabis definition was clarified to read as “Except as specified herein, all parts of the Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the California Health and Safety Code.”
- Proposed Section 17.220.015 Commercial District Land Uses and Permit Requirements was clarified to read as “**B. Cannabis Dispensary, retail-store front.** Concurrent with obtaining a Commercial Cannabis Business Permit required by Chapter 11.32, all cannabis dispensary, retail store front facilities shall be required to obtain a Conditional Use Permit pursuant to Chapter 17.530, which shall be subject to renewal every five years.”
- Proposed Section 17.230.015 Industrial District Land Uses and Permit Requirements was removed from the Draft Ordinance and recommendation.
- Proposed Attachment A, Map 2.10 was removed from the Draft Ordinance and recommendation.

In addition, all references to the proposed Section 17.230.015 and Attachment A, Map 2.10 were removed from the analysis within the Negative Declaration and it was determined that there is no significant impact associated with such modification to the Negative Declaration and recirculation is

not required. Provided, the cultivation business type is consistent with the existing Chemical Product Manufacturing land use type which currently is permitted in the City's Zoning Code, the business type is limited to three establishments, the modification does not result in impacts on the environment as determined by the Negative Declaration.

Interim Measure Prior to Effective Date

If City Council introduces the Zoning Ordinance and Regulatory Ordinance on November 27, and holds a second reading on December 11, Culver City's cannabis ordinances will not be in effect until January 10, 2018. However, the State will begin accepting applications and potentially issuing temporary commercial cannabis state licenses beginning January 2, 2018. This leaves a nine day span during which Culver City would be relying on its non-express ban (through permissive zoning principles) to prohibit commercial cannabis businesses. As discussed at the City Council meeting on February 13, 2017, staff advises that permissive zoning may not be enough to prohibit any commercial cannabis land use. Staff is evaluating whether a temporary ban of commercial cannabis activity until the Regulatory Ordinance is in effect is warranted, or whether it would be appropriate to adopt the Regulatory Ordinance as an urgency measure to take effect immediately upon its adoption. Both of these options are being evaluated in order to prevent any confusion or errors that might allow a commercial cannabis business to circumvent Culver City's regulations, and staff will recommend one of these options for City Council's consideration at its December 11, 2017 meeting.

Next Steps

1. The Regulatory Ordinance requires City Council to approve several additional resolutions in order to complete the regulatory structure:
 - Resolution establishing the maximum number of each type of cannabis business permitted to operate.
 - Resolution establishing procedures governing the application process for non-storefront and storefront commercial cannabis business permits.
 - Resolution establishing fees (including application and permit fees).
 - Resolution establishing business hours for commercial cannabis businesses.

The City Council will consider these resolutions at one or more future meetings.

2. The County of Los Angeles recently contacted the City in regard to the cannabis business public health inspections required under state's Business and Professions Code 26200. In order for the County to perform the required health inspections in Culver City, similar to the way they perform this function for food establishments, the City will need to contract with the County. The County plans to approve an ordinance formalizing the public health permitting process in December 2017 or January 2018. Subsequently, the City will need to adopt the County Public Health cannabis ordinance by reference and contract with the County for them to perform this service. The County contract would come at no cost to the City, since County permit applicants will pay for their own inspections.
3. On November 16, 2017, the State released hundreds of pages of emergency medicinal and

adult-use cannabis regulations. These regulations were drafted by the State in in order to reflect the law defined in MAUCRSA. Staff is reviewing the regulations to ensure that they are not in conflict with City's proposed ordinances. In the event conflicts are found, staff will provide that information to the City Council prior to its November 27th meeting.

Environmental Determination / CEQA

Pursuant to the California Environmental Quality Act (CEQA) Guidelines, an Initial Study was prepared for both Zoning and Regulatory Ordinances ("the Project"). The Initial Study shows that there is no substantial evidence that the project may have a significant effect on the environment. In conjunction with the Initial Study, a Negative Declaration (ND) has been prepared pursuant to the CEQA guidelines (see Attachment).

The Draft ND was circulated for public review from October 24, 2017 to November 14, 2017. Copies of the Draft ND were made available to the public within the City's Planning Division Office at City Hall and on the City's website at www.culvercity.org.

As a result of public review on the Draft ND, the City has received zero letters/emails from public agencies and/or organizations as of the writing of this report. In the event any comments are received after the publishing of this report and prior to the November 27th deadline, those will be provided to the City Council prior to its November 27th meeting.

FISCAL ANALYSIS

There is no fiscal impact associated with this item. All permitting and regulatory activities will be cost recoverable through application and permit fees. Fees are in the process of being established to compensate the City for the resources expended to investigate and process the initial applications, renewal applications, etc. A fee resolution setting forth the proposed new fees will be brought forth to City Council prior to the release of any applications or permits.

ATTACHMENTS

1. 2017-11-27 - ATT Proposed ZCA Ordinance and Cannabis Definitions
2. 2017-11-27 - ATT Proposed Commercial Cannabis Regulatory Ordinance
3. 2017-11-27 - ATT Resolution Adopting Negative Declaration
4. 2017-11-27 - ATT Negative Declaration
5. 2017-11-27 - ATT Planning Commission Resolution 2017-P018
6. 2017-11-27 - ATT Summary of Changes to Cannabis Regulations

MOTION

That the City Council:

1. Introduce an Ordinance Amending Culver City Municipal Code Title 17 - Zoning Section 17.700.01 - Definitions of Specialized Terms and Phrases; Section 17.220.015 - Commercial

District Land Uses and Permit Requirements; Section 17.230.015 - Industrial District Land Uses and Permit Requirements; and 17.210.015 - Residential Zoning District Land Uses and Permit Requirements; and

2. Adopt Negative Declaration P2017-0149-ZCA “Amendments to the City’s Municipal Code Regarding Cannabis Activities” based on the Initial Study’s finding that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment; and
3. Introduce an Ordinance amending Title 11, “Business Regulations,” of the Culver City Municipal Code to (A) add a new Chapter 11.17 “Commercial Cannabis Business”; and (B) amend Section 11.01.075 “Unlawful Businesses Prohibited” of Chapter 11.01.