

BUSINESS OF THE COUNCIL OF THE CITY OF HALF MOON BAY

AGENDA REPORT

For meeting of: **August 15, 2017**

TO: Honorable Mayor and City Council

VIA: Magda Gonzalez, City Manager

FROM: Matthew Chidester, Deputy City Manager
Heather Minner, Assistant City Attorney

TITLE: UPDATE ON THE MEDICINAL ADULT-USE CANNABIS REGULATION AND SAFETY ACT AND DEVELOPMENT OF THE COMMERCIAL CANNABIS CULTIVATION ORDINANCE AND LICENSING PROGRAM

RECOMMENDATION:

Provide feedback and direction to staff on the proposed ordinances and licensing program allowing and regulating commercial cultivation of cannabis at existing greenhouse sites within the City. With Council direction, staff will return on September 5, 2017 for a public hearing and first reading of the proposed ordinances.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

STRATEGIC ELEMENT:

This recommendation supports the Healthy Communities and Public Safety and the Fiscal Sustainability Elements of the Strategic Plan.

BACKGROUND:

On November 8, 2016, California voters approved Proposition 64 (“Adult Use of Marijuana Act” or “AUMA”). AUMA legalized recreational use of marijuana under state law, and established a regulatory scheme to permit commercial marijuana activities associated with the cultivation, manufacturing, transportation, distribution, testing, and dispensing of marijuana for recreational use. AUMA also allows limited cultivation and possession of marijuana for personal use. Previous legislation in 2015, the Medical Cannabis Regulation and Safety Act, had developed a similar licensing scheme for medical marijuana commercial activities. On June 27, 2017, Governor Jerry Brown signed Senate Bill 94, creating the Medicinal Adult-Use Cannabis Regulation and Safety Act (“SB 94”), which effectively integrated the regulatory and licensing schemes for both medical and recreational marijuana, now referred to as medicinal cannabis and adult-use cannabis.

Key Changes to California Cannabis Regulations through SB 94 include:

- The primary governing bureau will be the Bureau of Cannabis Control (“the Bureau”).
- Cities and counties retain full land use authority as to cannabis businesses; cities and counties may prohibit such businesses entirely, allow only some, or allow them with additional, locally developed regulations that fit local needs. SB 94 also establishes that local jurisdictions retain the authority to regulate cannabis businesses and to take enforcement action concerning Fire and Building Codes, conduct inspections, and implement audits.
- The state may not issue a license for an activity the local jurisdiction prohibits. In addition, the state must notify a local jurisdiction when it receives an application for commercial cannabis activity in that jurisdiction. The city or county then has 60 business days to notify the state of whether or not the applicant is in compliance with local regulations.
- Cities and counties will be required to submit copies of local ordinances and regulations on cannabis uses to the state. In addition, they must provide the state agency with a contact name for the verification of the regulatory permits.
- Through July 1, 2019, SB 94 exempts from the California Environmental Quality Act (“CEQA”) the adoption of an ordinance or regulation by a local jurisdiction if the ordinance or regulation requires discretionary review and approval of local permits or licenses for commercial cannabis activity.
- The residency requirement in AUMA is repealed. Those who reside in other states or countries are now allowed to own a cannabis business in California.
- Applicants for cultivation licenses will need to identify the source of water supply.

Since the passage of the AUMA in November of 2016, the City Council has held several public discussions on potential City regulations regarding Cannabis.

On February 15, 2017 a community meeting was held to gather public input on AUMA as it may apply to Half Moon Bay. Generally, there was support for all commercial operations. The following are significant points of general feedback from the meeting:

- Allow commercial activities and do not over-regulate
- Important for full range of activities to be locally available (cultivation, manufacturing, testing, distribution, retail).
- Retail operations need to be classy
- Look at what other cities have done
- Emphasize organic and responsible growing; composting; provide education
- Emphasize use of renewable energy
- Priorities for existing local facilities and local hiring
- Do something quickly to be ahead of State licensing and other cities.

On March 7, 2017, the Council received an update of the State's plan to implement AUMA as well as information gathered at the community meeting. Staff provided options for the City regarding medical and adult use of cannabis and sought direction from the Council on whether the City should ban, allow or regulate any or all of the various personal and commercial marijuana activities as well as medical marijuana. The Council provided unanimous direction to prioritize the development of ordinances to authorize commercial cultivation in existing greenhouse facilities, including manufacturing, testing and wholesale distribution.

The FY 2017-18 adopted budget includes funding to hire consultants to assist in the development of ordinances and a licensing program, and on June 16, 2017 the City entered into an agreement with HDL Companies to provide these services.

San Mateo County has convened several workgroups that include staff from cities, to discuss countywide issues and best practices. The County is currently developing its own set of regulations which will allow similar activities in the unincorporated areas, including the coastside areas surrounding the City. City and County staff communicate regularly to identify any disparities between the different agencies' proposed ordinances, and to share updates as state regulations continue to change.

DISCUSSION:

With the assistance and expertise of HDL and the City Attorney's Office, an ordinance is being drafted to include the following elements:

- Continue to ban all retail activities, including medicinal cooperatives, collectives and dispensaries
- Allow cultivation in commercial greenhouse facilities in existence as of the date the ordinance is adopted, under the following conditions:
 - A local discretionary license has been issued
 - A state license or licenses have been obtained
 - Owners and key personnel have passed a thorough background check
 - Greenhouse operators install ventilation, odor control, water treatment, lighting equipment, and back-up generators; consistent with best industry practices to provide safe, healthy and efficient operations that also minimize impacts to neighbors and the environment
 - Requirements are met regarding energy and water consumption and efficiency
 - Light pollution is minimized or eliminated through the use of retractable screens or other means
 - Stringent security requirements are met including video surveillance
- License approvals would be discretionary, meaning staff would process and provide recommendations regarding individual applications, which would ultimately be considered by the Council, allowing for public input on each application

- The ordinance does not include any limit to the total number of permits that can be issued
- The ordinance currently does not permit manufacturing, testing or other commercial operations. The vast majority of commercial greenhouses located within city limits are in the A-1 Agricultural Land Use Zoning District. Currently, A-1 zoning does not permit similar manufacturing facilities. In addition, under state law, testing labs and storage areas for distributors must occur in facilities separate from a cultivation greenhouse. While those uses may be allowed in the A-1 district, they would have to function as ancillary to the primary agricultural use of the property. Manufacturing and perhaps testing activities are more consistent with the city's IND Industrial Land Use zoning designation. However, few properties in the IND Zoning District are available for these activities due to proximity to Half Moon Bay High School. In addition, the state has yet to issue draft regulations for commercial cannabis manufacturing, testing, and distribution businesses. Further investigation of zoning provisions that would accommodate other commercial activities and a review of final state regulations is recommended before permitting other commercial operations beyond cultivation.
- Regarding personal cultivation and use, only indoor growth (including cultivation inside accessory structures such as greenhouses) in compliance with State laws would be allowed within the City, and all other laws regarding personal and medicinal use of cannabis apply. Outdoor cultivation for personal use would be prohibited.

In addition to Council's review of the above provisions, staff requests direction from the Council regarding the following important policy questions:

- Whether to allow the demolition of existing greenhouses and replacement of same size and footprint
- Whether to expand state-mandated buffer areas, which are 600 feet from any school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued
- Whether to limit the number of permits in each site and/or limiting the area of existing facilities dedicated to cannabis activities, to protect other agricultural uses from displacement
- While not related to cultivation, whether to prohibit deliveries of cannabis products from businesses licensed outside the City

Following feedback and direction from the Council on the proposed ordinance and additional policy questions above, staff will complete the draft ordinance and return on September 5th for a public hearing and first reading. The second reading and adoption of the ordinance could take place at your September 19th meeting.

Staff will continue to develop the licensing process and program, and will be prepared to begin accepting applications later this year. The oversight of the program will be housed in the

Community Development Department. HDL will assist in the preparation of all licensing materials and development of administrative fees, and will support initial program implementation and oversight.

In addition to obtaining a commercial cannabis cultivation license from the city and state, applicants will need to comply with other applicable local and state laws. Depending on the nature of the activity proposed, this could include CEQA review and a Coastal Development Permit.

Staff will also continue to explore options to tax cannabis cultivation, which could be considered by voters as early as the June 2018 ballot.