

CITY OF SANTA ROSA
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
STAFF REPORT FOR PLANNING COMMISSION
NOVEMBER 9, 2017

PROJECT TITLE

Comprehensive Cannabis Ordinance

APPLICANT

City of Santa Rosa

ADDRESS/LOCATION

City-wide

PROPERTY OWNER

City-wide

ASSESSOR'S PARCEL NUMBER

City-wide

FILE NUMBER

REZ17-002

APPLICATION DATE

January 19, 2016

APPLICATION COMPLETION DATE

January 19, 2016

REQUESTED ENTITLEMENTS

Zoning Code Text Amendment

FURTHER ACTIONS REQUIRED

Council Adoption of Ordinance

PROJECT SITE ZONING

City-wide

GENERAL PLAN DESIGNATION

City-wide

PROJECT PLANNER

Clare Hartman

RECOMMENDATION

Approval

For Planning Commission Meeting of: November 9, 2017

CITY OF SANTA ROSA
PLANNING COMMISSION

TO: CHAIR AND MEMBERS OF THE COMMISSION
FROM: CLARE HARTMAN, DEPUTY DIRECTOR - PLANNING
PLANNING & ECONOMIC DEVELOPMENT
SUBJECT: COMPREHENSIVE CANNABIS ORDINANCE

AGENDA ACTION: ADOPT A RESOLUTION

RECOMMENDATION

It is recommended by the Planning & Economic Development Department and the City Attorney's Office that the Planning Commission, by resolution, recommend the City Council adopt an ordinance enacting comprehensive regulations for cannabis through the amendment of Santa Rosa City Code Section 20-23.030, Table 2-2 (Allowed Land Uses and Permit Requirements for Residential Zoning Districts), Section 20-23.030, Table 2-6 (Allowed Land Uses and Permit Requirements for Commercial Zoning Districts), Section 20-24.030, Table 2-10 (Allowed Land Uses and Permit Requirements for Industrial Districts), Section 20-36.040, Table 3-4 (Automobile and Bicycle Parking Requirements by Land Use Type), Section 20-70.020 (Definitions), the repeal and replacement of Chapter 20-46 (Medical Cannabis Cultivation) with Chapter 20-46 (Cannabis), the repeal of Chapter 10-40 (Medical Cannabis Dispensaries) and the adoption of exemption findings pursuant to the California Environmental Quality Act (CEQA).

It is further recommended that the Planning Commission discuss and either affirm the prohibition on commercial adult use cannabis businesses or provide direction make amendments to allow adult use support and/or adult use retail cannabis businesses.

EXECUTIVE SUMMARY

The 2016 and 2017 City Council Goal Setting Workshops established five priorities to better focus staff efforts towards achieving established Council Goals. One of the Tier 1 priorities (projects that are underway or receiving the highest attention) is to "*pursue current opportunities for medical marijuana, cannabis cultivation, lab and employment development. Prepare for impacts of legalized recreational marijuana.*"

In accordance with Council goals, and in response to the State's adoption of several cannabis related laws and voter propositions, the Council has continued to assert its interest in retaining local authority over medical and adult use cannabis operations.

On January 19, 2016, the City Council directed staff (7-0) to prepare a city-wide City Code Text Amendment to provide comprehensive regulations for medical cannabis uses (later amended after the passage of Prop 64 and SB 94 to address both medical and adult use). In addition, the Council reconvened the Medical Cannabis Policy Subcommittee and staff convened a Technical Advisory Committee (TAC).

Following over twenty Council Policy Subcommittee meetings, several TAC sessions, and extensive public outreach and discussion, a Draft Comprehensive Cannabis Ordinance was published on June 30, 2017. Continued outreach and discussion ensued which resulted in further refining of the ordinance. The subject ordinance as amended and under consideration by the Planning Commission and City Council considers the technical review, public feedback, and subcommittee direction received to date.

The Draft Comprehensive Cannabis Ordinance includes the following components:

- a. Amends Section 20-23.030, Table 2-2 (Allowed Land Uses and Permit Requirements for Residential Zoning Districts),
- b. Amends Zoning Code Section 20-23.030, Table 2-6 (Allowed Land Uses and Permit Requirements for Commercial Zoning Districts)
- c. Amends Zoning Code Section 20-24.030, Table 2-10 (Allowed Land Uses and Permit Requirements for Industrial Districts)
- d. Amends Zoning Code Section 20-36.040, Table 3-4 (Automobile and Bicycle Parking Requirements by Land Use Type)
- e. Repeals and replaces Zoning Code Chapter 20-46 (Medical Cannabis Cultivation) with Chapter 20-46 (Cannabis)
- f. Amends Zoning Code Section 20-70.020 (Definitions)
- g. Repeals City Code Chapter 10-40 (Medical Cannabis Dispensaries)
- h. Adopts exemption findings pursuant to the California Environmental Quality Act

Highlights of the Ordinance:

- Establishes cultivation limits for personal medical and adult use
- Consolidates the City's interim cannabis policies
- Directs commercial medical cannabis businesses to commercial and industrial districts
- Establishes an operator in good standing program
- Provides standards to address security, odor, lighting and noise
- Provides for new dispensaries in commercial and industrial areas
- Addresses overconcentration of dispensaries with buffers to schools and other dispensaries

- Allows for delivery services through a Retail facility
- Prohibits adult use cannabis businesses
- Prohibits outdoor cultivation of medical cannabis businesses
- Prohibits commercial cultivation in the -LIL (Limited Light Industrial) Combining District

Please note: While the proposed ordinance as drafted prohibits adult use cannabis businesses, the Commission and Council may discuss and may recommend amendments to allow adult use cannabis support and/or retail businesses.

BACKGROUND

Medical Cannabis Policy prior to 2016:

Prior to 2016, the City of Santa Rosa regulated medical cannabis dispensaries by ordinance. On November 1, 2005, the City Council adopted Ordinance No. 3754, adding Chapter 10-40 (Medical Cannabis Dispensaries) to the Santa Rosa City Code. On January 14, 2014, the City Council adopted Ordinance No. 4020, amending certain sections of Chapter 10-40 (Medical Cannabis Dispensaries) in the City Code. The ordinance speaks to the number of dispensaries allowed in the City as follows:

10-40.090 Limitations on number and size of dispensaries.

- (A) During the initial six months from the effective date of the ordinance codified in this section, the City Manager may not grant or cause to be granted more than two permits for medical cannabis dispensaries in compliance with the provisions of this chapter.
- (B) After six months have lapsed from the effective date of said ordinance, the City Manager may consider additional applications for dispensaries and grant additional permits in compliance with all provisions of this chapter. (Ord. 4020 § 2, 2014; Ord. 3754 § 1, 2005)

To date, the City granted two dispensary permits within the first six months of the ordinance, but no subsequent permits. The two permitted medical cannabis retail (dispensary) businesses within City limits include Peace in Medicine which is located at 1061 North Dutton Avenue and Sonoma Patient Group located at 2425 Cleveland Avenue. In addition, there is one permitted medical cannabis retail (dispensary) business that is located outside the City limits, but within the Roseland Annexation area planned for annexation later this year. This dispensary is Alternatives A Health Collective and is located at 1603 Hampton Way.

Comprehensive Cannabis Policy as Council Priority:

On October 9, 2015, Governor Brown signed into law the Medical Marijuana Regulation and Safety Act (MMRSA), which went into effect on January 1, 2016. MMRSA established a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, testing, storage, distribution, and sale of medical cannabis through Assembly Bills 243 and 266, and Senate Bill 643.

The 2016 City Council (“Council”) Goal Setting Workshop established five priorities to better focus staff efforts towards achieving established Council Goals. One of the Tier 1 priorities (projects that are underway or receiving the highest attention) identified is to *“pursue current opportunities for medical marijuana, cannabis cultivation, lab and employment development. Prepare for impacts of legalized recreational marijuana.”*

In accordance with Council goals, and in response to the State’s adoption of the MMRSA, the Council quickly asserted its interest in retaining local authority over medical cannabis operations.

On January 19, 2016, the Council initiated a comprehensive policy effort to regulate medical cannabis operations, and reconvened the Medical Cannabis Policy Subcommittee. This subcommittee met monthly for the purpose of working towards creation of a new, comprehensive regulatory framework to address medical cannabis land use within the City, with a targeted completion and effective date by the end of 2017. The Subcommittee’s progress and meeting content over the course of over twenty meetings can be tracked through the City’s website (www.srcity.org/cannabis).

Direction provided by Council’s Medical Cannabis Policy Subcommittee:

Over the course of twenty meetings with the City’s Council Policy Subcommittee a philosophy towards Santa Rosa’s cannabis policy emerged:

- Cannabis uses are already taking place in the City; support their emergence as a legitimate sector of the community
- Cannabis is a land use issue; a Code enforcement issue; approach the policy through the lens of Planning and Economic Development, not from law enforcement
- Focus on Medical Cannabis for now; gain experience and success with medical prior to moving into adult use
- Provide a permit compliance path; support the industry by providing application support and clarity of regulations to ensure success
- Direct the use to appropriate areas (commercial and industrial districts); move commercial cannabis out from residentially zoned areas
- Be proactive and provide clear and objective standards to minimize impacts – security, odor, lighting, noise
- Defer to State law, Sonoma County Agricultural Commission and County Health Department for specific issues they have expertise in; Santa Rosa policy should focus on land use compatibility and economic balance.
- Test the approach through interim measures; increase education on both sides of the conversation
- Address the entire industry chain – recognize the community and regional benefits of supporting all aspects of the industry within City limits – from cultivation to support uses to retail.

Interim Measures:

On February 23, 2016, the Council adopted an interim ordinance, which added Chapter 20-46, (Medical Cannabis Cultivation), to the Zoning Code, allowing commercial cultivation of medical cannabis with a Minor Use Permit or Conditional Use Permit, depending on the size of the proposed facility, in the Light Industrial (IL), General Industrial (IG) zoning districts, and the Limited Light Industrial (-LIL) combining zoning district (Code Section 20-46.030.A). Regardless of size, the use permit requires a public hearing and action by the Planning Commission.

To date, seven medical cannabis commercial cultivation facilities have been approved by the Planning Commission. One of these actions was appealed by a neighboring property owner, but the City Council denied the appeal and approved the project.

On August 3, 2016, The City's Zoning Administrator, at the direction of the City Council, issued an Official Zoning Code Interpretation to address Medical Cannabis support uses, specifically addressing the light manufacturing (non-volatile), distribution, laboratory testing and transportation operations of the industry. The interpretation aligned these operational uses with their non-cannabis counterparts such that wherever laboratory testing uses were allowed, so be it for medical cannabis laboratory testing. Attached to the interpretation were standards regarding odor, lighting, security and noise to ensure compliance with state law and city ordinances given the specific issues surrounding the cannabis product.

To date, a total of ten medical cannabis support uses have been approved by the City. None have been appealed.

Cannabis Permitting Activity Update:

Since May, 2017, the City has released two quarterly Cannabis Permitting Update Reports (www.srcity.org/cannabis) that tracks both the number and concentration of new medical cannabis businesses in Santa Rosa, and the impacts to other industries that occupy similar zoning. As the City of Santa Rosa implements new medical cannabis regulations, and permits new businesses within the city limits, understanding these impacts will inform policy development in the support of a diverse economy.

Outdoor Commercial Cultivation:

On May 23, 2017, the City Council adopted an urgency ordinance prohibiting outdoor commercial cannabis cultivation within the City of Santa Rosa. On June 20, 2017, the Council adopted a subsequent ordinance to extend the temporary moratorium for up to an additional 10 months and 15 days allowing time to complete the comprehensive policy process.

Reaffirmation of Council Priority in 2017:

On June 6, 2017, the City Council reaffirmed that a comprehensive cannabis ordinance was a Tier 1 priority as part of their 2017/18 goal setting process.

Cannabis Business Tax | Measure D:

On June 6, 2017, the voters of Santa Rosa approved Measure D, implementing a Cannabis Business Tax for the City of Santa Rosa. Updated information on tax rates, approved ordinance, payment schedule and tax forms (available soon), can be found on the Cannabis Program site (www.srcity.org/cannabis).

Limited Light Industrial (LIL) Combining District:

On June 13, 2017, the City Council adopted an urgency ordinance to impose a temporary moratorium on the eligibility of the Limited Light Industrial (-LIL) Combining District for medical cannabis commercial cultivation. On July 11, 2017, the Council adopted a subsequent ordinance to extend the temporary moratorium for up to an additional 10 months and 15 days allowing time to complete the comprehensive cannabis policy process.

Release of the Draft Ordinance in June 2017:

Following over twenty Council Policy Subcommittee meetings, several TAC sessions, and extensive public outreach and discussion, a Draft Comprehensive Cannabis Ordinance was published on June 30, 2017. Continued outreach and discussion ensued which resulted in further refining of the ordinance. The subject ordinance as amended and under consideration by the Planning Commission and City Council considers the technical review, public feedback, and subcommittee direction received to date.

ANALYSIS

1. Project Description

The Draft Comprehensive Cannabis Ordinance includes the following components:

- a. Amends Section 20-23.030, Table 2-2 (Allowed Land Uses and Permit Requirements for Residential Zoning Districts),
- b. Amends Zoning Code Section 20-23.030, Table 2-6 (Allowed Land Uses and Permit Requirements for Commercial Zoning Districts)
- c. Amends Zoning Code Section 20-24.030, Table 2-10 (Allowed Land Uses and Permit Requirements for Industrial Districts)
- d. Amends Zoning Code Section 20-36.040, Table 3-4 (Automobile and Bicycle Parking Requirements by Land Use Type)
- e. Repeals and replaces Zoning Code Chapter 20-46 (Medical Cannabis Cultivation) with Chapter 20-46 (Cannabis)
- f. Amends Zoning Code Section 20-70.020 (Definitions)
- g. Repeals City Code Chapter 10-40 (Medical Cannabis Dispensaries)
- h. Adopts exemption findings pursuant to the California Environmental Quality Act

Highlights of the Ordinance:

- Establishes cultivation limits for personal medical and adult use
- Consolidates the City's interim cannabis policies
- Directs commercial medical cannabis businesses to commercial and industrial districts
- Establishes an operator in good standing program
- Provides standards to address security, odor, lighting and noise
- Provides for new dispensaries in commercial and industrial areas
- Addresses overconcentration of dispensaries with buffers to schools and other dispensaries
- Allows for delivery services through a Retail facility
- Prohibits adult use cannabis businesses
- Prohibits outdoor cultivation of medical cannabis businesses
- Prohibits commercial cultivation in the -LIL (Limited Light Industrial) Combining District

Please note: While the proposed ordinance as drafted prohibits adult use cannabis businesses, the Commission and Council may discuss and may recommend amendments to allow adult use cannabis support and/or retail businesses.

ANALYSIS

1. General Plan

The following General Plan goals and policies are applicable to the proposed Comprehensive Cannabis Ordinance:

- | | |
|---------|--|
| LUL-I-1 | Provide a range of commercial services that are easily accessible and attractive, that satisfies the needs of people who live and work in Santa Rosa and that also attracts a regional clientele. |
| LUL-K | Protect industrial land supply and ensure compatibility between industrial development and surrounding neighborhoods. |
| LUL-K-1 | Require industrial development adjacent to residential areas to provide buffers, and institute setback, landscaping, and screening requirements intended to minimize noise, light, and glare and other impacts. |
| EV-A | Maintain a positive business climate in the community. |
| EV-A-1 | Continue to promote Santa Rosa as the North Bay's premier location for technology, clean/green technologies, and entrepreneurial businesses, which create new products and business models that will attract national and international markets. |

- EV-A-5 Maintain diversity in the types of jobs available in Santa Rosa to lessen the impact of economic cycles.
- EV-B Facilitate the retention and expansion of existing businesses and provide sufficient land for business expansion and attraction of new employers that utilize the area's existing labor pool.
- EV-B-1 Monitor land use and development trends in the city to ensure an adequate supply of land that offers diverse use designations and development intensities.
- EV-B-4 Develop specific strategies to increase business-to-business commerce within Santa Rosa.
- EV-B-7 Focus business attraction efforts on filling vacancies in commercial and industrial structures.
- EV-C-1 Develop a retail and business services strategy to locate regional and local serving industries, and ensure appropriate location of such uses along major regional/arterial corridors.
- EV-D Maintain the economic vitality of the downtown, business parks, offices and industrial areas.
- EV-D-1 Continue to promote Santa Rosa's role as a regional center.
- EV-D-2 Maintain space in business parks for distribution and research uses. Attract a wide range of industries which serve local and regional needs and contribute to the community's economic vitality, and at the same time protect the local environment and quality of life.
- NS-F-2 Require that hazardous materials used in business and industry are transported, handled, and stored in accordance with applicable federal, state, and local regulations.

Staff response: Personal and commercial cannabis, while not specifically addressed in the Santa Rosa General Plan, is allowed by state law and further permitted through the City's interim measures and adopted ordinances pertaining to cannabis.

Commercial cannabis businesses represent a broad spectrum of commercial and industrial operations. The industry includes processing, packaging, labeling, cultivation, light manufacturing, heavy manufacturing with extraction, quality control, laboratory testing, warehousing and distribution and retail sales. As such the industry provides a broad and viable commercial and industrial service to the community, creating permanent full-time and part-time jobs, and helping to maintain the economic viability of the City.

Many of these operations are already taking place in unpermitted locations due to a lack of local regulation. This puts the community at risk and isolates an

entire industry from recognition, accountability and participation in the economic engine of the City.

The proposed ordinance allows the City to direct these land uses to appropriate areas of the City such as allowing medical cannabis manufacturing in industrial parks where non-cannabis manufacturing uses are already allowed, and also establishes a public review process for permits, and locational and operational requirements to address land use compatibility, odor, security, safety, health, lighting, parking and noise.

In sum, the proposed zoning changes will result in land uses in residentially, commercially and industrially zoned areas – as appropriate - that are compatible with existing and future uses and will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

2. Zoning

A Land Use Policy Chart is attached to this report which provided for easy reference on where each proposed new land use classification is allowed and under what permit authority. The full identification of each land use and their corresponding zoning requirements are found in the Draft Comprehensive Cannabis Ordinance.

Personal Cultivation – Adult Use and Medical

Personal cultivation is proposed to be allowed in any residential zoning district subject to specific limits and operational requirements.

Medical Cannabis Commercial Cultivation

Medical Cannabis Commercial Cultivation as a land use was determined to be similar in operational characteristics as a processing or warehousing use which is allowed in the City's Light Industrial and General Industrial Districts. A break in the permit process at the threshold of 5,000 sq. ft in gross square feet was applied to balance the need for public notification and discretionary review with clear support by the City to incentivize the smaller cultivation operators in gaining permit compliance.

Medical Cannabis Support Businesses

Medical Cannabis Support Businesses include manufacturing, distribution and testing. As a continuation of the City's interim measures, these uses are proposed to be allowed in the same zoning districts as their non-cannabis counterparts. For example, where light manufacturing is already allowed in the City, so is proposed for medical cannabis manufacturing level 1 (non-volatile). The same approach was applied to testing laboratories and distribution.

Medical Cannabis Retail (Dispensary) Businesses

Medical Cannabis Retail (Dispensary) Businesses were determined to align more

with retail use characteristics with patients coming and going not unlike any other retail or service use. Thus, this use is proposed for consideration in several commercial zoning districts. The use is also allowed in the industrial districts; however one limiting factor may be that many industrially developed properties were not designed to meet retail parking demands. None the less, the use permit process will allow a case by case review to ensure fit and compatibility.

The proposed Zoning Districts under consideration for medical cannabis commercial business include the following Districts listed below. These Districts are also identified on the attached map of the City, acknowledging their distribution throughout the City. The following summaries are intended to inform as to the intent of each of these Districts pursuant to Zoning Code Chapters 20-23 and 20-24.

Industrial Districts:

BP (Business Park)

The BP zoning district is applied to areas appropriate for planned, visually attractive centers for business that do not generate nuisances (noise, clutter, noxious emissions, etc.). This zone accommodates campus-like environments for corporate headquarters, research and development facilities, offices, light manufacturing and assembly, industrial processing, general service, incubator-research facilities, testing, repairing, packaging, and printing and publishing. Warehousing and distribution, retail, hotels, and residential uses are permitted on an ancillary basis. Restaurants and other related services are permitted as accessory uses. Outdoor storage is not permitted. The BP zoning district is consistent with and implements the Business Park land use classification of the General Plan.

IL (Light Industrial)

The IL zoning district is applied to areas appropriate for some light industrial uses, as well as commercial service uses and activities that may be incompatible with residential, retail, and/or office uses. Residential uses may also be accommodated as part of work/live projects. The IL zoning district is consistent with the Light Industry land use classification of the General Plan.

IG (General Industrial)

The IG zoning district is applied to areas appropriate for industrial and manufacturing activities, warehousing, wholesaling and distribution uses. Uses may generate truck traffic and operate 24 hours. Retail and business service uses that could be more appropriately in another zone are not permitted. Land uses allowed in the IG zoning district have the potential for creating objectionable noise, smoke, odor, dust, noxious gases, glare, heat, vibration, or industrial wastes. The IG zoning district is consistent with the General Industry land use classification of the General Plan.

Commercial Districts:

CO (Commercial Office)

The CO zoning district is applied to areas appropriate for administrative, business, financial, medical, professional, and public office uses, together with similar and related compatible uses. Residential uses may also be accommodated as part of mixed use projects. The CO zoning district is consistent with and implements the Office land use classification of the General Plan.

CN (Neighborhood Commercial)

The CN zoning district is applied to areas within and adjacent to residential neighborhoods appropriate for limited retail and service centers for convenience shopping. Uses in these centers are intended to provide for the day-to-day needs of local neighborhoods and workplaces, but not to be of such scope and variety as to attract substantial traffic volumes from outside the neighborhood. New development is encouraged to include both a residential and nonresidential component as noted by Section [20-23.030](#) (Commercial Land Uses and Permit Requirements). The CN zoning district is consistent with and implements the Neighborhood Shopping Center land use classification of the General Plan.

CG (General Commercial)

The CG zoning district is applied to areas appropriate for a range of retail and service land uses that primarily serve residents and businesses throughout the City, including shops, personal and business services, and restaurants. Residential uses may also be accommodated as part of mixed use projects, and independent residential developments. The CG zoning district is consistent with the Retail and Business Services land use classification of the General Plan.

CSC (Community Shopping Center)

The CSC zoning district is applied to areas appropriate for complexes of retail establishments, anchored by a large grocery store, serving clients from the community as a whole and in particular surrounding residential neighborhoods. These centers are intended to be designed to facilitate pedestrian and bicycle access in addition to vehicular access. Proposed commercial development is required to include a residential component when significant additions or reconstruction is proposed as noted by Section [20-23.030](#) (Commercial District Land Uses and Permit Requirements), Table 2-6 and Section [20-23.080](#). The CSC zoning district is consistent with and implements the Community Shopping Center land use classification of the General Plan.

The intent of these Districts and the understanding of the operational nature and characteristics of the proposed cannabis businesses and a land use were considered in the preparation of the Comprehensive Cannabis Ordinance.

3. Public Outreach & Comment

Since early 2016, the City has maintained a Cannabis Program (srcity.org/cannabis) website that functioned as a one-stop center for cannabis land use and tax policy information, applicant support resources, FAQs, and for following the progress and agendas of the Council's Cannabis Policy Subcommittee. Members of the public are able to sign up for e-mail alerts to stay up to date and to receive notices on website additions.

Outreach specific to the Draft Comprehensive Cannabis Ordinance included:

- A srcity.org/cannabis update sent out to 2,000 e-mails
- Council Policy Subcommittee held over 20 meetings since Jan 2016
- Social media, Next door, Facebook, press releases
- KSRO interviews, morning and The Drive
- News articles – Press Democrat, SF Chronicle
- July 17th – Public Forum – Presentation & Feedback Session (50 attendees)
- Outreach and presentations to interested groups:
 - Real estate community
 - Fire and Building Code Officials
 - School representatives
 - Neighborhood groups
 - Cannabis Business representatives
 - Non-cannabis business community
 - Trade organizations

As a result, themes of comments emerged as follows from the various stakeholder groups (discussed in more detail in the Issues Section of this report):

Residents/General Public

- Odor from outdoor personal cultivation
- Confusion over sq. ft. vs. # of plants

School/Youth Advocates

- Increase setback to school to 1,000 feet
- Extend setback to youth facilities, day care centers
- Opposed to outdoor cultivation abutting school property

Cannabis Industry

- Reduce distance between retail facilities to 600 feet
- Allow for Adult Use Businesses in this ordinance

General Business Community

- Overconcentration concerns of cannabis businesses

4. Technical Advisory Committee

Since January 2016, the City convened a Cannabis Policy Technical Advisory Committee (TAC) to support the information and analysis needs of the Council

Policy Subcommittee. Committee members included multiple representatives from Police, Fire, Building, Code Enforcement, City Attorney's Office, Planning, Economic Development, Water, Environmental Health, Finance, and others. The Committee members also coordinated at times with their County of Sonoma counterparts as well as counterparts in other city, county and state jurisdictions, as the team navigated the issues of cannabis law and policy. The Committee met many times throughout the process to inform and refine the City's policies.

ENVIRONMENTAL IMPACT

The adoption and implementation of this ordinance is exempt from the following provisions of the California Environmental Quality Act in that:

- i. Under section 15061(b)(3) (general rule) in that as a general policy making activity and/or administrative activity there is no possibility that the implementation of this ordinance will have significant effects on the environment; and
- ii. Under section 15183 (projects consistent with a community plan, general plan, or zoning) in that the proposed zoning amendments will direct commercial medical cannabis businesses to appropriate commercial and industrial districts designated to support such uses consistent with land use tables, development standards and other applicable provisions of Title 20 of the Code such as allowing medical cannabis testing laboratory uses where non-cannabis testing laboratory uses are allowed; and
- iii. Under section 15301 (existing facilities) in that proposed zoning amendments will allow commercial medical cannabis businesses to re-tenant existing commercial and industrial facilities designed to support such occupancies; and
- iv. Under SB 94 which provides that until July 1, 2019, the adoption of a specified ordinance, rule, or regulation by a local jurisdiction shall be exempt from CEQA if the ordinance requires discretionary review and approval of permits, license, or other authorizations to engage in commercial cannabis activity, and in that the subject ordinance does require zoning clearances and conditional use permits prior to engaging in commercial cannabis activity;
- v. Provisions of which each can provide a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

NOTIFICATION

On Sunday, October 1, 2017, a public hearing notice in the form of a 1/8-page ad was placed in the Press Democrat and posted at City Hall. This notice complies with Zoning Code Section 20-66.020(D) which allows for an alternative to mailed notice if the number of property owners to whom notice would be mailed exceeds 1,000. In addition to this required notice, the Cannabis Program website was updated to announce the hearing date.

ISSUES

Many of the issues raised by the public since the June 30, 2017 publication of the draft comprehensive cannabis ordinance are addressed through amendments to that draft – as illustrated in the attached Exhibit A with red-line and strike-out, and dated “Amended October 5, 2017”.

The following summaries are the remaining issues raised by the public, listed in the general order in which the topic was or would be addressed in the ordinance:

A. PERSONAL CANNABIS CULTIVATION – MAXIMUM LIMITATION

Draft ordinance: Allows for any of three max limits, depending on the reason why the cannabis is being cultivated. Max limits cannot be added together, and is the total per residence, regardless of the number of residents. Max limits represent the total allowed on-site, regardless of whether the cannabis is grown indoors, in a greenhouse or outdoors. Limits are as follows:

- Medical personal – 100 square feet per residence; or
- Medical caregiver – 500 square feet per residence; or
- Adult use personal – 6 plants per residence

Comments opposed: The limits are programmatic and thus a challenge to explain and to enforce. To identify or evaluate if a resident has either a valid right to grow or a valid complaint, one must determine the reason for the cultivation (medical or for adult use) and for whom the cultivation is for (personal, patient, caregiver, resident or non-resident). Complaints received from residents living adjacent to a grow cite a preference for a more objective standard such as number of plants regardless of reason.

Comments in favor: Residents that grow cannabis for either medical or adult use reasons cite the high costs at dispensaries and support the flexibility and savings provided with the square foot limits.

Alternative for consideration:

- 1) Require 6 plants max regardless of use (medical personal, medical caregiver, adult use personal).

B. PERSONAL CANNABIS CULTIVATION - OUTDOOR CULTIVATION

Draft ordinance: Allows for personal outdoor cultivation.

Comments opposed: Odor is the number one issue raised by neighbors of growers since it can result in an inability to use one’s yard or open windows while the odor is at its peak. Some have cited allergic or nauseous reactions to the odor. Others without air-conditioning are challenged with not being able to open their windows. While odor

mitigation is required and can be achieved for both indoor and mixed light (greenhouse) cultivation – to the point that no odor is detected from outside the structure - there are no effective mitigations available for outdoor cultivation. In addition to odor, neighbors cite security and access issues with outdoor cultivation since the product is not within a locked structure. School representatives voiced particular concerns against the allowance of outdoor cultivation since most public schools are surrounded by the rear yards of single family homes where cultivation can take place and become a nuisance.

Comments in favor: Growers of outdoor cannabis, particularly those on fixed incomes and who use medical cannabis regularly, cite the high cost of cannabis at the dispensaries and also the high energy cost and logistical challenge of growing cannabis indoors or in a greenhouse. Growers of cannabis also cite the passage of Prop 64 which solidified personal rights to growing cannabis for adult use and that being able to grow the plant outdoors like any other garden plant should be allowed.

Alternatives for consideration:

- 1) Prohibit outdoor cultivation for personal use
- 2) Prohibit outdoor cultivation for personal use abutting school property
- 3) Limit outdoor cultivation for personal use to 3 plants; similar to ordinances adopted by the Cities of Petaluma, Healdsburg, and Cloverdale.

C. MEDICAL CANNABIS BUSINESSES – SETBACKS

Draft ordinance: Allows for all medical cannabis license types but requires a 600 setback to a K-12 school for a retail (dispensary) or microbusiness with retail component. No setbacks are applied to any of the other commercial cannabis businesses, including cultivation, manufacturing, distribution, and testing.

Comment: Concern was expressed that the City was not explicitly asserting its right to apply different setbacks than what state law provides. SB 94 addresses setbacks for all license types including non-retail cannabis businesses with Section 26054 as follows: “no licensee under this division shall be located within a 600-foot radius of a 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, unless a licensing authority or a local jurisdiction specifies a *different radius*.” (*emphasis added*)

Response: Since the City’s provision for setbacks is different (less restrictive) than Business and Professions Code Section 26054, the ordinance has been amended to be more explicit in this regard.

D. MEDICAL CANNABIS CULTIVATION – ENERGY USE

Draft ordinance: Does not address this issue.

Comment: While the energy of all buildings must comply with Title 24 State of California energy standards, the processing energy required for indoor cultivation is not restricted by source or amount. Energy used in indoor cultivation to support grow lights and ventilation systems is recognized as some of the highest demands in any industrial sector and one of the negative environmental impacts of indoor cultivation. Without addressing the issue upfront, an increase in indoor cultivation in the City may result in unintended energy and greenhouse gas consequences for the region.

Alternative for consideration:

- 1) Consider adding a requirement similar to the adopted ordinance by the County of Sonoma: “Energy Use. Electrical power for indoor cultivation and mixed light operations including but not limited to illumination, heating, cooling, and ventilation, shall be provided by any combination of the following: (i) on-grid power with 100% renewable source; (ii) on-site zero net energy renewable source; or (iii) purchase of carbon offsets of any portion of power not from renewable sources.”

E. MEDICAL CANNABIS MANUFACTURING – ETHANOL

Draft ordinance: The June 30, 2017 draft ordinance, was prepared in alignment with state law at the time and specifically the passage of SB 94. As a result, the use of ethanol in cannabis manufacturing was placed in the definition of Medical Cannabis Manufacturing Level 2 (which corresponds to state license type 7). Following feedback by the public, the ordinance as amended October 5, 2017, amends the definition of Manufacturing Level 1 to include limited use of ethanol for “winterization” but removes the reference to ethanol entirely from Level 2 to allow flexibility and deference to state law for where use of the solvent in extraction processing will ultimately be placed.

Comments: Several comments assert that the City can decide for themselves whether or not to allow ethanol within Level 1 and have cited recent comments published by the State Department of Health as heading in that direction. Other comments stress the need to differentiate between the use of ethanol within the extraction process itself versus its use during post-extraction also known as “winterization”. The latter of which is a common practice for finishing the product regardless of how the product was extracted.

Response: Prior to SB 94, the City operated under interim cannabis zoning measures and state law in effect at the time. As such, the City allowed ethanol for both extraction and post-extraction (“winterization”) within Manufacturing Level 1, subject to review and conditions and in compliance with state license Type 6. Several zoning clearances and use permits were granted approval on this basis. Upon the passage of SB 94, the state included ethanol into the classification of “flammable” which placed it into volatile or Medical Cannabis Manufacturing Level 2, which nullified the City’s use approvals since state law supersedes the City on this issue.

Subsequently, on September 28, the California Department of Public Health, which is

the state authority for cannabis manufacturing, published a Comment Summary and Response paper that addressed the issue of ethanol as follows: "License Type: Ethanol Based upon comments received, CDPH will further clarify the use of ethanol in manufacturing. Ethanol extraction, if used in a manner that creates a risk of explosion or fire, such as high heat or pressure, would be classified as a Type 7 license. Other uses of ethanol, such as tinctures or "winterization" to refine extracts, would be considered Type 6." Final CDPH emergency regulations are expected to be published in mid-November and once published will be effective immediately.

As a result, the June 30, 2017 draft ordinance was amended to address post-extraction ethanol "winterization" and ethanol extraction as follows:

"Medical Cannabis Manufacturing - Level 1" means the processing or manufacturing of medical cannabis products using nonvolatile solvents, or no solvents. A Medical Cannabis Manufacturing Level 1 Operator shall only process or manufacture cannabis products for sale by a permitted Medical Cannabis Retail facility. The use of post-extraction ethanol "winterization" is allowed within Medical Cannabis Manufacturing Level 1 only to the extent such use is permitted by the state in a Type 6 license.

"Medical Cannabis Manufacturing - Level 2" means the processing or manufacturing of medical cannabis products using volatile solvents. A Medical Cannabis Manufacturing Level 2 Operator shall only manufacture cannabis products for sale by a permitted Medical Cannabis Retail facility. For purposes of this section, "volatile solvents" shall include solvents described in paragraph (3) of subdivision (d) of Section 11362.3 of the Health and Safety Code, or as such section may be amended.

As amended, the ordinance provides clarity for when post-extraction "winterization" can be allowed within Level 1 and maintains local flexibility in placing ethanol extraction in either Level 1 or Level 2 to the extent the placement remains in compliance with state law.

F. MEDICAL CANNABIS RETAIL – SETBACKS AND OVERCONCENTRATION

Draft ordinance: Medical Cannabis Retail and Delivery Businesses are allowed in appropriate zoning districts per Division 2 (land use tables); shall be setback 600 feet from a K-12 school; and shall be setback 1,000 feet from another permitted Medical Cannabis Retail and Delivery Business.

The issue of setbacks and overconcentration for medical cannabis retail has been a primary point of conversation through the ordinance process. Working maps showing a variety of setback considerations assisted the Council Policy Subcommittee in preparing the draft ordinance, as did a quarterly permit activity report used to monitor market interests.

Comments in favor or more restrictions: School, neighborhood and youth representatives would like to see more than a 600-foot setback and would like the setback expanded to other sensitive uses. Comments indicate a concern for overconcentration of cannabis businesses in general in any one neighborhood or quadrant in the City.

Comments in favor or fewer restrictions: Cannabis business stakeholders would like to see the setback to other dispensaries either removed or reduced to 600 feet. Many cite the co-location benefits of placing cannabis uses within the same site or vicinity of each other, including retail. Some noted that the City should explore different setbacks between dispensaries depending on their location or zoning district, such as not requiring a setback between dispensaries in industrial districts, and only applying the setback in commercial districts.

Alternatives for consideration:

- 1) Add a cap on total number of dispensaries; city-wide or by zone
- 2) Apply a larger setback to schools e.g. 1,000 feet
- 3) Apply setbacks to youth facilities, drug rehab centers and day care centers similar to the County of Sonoma
- 4) Reduce the setback between dispensaries to 600 feet
- 5) Remove or reduce the setback for dispensaries within specified zones, eg. BP, IL or IG.

G. ADULT USE CANNABIS BUSINESSES

Draft ordinance: Adult Use Cannabis Businesses are prohibited.

In response to recent changes in state law and public feedback received following the June 30, 2017 draft ordinance, the Council Policy Subcommittee directed staff to prepare alternative options on adult use cannabis businesses that the Commission and Council could discuss and consider action on.

Adult Use Support Uses (cultivation, manufacturing, distribution and testing laboratory).

While the draft ordinance and public discussion to date has focused on an allowance of medical cannabis, the passage of Prop 64 and SB 94 have started to move the issue of adult use further along in terms of how the state will regulate and permit adult use in combination with medical use. SB 94 for example clarified that testing labs will not hold separate A- (Adult Use) and M- (Medical) type licenses; only one testing laboratory license will be issued by the state that covers both sets of activities:

BPC 26050 (b) With the exception of testing laboratory licenses, which may be used to test cannabis and cannabis products regardless of whether they are intended for use by

individuals who possesses a physician's recommendation, all licenses issued under this division shall bear a clear designation indicating whether the license is for commercial adult-use cannabis activity as distinct from commercial medicinal cannabis activity by prominently affixing an "A" or "M," respectively. Examples of such a designation include, but are not limited to, "A-Type 1" or "M-Type 1."

Based on SB 94, as specified in this division, the requirements for A-licenses and M-licenses associated with a testing laboratory will essentially be the same at the state level.

Subsequent to SB 94, AB 133 (Trailer Bill 2.0) was passed. AB 133 appears to have opened the door to eliminate separate A- and M- license categories for all non-retail cannabis uses or at least allow co-location of the license types (and possibly other license types) by eliminating the "separate and distinct" requirement from the definition of "licensed premises." The state does not seem to anticipate separate tracking of A- and M- plants as is required by other states like Colorado, and it seems likely that they will not require separate A- and M- licensed premises within a facility for non-retailers.

Thus, the trend at the state level is to regulate medical support uses (non-retail) the same as adult use support (non-retail), while reserving the opportunity to regulate A- and M- retail licenses differently. Much of this trend is attributable to the fact that the product development, distribution and testing process itself has little discernable difference in impact, and that the primary area of scrutiny is at the point of sale.

It is expected that additional clarification may be upcoming in the emergency regulations in mid-November.

Due to the late nature of this direction in the public and analytical review process, the options available are narrow in scope but offered as follows:

Alternatives for consideration:

- 1) Allow commercial adult use support uses (cultivation, manufacturing, distribution, and testing) and apply *the same* locational and operational regulations as medical cannabis support businesses.
- 2) Allow commercial adult use support uses but *apply more restrictive* regulations than how medical is allowed.
- 3) Allow commercial adult use retail uses (retail and delivery and microbusiness with retail component) and apply *the same* locational and operational regulations as medical cannabis retail businesses.
- 4) Allow commercial adult use retail uses but apply *more restrictive* regulations than how medical is allowed.
- 5) Direct staff to continue work with the Council Cannabis Policy Subcommittee to pursue an Adult Use update to the ordinance as a second phase.

ATTACHMENTS

Attachment 1 – Cannabis Permit Activity Update – September 12, 2017
Attachment 2 – Comprehensive Land Use Policy Chart
Attachment 3 – Map of Zoning Districts eligible for Medical Cannabis Business
Attachment 4 – Sample maps depicting medical retail (dispensary) with 1,000-foot overconcentration and 600 feet to school setback buffers
Attachment 5 - Correspondence (In Favor – Personal Outdoor)
Attachment 6 - Correspondence (Opposed – Personal Outdoor)
Attachment 7 – Correspondence (Commercial Cannabis)
Resolution 1/Exhibit A (Draft Comprehensive Cannabis Ordinance)

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