



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Report
AGENDA ITEM NO.: 1

DATE: July 18, 2017

TO: City Council

FROM: Stephen Fischer
City Attorney

A handwritten signature in cursive script, appearing to read "S. Fischer".

SUBJECT: Marijuana Recommendations and Direction (5/20/30)

CONTACT: Stephen Fischer, City Attorney
Stephen.Fischer@oxnard.org, 385-7483

RECOMMENDATION:

That City Council direct staff to prepare updates to the Oxnard City Code to:

- 1) Allow for deliveries of medical marijuana;
- 2) Incorporate existing medical marijuana restrictions into the zoning code; and
- 3) Prohibit commercial marijuana activities.

BACKGROUND

On November 8, 2016, California voters passed the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") as Proposition 64. AUMA legalized the nonmedical use of marijuana by persons 21 years of age and over, the personal cultivation of up to six marijuana plants per household, and certain commercial marijuana businesses.

All commercial marijuana businesses must have a state license in order to operate, but AUMA does not limit the City's authority to adopt and enforce local ordinances regulating or prohibiting state-licensed marijuana businesses. It is anticipated that the state will begin issuing licenses by January 1, 2018. If the City wishes to regulate or ban commercial marijuana businesses before they may legally operate within the City, the regulations or ban will need to take effect prior to that date. On June 27, the Governor signed SB 94 which created a new single regulatory system for both medical and commercial marijuana activities. These regulations will be developed in the coming months. Under the newly enacted program the burden will be on the City to provide the state licensing authority with its local ordinances and regulations related to marijuana. The

state will look to these submittals to determine if any state licenses should be issued in the City. A list of the potential license types, now applicable to both medical and commercial activities, is attached as Attachment A.

Under the City's existing marijuana regulations, medical dispensaries are banned and outdoor cultivation/deliveries of commercial and medical marijuana are also prohibited. Existing City regulations also prohibit the issuance of licenses for commercial activities. However, it is recommended that the current prohibition on commercial and medical marijuana activities be made explicit within the City's zoning code. Below is a summary of the City's current regulations:

- No medical marijuana dispensaries or businesses are permitted (OCC 7-281)
- No outdoor cultivation of marijuana (medical or recreational) is permitted; indoor cultivation of 6 plants in accordance with AUMA is allowed (OCC 7-282)
- No deliveries of marijuana (medical or recreational) are permitted (OCC 7-283)
- No license or permit shall be issued for the sale, supply or provision of marijuana in the City (2007 uncodified ordinance).

On April 4, the City Council held a study session to discuss regulatory options after the passage of AUMA. While there was no consensus reached on marijuana issues, there did not appear to be Council support for allowing of commercial activities, and a majority spoke in favor of taking a "go slow" approach to marijuana regulation. Consistent with this direction, staff is presenting three recommendations:

1. Revise existing regulations to allow for delivery of medical marijuana. Consistent with a cautious approach, this change would potentially allow city residents with a medical need greater access to marijuana if they are not able to either grow marijuana for personal use under existing rules or visit a dispensary in a neighboring jurisdiction (such as Ojai or Port Hueneme). It is recommended that deliveries be limited to medical marijuana only and delivery businesses would be subject to existing city rules, such as obtaining a tax certificate. This proposed change would solely allow for deliveries into the City; not for a delivery business to be physically based within City limits. This would not involve a land use change and a revision to City Code could be brought back for City Council approval this fall.

2. Incorporate existing medical marijuana restrictions into the zoning code. While medical marijuana businesses and dispensaries are currently banned, it is recommended that these restrictions are incorporated into the City zoning code. This is not a change to existing City regulations or policy.

3. Enact a zone text amendment explicitly banning commercial activities. No City Council members have expressed clear support for particular commercial marijuana activities. This position is consistent with existing City regulations which do not allow for issuance of licenses or permits for marijuana activities. In order to ensure no loss of local control, the ban on

commercial activities should be made explicit in the City zoning code.

This recommendation is consistent with the City Council's go slow approach which was discussed in April. With this approach, the City will be able to examine and study the experiences of neighboring jurisdictions and other agencies throughout the state and observe how the federal government reacts to state marijuana activities, particularly recreational ones. This "go slow" approach will allow the City to be in a stronger position to explore future options and draft regulations based on evidence and data. Additionally, the regulatory landscape should be clearer in the future. As mentioned, a new regulatory system took effect June 27, 2017 and there are currently over 30 bills under consideration contemplating further changes to state law regarding marijuana. The proposed ordinance related to recommendations 2 and 3 would be prepared for review by the City's Planning Commission and would return to the City Council by early November for adoption prior to the January 1 state deadline.

As was discussed at the prior study session, marijuana in California is an issue of great regulatory complexity. These recommendations are not indicative of a staff position in support of permanent policy decisions. Staff will continue to monitor activities at the County, State and Federal level in the coming months and return in the New Year to re-examine the issues of medical and commercial marijuana activities with the City Council.

STRATEGIC PRIORITIES

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to build relationships and create opportunities within the community for safe and vibrant neighborhoods, which will showcase the promising future of Oxnard.

FINANCIAL IMPACT

The recommended actions will potentially affect state grants. Under Proposition 64, the Board of State and Community Corrections may make grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with AUMA. However, local agencies are only eligible to receive these state grant funds if they allow outdoor personal cultivation of marijuana and retail sales. At this point in time the amount of potential grant money is unclear; the amount of revenue the state will collect is unknown and local grants are last in the distribution of state marijuana tax revenues.

ATTACHMENTS:

Attachment A - License Classifications

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Attachment B - Regulations of other local agencies

Categories of Marijuana Businesses

The Medical Cannabis Regulation and Safety Act of 2015 (“MCRSA”) created six categories of licenses: cultivation, manufacturing, testing, dispensary, distribution, and transportation. The Adult Use of Marijuana Act of 2016 (“AUMA”) also created a licensing scheme for the operation of commercial marijuana activities. On June 27, 2017, SB 94 repealed MCRSA, including some MCRSA provisions within AUMA, and created an entirely new comprehensive regulatory program, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). Under MAUCRSA, an applicant for a state marijuana license may not be in violation of a local ordinance, but the burden is on the City to provide the state with its local ordinances and regulations related to marijuana.

The license types authorized under MAUCRSA are as follows:

Cultivation: Cultivation both indoors and outdoors with the type of license issued based on the location (indoor/outdoor) and size.

Type 1 – Cultivation; Specialty outdoor; Small.

Type 1A – Cultivation; Specialty indoor; Small

Type 1B – Cultivation; Specialty mixed-light; Small

Type 1C – Cultivation; Specialty cottage; Small

Type 2 – Cultivation; Outdoor; Small

Type 2A – Cultivation; Indoor; Small

Type 2B – Cultivation; Mixed-light; Small

Type 3 – Cultivation; Outdoor; Medium

Type 3A – Cultivation; Indoor; Medium

Type 3B – Cultivation; Mixed-light; Medium

Type 4 – Cultivation; Nursery

Type 5 – Cultivation; Outdoor; Large*

Type 5A – Cultivation; Indoor; Large*

Type 5B – Cultivation; Mixed-light; Large*

* The state will not issue licenses for large scale cultivation until January 1, 2023.

Manufacturing: The state will issue two types of licenses for commercial manufacturing: one for manufacturing using volatile solvents, and one for non-volatile solvents.

Type 6 – Manufacturer Level 1 - non-volatile

Type 7 – Manufacturer Level 2 - volatile

Testing: A business holding a testing license is not eligible to hold any other license and will provide third party inspection and certification of marijuana products.

Type 8 – Testing Laboratory

Dispensary & Retail Sales: This license holder may operate a storefront or other retail location open to the public.

Type 10 – Retailer

Distribution: A license holder may transport and warehouse marijuana products.

Type 11 – Distributor

Microbusinesses: This license holder may cultivate up to 10,000 square feet and also act as distributor, manufacturer, and retailer at a single site.

Type 12 – Microbusiness

Attachment B

Regulatory status of other local agencies after passage of Proposition 64:

- Camarillo - Moratorium on commercial activities and outdoor cultivation.
- Fillmore - No commercial activities and indoor growing permit required.
- Ojai - No commercial activities, provision for three permitted medical dispensaries.
- Port Hueneme – In the process of drafting regulations to allow medical marijuana dispensaries, manufacturing, cultivation and delivery.
- Santa Barbara (City) – Currently allow for a maximum of three medical marijuana storefronts.
- Santa Paula - No commercial activities.
- Simi Valley - No commercial activities.
- Thousand Oaks – On 6/27 staff was directed to prepare code amendments allowing one medical marijuana dispensary and a marijuana testing facility in the city.
- Ventura (City) - Moratorium on commercial activities and outdoor cultivation.
- Ventura (County) - No commercial activities and the County has adopted a “go slow” approach regarding regulations allowing access to medical marijuana. In March of this year the Board of Supervisors was unable to reach a consensus on preliminary proposed regulations allowing limited cultivation and medical dispensary activities.