



AGENDA REPORT

Meeting Date: August 8, 2017
Item Number: D-7
To: Honorable Mayor & City Council
From: Laurence S. Wiener, City Attorney
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING ALL COMMERCIAL CANNABIS ACTIVITY (BOTH MEDICAL AND NON-MEDICAL) EXCEPT FOR DELIVERIES OF MEDICAL CANNABIS, MAKING RELATED MUNICIPAL CODE AMENDMENTS, AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT
Attachments: 1. Ordinance

RECOMMENDATION

It is recommended that the City Council move to waive the full reading and adopt the ordinance entitled, "AN ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING ALL COMMERCIAL CANNABIS ACTIVITY (BOTH MEDICAL AND NON-MEDICAL) EXCEPT FOR DELIVERIES OF MEDICAL CANNABIS, MAKING RELATED MUNICIPAL CODE AMENDMENTS, AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT".

INTRODUCTION

At its meeting of July 18, 2017, the City Council conducted a first reading of this ordinance and introduced it.


DISCUSSION

This ordinance amends the Municipal Code to expressly prohibit all forms of cannabis-related businesses with the exception of allowing medical marijuana delivery to residents.

Meeting Date: August 8, 2017

FISCAL IMPACT

None.



Approved By
Laurence S. Wiener, City Attorney

Attachment 1

ORDINANCE NO. 17-O-_____

**AN ORDINANCE OF THE CITY OF BEVERLY HILLS
PROHIBITING ALL COMMERCIAL CANNABIS
ACTIVITY (BOTH MEDICAL AND NON-MEDICAL)
EXCEPT FOR DELIVERIES OF MEDICAL CANNABIS,
MAKING RELATED MUNICIPAL CODE AMENDMENTS,
AND FINDING THE ORDINANCE EXEMPT FROM THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BEVERLY
HILLS DOES ORDAIN AS FOLLOWS:**

SECTION 1. Findings and Purpose.

A. The City of Beverly Hills, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California.

B. On November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA added Division 10 to the California Business and Professions Code, sections 26000, *et seq.*, which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for cannabis businesses. The AUMA provides that the State shall begin issuing licenses to cannabis businesses under Division 10 of the California Business and Professions Code by January 1, 2018. California Business and Professions Code section 26055(e) provides that a State licensing authority shall not approve an application for a State license for commercial non-medical cannabis activity if approval of the State license will violate the provisions of any local ordinance.

C. On October 9, 2015, Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which were collectively known as the Medical Cannabis Regulation and Safety Act (hereinafter “MCRSA”). The MCRSA established a State licensing scheme for commercial medical cannabis uses, while protecting local control by requiring that all such businesses have a local license or permit to operate in addition to a State license. The MCRSA allowed the City to completely prohibit commercial medical cannabis activities.

D. On June 22, 2017, the Planning Commission of the City of Beverly Hills held a public hearing on this proposed Ordinance, at which time all persons interested in the proposed Ordinance had the opportunity and did address the Planning Commission on these matters. Following the receipt of public testimony the Planning Commission closed the public hearing.

E. At the conclusion of the Planning Commission hearing and after due consideration of the testimony, the Planning Commission adopted Resolution No. 1813 recommending that the City Council adopt the proposed Ordinance, to prohibit all commercial cannabis activity except for the delivery of medical cannabis.

F. On June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA,

and created a single regulatory scheme for both medical and non-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether commercial cannabis activity could occur in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a business to engage in commercial cannabis activity if approval of the State license will violate the provisions of any local ordinance or regulation. The MAUCRSA requires that a State licensing authority begin issuing licenses to marijuana businesses beginning January 1, 2018.

G. On July 18, 2017, the City Council of the City of Beverly Hills held a public hearing on the proposed Ordinance, at which time all persons interested in the proposed Ordinance had the opportunity and did address the City Council on these matters. Following the receipt of public testimony the City Council closed the public hearing.

H. All legal prerequisites to the adoption of this Ordinance have occurred.

SECTION 2. The definition of “Person” contained in Section 1-2-1 (Application of Definitions) of Chapter 2 (Definitions) of Title 1 (General Provisions) is hereby amended to read as follows:

“PERSON: A natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, cooperative, and collective, and any manager, lessee, agent, servant, officer or employee thereof.”

SECTION 3. The definition of Marijuana Dispensary, Store, Co-Op, or Cultivation Operation from Section 10-3-100 (Words Defined) of Article 1 (Definitions) of Chapter 3 (Zoning) of Title 10 (Planning and Zoning) is hereby deleted, with all other definitions remaining in effect without amendment.

SECTION 4. The City Council of the City of Beverly Hills hereby deletes Section 10-3-2761 (Marijuana Dispensary, Store, Co-Op, or Cultivation Operation Prohibited) from Article 27 (Other Uses and Building Restrictions) of Chapter 3 (Zoning) of Title 10 (Planning and Zoning).

SECTION 5. The City Council of the City of Beverly Hills hereby adds Article 47 (Cannabis Prohibitions and Regulations) to Chapter 3 (Zoning) of Title 10 (Planning and Zoning) to read as follows:

“ARTICLE 47 CANNABIS PROHIBITIONS AND REGULATIONS

Section 10-3-4700: Purpose.

Section 10-3-4701: Definitions.

Section 10-3-4702: Prohibited uses and activities.

Section 10-3-4703: Exceptions.

Section 10-3-4704: Violation, penalty.

10-3-4700 Purpose.

A. The purpose of this article is to expressly prohibit the establishment of commercial cannabis uses in the city.

B. The city council finds that prohibitions on commercial cannabis activity are necessary for the preservation and protection of the public health, safety, and welfare of the city. The prohibition of such uses is within the authority conferred upon the city council by State law and is an exercise of its police powers to enact and enforce regulations for the public health, safety and welfare of the city.

10-3-4701 Definitions.

For purposes of this chapter, the following definitions shall apply.

A. "Cannabis" means all parts of the plant *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" includes cannabis that is used for medical, non-medical, or other purposes.

"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. "Cannabis" also does not include industrial hemp, as defined in California Health and Safety Code section 11018.5.

B. "Cannabis accessories" means any equipment, products or materials of any kind which is intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body.

C. "Cannabis product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

D. "Commercial cannabis activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis product for medical, non-medical, or any other purpose and includes the activities of any business licensed by the State or other government entity under

Division 10 of the California Business and Professions Code, or any provision of State law that regulates the licensing of cannabis businesses.

E. “Concentrated cannabis” means manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate.

F. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

G. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.

H. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Division 10 of the California Business and Professions Code, as they may be amended from time to time.

I. “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

J. “MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act as codified in Division 10 of the Business and Professions Code, as the same may be amended from time to time.

K. “Private residence” means a house, an apartment unit, condominium, or other similar dwelling that is lawfully used as a residence.

10-3-4702 Prohibited uses and activities.

A. Commercial cannabis activity, whether or not for profit, is prohibited in all zones, specific plan areas, and overlay zones of the city. No person shall establish, operate, maintain, conduct, allow, or engage in commercial cannabis activity anywhere within the city. To the extent that this prohibition conflicts with any other provision of this Municipal Code, this prohibition will control.

B. A property owner shall not rent, lease or otherwise permit any person or business that engages in commercial cannabis activity to occupy real property in the city. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial cannabis activity on any real property owned or controlled by that property owner that is located in the city.

C. Subsection A above shall prohibit all activities for which a State license is required pursuant to the MAUCRSA, as the same may be amended from time to time. Accordingly, the city shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MAUCRSA, as the same may be amended from time to time. The city shall also not issue any local license to a non-profit entity pursuant to California Business and Professions Code section 26070.5.

D. To the extent not already prohibited by subsection A above, all deliveries of cannabis or cannabis products for non-medical purposes, to or from any location are expressly prohibited. No person shall conduct or perform any delivery of any cannabis or cannabis products for a non-medical purpose, which delivery either originates or terminates within the city. This subsection shall not prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery or distribution to a person located outside the city, where such transport does not involve delivery or distribution within the jurisdictional limits of the city.

10-3-4703 Exceptions.

A. Notwithstanding Subsection 10-3-4702 above, the delivery of medical cannabis from a business located outside the city and licensed under the MAUCRSA, or any other provision of law that permits State licenses for medical cannabis businesses, shall be permitted into the city.

B. To the extent that the following activities are permitted by State law, nothing in this article shall prohibit a person 21 years of age or older from:

1. Possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, not more than 28.5 grams of cannabis not in the form of concentrated cannabis;

2. Possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, up to eight grams of cannabis in the form of concentrated cannabis;

3. Smoking or ingesting cannabis or cannabis products except as prohibited by California Health and Safety Code section 11362.3;

4. Possessing, transporting, purchasing, obtaining, using, manufacturing, or giving away cannabis accessories to persons 21 years of age or older without compensation whatsoever; or

5. Engaging in the cultivation of six or fewer live cannabis plants within a single private residence, inside an accessory structure located upon the grounds of a private residence, or if grown outdoors within a locked space that is not visible by normal, unaided vision from a public place.

C. This article shall also not prohibit any commercial cannabis activity that the city is required by State law to permit within its jurisdiction pursuant to the MAUCRSA.

10-3-4705 Violation, penalty.

In addition to any other enforcement permitted by this Section 10-3-205 of the Beverly Hills Municipal Code, the city attorney or city prosecutor may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action

brought pursuant to this article, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party. Notwithstanding the penalties set forth in Section 10-3-205 of the Beverly Hills Municipal Code, no provision of Section 10-3-205 or this Article 47 authorizes a criminal prosecution, arrest or penalty inconsistent with or prohibited by Health and Safety Code section 11362.71, *et seq.* or section 11362.1, *et seq.*, as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under Section 10-3-205 of the Beverly Hills Municipal Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.”

SECTION 6. The Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (“CEQA”), the State CEQA Guidelines, and the environmental regulations of the City. Planning Division staff has determined that the adoption and implementation of the Ordinance is eligible for a class 5 categorical exemption for minor changes in land use limitations and will not have a significant environmental impact. The Ordinance is exempt from the environmental review requirements of CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations. Planning Division Staff has also determined that the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption and implementation of the Ordinance to prohibit commercial cannabis activity except for the delivery of medical cannabis will have a significant effect on the environment. The adoption and implementation of the Ordinance will not result in a permanent alteration of property nor the construction of any new or expanded structures. The City Council has reviewed Planning Division Staff’s determination of exemption, and based on its own independent judgment, concurs with Staff’s determination of exemption. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

SECTION 7. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. Restatement of Existing Law. Neither the adoption of this Ordinance nor the repeal of any other Ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

SECTION 9. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the city within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk’s certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this city.

SECTION 10. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

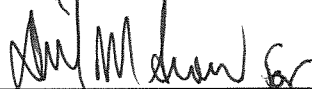
Adopted:
Effective:

LILI BOSSE
Mayor of the City of Beverly Hills

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager