



Legislation Text

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Report to Mayor and City Council

Thursday, November 09, 2017

Discussion

SUBJECT:

DISCUSS AND CONSIDER INTRODUCTION OF ORDINANCE NO. 17-1636 TO PROHIBIT ALL COMMERCIAL CANNABIS OPERATIONS AND TO REGULATE STRICTER THAN STATE REQUIREMENTS PERSONAL CANNABIS CULTIVATION; DISCUSS AND CONSIDER INTRODUCTION OF ORDINANCE NO. 17-1637 TO PROHIBIT ALL COMMERCIAL CANNABIS OPERATIONS EXCEPT FOR LIMITED OPERATIONS AS DEFINED IN THE ORDINANCE, AND TO REGULATE STRICTER THAN STATE REQUIREMENTS PERSONAL CANNABIS CULTIVATION; AND, DISCUSS AND CONSIDER INTRODUCTION OF ORDINANCE NO. 17-1638 TO STRENGTHEN SECONDHAND SMOKE REGULATIONS.

I. SUMMARY

Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), was approved by California voters on November 8, 2016. The AUMA legalized limited personal use, possession and cultivation of cannabis.

Pursuant to the AUMA and Senate Bill 94 (the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA)), the state will also begin issuing licenses for commercial cannabis operations on or after January 1, 2018.

Cities cannot prohibit personal use, but maintain limited local control over personal cultivation of cannabis and can regulate personal cultivation stricter than state regulations. Cities also have the authority to prohibit or regulate commercial cannabis operations by local ordinance. A failure of a city to address these issues cedes substantial authority to the state. Cities may also regulate cannabis secondhand smoke akin to regulation of tobacco secondhand smoke.

An ordinance which both prohibits all commercial cannabis operations, while also regulating personal cannabis cultivation stricter than state standards, is presented for discussion and possible introduction for a first reading.

An alternative ordinance which both prohibits all commercial cannabis operations except for one indoor cultivation operation, one (wholesale) distribution operation and one testing

operation, while also regulating personal cannabis cultivation stricter than state standards, is presented for discussion and possible introduction for a first reading.

Failure to address by ordinance, the commercial cannabis operation types which the state will license on or after January 1, 2018, will reasonably allow an operator with a valid state commercial cannabis operation license to operate in the City.

An ordinance to strengthen secondhand smoke regulations is also presented for discussion and possible introduction for a first reading.

The Council is asked to decide the following issues:

- 1) Does the Council want to regulate personal uses stricter than state standards? If yes, the Council is asked to discuss the proposed regulations on personal uses in the Ordinances before the Council tonight.
- 2) Does the Council want to prohibit all commercial cannabis operations or prohibit all commercial cannabis operations except for some limited operations as allowed under the proposed City ordinance?

II. RECOMMENDATION

Staff recommends that Council DISCUSS and then CONSIDER for introduction by first reading by title only and with further reading waived, one of the following two cannabis regulation ordinances:

1. ORDINANCE NO. 17-1636 ADDING CHAPTER 15 (COMMERCIAL CANNABIS OPERATIONS PROHIBITED) TO PROHIBIT ALL COMMERCIAL CANNABIS OPERATIONS IN THE CITY AND ADDING CHAPTER 17 (PERSONAL CANNABIS CULTIVATION) TO REGULATE STRICTER THAN STATE REQUIREMENTS PERSONAL CANNABIS CULTIVATION, TO ARTICLE VI (TAXES AND LICENSES) OF THE CARSON MUNICIPAL CODE, AND FINDING AN EXEMPTION FROM CEQA; OR
2. ORDINANCE NO. 17-1637 ADDING CHAPTER 15 (COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM) TO PROHIBIT ALL COMMERCIAL CANNABIS OPERATIONS IN THE CITY EXCEPT FOR LIMITED OPERATIONS AS DEFINED IN THE ORDINANCE, AND ADDING CHAPTER 17 (PERSONAL CANNABIS CULTIVATION) TO REGULATE STRICTER THAN STATE REQUIREMENTS PERSONAL CANNABIS CULTIVATION, TO ARTICLE VI (TAXES AND LICENSES) OF THE CARSON MUNICIPAL CODE, AND FINDING AN EXEMPTION FROM CEQA.

Staff recommends that Council DISCUSS and CONSIDER for introduction by first reading by title only and with further reading waived, the following secondhand smoke regulation

ordinance:

1. ORDINANCE NO. 17-1638 RENAMING CHAPTER 11 OF ARTICLE IV OF THE CARSON MUNICIPAL CODE AS "SECONDHAND SMOKE CONTROL," AND AMENDING CHAPTER 11 TO STRENGTHEN REGULATION OF SECONDHAND SMOKE.

III. ALTERNATIVES

PROVIDE further direction to City staff.

IV. BACKGROUND

A. State Cannabis Laws and Local Control

1. Personal Cannabis Cultivation

Proposition 64 legalized statewide the personal cultivation of up to six cannabis plants at a private residence. A "private residence" is defined as "a house, an apartment unit, a mobile home, or similar dwelling." (Health and Safety Code § 11362.2(b)(5).)

Cities may prohibit outdoor personal cannabis cultivation. However, cities are preempted from prohibiting indoor personal cannabis cultivation of up to six plants. (Health and Safety Code § 11362(b)(2).)

While cities may not prohibit such indoor personal cultivation, cities may "enact and enforce reasonable regulations to reasonably regulate" indoor cultivation which do not act to effectively prohibit indoor cultivation. (Health & Safety Code § 11362.2(b)(1).)

2. State Licenses for Commercial Cannabis Operations

On or about January 1, 2018 the State of California will begin issuing state licenses for commercial cannabis operations (both medical and recreational). The state cannabis licenses will be for retail sales, cultivation, manufacturing, testing, distribution and microbusinesses.

A state license will be required to engage in any of these commercial cannabis operations.

Pursuant to recently passed SB 94 there will be the same twenty different license types available for medical and recreational commercial operations, to be distinguished by either an "A" for adult-use (i.e., recreational) or a "M" for medical use. (Business & Professions Code § 26050.)

3. Local Control of Commercial Cannabis Operations

Local governments maintain regulatory and land use authority over all of these new commercial cannabis operations which the state will be licensing. Cities may completely prohibit these businesses, allow some but not others, or allow all of them. Cities may also impose stricter regulations than the state (if a certain business type is allowed). (Business & Professions Code § 26200.)

However, to maintain local control over these businesses, local governments are advised to expressly determine through local ordinance whether each different type of business operation will be allowed in a city. A failure to affirmatively address these operations through local ordinance may reasonably allow commercial cannabis operations to conduct business in a city pursuant to a valid state license, if that city doesn't expressly prohibit that license type.

4. Smoking and Second-Hand Smoke Regulations

Proposition 64 further provides that the new laws permitting use and possession of cannabis shall not be interpreted to permit any person to smoke cannabis or cannabis products in public places or in any place where smoking tobacco is prohibited. (Health & Safety Code § 11362.3(a)(1-2).)

5. Cannabis Ordinances for Consideration by Council

An ordinance to prohibit all commercial cannabis operations has been prepared for Council discussion and possible introduction by first reading. In the alternative, an ordinance to prohibit all commercial cannabis operations with the exception of limited operations under one California licensed cannabis center which allows one license per cannabis activities except for manufacturing licenses and dispensary licenses has been prepared for Council discussion and possible introduction by first reading.

Both of these ordinances also regulate personal cannabis cultivation stricter than state regulations.

And, an ordinance to strengthen secondhand smoke regulations has been prepared for Council discussion and possible introduction by first reading.

Below are summaries of the proposed regulations in these ordinances.

B. Decisions for Council:

1. Does the Council Wish to Regulate Personal Uses More Strictly than the State? Proposed Regulations on Personal Cannabis Cultivation.

Both of the proposed ordinances concerning commercial cannabis operations provide for the regulation (stricter than state standards) of personal cannabis cultivation, as summarized below.

i. Outdoor personal cannabis cultivation.

All outdoor personal cannabis cultivation is prohibited in the City. (Section 17.030.

ii. Indoor personal cannabis cultivation.

Indoor personal cannabis cultivation at a private residence is subject to the following regulations (Section 17.030) and violation of regulation is punishable as a misdemeanor with a set fine of \$1,000 (Section 17.050).

- a. No more than six plants.
- b. No access to minors.
- c. No visibility from public places.
- d. No odor from cultivation detectable by neighbors.
- e. City inspections.
- f. Requirement for a fire extinguisher in cultivation room.
- g. Electricity draw to not exceed maximum rating of the approved electrical panel for residence.
- h. Artificial lighting shielded so that completely confined to private residence.
- i. Private residence must have fully functional and usable kitchen, as well as bathroom and bedroom areas; and, private residence shall not be used primarily or exclusively for cannabis cultivation.
- j. Cultivation shall not displace required parking in a garage.

iii. Permit required to cultivate indoor personal cannabis cultivation (Sections 17.030(B), 17.040)

Indoor personal cannabis cultivation may only be conducted pursuant to a current and valid personal cannabis cultivation permit. Permits must be renewed annually. Applications for such a permit shall include:

- a. Property owner consent for cultivation (if applicant a tenant).
- b. Passage of a City inspection of the cultivation site for determination that all City regulations are met.
- c. Provision to City of a scaled property site plan and a scaled diagram of the floor plan of the area to be used for cultivation.

2. Does the Council Wish to Prohibit All Commercial Cannabis Operations or Prohibit All But Limited Operations as Allowed Under the

Ordinance?

i. Proposed Regulations to Prohibit All Commercial Cannabis Operations

Dispensaries, manufacturing, outdoor cultivation, mixed-light cultivation, indoor cultivation, (wholesale) distributor and testing commercial cannabis operations are prohibited throughout the City. Delivery of cannabis or cannabis products into the City of Carson for retail sale is prohibited.

ii. Proposed Regulations to Prohibit All Commercial Cannabis Operations Except for Limited Operations as Allowed Under the Ordinance.

In the alternative to an ordinance to prohibit all commercial cannabis operations, an ordinance is provided for consideration which prohibits all commercial cannabis operations (including dispensaries) while permitting limited operations under one California licensed cannabis center which allows one license per cannabis activities except for manufacturing licenses and dispensary licenses, as summarized below.

a. Most Commercial Operations Prohibited

Dispensaries, manufacturing, outdoor cultivation and mixed-light cultivation commercial cannabis operations would be prohibited throughout the City. With the exception of one each, all indoor cultivation, (wholesale) distributor, and testing commercial cannabis operations are prohibited throughout the City. (Sections 15.040-15.050, 15.130(D), 15.140(D), 15.150(D).) All to be under one licensed cannabis center.

Delivery of cannabis or cannabis products into the City of Carson for retail sale is prohibited. (Section 15.160.)

b. Limited Commercial Operations Permitted

Subject to issuance of a local commercial cannabis operation permit and the equivalent state license, one California licensed cannabis center will be allowed comprising of one license per cannabis activities except for manufacturing licenses and dispensary licenses. One each of the following commercial cannabis operations are permitted: indoor cultivation, (wholesale) distributor and testing. (Sections 15.130(D), 15.140(D), 15.150(D).)

Permits are subject to revocation or suspension for violation of local ordinance or state law and must be renewed annually. (Sections 15.190, 15.110.)

Operations are allowed only in industrial or commercial zones. (Sections 15.130(C)(1), 15.140(C)(1), 15.150(C)(1).)

State law requires businesses must be at least 600 feet from schools, youth centers and day cares centers. Increasing those distances or adding other sensitive uses is at the discretion of the City.

The proposed ordinance sets a minimum distance requirement of 750 feet from schools, youth centers, day care centers, churches (including non-profits), parks, residences, libraries and regional shopping malls.

Four “radius maps” are attached which show the state law minimum distance requirements, and then three more which show minimum distance requirements of 600 feet, 750 feet and 1000 feet from a number of sensitive uses (including churches and residences). (Sections 15.130(C)(2), 15.140(C)(2), 15.150(C)(2).)

c. Issuance of a Commercial Cannabis Operation Permit

Issuance of a commercial cannabis operation permit (“permit”) is governed by a two-step procedure. (Section 15.060(B).)

The first step starts with review by the Director of Community Development of permit applications. This review is for compliance with general requirements for operation as established by local and state law. These requirements include odor control, security, floor and site plans, and criminal background checks.

If an application passes this review, then an application is reviewed by the cannabis permit committee for maintenance and promotion of the health, safety and welfare of Carson residents and visitors, pursuant to articulated criteria in a merit list. Merit list criteria include factors like business operation plan, security plan, community benefits, educational programs, employment opportunities and capitalization. The cannabis permit committee is composed of the Community Development Director, the Finance Director, the Carson Police Captain, the Carson Fire Captain and the City Manager (or their designees). The cannabis permit committee after its review prepares a written report for consideration by the City Council. (Sections 15.070-15.080.)

The second step is review by the City Council of the merit list report prepared by the cannabis permit committee. The City Council then makes a decision on whether a permit shall be issued on the basis of promotion of merit list criteria. (Section 15.090.)

At the discretion of the City, a request for qualifications or a request for proposals may be issued to provide for submission of multiple applications by a set deadline, and then subject to comparative review. This is pursuant to the authority of the City Council to adopt additional regulations or procedures governing commercial cannabis operations. (Sections 15.090(D), 15.160.)

d. Regulations for Commercial Cannabis Operations

Substantial and extensive local regulations are imposed on all commercial cannabis operations, including the following. (Section 15.120.)

- i. Secure storage of cannabis, cannabis products, and cash.
- ii. 24/7 security camera coverage of all major areas of the operation. Live-

streaming from cameras available to City officials. Mandatory maintenance by operator of no less than 30 days of recordings, which are subject to review by City officials upon request.

- iii. At least one armed licensed security guard. Additional security guards required at the discretion of the City in consultation with the Los Angeles County Sheriff's Department.
- iv. Alarm system. Locked entrances controlled by employees. Windows secured against entry from outside.
- v. Zero tolerance odor control through an air treatment system that ensures no off-site odors result from the operation.
- vi. Authorization for City officials to make unannounced reasonable inspections of operation to ensure compliance with law.
- vii. Detailed requirements for record keeping, including employee information, product inventory, financials, and insurance policies.
- viii. Heightened site management duties including prevention of nuisance activity, litter and graffiti removal, and safe waste disposal.
- ix. Continuing duty to conduct employee criminal background checks.
- x. No use of cannabis or alcohol at the business site.
- xi. All employees must be at least 21 years of age.

Specific regulations for each business type include:

- i. Indoor Cultivation - Water usage and supply restrictions, site closed to general public and minors (under 21), procedures to prevent product contamination, sanitation standards, highest industry standards of employee training, no cannabis visible to public from outside the building site, secure transport and storage areas. (Section 15.130.)
- ii. Testing - City approval of equipment used, fire safety plan, certified industrial hygienist plan, hazardous material and waste disposal plans, operating procedures for proper testing, fire sprinklers, no cannabis visible to public from outside of the building site, site closed to general public and minors (under 21), secure transport and storage areas, sanitation standards, highest industry standards of employee training. (Section 15.140.)
- iii. (Wholesale) Distribution - Distribution only between licensed commercial cannabis operations, no retail sales, presentation of shipping manifest documents to City officials upon demand, no cannabis visible to public from outside the building site, secure transport and storage areas, site closed to general public and minors

(under 21), sanitation standards, highest industry standards of employee training. (Section 15.150.)

3. Development Agreement

If limited operations are allowed, before operations may commence under a City commercial cannabis operation permit, a permittee is required to enter into a development agreement with the City. (Section 15.100.)

4. Additional Regulations

If limited operations are allowed, further rules, regulations, procedures and standards for the administration and implementation of the commercial cannabis operations regulatory program may be adopted either by resolution or ordinance from the City Council, or by the Community Development Director (upon authorization by resolution from the City Council). (Section 15.170.)

5. Suspension and Revocation of Commercial Cannabis Operation Permit

If limited operations are allowed, the Community Development Director is authorized to suspend and/or revoke a permit upon written findings of a failure to comply with any of the requirements imposed upon a commercial cannabis operation. (Section 15.190.)

C. Proposed Regulations to Strengthen Secondhand Smoke Codes

Existing Chapter 11 of Article IV of the Carson Municipal Code prohibits smoking in certain public places. The proposed ordinance strengthens these existing City codes by expressly providing that no person shall cause smoke (including from tobacco use, cannabis use or electronic smoking devices) to unreasonably interfere with the reasonable use and enjoyment of a private residence. Additionally, the proposed ordinance provides for public nuisance abatement of violations of Chapter 11.

V. FISCAL IMPACT

Permit fees are imposed to recoup regulatory and administrative costs associated with regulation and permitting of commercial cannabis operations and personal cannabis cultivation. These fees will be set by subsequent resolution of the City Council.

Taxes on commercial cannabis operations were approved by Carson voters at the November 8, 2016 general municipal election. Chapter 13 (Cannabis Tax) of Article VI (Taxes and Licenses) of the Carson Municipal Code provides for a tax of \$25.00 per square foot for space utilized as cultivation area, and a tax of eighteen (18) percent of proceeds on every business involved in the retail or wholesale distribution, cultivation, manufacture, transportation (including delivery), or testing of cannabis.

If the taxes are collected they are estimated to annually generate \$500,000 to \$3,500,000 or more for the City in revenue according to analysis conducted for the November 8, 2016

election on the taxes. Required development agreements with cannabis business operations could also provide additional City revenues.

VI. EXHIBITS

1. ORDINANCE NO. 17-1636 ADDING CHAPTER 15 (COMMERCIAL CANNABIS OPERATIONS PROHIBITED) TO PROHIBIT ALL COMMERCIAL CANNABIS OPERATIONS IN THE CITY AND ADDING CHAPTER 17 (PERSONAL CANNABIS CULTIVATION) TO REGULATE STRICTER THAN STATE REQUIREMENTS PERSONAL CANNABIS CULTIVATION, TO ARTICLE VI (TAXES AND LICENSES) OF THE CARSON MUNICIPAL CODE, AND FINDING AN EXEMPTION FROM CEQA; (pp. 12-25)
2. ORDINANCE NO. 17-1637 ADDING CHAPTER 15 (COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM) TO PROHIBIT ALL COMMERCIAL CANNABIS OPERATIONS IN THE CITY EXCEPT FOR LIMITED OPERATIONS AS DEFINED IN THE ORDINANCE, AND ADDING CHAPTER 17 (PERSONAL CANNABIS CULTIVATION) TO REGULATE STRICTER THAN STATE REQUIREMENTS PERSONAL CANNABIS CULTIVATION, TO ARTICLE VI (TAXES AND LICENSES) OF THE CARSON MUNICIPAL CODE, AND FINDING AN EXEMPTION FROM CEQA. (pp. 26-72)
3. ORDINANCE NO. 17-1638 RENAMING CHAPTER 11 OF ARTICLE IV OF THE CARSON MUNICIPAL CODE AS "SECONDHAND SMOKE CONTROL," AND AMENDING CHAPTER 11 TO STRENGTHEN REGULATION OF SECONDHAND SMOKE. (pp. 73-76)
4. City of Carson Radius Map for Businesses with 600 Foot Buffer from Schools, Day Care Centers and Youth Centers. (p. 77)
5. City of Carson Radius Map with 600 Foot Buffer from Schools, Day Care Centers, Youth Centers, Parks, Non-Profits Including Religious Institutions, and Residences. (p. 78)
6. City of Carson Radius Map with 750 Foot Buffer from Schools, Day Care Centers, Youth Centers, Parks, Non-Profits Including Religious Institutions, and Residences. (p. 79)

7. City of Carson Radius Map with 1000 Foot Buffer from Schools, Day Care Centers, Youth Centers, Parks, Non-Profits Including Religious Institutions, and Residences. (p. 80)

Prepared by: Chris F. Neumeyer, Assistant City Attorney