



CITY OF EL MONTE
ECONOMIC DEVELOPMENT DEPARTMENT
CITY COUNCIL AGENDA REPORT

CITY COUNCIL MEETING OF OCTOBER 3, 2017

September 18, 2017

The Honorable Mayor and City Council
City of El Monte
11333 Valley Boulevard
El Monte, CA 91731

Dear Mayor and City Council:

A PUBLIC HEARING TO CONSIDER THE FIRST READING OF AN ORDINANCE TO AMEND TITLES 5 (BUSINESS LICENSES AND REGULATIONS) AND 17 (ZONING) OF THE EL MONTE MUNICIPAL CODE REGARDING BANS AND REGULATIONS OF MEDICINAL COMMERCIAL CANNABIS ACTIVITIES

IT IS RECOMMENDED THAT THE CITY COUNCIL:

1. Open the public hearing;
2. Receive presentation from staff;
3. Pose questions to staff;
4. Allow members of the public to offer comment;
5. Pose follow up questions to staff;
6. Conduct additional deliberation, if needed;
7. Close the public hearing; and
8. Consider adoption of a Categorical Exemption pursuant to Section 15061(b)(3) (the "General Rule") of the California Environmental Quality Act (CEQA) and approval of the proposed Ordinance for first reading (see Attachment 1).

BACKGROUND

California Legislature

In September 2015, the California State Legislature enacted, and Governor Brown signed into law three bills – Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 – which together comprise the Medical Marijuana Regulation and Safety Act (the "MMRSA"). The MMRSA created a comprehensive dual state licensing system for the cultivation, manufacture, retail, sale, transport, distribution, delivery, and testing of medical cannabis. The MMRSA was renamed the Medical Cannabis Regulation and Safety Act (the "MCRSA") under Senate Bill 837 in June 2016, which also made substantive changes to the applicable state laws, which affect the various state agencies involved in regulating cannabis businesses as well as potential licensees.

Proposition 64

On November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters as Proposition 64 and became effective on November 9, 2016. Proposition 64 legalized the nonmedical use of cannabis by persons 21 years of age and over, and the personal cultivation of up to six (6) cannabis plants. AUMA also created a state regulatory and licensing system governing the commercial cultivation, testing, and distribution of nonmedical cannabis, and the manufacturing of nonmedical cannabis products.

Senate Bill 94

On June 27, 2017, Governor Brown signed the Legislature-approved Senate Bill 94. SB 94 combined elements of the MCRSA and AUMA to establish a streamlined singular regulatory and licensing structure for both medicinal and adult-use cannabis activities given that there were discrepancies between the MCRSA and AUMA. The new consolidated provisions under SB 94 is now known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”) to be governed by the California Bureau of Cannabis Control. MAUCRSA refers to medical cannabis as “medicinal cannabis” and nonmedical/recreational cannabis as “adult-use cannabis”.

City Moratoria

In response to the above state legislation, the City Council issued the moratoria listed below to allow the City time to research and develop a permanent ordinance for City Council consideration.

- July 19, 2016 – Interim Urgency Ordinance No. 2889 to establish a temporary moratorium on medical “commercial cannabis activities,” as defined under the MMRSA, for a period of 45 days and extended such moratorium for an additional period of 22 months and 15 days under Interim Urgency Ordinance No. 2894, on August 16, 2016.
- August 2, 2016 – Ordinance No. 2890 to reinforce existing permanent prohibitions on medical marijuana dispensaries and cultivation.
- November 15, 2016 – Urgency Ordinance No. 2902 to prohibit outdoor personal marijuana cultivation and establish regulations and a permitting process for indoor personal marijuana cultivation.
- December 6, 2016 – Ordinance No. 2905 to establish a temporary moratorium on nonmedical “commercial cannabis activities” for a period of 45 days and extended such moratorium for an additional period of 22 months and 15 days under Interim Urgency Ordinance No. 2907, on January 10, 2017.

In accordance with State law, the proposed Ordinance would allow only medicinal commercial cannabis activities pursuant to MAUCRSA and locally tailored provisions pursuant to the City’s police power under Section 7 of Article XI of the California Constitution.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Below is a chronology of the various public meetings and outreach events conducted on this matter:

City Council and Development Ad Hoc Committee

On March 1, 2017, the City Council conducted a Study Session regarding cannabis bans, regulations, and legislative options. At the meeting, the Council directed staff to work with the Development Ad Hoc Committee to evaluate and develop thresholds and regulations for full Council consideration.

The Development Ad Hoc Committee met in March and May of 2017 and recommended that all nonmedical/adult-use cannabis activities, and medicinal cannabis retail, dispensary, microbusinesses and deliveries should be prohibited. The Committee discussed allowable zones and uses, licensing requirements and discretionary application process, facility and product management, and City benefits and revenues. Additionally, on May 18, 2017 a public Ad Hoc Committee Meeting was conducted in which approximately 40 industry representatives were in attendance and provided input on the Committee's considerations.

At the June 20, 2017 City Council Meeting, staff provided an update on meetings with the Council and Ad Hoc and Council authorized the City Manager to enter into a Professional Services Agreement with HdL Companies to assist with applicable bans and medicinal commercial cannabis regulations. HdL Companies has assisted local and state agencies in developing cannabis policies for regulation, compliance, auditing and economic development.

The proposed Ordinance reflects feedback and direction from the City Council and the Development Ad Hoc Committee and staff's and HdL's research and analyses of other cities' and states' policies, regulations and best practices for medicinal commercial cannabis activities.

El Monte Planning Commission Hearing

On July 25, 2017, the Planning Commission held a duly noticed public hearing on the draft Ordinance at which time it recommended that the City Council adopt the Ordinance, as memorialized in Planning Commission Resolution No. 3481 and outlined in the staff report (see Attachments 2 & 3). All moratoriums for nonmedical or adult-use activities would remain in place, with the exception of Urgency Ordinance No. 2902 which established regulations and a permitting process for indoor personal marijuana cultivation, under Proposition 64. The moratoriums for medicinal commercial cannabis activities would be replaced with the proposed Ordinance.

City Council Hearing – August 15, 2017

On August 15, 2017, the City Council held a duly noticed public hearing for the first reading of the draft Ordinance (see Attachments 4 & 5). During the public comment period, four (4) members of the public spoke in opposition and one (1) person spoke in

favor of the Ordinance. The City Council approved the first reading of the Ordinance 3-1 (one Council Member was absent).

Shirpser Elementary School Safety Meeting – August 29, 2017

On August 29, 2017, the El Monte Police Chief conducted a Safety Meeting at Shirpser Elementary School. At the meeting, staff provided an overview of the proposed Ordinance, provided an update on the results of City Council's August 15, 2017 first reading and informed parents of the September 5, 2017 second reading. The parents in attendance had questions regarding State laws (Prop. 64 and SB 94) and were opposed to proposed Ordinance due to safety concerns.

Letters from El Monte City School District and Mountain View School District

On August 30, 2017 and September 5, 2017, the City received letters from the El Monte City School District and the Mountain View School District, respectively (see Attachment 6). The letters expressed concerns regarding distance to schools and day care centers; odor detection, prevention, and mitigation; investment of proceeds into substance abuse programs and drug treatment facilities and resources.

City Council Hearing – September 5, 2017

On September 5, 2017, the City Council pulled the second reading from the consent calendar and reopened the public hearing. Staff's presentation included an overview of the School District letters and how the proposed Ordinance would address the comments. During the public comment period, there were 21 speakers in opposition, and 11 people submitted comment cards in opposition but did not speak. The comments are summarized below:

1. Public Outreach:
 - Outreach and notification to schools, community, residents
2. Distance from schools:
 - Increase distance requirements to 800 feet or 1,000 feet and not along routes to school
3. Safety:
 - Require additional police officers as 120 police officers are not enough
 - Current police officers are not equipped to enforce cannabis activities
 - Increase crime, homeless, drug addicts, gangs, robbery
 - Leads to trafficking of other drugs
4. Health:
 - Odor control
 - Air quality
 - Water contamination
5. Social:
 - Negative impacts on future generation
 - Message City is sending to kids
 - Conflicts with Red Ribbon Week
 - Kids exposed to drug addicts

- Provide a good environment for kids
 - Negative stigma for El Monte, protect City's image
 - Drug use rampant in El Monte
 - Cannabis activities is damaging to community
6. Personal:
- Kids go to nearby schools
 - Against drugs, raised to say no to drugs
 - Family members with drug abuse, death
 - Decrease in property values
7. Ordinance:
- Restrict manufacturing of children enticing products
 - Cap on number of permits
 - Explosive rooms for volatile extractions
 - Require electrical upgrade
 - Develop children & family benefit plan
 - Designate all revenues to youth prevention, enforcement, monitoring
 - Publish annual revenues on City website

In response to the public comments received at the Shirpsier Safety Meeting, letters from the School Districts, and the September 5, 2017 City Council second reading, the Council continued the item and directed staff to work with the Ad Hoc Committee to analyze the comments received and revise the Ordinance as necessary.

Ad Hoc Committee Meeting September 11, 2017

On September 11, 2017, staff presented revisions to the Ordinance to the Ad Hoc Committee that addresses the public comments. Staff's responses to the issues raised are summarized below:

1. **Distance from Schools** – The revised Ordinance proposes to increase the distance requirement to schools, day care centers, and youth centers from the State mandated 600 feet to 800 feet. Additionally, the boundaries of two (2) proposed cannabis activity areas have been reduced. The proposed revised boundary of the Northwest Area would eliminate the properties east of Shirley Avenue and west of Arden Drive, and would no longer be adjacent to residential neighborhoods or schools. The proposed revised boundary of the East Valley Entryway Area would eliminate the properties east of Durfee Avenue, and would be further away from schools.
2. **Safety and Crime** – The original proposed Ordinance included a "Security" section requiring security measures to include, but not limited to installation of 24-hour, live-feed security High Definition cameras accessible by the Police Department remotely on demand; alarm systems; and 24-hour onsite security personnel authorized by the Police Chief.

Additionally, the permit application requires the submittal of security and fire prevention plans. The security plan shall include a description and detailed

schematic of the overall facility security. The security plan shall also include an assessment of site security by a qualified licensed security consultant. The fire prevention plan shall describe the fire prevention, suppression, HVAC and alarm systems the facility will have in place. It shall include an assessment of the facility's fire safety by a qualified licensed fire prevention and suppression consultant.

In regards to police enforcement, as part of the revenues received through the development agreement process, the City will hire police officer(s) specializing in cannabis enforcement to monitor and enforce the cannabis operations.

3. **Health** – The original proposed Ordinance includes operational standards that address odor control through air filtration systems; provides standards for pesticides, product labeling and storage; requires water and power usage plans; and manufacturing standards to include regulations regarding non-children enticing packaging per State law.

Additionally, the permit application requires the submittal of an air quality plan to demonstrate that the air circulation does not impact the employees' health and welfare nor the surrounding uses.

4. **Public Education** – Through the development agreement process, cannabis businesses would be required to contribute public benefits to include monetary benefits; a portion of which would be used to fund and develop drug prevention training and education initiatives.

The Ad Hoc Committee directed staff to revise the Ordinance as outlined above and also directed staff to conduct a Town Hall cannabis informational meeting prior to returning to the City Council for first reading of the revised Ordinance. As directed by the Ad Hoc Committee, the City will conduct a Town Hall meeting to educate the community on Federal and State laws regulating cannabis and inform the community of the existing and proposed City legislation regarding cannabis. The Town Hall meeting will be held on September 30, 2017. Post cards were mailed to every postal patron in the City on September 20, 2017. Staff will provide the Council with an update of the meeting at the October 3, 2017 City Council meeting.

The revised ordinance outlined below reflects the responses to the public comments received and the direction of the Ad Hoc Committee.

Proposed Code Amendment No. 757

The proposed Ordinance would amend Titles 5 – Business Licenses and Regulations and 17 – Zoning of the El Monte Municipal Code (EMMC) to prohibit cannabis retailers, dispensaries, microbusinesses and delivery services citywide and establish regulations and a discretionary review process for the prospective allowance of medicinal commercial cannabis activities, specifically cultivation, manufacturing, distribution, and laboratory testing in certain designated areas of the City.

Medicinal Commercial Cannabis Activities

Code Amendment No. 757 would allow the following activities in designated areas:

Cultivation involving indoor-only propagation, planting, growing, harvesting, drying, curing, grading, and/or trimming of cannabis plants or any part thereof for any purpose, including marijuana, for medicinal purposes.

Manufacturing operations that produces, prepares, propagates, or compounds medicinal cannabis or medicinal cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. Manufacturing also includes packaging or repackaging medicinal cannabis or medicinal cannabis products or labels or relabels its container. Manufactured cannabis is raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, extraction or other manufactured product intended for internal consumption through inhalation or oral ingestion or for topical application.

Distribution for wholesale procurement, and sale, of medicinal cannabis or medicinal cannabis products between medicinal cannabis entities licensed pursuant to MAUCRSA, and any subsequent State of California legislation regarding the same.

Laboratory Testing in a facility that performs tests of medicinal cannabis or medicinal cannabis products and that is accredited by an accrediting body that is independent from all other persons involved in the medicinal cannabis industry in the State and licensed by the Bureau of Marijuana Control.

Medicinal Commercial Cannabis Activity Areas

The cultivation, manufacturing, distribution, and laboratory testing of medicinal cannabis would be allowed in the M-2 (Light Manufacturing) and M-1 (General Manufacturing) zones within the Northwest Industrial area west of Shirley Avenue and north of the railroad, and the C-3 (General Commercial) zone in portions of the East Valley Entryway area, west of Durfee Avenue. The Flair Park Area, zoned O-P (Professional Office), would be allowed for laboratory testing only. State law prohibits cannabis businesses from locating on any parcel of land within 600 feet of a school (public or private), day care, or youth center. In response to the public comments received, the Ordinance has been revised to expand the distance requirement from the State mandated 600 feet to 800 feet. Additionally, the boundaries of the cannabis activity areas have been reduced. Exhibit "A" of the proposed Ordinance shows the proposed designated areas. For reference only, an 800 foot buffer is shown around Gidley and Rio Vista Elementary Schools, Madrid Middle School, Mountain View High School, and three (3) Montessori schools within the Flair Park Area.

Permits and Discretionary Review Process

In order to conduct a commercial medicinal cannabis business, a valid Medicinal Commercial Cannabis Permit (Permit) is required along with a valid temporary or permanent state commercial cannabis license. The Permit would be valid for 12 months, with annual renewal reviewed by El Monte's City Manager or designee.

City Application Process. The application process and fee (based on recovery of City costs) will be adopted by the City Council in a separate resolution and will include the following:

- Background check and live scan.
- Full proposal including but not limited to corporate documents, business and operations plan, safety and security plans, and project plans.
- Selection/point system conducted by a third-party reviewer with points based on background, experience, land ownership or lease, location and compatibility, sustainable practices, public benefits, etc.
- Internal interview by the City (i.e. representative from Planning Division, Finance Department, Fire Department, Police Department).

Qualified candidates would then be invited to apply for a Conditional Use Permit (CUP) and a development agreement (DA). The DA would include monetary and public benefits such as revenues to the General Fund, local hire, enhanced public safety, youth educational outreach, parks and public infrastructure funding, etc. Additionally, a Design Review (DR) would be required for most new construction or building remodels. The CUP, DR and DA would be subject to California Environmental Quality Act (CEQA) review and would require approval by the Planning Commission and City Council.

Upon City Council's approval of the CUP, (DR if applicable) and DA, the applicant can apply for building permits and inspections, permits from outside agencies including utility companies, water company, LA County Fire Department, LA County Health Department, etc., and a City Business License. Once all approvals and licenses have been obtained, the City Manager or designee would administratively issue a Medicinal Commercial Cannabis Permit. Once a Medicinal Commercial Cannabis Permit is issued, the business can legally operate.

State License. Medicinal commercial cannabis operators that have a valid City Medicinal Commercial Cannabis Permit can apply online for a State license from the Bureau of Cannabis Control beginning January 1, 2018. The State Bureau of Cannabis Control will issue temporary permits up until January 1, 2019 until a permanent license is issued. Prior to January 1, 2018, operators with a valid City Permit can temporarily operate without a state license until the State has completed and implemented a Statewide permitting process.

Cannabis Employee Permit. Any person who is an employee, works, or volunteers within a medicinal commercial cannabis business shall be legally authorized under state law and shall obtain a City Medicinal Commercial Cannabis Employee Work Permit. Applicants shall be at least 21 years of age, and undergo a background check and live scan process through the City's Police Department. The employee permit would be issued by the City Manager or designee and would be renewed on an annual basis.

Use Standards and Regulations

The following is a summary of the regulations that would apply to all projects:

Records and Recordkeeping. Medicinal commercial cannabis business operators shall adhere to records and record keeping practices that include, but are not limited to: records of revenues and expenses; register of information for all owners and interest holders; and inventory control and reporting systems for permitted activities.

Security Measures. Medicinal commercial cannabis business operators shall implement sufficient security measures to deter and prevent unauthorized entrance into areas containing cannabis/cannabis products, and to deter and prevent theft at the business. Measures include, but are not limited to: storage, transportation, and currency management plans; installation of 24-hour, live-feed security High Definition cameras accessible by the Police Department remotely on demand, alarm systems; 24-hour onsite security personnel authorized by Police Chief; and providing a security liaison to the City.

Operational Requirements. The proposed Ordinance includes general operational standards and specific standards for cultivation and manufacturing activities. All facilities shall also adhere to state laws. There shall be no outdoor cultivation and cultivation amounts would be limited to canopy size based on state permits. Operational standards include, but are not limited to odor control/air filtration systems; regulations regarding pesticides labeling and storage; requirement for a standby generator in an event of a power outage; water and power usage plan; and manufacturing standards.

Community Relations. In order to ensure that potential impacts to adjacent properties are addressed, the proposed Ordinance includes a Community Relations section that requires the business to provide a community relations liaison to all businesses and residents within 150 feet.

Furthermore, during the first year of operations, the business operator shall meet with the City Manager or designee quarterly to discuss costs, benefits, and other community issues. After the first year, meetings may be called at the request of the City Manager.

Inspections and Enforcement. The City Manager, Police Chief or designee may enter the business at any time during hours of operation without notice to inspect the business location, request recordings and records, and/or obtain samples of the cannabis to test for public safety purposes.

Violations. Each violation of the provisions of the proposed Ordinance will be deemed unlawful and a public nuisance. Each violation will be considered separate violations and shall be subject to all remedies and enforcement measures authorized by the El Monte Municipal Code.

Additionally, should there be an imminent threat to public health, safety or welfare, the City Manager, Police Chief or designee, may take immediate action to temporarily suspend a commercial medicinal cannabis business permit issued by the City, pending a hearing before the City Council.

CEQA/ENVIRONMENTAL DETERMINATION

The proposed Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) because the Code Amendment/Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment, does not constitute a “project,” and has no potential for causing a significant effect on the environment. Furthermore, Business and Professions Code Section 26055 exempts local ordinances from CEQA that authorizes commercial cannabis activity through discretionary review and approval. Each conditional use permit and development agreement will be subject to CEQA review.

PUBLIC NOTICING

A public hearing notice was published in the El Monte Examiner newspaper for citywide notice on September 21, 2017 (see Attachment 7).

FISCAL IMPACT/FINANCING

The medicinal commercial cannabis permit, associated discretionary review process, and enforcement will require staff resources which will include fees for cost recovery. The permit and discretionary review process and fees will be presented to the City Council under a separate resolution at a future public hearing.

Through the development agreement process, it is anticipated that each medicinal commercial cannabis permit will generate revenues to the general fund. The specific amount would be established on a case-by-case basis depending on the annual amount of sales or canopy size that each permit generates. The total annual revenue to the City would be based on the number of permits.

CONCLUSION

Staff recommends that, following a public hearing, the City Council move to adopt the proposed Ordinance for first reading to establish bans and regulations for medicinal commercial cannabis activities within the City.

Respectfully submitted,

JESÚS M. GOMEZ
City Manager

ALEXANDER HAMILTON
Assistant City Manager

MINH THAI
Economic Development Director

Attachments:

1. Proposed City Council Ordinance with Exhibit "A"
2. Planning Commission Resolution No. 3481, July 25, 2017
3. Planning Commission Staff Report, July 25, 2017
4. Ordinance Approved at August 15, 2017 City Council Meeting
5. City Council Staff Report, August 15, 2017
6. Letters from the School Districts, August 30, 2017 and September 5, 2017
7. Public Notice

DATE: OCTOBER 3, 2017
PRESENTED TO EL MONTE CITY COUNCIL
<input type="checkbox"/> APPROVED
<input type="checkbox"/> DENIED
<input type="checkbox"/> PULLED
<input type="checkbox"/> RECEIVE AND FILE
<input type="checkbox"/> CONTINUED
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CHIEF DEPUTY CITY CLERK