



City of Alameda

Staff Report

File Number:2017-4877 (45 minutes)

City Council

Agenda Date: 11/7/2017

File Type: Regular Agenda Item

Agenda Number: 6-F

Introduction of Ordinance Amending the Alameda Municipal Code by Adding a New Article XVI (Cannabis Businesses) to Chapter VI (Businesses, Occupations and Industries);

Introduction of Ordinance Amending the Alameda Municipal Code by Amending Sections 24-11 (Smoking Prohibitions in Places of Employment and Unenclosed Public Places) and 24-12 (Smoking Prohibitions in Housing); and

Recommendation to Authorize Staff to Conduct a Fee Study to Determine the Cost of Implementing the Cannabis Regulatory Program. (City Manager 1010)

To: Honorable Mayor and Members of the City Council

From: Jill Keimach, City Manager

Re: Introduce an Ordinance Amending the Alameda Municipal Code by Adding a New Article XVI (Cannabis Businesses) to Chapter VI (BUSINESSES, OCCUPATIONS, AND INDUSTRIES);

Introduce an Ordinance Amending the Alameda Municipal Code by Amending Sections 24-11 (Smoking Prohibitions in Places of Employment and Unenclosed Public Places) and 24-12 (Smoking Prohibitions in Housing); and

Authorize Staff to Conduct a Fee Study to Determine the Cost of Implementing the Cannabis Regulatory Program

BACKGROUND

On November 1, 2016, the City Council approved a referral directing staff to study updated regulations for, and potential taxation of, commercial cannabis activities. The referral specifically directed staff to look at conditionally allowing cultivation, manufacture, testing, distribution, transport, and dispensing medicinal cannabis and recreational cannabis. In addition, the referral directed staff to analyze potential fees and taxes related to cannabis business activities.

On July 5, 2017, a second referral related to cannabis business activities was approved by the City Council. The July 5, 2017 referral directed staff to propose regulations to permit convenient and safe

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cannabis businesses in Alameda including dispensaries, cultivation, manufacturing, purity and potency testing labs and quality control facilities, and other activities associated with the medicinal cannabis activities now legally permitted in California, including temporary licenses for recreational cannabis businesses.

Based on City Council direction contained in the two referrals, staff prepared a draft ordinance that would conditionally permit medicinal and recreational cannabis business activity in the City. The draft Ordinance was presented to the City Council at a September 5, 2017 Council meeting. At that meeting, the Council discussed the proposed ordinance and gave staff direction on next steps. Council requested that a special meeting be scheduled to continue the discussion regarding permitting cannabis business activities in the City in a workshop format. In addition, staff was directed to prepare a revised draft ordinance based on feedback received from Councilmembers and provide additional information on a number of issues raised by Councilmembers for review and discussion at the special meeting. A special meeting was held on October 21, 2017, to review and provide direction to staff on a revised draft ordinance. City Council requested a series of changes to the draft Ordinance and directed staff to finalize the Ordinance for introduction at the November 7, 2017 City Council meeting.

As staff undertook its work to finalize the Ordinance it determined that any amendments to the Zoning Code (Chapter XXX of the AMC) must first be referred to the Planning Board. As the staff report and agenda language for an ordinance amending the Zoning Code must include the Planning Board's recommendation, staff is recommending that the City Council wait to act on zoning portions of the draft ordinance until after the Planning Board holds a public hearing and makes a recommendation on November 13, 2017.

There are two key amendments to the Zoning Code that must be adopted to regulate cannabis businesses in the City. The first amendment is to repeal the current prohibition on medical marijuana dispensaries and cultivation. The second amendment is to revise the Zoning Code to conditionally permit cannabis business activities in specific zoning districts consistent with the Council's recent direction. As a result, staff is proposing a bifurcated process for adopting a regulatory framework for cannabis businesses in Alameda. Staff believes this process will allow the City to have a regulatory framework in place prior to January 2, 2018, and have the required amendments to the Zoning Code effective by mid-January 2018.

Staff is proposing the following process to accomplish a regulatory framework for cannabis businesses:

- **November 7, 2017:** 1) Introduce an ordinance amending the AMC to add a new article that regulates cannabis businesses. This ordinance covers all aspects of regulating the operational aspects of cannabis business activities except specifying where those businesses can locate and the process and conditions for considering a use permit. 2) Introduce an ordinance amending Sections 24-11 (Smoking Prohibitions in Places of Employment and

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Unenclosed Public Places) and 24-12 (Smoking Prohibitions in Housing) of the AMC.

- **November 13, 2017:** Planning Board considers a recommendation to the City Council to: (a) repeal the ban on cannabis business activities and to specify the zones where permitted cannabis businesses can locate; and (b) to approve an ordinance amending the Zoning Code to reflect those changes.
- **November 21, 2017:** Second reading of the ordinance amending the AMC to add a new article that regulates cannabis businesses and the ordinance amending the AMC to include a prohibition on smoking cannabis consistent with the existing prohibition on smoking tobacco.
- **December 5, 2017:** Introduce an ordinance amending the Zoning Code to repeal the ban on cannabis business activities and to specify the zones where permitted cannabis businesses can locate.
- **December 19, 2017:** Second reading of the ordinance amending the Zoning Code.
- **December 21, 2017:** Effective date for ordinances adding an article to the AMC regulating cannabis businesses and amending the smoking ordinance to include a prohibition on smoking cannabis consistent with the prohibition on smoking tobacco.
- **January 18, 2018:** Effective date for the ordinance amending the Zoning Code repealing the ban on cannabis activities and specifying the zoning districts where cannabis businesses can locate.

Staff has revised the draft ordinance to 1) remove the references to amendments to the Zoning Code which will be addressed in a separate ordinance and 2) implement Council direction received at the October 21 workshop. Red-lined/strike-out versions of the revised Ordinance, as well as the smoking ordinance, are attached at Exhibit 1.

DISCUSSION

The changes to the draft Ordinance requested at the October 21 special meeting are summarized below and are organized by topic in the same order as presented in the October 21 staff report. While the Council is not considering amendments to the Zoning Code at this time, a discussion of the Zoning Code-related issues raised at the October 21 workshop are also addressed below.

Smoking Ordinance

A request was made to separate the ordinance amending the smoking ordinance from the ordinance amending the Alameda Municipal Code (AMC) to address cannabis business activities. Staff is now

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requesting that City Council introduce two separate ordinances, one amending the City's smoking ordinance to include prohibiting smoking cannabis consistent with the existing prohibition on smoking tobacco in public places, including parks and in multi-family housing, and one amending the AMC to regulate cannabis business activities, including on-site consumption within an approved dispensary.

Permitted Cannabis Business Activities

The ordinance:

- Prohibits most indoor and outdoor cannabis commercial cultivation;
- Prohibits microbusinesses;
- Prohibits delivery-only cannabis businesses, including dispensaries that are closed to the public;
- Prohibits adult use, non-medicinal dispensaries;
- Permits cultivation solely as a nursery (production of clones, immature plants, seeds, etc.);
- Permits medicinal dispensaries and the delivery of medicinal cannabis only in connection with those dispensaries;
- Permits on-site consumption in conjunction with medicinal dispensaries;
- Permits cannabis manufacturing and distribution in connection with manufacturing;
- Permits cannabis testing labs.

The ordinance also:

- Caps the number of nurseries at one;
- Caps the number of medicinal dispensaries, including on-site consumption, at two, and requires the dispensaries to be disbursed to avoid concentrating the dispensaries in a single area of the City;
- Caps the number of manufacturing facilities at four; and

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- Caps the number of testing facilities at two.

In addition to determining which cannabis business activities to permit and regulate, and the maximum number of each of the permitted business types, the Council provided direction on where the permitted businesses should be located. Rather than specify permitted locations, for example, Webster Street, Park Street, Marina Village Business Park, Harbor Bay Business Park, Alameda Point, etc., Council requested that staff determine the appropriate zoning districts for the various cannabis business activities.

Staff will be recommending that the Planning Board consider recommending that the City Council approve an ordinance amending the Zoning Code to permit:

- Medicinal dispensaries in the Community Commercial (C-C), North Park - Work (NP-W), North Park - Gateway (NP-G) and Alameda Point - Adaptive Reuse (AP- AR) Zones.
- Nurseries, manufacturing facilities, and testing labs in the Commercial- Manufacturing (C-M), Alameda Point - Enterprise District (AP-E1 and AP-E2) and AP-AR Zones.

It should be noted that Marina Village, one of the City's two business parks, is zoned Mixed Use (MX). Staff does not recommend that the MX Zone be a permitted zoning district for cannabis business activities as a number of MX sites include residential uses such as Bayport and the Tri Pointe homes at Alameda Landing. Therefore, the Planning Board and Council may want to consider specifying Marina Village as a permitted location for nursery, manufacturing and laboratory testing uses, while not permitting those uses in the MX Zone generally. A zoning map, along with a map depicting only the zones where cannabis businesses are proposed to be permitted, are attached as Exhibit 2.

Lastly, while staff is recommending that cannabis business activities be permitted in the AP-AR and AP-E1 and E2 zones, the ordinance continues to prohibit cannabis businesses on City-owned property.

Buffer Areas Around Sensitive Uses

State law allows local jurisdictions to establish buffer areas around sensitive uses and to determine what are sensitive uses. In the absence of local regulations, the State specifies a 600-foot buffer area around sensitive uses and defines sensitive uses (California Health & Safety Code section 11353.1) as "any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities".

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On October 21, the City Council discussed the required buffer zones for the various permitted cannabis business activities and determined:

- Dispensaries and nurseries cannot be located within a 1,000-foot buffer area around sensitive uses.
- Manufacturing facilities and testing labs cannot be located within a 600-foot buffer area around sensitive uses.

On October 24, 2017, the Alameda Unified School District (AUSD) Board approved amendments to its original resolution to recommend that sensitive uses be broaden to include youth centers and non-AUSD childcare facilities, and that a buffer zone of 1,000 feet from sensitive uses be established for dispensaries only. The PTA continues to support a buffer zone of 1,000 feet from sensitive uses be mandated for dispensaries. This is consistent with the ordinance.

The Council also discussed which uses should be included in the definition of sensitive uses and considered whether recreational centers within City parks should be included as youth centers as the City runs after-school and summer camp programs at those recreation centers. To facilitate further consideration by Council, staff has prepared a map, attached as Exhibit 3, which shows a 1,000-foot buffer area and a 600-foot buffer area around sensitive uses, including recreation centers within City parks. Staff has also included an expanded definition of youth centers in the Ordinance by adding the following: "Youth Centers shall also mean any facility determined by the Alameda Recreation and Parks Department to be a recreation center in a City park".

In addition to buffering sensitive uses from the potential impacts of cannabis businesses, the Council wanted to ensure that there was not an over-concentration of dispensaries in one area of the City. Exhibit 4 is a map showing a one-mile radius around Park and Webster Streets that depicts the distance between permitted dispensaries that would be required if dispensaries are located no closer than one mile to each other. Based on this map, the Ordinance includes a provision that dispensaries must be located no closer than one mile to each other.

Program Administration

Staff recommends that the City Council direct full recovery of all costs incurred by the City associated with permitting and regulating cannabis businesses. These fees are legally limited to recovery of actual expenditures and cannot contribute to the General Fund. Implementation of regulatory fees requires calculation and documentation of actual costs through a nexus, or fee, study. Staff is recommending that SCI be retained to prepare a fee study to determine the appropriate fees for permitting, regulating, monitoring, and enforcing requirements related to cannabis business activities to ensure full costs recovery. The fee study would also highlight any staff resources needed for program administration. Once the fee study is completed and approved, the fees would be included

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in the Master Fee Schedule.

On-Site Consumption

At the October 21 workshop, there was discussion about on-site consumption and the challenges of smoking cannabis due to the proposed changes to the City's strict smoking ordinance which would prohibit smoking cannabis in public places as well as in multi-family housing. It was expressed that the restrictions on smoking, coupled with other laws governing ingesting cannabis (passengers cannot smoke in moving vehicles, etc.), could result in no place to smoke cannabis except private single-family homes, which could disproportionately impact renters. Given that the City is permitting medicinal dispensaries, there was support for allowing spaces where patients could ingest medicinal cannabis and not worry about breaking the law. Therefore, the Council agreed to permit on-site consumption in connection with the two permitted medicinal dispensaries.

Labor Peace/Local Hire/Local Ownership

While the Council expressed initial interest in requiring "labor peace" agreements for businesses with 10 or more employees, it confirmed that labor peace agreements should be required for businesses with two or more employees, the minimum number of employees to organize. Council supported the requirement that applicants for a cannabis business permit provide a local hire plan as part of the permit process.

When local ownership and community benefits were discussed at the initial workshop on September 5, it was recommended that these issues be addressed as part of a solicitation process for granting operator permits for dispensaries. This approach was recommended because staff proposed that the number of dispensaries be capped, and if the number of business permits is restricted, a common best practice is to issue a Request for Proposals (RFP) to select the businesses.

At the October 21 workshop, the Council approved permitting a number of cannabis business activities and capping the total number of businesses by activity. The Council approved permitting two medicinal dispensaries, including on-site consumption, one nursery, four manufacturing facilities, and two testing labs. Staff continues to recommend a solicitation process for selecting the two medicinal dispensaries and suggests that the Council consider whether to use a solicitation process for all other permitted activities. One approach would be to issue a master RFP that would cover all permitted business categories. If permits were not issued for all of the business "slots", the RFP could become a rolling RFP that is issued periodically until all of the businesses by type are permitted and all caps are reached. The alternative would be to create a "first come, first served" system that could be difficult to implement if there is interest well beyond the maximum number of businesses permitted (for example, if 10 manufacturing businesses were vying for four available permits at the same time).

While staff believes that a master RFP process may be appropriate, the Council may want to carve

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out testing labs from that process and work with testing labs on a first come, first served basis. Testing labs are an important part of the State regulatory infrastructure as all cannabis products must be tested starting on January 2, 2018. As part of supporting the health and safety aspect of the industry, the City may want to position itself to be responsive to testing labs needing to secure local approvals as quickly as possible to apply for a State license and begin operations.

In either event, staff will be preparing business selection criteria and guidelines, which will include an analysis of local ownership and community benefits and an approach for soliciting proposals by cannabis businesses, for Council review and approval.

Equity Program

At the October 21 workshop, staff presented summary data for marijuana-related arrests over the last twenty years. City Council requested that the data be broken down by year and by the type of arrest so that it can review a more detailed analysis of the data. It was also requested that staff work with the Alameda Unified School District to obtain data about suspension and expulsion rates for students involved in marijuana-related discipline actions. It was understood that staff would be unable to prepare the requested data in time for the November 7 City Council meeting but that completion and presentation of this data would be part of the selection process for cannabis businesses. The data would be used to inform the City Council's discussion about whether or not it wanted to require some type of equity program as part of granting approval of one, or both, of the medicinal dispensary permits (or other cannabis business permits).

Other Miscellaneous Changes

As discussed at the October 21 workshop:

- Staff has included language in the ordinance to prohibit vending machines in dispensaries.
- Additional language has been added to specify what constitutes a violation of the ordinance to assist staff with any future enforcement actions, and other similar minor changes (e.g., expanding definition of a "person").
- A provision has been added to clarify that staff can prepare implementing regulations to carry out the requirements of the ordinance.
- The ordinance language authorizing the Chief of Police to obtain other or supplemental information as part of his/her background investigation has been limited to criminal history and possible financial information to prohibit asking for information about immigration status.

In addition, it was agreed that staff would report back to Council 12 months after the effective date of

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the ordinance to assess the ordinance and to recommend any changes to the ordinance including the possibility of allowing additional cannabis business activities.

Based on Council's direction received at two earlier workshops, it is recommended that the City Council introduce two ordinances, one amending the AMC to regulate the operational aspects of cannabis business activities and one amending the smoking ordinance to prohibit smoking cannabis consistent with the current restrictions on smoking tobacco.

FINANCIAL IMPACT

There could be a significant negative impact to the General Fund from adopting this ordinance that permits cannabis business activity in the City of Alameda if a fee schedule that ensures full cost recovery is not implemented. There are significant resources that will be devoted to permitting, regulating, monitoring and enforcing local requirements. Therefore, staff is recommending that a fee study be undertaken to fully identify and document those costs and that the Master Fee Schedule be amended to ensure full cost recovery.

There is also an opportunity to positively impact the City's General Fund through the imposition of a tax on cannabis business activities. Such a tax is subject to a vote of the people. It is generally estimated that taxing cannabis businesses could generate \$800,000 - \$1.6 million annually. However, there is some uncertainty about how quickly a tax can be put in place, how quickly a maximum tax could be achieved, and how the industry will perform over time. Staff will be further analyzing the issue of taxation and will provide a follow-up staff report to the City Council with its recommendations.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

This ordinance is being adopted in a manner consistent with the AMC. Certain provisions of the AMC will need to be deleted, along with numerous changes to the AMC as reflected in the Ordinance.

ENVIRONMENTAL REVIEW

Adoption of these ordinances is exempt from the California Environmental Quality Act ("CEQA") pursuant to Business and Professions Code section 26055(h) as discretionary review and approval, which shall include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code, shall be required in order to engage in commercial cannabis activity within the City of Alameda under such ordinances. Adoption of these ordinances is additionally exempt from CEQA pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of these ordinances may have a significant effect on the environment.

RECOMMENDATION

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It is recommended that City Council:

1. Introduce an Ordinance amending the Alameda Municipal Code by adding a new Article XVI (Cannabis Businesses);
2. Introduce an Ordinance amending the Alameda Municipal Code by Amending Sections 24-11 (Smoking Prohibitions in Places of Employment and Unenclosed Public Places) and 24-12 (Smoking Prohibitions in Housing); and
3. Authorize staff to conduct a Fee Study to determine the cost of implementing the regulatory program.

Respectfully submitted,
Debbie Potter, Community Development Director

Financial Impact section reviewed,
Elena Adair, Finance Director

Exhibits:

1. Redline Cannabis Businesses Ordinance
2. Redline Smoking Ordinance
3. Zoning Maps
4. Map of Buffer Zones
5. One-Mile Radius Map between Potential Dispensary Locations