



City of Alameda

Staff Report

File Number:2018-5785 (60 minutes)

City Council

Agenda Date: 7/24/2018

File Type: Regular Agenda Item

Agenda Number: 6-F

Recommendation to: 1) Receive a Semi-Annual Report on Cannabis, including an Update on the Request for Proposals (RFP) Process (Outcomes and Lessons Learned); 2) Provide Direction Regarding Potential Amendments to Local Law Concerning Cannabis, including (a) Maintain Cap on Testing Laboratories, (b) Allow Processing of Applications for Nursery Cultivation and Manufacturing on a First-Come, First-Served Basis, (c) Amendments Affecting Dispensaries and Nursery Cultivation Businesses, including Modify Buffer Zones, Dispersion Requirement, Zoning, and Adult Use, and (d) Confirmation of Use of RFP Process to Administer Cap; and 3) Receive Update Concerning Other Areas Relating to Cannabis, Including Regulation of Cannabis Delivery, and Cannabis Tax. (Community Development 209-481007)

To: Honorable Mayor and Members of the City Council

From: Elizabeth D. Warmerdam, Acting City Manager

Re: Recommendation to: 1) Receive a Semi-Annual Report on Cannabis, including an Update on RFP Process (Outcomes and Lessons Learned); 2) Provide Direction Regarding Potential Amendments to Local Law Concerning Cannabis, including (a) Maintain Cap on Testing Laboratories, (b) Allow Processing of Applications for Nursery Cultivation and Manufacturing on a First-Come First-Served Basis, (c) Amendments Affecting Dispensaries and Nursery Cultivation Businesses, including Modify Buffer Zones, Dispersion Requirement, Zoning, and Adult Use, (d) Confirmation of Use of RFP Process to Administer Cap; and 3) Receive Update Concerning Other Areas Relating to Cannabis, Including Regulation of Cannabis Delivery, and Cannabis Tax

BACKGROUND

On November 7, 2017, the City Council introduced two ordinances: (1) an ordinance covering all aspects of regulating the operations of cannabis businesses, including requiring an operator's permit and granting the Community Development Department the authority to adopt implementing regulations ("Regulatory Ordinance"), and (2) an ordinance amending the City's smoking ordinance to regulate smoking of cannabis in the City of Alameda. On December 5, 2017, the City Council introduced a third ordinance governing land use. These three ordinances were all in effect as of January 18, 2018.

The Regulatory Ordinance requires a Cannabis Business Operators Permit (CBOP) for the following

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cannabis businesses:

- One nursery cultivation (including distributor's permit)
- Four manufacturing permits (including distributor's permit)
- Two testing laboratory permits
- Two medicinal retail dispensary permits (including delivery permits)

Because the ordinance caps the maximum number of permits to be issued by business category, staff developed a Request for Proposals (RFP) process to select the businesses in each category who would be eligible to move forward to the application phase. On April 17, 2018, City Council approved implementing regulations governing the RFP process.

The Council also discussed how it wanted to address testing laboratories. At that meeting, the Council authorized staff to allow testing laboratories to apply for CBOPs on a first-come first-served basis. Council also directed staff to prepare an ordinance amending the Regulatory Ordinance to either increase the number of permitted testing labs or remove the cap altogether.

On May 18, 2018, the City Council held a study session to review and comment on staff's proposed six-month work plan. At that meeting, staff noted it would be returning to City Council at its July 24, 2018 meeting with proposed amendments to the Regulatory Ordinance regarding testing labs. Council requested (a) a broader discussion for the July 24th meeting, including an update on the RFP process (along with lessons learned), and (b) an opportunity to provide direction on the Regulatory Ordinance including potential changes to buffer zone and dispersion requirements for dispensaries, the cap on dispensaries, and the current prohibition on adult-use sales at such dispensaries, and cannabis delivery businesses.

After receiving Council direction at tonight's meeting, staff will prepare an ordinance amending the Regulatory Ordinance for consideration by the Council at its September 4, 2018 meeting.

DISCUSSION

RFP Process

Release of the RFP. The RFP was issued on April 23, 2018, which governed all cannabis businesses (dispensaries, manufacturing, and nursery/cultivation) except testing labs. Early on, staff noted that the interest in cannabis businesses centered on cannabis dispensaries. Staff received five Letters of Intent (LOIs) by the May 14, 2018 deadline. All five LOIs proposed medicinal dispensaries. No LOIs were received for manufacturing or nursery businesses. In addition, the City has received no permit applications for testing laboratories.

LOIs. Two of the LOIs met the minimum qualifications to advance to the next step in the process. These LOIs were for locations on Webster Street. The other three LOIs proposed locations that did

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not comply with the 1000-foot buffer zone requirement for sensitive uses.

Proposals: Submittal and Review. Two proposals were received by the June 11, 2018 deadline. The review panel met on June 19, 2018 to review the two proposals. Only one of the two proposers earned a sufficient score to move forward to the interview. On July 2, 2018, the review panel interviewed the one qualifying proposer. Staff issued a conditional award letter to the proposer, Main Street Supply, on July 3, 2018, notifying them that they had been selected to move forward to submit an application for a CBOP.

Lessons Learned

Solicitation of Feedback. Staff followed up with several businesses that had expressed interest in locating in Alameda to better understand the response rate, i.e., why permit applications were not submitted, in the case of testing laboratories, and why LOIs for non-dispensary businesses were not submitted in response to the RFP.

Testing Laboratories. Staff received three inquiries concerning locating a testing laboratory within the City, although one did not move past an initial telephone conversation. As for the balance, one of two testing laboratories indicated that it had lost its Alameda location to a non-cannabis business; and accordingly, has decided to relocate to another location in Oakland. The other testing laboratory remains interested in locating to Alameda but stated that the tenant improvements at its initial location were too expensive.

Nursery/Cultivation. Staff spoke with one individual interested in a nursery/cultivation business but they were unable to find a location outside of the 1,000-foot buffer zone for sensitive uses.

Manufacturing. While numerous manufacturers had initially expressed interest in locating in Alameda, none submitted an LOI. One manufacturer indicated that it needed more clarity regarding the potential long-term tax exposure for it to consider relocating to Alameda.

Overall, a number of prospective proposers noted that there was unwillingness to rent or sell space to cannabis-related businesses and that the buffer zones in combination with the limited areas in which cannabis businesses are permitted to locate made it difficult to secure a property to be eligible to participate in the RFP process.

The City's consultant, SCI Consulting Group, indicated that other cities are experiencing an exceptionally low number of responses to RFPs across the State. Explanations for this lack of interest range from barriers to entry into the cannabis industry that include a need to be well capitalized, a slow roll out of the State's regulatory program and a complex regulatory regime, and uncertainty at the federal level about enforcement within the industry.

Potential Changes to Process to Address Proposal Response Rate

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Testing Laboratories. Staff is not recommending any changes to the current system for permitting testing laboratories.

Nursery Cultivation/Manufacturing. No LOIs were received for the four available manufacturing opportunities and only one nursery cultivator expressed interest in applying for the one CBOP opportunity. Therefore, staff recommends that the implementing regulations be amended to allow manufacturers and nursery cultivators to apply for CBOPs on a first-come first-served basis, consistent with the way permits will be handled for testing labs.

Medicinal Dispensaries. To fill the cap for medicinal cannabis dispensaries, the Council may want to consider some, or all, of the following changes to the Regulatory Ordinance:

- Reduce buffer zones around sensitive uses;
- Reduce the dispersion requirement for dispensaries; and/or
- Permit cannabis-related businesses in additional areas of the City.

These options are discussed below. Should any changes be made that would allow an additional dispensary to locate in the City, staff recommends that a RFP be re-issued for the remaining opportunities up to the cap.

Potential Changes to the Regulatory Ordinance

Staff has identified a list of issues for which staff is seeking direction from the Council (Exhibit 1). Following Council direction, staff will prepare an ordinance amending the Regulatory Ordinance and return to Council for its consideration on September 4, 2018.

- 1. Maintain the Cap on Testing Laboratories.** City Council requested that staff provide a recommendation on whether to increase the number of testing laboratories allowed. Since there is only one known testing laboratory interested in locating in Alameda at this time, staff recommends keeping the current cap at two.
- 2. Nursery/Cultivation and Manufacturing Business to Apply on First-Come-First-Served Basis.** No LOIs were received for manufacturing or nursery/cultivation businesses. Therefore, staff recommends that the implementing regulations be amended to allow manufacturers and nursery cultivators to apply for CBOPs on a first-come first-served basis. Also, staff would recommend any changes to the buffer zone proposed below for medicinal dispensaries also apply to nursery/cultivation businesses.
- 3. Amendments Affecting Dispensaries (and Other Businesses Where Applicable) Under Existing Cap.** Although one proposer will proceed to filing an application for a medicinal

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dispensary on Webster Street, the cap has not been met. The Council may want to consider a number of changes affecting dispensaries for which staff seeks direction, including:

- a. Buffer Zone. The Council may want to consider modifying the buffer zone around sensitive uses for medicinal dispensaries. Several medicinal cannabis dispensary businesses attempted to secure locations in east Alameda during the RFP process. However, due to the size of the buffer zone (1,000 linear feet from sensitive uses from the nearest door to the nearest door) and limited availability of space in zoning districts that allow cannabis businesses, there were few opportunities for medicinal cannabis dispensary operators to find suitable locations outside of the buffer zones.

The one nursery cultivator interested in locating a business in Alameda also had difficulties securing a facility outside of the buffer zone (also 1,000 feet from sensitive uses). The buffer zone requirement was made more challenging due to the unwillingness of property owners to lease space in Harbor Bay, Marina Village and Alameda Point and the limited zoning districts allowing this use.

Under the Regulatory Ordinance, sensitive uses are defined as: “a public or private school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center.” A youth center is further defined 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. Youth Centers shall also mean any facility determined by the Alameda Recreation and Parks Department to be a recreation center in a City park.”

The Regulatory Ordinance requires that dispensaries and the nursery be located outside of a 1,000-foot buffer zone around sensitive uses. Manufacturers and testing labs must be located outside of a 600-foot buffer zone around sensitive uses. Exhibit 2 shows the 1,000-foot buffer zone for dispensaries and a nursery. If the Council is interested in providing an east end location for a dispensary, and/or a nursery in the City, one way to increase the availability of potential spaces for cannabis activities is to reduce the buffer zone around sensitive uses and/or modify the definition of sensitive uses.

The Council may want to consider modifying either (or both) the buffer zone and the definition of sensitive uses of which there are two primary approaches:

- Reduce buffer zone to 600 feet around sensitive uses, as defined in the Ordinance; or

- Maintain 1,000-foot buffer from either (or both) *public and private K-12 schools* from the nearest door to the nearest door and reduce to 600 linear feet for all other sensitive uses. The means of measurement could remain path of travel and nearest door to nearest door. In addition, the definition of sensitive uses could be revised to specify that off-campus after-school programs and tutorial and learning centers are not considered schools.

While reducing the buffer zone to 600 feet around sensitive uses might be the simplest solution to providing more potential locations, the Alameda Unified School District (AUSD) Board adopted a resolution encouraging the Council to provide a 1,000-foot buffer around public K-12 schools. Therefore, the Council may want to preserve the 1,000-foot buffer K-12 schools, both public and private, and reduce the buffer to 600 feet for other sensitive uses. Exhibit 3 shows a 600-foot buffer zone around sensitive uses and Exhibit 4 shows a two-tier buffer system (1,000 feet around public and private schools and 600 feet around all other sensitive uses). Any changes to the buffer zones would impact dispensaries and the nursery only, as no modification to the 600-foot buffer zone around sensitive uses is recommended for manufacturers or testing labs.

Should the Council provide a two-tier buffer system, it should also modify the definition of sensitive uses to clarify that off-campus after-school programs and tutorial and learning centers are not considered schools.

- b. Dispersion Requirement. The Regulatory Ordinance requires that the two dispensaries currently allowed must be at least one mile apart to prevent over-concentration. Exhibit 5 shows the one-mile separation distance between dispensaries. If the Council did not want to reduce the buffer zones around sensitive uses it could re-visit the dispersion requirement as an approach to creating additional potential locations for a second dispensary. The Council may consider reducing the one-mile dispersion requirement by establishing a lower dispersion distance between dispensaries. For example, the City of Berkeley requires that a dispensary be located a minimum of 600 feet from another dispensary. In addition, if the Council is interested in increasing the cap on dispensaries, it would most likely need to reduce the dispersion requirement to accommodate any additional dispensaries.
- c. Zoning. Another approach to expanding potential locations for cannabis-related businesses is to allow such businesses in additional zones (i.e., expanding “green zones”). There have been some suggestions about permitting cannabis-related businesses, particularly dispensaries, in the C-1, Neighborhood Business District and/or

the C-M, Commercial Manufacturing District. While staff explored an expansion into those zones, it is not recommending any changes to the Zoning Code to allow for cannabis-related businesses in additional zoning districts at this time. The C-1, Neighborhood Business District is oriented to neighborhood-serving activities and this District typically backs directly onto residential neighborhoods. The C-M, Commercial Manufacturing District is designed to serve manufacturing, flex office, life science and high technology businesses and not necessarily retail-oriented medicinal cannabis dispensary businesses.

- d. Adult Use of Cannabis. A valid notice of intent to circulate a petition to legalize adult use cannabis was submitted to the City Clerk's office on May 21, 2018. The petitioners have six months to gather signatures. If enough valid signatures are collected the City Council can direct preparation of a report to evaluate the impacts of the petition and adopt an ordinance or place the measure on the ballot. Council may want to consider amending the Regulatory Ordinance to allow dispensaries to sell medicinal, as well as recreational, cannabis in lieu of placing an initiative on the ballot that intends to achieve the same outcome. Or, the Council could re-visit permitting the sale of adult use cannabis only in the event that the initiative qualifies for the ballot. A Council-sponsored amendment to the Ordinance could save the City money if it is determined that the initiative has a high likelihood of being approved.
- e. Confirmation of Use of RFP Process. If Council is amenable to amendments to the Regulatory Ordinance to provide for additional locations for dispensaries (buffer zone, dispersion, or rezoning, etc.), then staff recommends that a second RFP be issued, modeled after the initial RFP process, for the remaining opportunity, with minor modifications.
- f. Increase the Cap on the Number of Dispensaries. Currently, the Ordinance provides for a maximum of two medicinal dispensaries. When the cap was established the Council noted that it wanted to proceed in a measured way that would allow the City to gauge the success of permitting cannabis businesses in the City before expanding its footprint. At that time staff noted that a rule of thumb was that jurisdictions could support one dispensary for every 15,000 residents. This guidance would support allowing up to five dispensaries in the City. However, staff would not recommend any increase in the cap without modification to the buffer zone and dispersion requirements. It would be virtually impossible to site additional dispensaries without such changes. Staff is requesting direction from the City Council as to whether or not it wants to increase the number of dispensaries in the City at this time.

Other Areas Affecting Cannabis

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Cannabis Delivery. Alameda only permits cannabis delivery businesses within the City in conjunction with brick and mortar medicinal cannabis dispensary locations. State Senate Bill 1302, which is currently stalled on the Senate floor, reads in part, “A local jurisdiction shall not adopt or enforce any ordinance that would prohibit a licensee from delivering cannabis within or outside of the jurisdictional boundaries of that local jurisdiction.” Currently the City does not have any rules regarding outside delivery. Staff proposes to promulgate regulations that would require off-island delivery business to secure City business licenses. Staff is not proposing any expansion to the Regulatory Ordinance to permit stand-alone delivery businesses.

Cannabis Tax. Staff presented tax revenue alternatives to the City Council at its May 18, 2018 meeting. City Council decided not to put forward a cannabis tax on the November 2018 ballot. Estimated revenues on a 4% tax on cannabis businesses could yield between \$260,000 and \$770,000 annually (this assumes the existing caps and restrictions (e.g., medicinal only) on the various cannabis-related businesses). Council has not indicated any interest in re-visiting a possible cannabis business tax at this time.

FINANCIAL IMPACT

There is no financial impact to the General Fund by providing direction to staff. The cost of staff work related to regulating cannabis business activities will be borne solely by cannabis businesses. A fee study is currently underway and will be presented to the City Council in September. The study will recommend a process for cost recovery over a period of years.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

This report is in conformance with the Alameda Municipal Code, Article XVI.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) applies only to projects, which have the potential for causing a significant effect on the environment. This is not a project and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, sections 15378 and 15061(b)(3) (General Rule).

RECOMMENDATION

It is recommended that the City Council:

- 1) Receive a semi-annual report on cannabis, including an update on RFP process (outcomes and lessons learned);

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- 2) Provide direction regarding potential amendments to local law concerning cannabis, including (a) maintain cap on testing laboratories, (b) allow processing of applications for nursery cultivation and manufacturing on a first-come first-served basis, (c) amendments affecting dispensaries and nursery cultivation businesses, including modify buffer zones, dispersion requirement, zoning, and adult use, (d) confirmation of use of RFP process to administer cap; and
- 3) Receive update concerning other areas relating to cannabis, including regulation of cannabis delivery, and Cannabis Tax.

Respectfully submitted,
Debbie Potter, Community Development Director

By,
Lois Butler, Economic Development Manager

Financial Impact section reviewed,
Elena Adair, Finance Director

Exhibits:

1. Summary of Issues
2. 1,000-Foot Buffer Zone for Dispensaries and Nursery
3. 600-Foot Buffer Zone Around Sensitive Uses
4. Two-Tier Buffer System Map
5. One-Mile Dispersion Map
6. Zoning Maps
 - a. Existing Cannabis Zoning Districts
 - b. Proposed Cannabis Zones
 - c. Proposed Cannabis Zones with Buffers