



City of Alameda

Meeting Agenda

City Council

Tuesday, January 15, 2019

7:00 PM

City Hall, 2263 Santa Clara Avenue, Council
Chambers, 3rd Floor, Alameda CA 94501

REVISED SPECIAL MEETING - CLOSED SESSION - 5:15 P.M.

The agenda was revised on January 8, 2019 at 5:00 p.m. to have the meeting start at 5:15 p.m.

- 1 Roll Call - City Council
- 2 Public Comment on Closed Session Items - Anyone wishing to address the Council on closed session items may speak for 3 minutes per item
- 3 Adjournment to Closed Session to consider:
 - 3-A [2019-6358](#) CONFERENCE WITH LABOR NEGOTIATORS (Government Code section 54957.6)
CITY NEGOTIATORS: David L. Rudat, Interim City Manager, and Nancy Bronstein, Human Resources Director
EMPLOYEE ORGANIZATIONS: International Brotherhood of Electrical Workers, Local 1245 (IBEW), Electric Utility Professional Association of Alameda (EUPA), Alameda City Employees Association (ACEA), Alameda Police Officers Association Non-Sworn Unit (PANS), Alameda Management and Confidential Employees Association (MCEA); Executive Management Employees (EXME) and Electric Utility Professionals of Alameda (AMPU)
UNDER NEGOTIATION: Salaries and Terms of Employment
 - 3-B [2019-6365](#) PUBLIC EMPLOYEE APPOINTMENT/HIRING
Pursuant to Government Code § 54957
Title/description of positions to be filled: City Attorney
 - 3-C [2019-6366](#) PUBLIC EMPLOYEE APPOINTMENT/HIRING
Pursuant to Government Code § 54957
Title/description of positions to be filled: City Manager
 - 3-D [2019-6417](#) CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Government Code section 54956.8)
PROPERTY: A 30 acre portion of Site B, Alameda Point
CITY NEGOTIATOR: David L. Rudat, Interim City Manager
POTENTIAL BUYER: Abbott Bros. Development, Inc.

ISSUE UNDER NEGOTIATION: Real Property Negotiations Price and
Terms of Payment

4 **Announcement of Action Taken in Closed Session, if any**

5 **Adjournment - City Council**

REGULAR CITY COUNCIL MEETING - 7:00 P.M.

Pledge of Allegiance

1 **Roll Call - City Council**

2 **Agenda Changes**

3 **Proclamations, Special Orders of the Day and Announcements - Limited to 15 minutes**

4 **Oral Communications, Non-Agenda (Public Comment) - A limited number of speakers may address the Council regarding any matter not on the agenda; limited to 15 minutes; additional public comment addressed under Section 8**

5 **Consent Calendar - Items are routine and will be approved by one motion unless removal is requested by the Council or the public**

5-A [2019-6399](#) Minutes of the Special and Regular City Council Meetings Held on December 18, 2018. (City Clerk)

5-B [2019-6402](#) Bills for Ratification. (Finance)

Attachments: [Bills for Ratification](#)

5-C [2019-6382](#) Recommendation to Authorize the Interim City Manager to Execute a First Amendment to the Professional Services Agreement with Hinderliter de Llamas Associates (HdL) to Include the Review and Examination of Measure F Transactions and Use Tax Records Collected by the California Department of Tax and Fee Administration and to Increase Compensation Under the Agreement by \$25,000; and

Adoption of Resolution Authorizing Hinderliter de Llamas Associates (HdL) Access to the City's Sales and Transactions and Use Tax Records. (Finance 2410)

Attachments: [Exhibit 1 - Agreement](#)
 [Exhibit 2 - First Amendment](#)
 [Resolution](#)

- 5-D** [2019-6369](#) Adoption of Resolution Authorizing the Interim City Manager to Execute Agreements and All Related Documents with the California Department of Tax and Fee Administration for Implementation of the City's Half-Cent Transactions and Use Tax (Measure F) Approved by the Voters at the November 6, 2018 General Election. (Finance 2410)

Attachments: [Exhibit 1 - Agreement for Preparation](#)
 [Exhibit 2 - Agreement for State Administration](#)
 [Resolution](#)

- 5-E** [2019-6347](#) Adoption of Resolution Authorizing the City of Alameda to Participate in the United States Department of Housing and Urban Development (HUD) Public Offering as Part of the Section 108 Loan Guarantee Assistance Program to Refinance an Existing Note in the Original Principal Amount of \$4,000,000, Related to Financing of the Civic Center Parking Garage (Series 2006-A);

Adoption of Resolution Authorizing the City of Alameda to Participate in the United States Department of Housing and Urban Development (HUD) Public Offering as Part of the Section 108 Loan Guarantee Assistance Program to Refinance an Existing Note in the Original Principal Amount of \$3,000,000, Related to Financing of the Civic Center Parking Garage (Series 2008-A); and

Recommendation to Authorize the Interim City Manager to Negotiate and Execute Related Documents, Agreements, and Modifications Related to the Refinancing. (Community Development 274)

Attachments: [Resolution - Series 2006-A](#)
 [Resolution - Series 2008-A](#)

- 5-F** [2019-6352](#) Adoption of Resolution Authorizing the Interim City Manager to Execute a Cooperation Agreement and Any Amendments Thereto between Eden Housing, Inc., a California Corporation, and the City of Alameda for Compliance with the Requirements of a Grant Application Under the Affordable Housing and Sustainable Communities Funding Program for: A) the 70-Unit Family Affordable Housing Project on Block 8 within Site A at Alameda Point and B) Transportation Projects (a Segment of Main Street (West Side) between Pacific and Atlantic Avenues or a Segment of Central Avenue, and Lighting Along the Cross-Alameda Trail). (Base Reuse 819099)

Attachments: [Exhibit 1 - Cooperation Agreement](#)
 [Presentation](#)
 [Resolution](#)

- 5-G** [2019-6353](#) Adoption of Resolution Declaring Results of Special Election in

Community Facilities District No. 17-1 (Alameda Point Public Services District), Determining That Alteration of the Rate and Method of Apportionment of Special Taxes for the District is Lawfully Authorized, and Directing Recording of an Amendment to Notice of Special Tax Lien. (Base Reuse 819099)

Attachments: [Resolution](#)

- 5-H [2019-6354](#) Adoption of Resolution Approving a Memorandum of Understanding (MOU) Between the Alameda Police Officers Association Non-Sworn Unit (PANS) and the City of Alameda for a Forty-Two Month Term Commencing December 27, 2018 and Ending June 30, 2022. (Human Resources 2510)

Attachments: [Exhibit 1 - MOU \(Redline\)](#)
 [Exhibit 2 - MOU](#)
 [Resolution](#)

- 5-I [2019-6359](#) Adoption of Resolution Approving a Memorandum of Understanding Between the Alameda City Employees Association and the City of Alameda for a Forty-Two Month Term Commencing December 28, 2018 and Ending June 30, 2022. (Human Resources 2510)

Attachments: [Exhibit 1 - MOU \(Redline\)](#)
 [Exhibit 1 - REVISED MOU \(Redline\)](#)
 [Exhibit 2 - MOU](#)
 [Exhibit 2 - REVISED MOU](#)
 [Resolution](#)

- 5-J [2019-6361](#) Adoption of Resolution Approving a Memorandum of Understanding (MOU) Between the Management and Confidential Employees Association (MCEA) and the City of Alameda for a Forty-Two Month Term Commencing December 27, 2018 and Ending June 30, 2022. (Human Resources 2510)

Attachments: [Exhibit 1 - MOU \(Redline\)](#)
 [Exhibit 2 - MOU](#)
 [Resolution](#)

6 Regular Agenda Items

- 6-A [2019-6345](#) Recommendation to Provide Direction on the City's Proposal for the Homeless Emergency Aid Program (HEAP) and Authorize the Interim City Manager to Work with the Social Service Human Relations Board to Finalize and Implement the City's HEAP Programs and Services. (Economic Development 001)

Attachments: [Presentation](#)

- 6-B** [2019-6384](#) Public Hearing to Consider Introduction of Ordinance Amending the Alameda Municipal Code by (1) Amending Section 30-10 (Cannabis) to (a) Add Cannabis Retail Businesses as Conditionally Permitted Uses in the C-1, Neighborhood Business, and C-M, Commercial-Manufacturing Zoning Districts, (b) Amend Certain Portions of the Zoning Code to Enable Cannabis Retail Businesses to Dispense Non-Medicinal or “Adult Use” Cannabis, and (c) Amend Certain Portions of the Zoning Code to Remove the Dispersion Requirement; and (2) Repeal Ordinance No. 3228; and

Introduction of Ordinance: (1) Amending the Alameda Municipal Code by Amending Article XVI (Cannabis Businesses) of Chapter VI (Businesses, Occupations and Industry) to (a) Eliminate the Cap on Testing Laboratories, (b) Allow for Two Additional Cannabis Businesses to Operate as “Dispensary/Delivery” (Delivery Required, Open to the Public) within the Zoning Districts for Cannabis Retail, (c) Amend the Dispersion Requirement to Require No More Than Two Cannabis Retail Businesses to Operate on Either Side of Grand Street, (d) Create a Two-Tier Buffer Zone from Sensitive Uses for Cannabis Businesses, (e) Amend Certain Portions of the Regulatory Ordinance to Enable Cannabis Retail Businesses to Dispense Non-Medicinal or “Adult Use” Cannabis, (f) Modify Requirements for Off-Island Delivery, and (g) Make Other Clarifying or Conforming Amendments Thereto; and (2) Repealing Ordinance No. 3227. (Community Development 209)

Attachments: [Exhibit 1 - Map of Zones](#)
 [Exhibit 2 - Letter](#)
 [Exhibit 3 - Ordinance Land Use \(Redline\)](#)
 [Exhibit 4 - Ordinance Regulatory \(Redline\)](#)
 [Correspondence - Updated 1-15](#)
 [Ordinance - Land Use](#)
 [Ordinance - Regulatory](#)

- 7 City Manager Communications - Communications from City Manager**
- 8 Oral Communications, Non-Agenda (Public Comment) - Speakers may address the Council regarding any matter not on the agenda**
- 9 Council Referrals - Matters placed on the agenda by a Councilmember may be acted upon or scheduled as a future agenda item**
- 10 Council Communications - Councilmembers can address any matter not on the agenda, including reporting on conferences or meetings**

11 Adjournment - City Council**SPECIAL MEETING - 7:01 P.M. (Following Regular Meeting)**

The special meeting agenda was added on January 8, 2019 at 5:00 p.m.

1 Roll Call - City Council**2 Agenda Items**

- 2-A** [2019-6396](#) Recommendation to Review the Ballot Arguments and Address Rebuttals for the Two April 9, 2019 Special Election Measures: 1) a Proposed Initiative Measure to Change the Designation for an Approximately 3.65 Acre Site on McKay Avenue, by Amending the General Plan Designation from Office to Open Space, and by Amending the Zoning Ordinance from Administrative-Professional District to Open Space District; and 2) the Caring Alameda Act. (City Clerk 2220)
- Attachments:** [Exhibit 1 - Ballot Argument Against Initiative](#)
 [Exhibit 2 - Ballot Argument In Favor of Caring Alameda Act](#)
 [Exhibit 3 - Declaration of Argument Authors](#)
- 2-B** **2019-6424** Recommendation to Consider Directing the City Attorney to Initiate Litigation to Obtain a Judicial Declaration Whether Enforcement of the McKay Open Space Initiative will Require the City of Alameda to Compensate the Owner for the Value of the McKay Avenue Property in the event that the McKay Open Space Initiative Becomes Effective. (City Manager 2100)

3 Adjournment - City Council

- Meeting Rules of Order are available at <https://alamedaca.gov/node/5822>
- Time frames listed for agenda items are only estimates. Discussions on each item could take more or less time. Anyone interested in speaking is encouraged to arrive early rather than relying on the estimates.
- Translators and sign language interpreters will be available on request. Please contact the City Clerk at 510-747-4800 or TDD number 510-522-7538 at least 72 hours prior to the meeting to request a translator or interpreter.
- Equipment for the hearing impaired is available for public use. For assistance, please contact the City Clerk at 510-747-4800 or TDD number 510-522-7538 either prior to, or at, the Council meeting.
- Accessible seating for persons with disabilities, including those using wheelchairs, is available.
- Minutes of the meeting available in enlarged print.
- Video tapes of the meeting are available upon request.
- Please contact the City Clerk at 510-747-4800 or TDD number 510-522-7538 at least 48 hours prior to the meeting to request agenda materials in an alternative format, or any other reasonable accommodation that may be necessary to participate in and enjoy the benefits of the meeting.
- This meeting will be broadcast live on the City's website www.alamedaca.gov/agendas.
- Documents related to this agenda are available for public inspection and copying at of the Office of the City Clerk, 2263 Santa Clara Avenue, Room 380, during normal business hours.
- **KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE:** Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City of Alameda exist to conduct the citizen of Alameda's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.
- **FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION:** the address is 2263 Santa Clara Avenue, Room 380, Alameda, CA, 94501; phone number is 510-747-4800; fax number is 510-865-4048, e-mail address is lweisiger@alamedaca.gov and contact is Lara Weisiger, City Clerk.
- In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Public Hearing to Consider Introduction of Ordinance Amending the Alameda Municipal Code by (1) Amending Section 30-10 (Cannabis) to (a) Add Cannabis Retail Businesses as Conditionally Permitted Uses in the C-1, Neighborhood Business, and C-M, Commercial-Manufacturing Zoning Districts, (b) Amend Certain Portions of the Zoning Code to Enable Cannabis Retail Businesses to Dispense Non-Medicinal or “Adult Use” Cannabis, and (c) Amend Certain Portions of the Zoning Code to Remove the Dispersion Requirement; and (2) Repeal Ordinance No. 3228; and

Introduction of Ordinance: (1) Amending the Alameda Municipal Code by Amending Article XVI (Cannabis Businesses) of Chapter VI (Businesses, Occupations and Industry) to (a) Eliminate the Cap on Testing Laboratories, (b) Allow for Two Additional Cannabis Businesses to Operate as “Dispensary/Delivery” (Delivery Required, Open to the Public) within the Zoning Districts for Cannabis Retail, (c) Amend the Dispersion Requirement to Require No More Than Two Cannabis Retail Businesses to Operate on Either Side of Grand Street, (d) Create a Two-Tier Buffer Zone from Sensitive Uses for Cannabis Businesses, (e) Amend Certain Portions of the Regulatory Ordinance to Enable Cannabis Retail Businesses to Dispense Non-Medicinal or “Adult Use” Cannabis, (f) Modify Requirements for Off-Island Delivery, and (g) Make Other Clarifying or Conforming Amendments Thereto; and (2) Repealing Ordinance No. 3227. (Community Development 209)

To: Honorable Mayor and Members of the City Council

From: David L. Rudat, Interim City Manager

EXECUTIVE SUMMARY

On November 7, 2018, City Council adopted Ordinance Nos. 3227 and 3228 concerning cannabis businesses in Alameda. Those Ordinances are now in effect. A complaint, however, was filed under the City’s Sunshine Ordinance that the agenda title for these ordinances when the City Council considered their introduction did not reflect certain provisions in the ordinance that was introduced on October 16, 2018, and then adopted on November 7, 2018. The Open Government Commission conducted a hearing on the complaint, sustained it and, as a remedy, held that the Ordinances were deemed null and void and that the Council may consider re-noticing the ordinances following a public hearing.

The City Attorney’s Office had advised the Commission and the Council that the Sunshine Ordinance had not been violated and that the Commission did not have the legislative authority to render a legally adopted ordinance null and void.

Given the decision of the Commission and the opinion of the City Attorney, the City Manager and staff are recommending that the two ordinances be re-introduced and adopted, and that Ordinances Nos 3227 and 3228 be subsequently repealed when the new ordinances are adopted and become effective.

Rather than risk future confusion over the legal status of Ordinance Nos. 3227 and 3228 (and the likely accompanying use of limited city resources), and to further sustain public confidence in its public officials and legal processes concerning the adoption and enforcement of its laws, staff's proposed solution as the most expeditious and balanced one, with the least amount of risk, that would best serve interests of the community as a whole.

Accordingly, in an abundance of caution only, the City Manager and staff are recommending that the two ordinances be re-considered and that Ordinance Nos. 3227 and 3228 be repealed.

BACKGROUND

In late 2017, the City Council directed staff to undertake a Cannabis Regulatory Fee Study to ensure that the cost of regulating cannabis business activity in the City is borne by the cannabis businesses.

In late 2017, the City Council adopted two ordinances that covered all aspects of regulating the operations of cannabis businesses in Alameda. One ordinance regulates land use issues and requires a use permit for cannabis business activities (Zoning Ordinance). The other ordinance regulates cannabis business activity and requires an operator's permit for cannabis businesses (Regulatory Ordinance). These ordinances were effective on January 18, 2018.

Pursuant to the regulatory ordinance, the maximum number of permits to be issued by cannabis business category is capped. The Council approved a Request for Proposals (RFP) process (including an evaluation rubric and a review panel) to select the businesses in each category that would be eligible to move forward with applying for and obtaining the requisite approvals, with the exception of testing labs, which were permitted to apply for a permit on a first-come/first-served basis.

These categories include:

- ☐ One nursery cultivation (including distributor's) permit;
- ☐ Four manufacturing permits (including distributor's) permit; and
- ☐ Two medicinal retail dispensary permits (including delivery permits)

The first RFP was issued in April 2018. Five proposals were received for retail dispensaries. No proposals were received for any other uses. Three of the proposals for retail dispensaries were deemed non-responsive as they were all located within the 1,000-foot buffer zone for sensitive uses. Two proposals were evaluated by the review panel and one proposer was awarded the right to move forward with its application for an operator's permit. The proposer who was not selected appealed the panel's determination. A hearing officer issued an opinion denying the appeal on September 24, 2018. The proposer who was selected is moving forward with its permit application.

At its May 18, 2018 goal-setting work session, the City Council directed staff to report on a number of issues related to the Regulatory Ordinance. Staff prepared the requested analysis in a semi-annual report for Council consideration at its July 24, 2018 meeting. At that meeting, Council directed staff to prepare the required ordinances to amend the Zoning Ordinance and the Regulatory Ordinance to:

- ☐ Eliminate the cap on the number of testing laboratories allowed in Alameda, but maintain the cap of two for dispensaries open to the public;
- ☐ Similar to testing laboratories, allow nursery cultivation and cannabis manufacturing businesses to apply for permits on a first-come/first-served basis;
- ☐ Maintain the buffer zone of 1,000 feet from public and private K-12 schools and reduce the buffer zone to 600 feet for all other sensitive uses for dispensaries and cultivation uses;
- ☐ Expand existing zoning to conditionally permit cannabis dispensaries in the C-1, Neighborhood Business and C-M, Commercial-Manufacturing zoning districts;
- ☐ Maintain the existing dispersion requirement for dispensaries;
- ☐ Confirm continued use of the RFP process, including the scoring rubric and review panel to allocate the limited right to apply for a cannabis business permit;
- ☐ Amend ordinance language to clarify that certain uses do not qualify as a “school,” including providing a definition for tutoring centers;
- ☐ Allow adult use (recreational) cannabis to be sold in Alameda;
- ☐ Clarify that off-island cannabis delivery businesses need only apply for a business license and pay applicable fees; and
- ☐ Recommend any clean-up amendments to the Regulatory Ordinance.

On October 16, 2018, the Council made revisions to an ordinance prepared by staff based on Council direction, which included a revision to convert the two additional “delivery-only” dispensaries to “delivery-required” (open to the public) dispensaries. After making those revisions, the Council introduced on first reading two ordinances amending Ordinance No. 3227 (Regulatory Ordinance) and Ordinance No. 3228 (Land Use Ordinance). Following the first reading, on October 30, 2018, a member of the public filed a complaint with the Open Government Commission (“OGC”) concerning the agenda title for the two ordinances that the Council introduced on October 16. On November 7, 2018, the Council took final action to adopt the two ordinances on second reading, after taking further public comment, including comment from the OGC complainant. The matter was heard by the OGC on November 14, 2018. After deliberation, the OGC sustained the complaint and, in light thereof, deemed the two ordinances null and void and that the ordinances be re-noticed to allow members of the public to be heard.

Thereafter, the City Attorney’s Office provided a legal memorandum to the Commission that set forth in more detail why there had not been a violation of the Sunshine Ordinance but, assuming the Commission found a violation that the Commission did not have the

legal authority to render Ordinances adopted by the City Council null and void. Rather, if the Commission continued to conclude that there had been a violation of the Sunshine Ordinance, it should recommend to the City Council that the Ordinances be considered for re-introduction following a public hearing and that the adopted Ordinances be repealed.

At the request of the City Attorney's Office, the complaint was returned to the Commission on December 17, 2018, for further consideration in light of the City Attorney's memorandum. Nevertheless, the Commission sustained the complaint, ordered Ordinance Nos. 3227 and 3228 null and void, and noted that the Council may reintroduce the two ordinances after a properly noticed public hearing.

In order to carry out the intent of the Commission's decision, and to avoid any potential litigation concerning the legal status of the two ordinances, this item has been scheduled for a public hearing on the Council's January 15, 2019 agenda.

DISCUSSION

Zoning Code Amendments

At its July 24, 2018 meeting, City Council directed staff to amend the Zoning Code to:

Expand Zoning Districts where Retail Cannabis Dispensaries can be Conditionally Permitted

The City Council directed staff to amend the Zoning Code to expand the zoning districts where retail cannabis dispensaries can be conditionally permitted to include the C-1 Neighborhood Business and C-M Commercial Manufacturing districts (Exhibit 1 is a map of C-1 and C-M zones). The purpose of the C-1 district is to "serve residential areas with convenient shopping and service facilities." The C-1 districts are primarily located along the Lincoln Avenue and Central/Encinal Avenue at locations that once served as railroad stations. Today, these areas are populated with small businesses engaged in retail, food, and office businesses.

The C-M, Commercial Manufacturing Zoning District, is intended for a broad variety of general commercial facilities and light manufacturing uses such as food distribution, research labs, and warehouses. The Harbor Bay Business Park, Wind River Campus, and Ballena Bay are the primary business locations zoned C-M. Two other locations zoned C-M include Stewart Court off of Constitution Avenue and the City block containing Fire Station 3 and the Emergency Operations Center on Grand Street. Permitting cannabis retail sales conditionally in the C-M District could be complementary to the general commercial facilities and light manufacturing uses permitted in that District.

As a conditionally permitted use in both the C-1 and C-M Districts, the City has the ability to consider and impose conditions on any aspect of the cannabis business to address potential negative impacts.

Conditionally Permit “Dispensary/Delivery” (Delivery Required; Open to the Public) in the C-M and C-1 Zones

At its October 16, 2018 meeting, the Council modified its original direction to permit two additional “delivery-only” dispensaries to add two additional “delivery-required” dispensaries, which would be open to the public. These businesses would be no different (functionally and from a regulatory perspective) from full-service retail dispensaries, except that they would be required to offer cannabis delivery from the licensed premises. For example, they would be open to the public. Allowing delivery-required dispensaries as a conditionally permitted use in the C-1 and C-M districts would be consistent with the underlying intent for that zone. With all cannabis businesses, the City has the ability to impose conditions of approval to address potential impacts through the use permit process.

At its July 24, 2018 meeting, Council requested that staff contact business park representatives to receive input on locating dispensaries in the C-M zone. Staff received the attached letter from Harbor Bay Business Park opposing the proposed zoning amendment (Exhibit 2).

Allow Retail and “Dispensary/Delivery” (Delivery-Required; Open to the Public) to Sell Cannabis for Adult Use (recreational use)

At its July 24, 2018 meeting, Council considered lifting the ban on adult-use sales based on a number of factors, including the filing of valid notice of intent to circulate a citizen-initiated petition to legalize adult use cannabis. Although lifting the ban on the sale of adult use cannabis would not raise new concerns from a land use and zoning perspective, an amendment to the Zoning Code is required should the Council decide to allow sale for adult use, as the Code only allows the sale or delivery of medicinal cannabis. Accordingly, as requested by the Council, staff has prepared ordinance amendments to facilitate a discussion and comment on allowing the sale of adult use cannabis in Alameda.

On September 24, 2018, the Planning Board held a public hearing to consider the zoning changes described above. The Planning Board recommended that the City Council adopt an ordinance making those changes as well as several other changes including:

- ☐ Removing the one (1) mile dispersion requirement from the Zoning Ordinance and including it wherever the Council saw fit (e.g., Regulatory Ordinance);
- ☐ Requiring that delivery-only dispensaries meet the same parking requirements as manufacturing uses rather than retail uses; and
- ☐ Reviewing the guidelines for distances used by the California Department of Alcohol Beverage Control (“ABC”) to determine if cannabis buffer zones should be consistent with ABC’s.

The ordinances as drafted include some but not all of the changes recommended by the Planning Board. Following the Planning Board meeting, staff had further revised the draft

ordinance based on the Planning Board's discussion to include two definitions, one for Cannabis Retail and one for Cannabis Retail - Delivery Only, rather than a single definition. Two definitions are appropriate as these businesses are conditionally permitted in different zones, are subject to different parking requirements, etc. However, in light of the Council's direction at the October 16, 2018 meeting, these amendments were removed from the Land Use Ordinance.

Based on the Planning Board's recommendation, the Council's direction concerning dispensaries and the decision of the Open Government Commission, staff recommends that the City Council introduce a new ordinance amending Ordinances No. 3206 (Land Use Ordinance attached as Exhibit 3), which tracks the language of Ordinance No. 3228, as described above, and repealing Ordinance No. 3228.

Regulatory Ordinance Amendments

Staff prepared a draft ordinance amending the Regulatory Ordinance based on Council direction received on July 24, 2018, and direction received from the Council on October 16, 2018. The following is a summary of the key amendments to the Regulatory Ordinance considered on October 16, 2018.

Dispersion Requirement

As noted above, the Planning Board recommended that the dispersion requirement be removed from the Zoning Code. The Planning Board felt that the dispersion requirement was not a land use issue. The dispersion requirement prohibits retail dispensaries to be located within one mile of each other. In light of the Planning Board's recommendation, the proposed ordinances reflect the recommended change. Therefore, the dispersion requirement has been deleted from the Zoning Ordinance and added to the Regulatory Ordinance. A modified dispersion requirement (overconcentration) would still apply to "Dispensary/Delivery" (Delivery-Required, Open to the Public) dispensaries. The proposed ordinance would permit two dispensaries east of Grand Street and two dispensaries west of Grand Street and does not make a distinction between the types of retail dispensary.

Two-Tier Buffer Zone

The draft ordinance retains the 1,000-foot buffer zone from public and private K-12 schools and reduces the buffer zone to 600 feet for other sensitive uses including youth centers and tutoring centers, for retail dispensaries (both types) and nursery cultivation. The draft Regulatory Ordinance also provides that, for retail dispensaries, which are subject to the RFP process, the buffer zone will be established based on existing sensitive uses prior to the time of submittal of the Letter of Intent, or at the time of application, in the case of businesses that apply on a first-come-first-served basis. This change will ensure that businesses can proceed with the process and expend resources and funding without the risk that a sensitive use subsequently move in within the

applicable buffer zone and then displace the cannabis business, rendering its proposed location ineligible.

The original Regulatory Ordinance included a definition of schools and youth centers, which are primarily recreational in nature, but did not provide a definition for uses that has an academic focus. As such, academic uses were construed as schools as a matter of application. For example, academic after-school programs and tutoring facilities fell within the plain meaning of a “school”. Moreover, the Ordinance did not address the applicable buffer for academic uses, as an ancillary use, within buildings that were not intended for such use (e.g., private homes, churches, etc.). Therefore, staff is recommending two changes. First, an amendment that clarifies that ancillary academic uses are not a “school” for purposes of the buffer, therefore the 600-foot radius would apply. Second, the following definition for tutoring centers has been added:

“‘Tutoring Center’ means any enterprise, whether or not for profit, that operates in a commercial building or structure the principal use of which is to offer instruction of any kind to support academic instruction of K-12 students.”

The buffer zone of 600 feet from sensitive uses remains the same for all other cannabis business activities.

Remove Cap on Testing Labs

One of the earliest changes to the Regulatory Ordinance proposed by Council was to remove the cap on testing labs and that change is provided for in the draft ordinance. In addition, based on direction given, an implementing regulation was issued that allows nursery cultivation and manufacturing uses to apply for an operator’s permit on a first-come, first-served basis, similar to testing labs. As a result, testing labs, nursery cultivation and manufacturing businesses can all apply for an operator’s permit without going through a RFP process. To date, no applications have been received for any of these business uses.

Allow for Delivery-Required Dispensaries

On July 24, 2018, Council directed staff to expand the categories of permitted cannabis businesses to include up to two delivery-only dispensaries. These brick and mortar businesses would have been regulated similar to retail cannabis dispensaries with two major features: (a) they would be closed to the public, and (b) would only be permitted in the C-M zone. To obtain the right to apply for an operator’s permit, a prospective business would compete through a RFP process.

However, at its October 16 meeting, the Council gave direction and instead of “delivery-only” proposed that these businesses be required to offer delivery services from the licensed premises, which would be open to the public. As such, these “delivery-required” dispensaries would be permitted in the C-1 and C-M zones. The ordinance as drafted

allows for two “delivery-required” dispensaries. As noted above, these uses are no different from full-service dispensaries, except that they must offer delivery services and be open to the public.

Adult Use of Cannabis

As was reported at the July 24, 2018 meeting, 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 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.

Given the anticipated high level of support for such an initiative (68% of Alameda voters supported the State ballot initiative to allow recreational use and sale of cannabis products) and the costs associated with conducting an election, should enough valid signatures be collected to put an adult use measure on the ballot, a majority of Council members expressed a willingness to allow the sale of cannabis products for adult use.

As noted above, both the draft Zoning Ordinance and Regulatory Ordinance allow for the sale of cannabis products for adult use. These ordinances already provide for the nursery cultivation and manufacturing of cannabis products for adult use.

Additional Clean-Up Amendments

Additional ordinance clean-up amendments are proposed to (1) “Permit Applications” section, which requires the applicant to provide a deed if the applicant will own the property; (2) “Cannabis Business Owner,” “Review of Applications; Appeal of Denials and Suspensions,” and “Labor Peace Agreement” language to comport with the State law; and, (3) reflect City department realignments.

Other substantive amendments include:

- ☐ False Statements/Representations. It shall be unlawful to make false statements in an application;
- ☐ Withdrawal of Application. Application withdrawals must be requested in writing and approved by the City. The City shall have continuing jurisdiction to deny a license even if it is withdrawn; and
- ☐ Implementing Regulations. The Planning, Building, and Transportation Department’s authority to adopt implementing regulations was expanded to encompass all cannabis ordinances, not only the Regulatory Ordinance.

As with the Land Use Ordinance, noted above, in light of the Council direction on October 16, 2018 concerning dispensaries and the Open Government Commission’s decision, staff recommends that the City Council introduce a new ordinance amending Ordinance No. 3201 (Regulatory Ordinance attached as Exhibit 4), which tracks the language of Ordinance No. 3227, as described above, and repealing Ordinance No.3227.

Request for Proposals Process

Staff had requested that the Council confirm continued use of the RFP process to facilitate administration of the cap. The Council decided to continue using the RFP process. The action currently before the Council would have no impact on that part of the Council's decision on October 16, 2018, which remains undisturbed.

FINANCIAL IMPACT

As noted on a previous staff report, there is no financial impact to the General Fund by introducing ordinances to amend the Zoning Code and Article XVI of the Municipal Code as described above. The City's Master Fee Schedule was amended in July 2018 to include fees to be charged in conjunction with administering the City's cannabis business regulatory program to ensure full cost recovery.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

This report and its recommended actions have been prepared in conformance with the Alameda Municipal Code.

ENVIRONMENTAL REVIEW

California Environmental Quality Act ("CEQA") review is not required for this action pursuant to Business and Professions Code section 26055(h) as the City of Alameda requires discretionary review and approval of subsequent applications to engage in commercial cannabis activity. As a separate and independent basis, this action is 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 this action may have a significant effect on the environment.

RECOMMENDATION

It is recommended that the City Council:

Hold a Public Hearing to Consider the Introduction of an Ordinance (1) Amending the Alameda Municipal Code by Amending Section 30-10 (Cannabis) to (a) Add Cannabis Retail Businesses as Conditionally Permitted Uses in the C-1, Neighborhood Business, and C-M, Commercial-Manufacturing Zoning Districts, (b) Amend Certain Portions of the Zoning Code to Enable Cannabis Retail Businesses to Dispense Non-medicinal or "Adult Use" Cannabis, and (c) Amend Certain Portions of the Zoning Code to Remove the Dispersion Requirement; and (2) Repealing Ordinance No. 3228; and

Introduce an Ordinance: (1) Amending the Alameda Municipal Code by Amending Article XVI (Cannabis Businesses) of Chapter VI (Businesses, Occupations and Industry) to (a) Eliminate the Cap on Testing Laboratories, (b) Allow for Two Additional Cannabis

Businesses to Operate as “Dispensary/Delivery” (Delivery Required, Open to the Public) Within the Zoning Districts for Cannabis Retail, (c) Amend the Dispersion Requirement to Require No More Than Two Cannabis Retail Businesses to Operate on Either Side of Grand Street, (d) Create a Two-Tier Buffer Zone from Sensitive Uses for Cannabis Businesses, (e) Amend Certain Portions of the Regulatory Ordinance to Enable Cannabis Retail Businesses to Dispense Non-medicinal or “Adult Use” Cannabis, (f) Modify Requirements for Off-Island Delivery, and (g) Make Other Clarifying or Conforming Amendments thereto; and (2) Repealing Ordinance No. 3227.

Respectfully submitted,
Dave Rudat, Interim City Manager

By,
Michael H. Roush, Interim City Attorney

Financial Impact section reviewed,
Elena Adair, Finance Director

Exhibits:

1. Map of Zones
2. Letter
3. Ordinance Land Use (Redline)
4. Ordinance Regulatory (Redline)