



CITY OF MORRO BAY CITY COUNCIL Notice of Special Meeting

The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.

Agenda **Tuesday, October 10, 2017** **Morro Bay Veterans Hall – 4:00 P.M.** **209 Surf Street, Morro Bay, CA**

ESTABLISH QUORUM AND CALL TO ORDER

PUBLIC COMMENT FOR ITEMS ON THE AGENDA

SPECIAL MEETING AGENDA ITEM:

1. DISCUSSION ON COUNCIL CANNABIS SUBCOMMITTEE RECOMMENDATIONS AND REQUEST FOR DIRECTION ON A CANNABIS ORDINANCE TO REGULATE BUSINESSES AND PERSONAL USE

RECOMMENDATION: Council provide direction to staff to introduce a cannabis ordinance for first reading at the regular City Council meeting scheduled for October 24, 2017 either: 1) pursuant to the recommendations of the Council Cannabis Subcommittee; or 2) pursuant to further Council direction

ADJOURNMENT

DATED: October 5, 2017



Jamie L. Irons, Mayor

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

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AGENDA NO: 1

MEETING DATE: October 10, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: October 2, 2017

FROM: Council Cannabis Subcommittee

SUBJECT: Discussion on Council Cannabis Subcommittee Recommendations and Request for Direction on a Cannabis Ordinance to Regulate Businesses and Personal Use

RECOMMENDATION

Council provide direction to staff to introduce a cannabis ordinance for first reading at the regular City Council meeting scheduled for October 24, 2017 either: 1) pursuant to the recommendations of the Council Cannabis Subcommittee; or 2) pursuant to further Council direction.

FISCAL IMPACT

Fees may be imposed to recoup regulatory and administrative costs associated with regulation and permitting of commercial cannabis operations and personal cannabis cultivation. The Council Cannabis Subcommittee recommends City costs incurred by permitting and regulating commercial cannabis operations be recouped from operators through fees, and that a nominal fee be charged for issuance of a personal cannabis cultivation permit.

To generate revenue from commercial cannabis operations, Cities may impose local voter approved taxes on commercial cannabis operations, as well as seek the execution of development agreements with operators. Two common types of local cannabis taxes are to impose a percentage tax (e.g., 5-15%) on the gross receipts of cannabis businesses, and to also impose a flat rate (e.g., \$10-25) per square foot of cultivation. The Council Cannabis Subcommittee is recommending that the Council consider (after further analysis from City staff is subsequently provided) whether a cannabis tax measure should be sent to the City's voters for consideration at the regular election which will be held in November of 2018. The Subcommittee also recommends that revenue generating development agreements be sought with any commercial cannabis operations permitted in the City.

State grants (funded by new state cannabis taxes) are available to certain cities for local public health and safety programs to address the impact of the state's new cannabis laws. Cities "which have banned the cultivation, including personal cultivation... or retail sale of marijuana or marijuana products" are ineligible for these grants. (Revenue & Taxation Code § 34019(f)(3)(c).) The City of Morro Bay will be ineligible for these state grants if the Council Cannabis Subcommittee recommendations for an ordinance are approved (because not all cultivation and retail is allowed).

BACKGROUND

On November 8, 2016, California voters adopted Proposition 64, the Control, Regulate and Tax

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Prepared By: CFN

Dept Review: _____

City Manager Review: MRL

City Attorney Review: CFN

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Adult Use of Marijuana Act (“AUMA”). The AUMA legalized for individuals 21 years of age or older the personal use of cannabis, personal possession of up to one ounce of cannabis (and eight grams of concentrated cannabis), and (limited) personal cultivation of up to six cannabis plants. The AUMA also provides for the statewide regulation and licensing of commercial *recreational* cannabis operations (starting by January 1, 2018).

Similar to the provisions of the AUMA, the State of California has also provided for the statewide regulation and licensing of commercial *medical* cannabis operations (starting by January 1, 2018) through first the Medical Cannabis Regulation and Safety Act of 2015 (“MCRSA”), and then recently passed SB 94 (the Medicinal and Adult Use Cannabis Regulation and Safety Act, or “MAUCRSA”). SB 94 merges the separate cannabis regulatory regimes of MCRSA, governing medical cannabis, and Proposition 64, governing recreational cannabis. SB 94 also provides for a statewide cannabis regulatory system to be administered by a new Bureau of Cannabis Control.

On January 24, 2017, staff presented a summary of Proposition 64 (the Adult Use of Marijuana Act) and City Council directed staff to host an educational session addressing Proposition 64, including prospective community outreach and involvement in the discussion. The Assistant City Attorney presented an educational workshop on Proposition 64 at the March 1st meeting. The Council Cannabis Subcommittee was formed at that meeting with Council Member Robert Davis and Marlys McPherson being appointed. At the April 11, 2017 meeting, the Council directed staff to hold a public workshop for community input. On June 14, 2017, staff and Council reached out to the community through a public forum, allowing individuals the opportunity to express their opinion on Proposition 64, and approximately 75 individuals attended. The Subcommittee met with staff twice in July 2017 to discuss and prepare recommendations. On August 8, 2017, the City Council considered Subcommittee recommendations for a cannabis ordinance, and the City Council provided further direction. On September 6 and 29, 2017, the Council Cannabis Subcommittee met with staff to discuss further specific details for a cannabis ordinance.

The Subcommittee was assisted by the following staff:

- Martin Lomeli (Interim City Manager)
- Chris Neumeyer (Assistant City Attorney)
- Chief Greg Allen (Police Chief)
- Chief Steve Knuckles (Fire Chief)
- Commander Jody Cox (Police Commander)
- Scot Graham (Community Development Director)
- Ikani Taumoepeau (Deputy City Manager)

1. State Licenses for Commercial Cannabis Operations

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

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

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

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2. Local Control of Commercial Cannabis Operations

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

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

The Morro Bay Municipal Code ("MBMC") currently expressly prohibits medical cannabis dispensaries and all cannabis cultivation (with an exception for personal medical cannabis cultivation). The MBMC also prohibits the issuance of a license or permit for "marijuana processing" which includes creation of cannabis products and concentrates (e.g., edibles). (MBMC § 9.06.040(A-C).)

3. Personal Cannabis Cultivation

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

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

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

Current MBMC § 9.06.040(B) already prohibits "marijuana cultivation by any person... in all zones throughout the city" with the exception of "personal individual cultivation by a primary caregiver or qualified patient for use of medical marijuana, as permitted by the Compassionate Use Act of 1996." That current code acts to prohibit outdoor recreational cannabis cultivation. However, indoor cultivation (which cannot be banned), at present, is unregulated.

4. Smoking and Second-Hand Smoke Regulations

Proposition 64 further provides that the new laws permitting use and possession of cannabis shall not be interpreted to permit any person to smoke cannabis or cannabis products in public places *or* in any place where smoking tobacco is prohibited. (Health & Safety Code § 11362.3(a)(1-2).) Chapter 9.24 ("Secondhand Smoking Regulations") of the Morro Bay Municipal Code ("MBMC") provides smoking in Morro Bay is generally prohibited in public places, with some limited exceptions.

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DISCUSSION

The Council Cannabis Subcommittee, with input from staff, recommends the Council direct staff to introduce a cannabis ordinance for first reading at the October 24, 2017 regular Council meeting as detailed below, as well as direct staff to provide analysis to the Council on the merits of the Council submitting a cannabis tax ballot measure to the City's voters for consideration at the November 6, 2018 general election. A cannabis tax ballot measure would need to be approved for submission to the voters by the City Council no less than 88 days before election day. (Election Code section 9222.) If directed to do so, staff would timely provide analysis on a potential cannabis tax ballot measure for review to the City Council by Summer, 2018.

Most of the Subcommittee recommendations below are consistent with prior Council direction. Exceptions include a recommendation that testing, manufacturing and recreational deliveries not be allowed (with reconsideration if a cannabis tax ballot measure is approved by the City's voters), and that applications for City medical cannabis dispensary permits be accepted no earlier than July 1, 2018.

1. Personal Cultivation - Regulate as follows (consistent generally with prior Council direction):
 - a. Limitations.
 - i. Total of six plants allowed to be cultivated at a private residence.
 - ii. Allow up to two of the six plants to be grown outdoors, if outdoor cultivation is at least ten feet from property line, cannot be seen from public spaces and adheres to general regulations.
 - iii. Comply with all state and City regulations governing personal cannabis cultivation.
 - b. Reasonable Regulations. Adopt local health and safety regulations including:
 - i. Cultivation in a secured space and reasonably inaccessible to minors.
 - ii. Odor control so not detectable from neighboring properties or public place.
 - iii. Cultivation not visible from any public place.
 - iv. Electricity draw to not exceed maximum rating of the approved electrical panel for residence.
 - v. Artificial lighting shielded so that completely confined to private residence.
 - vi. Private residence must have fully functional and usable kitchen, as well as bathroom and bedroom areas, for use by the permit holder; and, private residence shall not be used primarily or exclusively for cannabis cultivation.
 - vii. Cultivation shall not displace required parking in a garage.
 - c. Permit.
 - i. Require local permit issued pursuant to a "self-inspection/certification program" which affirms compliance with local and state regulations.
 - ii. Charge nominal fee for permit, and waive fee for applications submitted from January 1, 2018 through June 30, 2018.
 - iii. Require property owner consent.
 - iv. Non-transferable permit.
 - d. Penalties. Violation subject to administrative citation, infraction and/or misdemeanor at City discretion; public nuisance abatement; and, revocation of permit.

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2. Public Use / Smoking Regulations: Take following actions (consistent generally with prior Council direction):
 - a. Maintain current strict smoking prohibitions in City code.
 - b. Amend current exemptions in order to strengthen prohibition.
 - c. Expand penalties to include misdemeanor violations.
 - d. Provide that excessive smoking can constitute a public nuisance subject to civil enforcement action.
 - e. Expressly prohibit vaping.

3. Dispensaries (Medical) - Allow as follows (consistent generally with prior Council direction):
 - a. Number. Allow two fixed location (not mobile) medical cannabis dispensaries.
 - b. When. Applications to be accepted no sooner than July 1, 2018.
 - c. Locations (subject to generation of final radius map).
 - i. Allow only in central business district (C-1) district, general commercial (C-2) district, and the light industrial (M-1) district.
 - ii. Prohibited within six hundred feet of a school, park, place of worship or a residential zone.
 - iii. One hundred foot distance restriction between dispensaries.
 - d. Permit Issuance.
 - i. Three-step process for permit issuance.
 - ii. First step is Community Development Director vets applications for meeting City regulations and state law, and then potentially analyzes and ranks applicants using criteria itemized below in the "Merit List."
 - iii. Second step is a Committee review (with membership proposed of Fire Chief, Police Chief and City Attorney, or their designees) to determine whether issuance of requested permit maintains and promotes the health, safety and welfare of the residents and visitors of Morro Bay. The Committee after review will recommend to City Manager whether a permit should be issued or not. Proposed criteria to be considered include the following "Merit List" factors:
 1. Operation plan for the business, including attention to impact of the business on the community.
 2. Security plan for the business, including details for the non-diversion of cannabis or cannabis products to illegal uses.
 3. Health and safety plan for the business, including enhanced product and operations health and safety.
 4. Impact on the environment.
 5. Neighborhood compatibility.
 6. Employment opportunities for City of Morro Bay residents.
 7. Economic benefits to the City of Morro Bay.
 8. Community benefits to the City of Morro Bay.
 9. Experience of the operators, managers and employees.
 10. Capitalization of the business.

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11. Requirements of local law and applicable State law.
 12. Any additional criteria of benefit to making a determination of the applicant's commitment to the health, safety and welfare of the citizens and visitors of the City of Morro Bay.
- iv. Third Step is review by City Manager, or his designee, of Committee recommendations and then a final decision on whether a permit will or will not be issued. The reasons for the decision shall be articulated in writing and refer to the criteria in the Merit List. The decision shall be final and non-appealable.
- e. Term. Initial term of 1-2 years (depending on when review conducted for a renewal, see section (g) below), and thereafter a 2 year term.
 - f. Type. Regulatory permit rather than a land use permit.
 - g. Renewal. Biennial renewal shall generally occur. Renewal subject to three step review process established above for permit issuance, to determine if best serves community (health, safety and public welfare criteria) for permit to be renewed. Thereafter consider renewals only every other year. Intent is for City to review one permit a year (rather than both permits every year), so assuming the City initially permits two medical marijuana dispensaries, after the first year passes, the City shall select one of the two permits for review, and thereafter shall review permits every other year.
 - h. Fees. Recover from each operator all City regulatory and administrative costs specific to each operator.
 - i. Revenue. Seek development agreements with operators (in context of sending a cannabis tax measure to City voters in November, 2018).
 - j. Regulations. Reasonable requirements such as:
 - i. Strict odor control.
 - ii. Strong security requirements including alarm system and development of security plan.
 - iii. Background checks on employees.
 - iv. Property owner consent.
 - v. Indemnification of the City.
 - vi. Cameras in use 24/7 and footage available to City.
 - vii. Inspection authority for City.
 - viii. Signage restrictions.
 - ix. Insurance requirements.
 - x. Record keeping requirements and records available to City.
 - xi. Development of operations plan and cash handling plan.
 - xii. Provision of floor and site plan.
 - xiii. Restriction on sales and packaging of cannabis edibles to prevent consumption by minors.
 - xiv. No medical cannabis recommendations on-site.
 - xv. Requirement for use of opaque packaging.

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- xvi. No minors allowed unless a qualified patient or primary caregiver, and accompanied by parent or guardian.
 - k. Penalties. Violation subject to administrative citation, infraction and/or misdemeanor at City discretion; public nuisance abatement; and, revocation of City permit authorizing operation.
4. Dispensaries (Recreational) – Prohibit (consistent with prior Council direction).
 5. Commercial Cultivation (Medical and Recreational) – Prohibit (consistent with prior Council direction).
 6. Manufacturing and Testing (Medical and Recreational) - Prohibit with reconsideration of ban after a cannabis tax measure sent to City voters at regular election in November, 2018. **New recommendation from Subcommittee.** Reasons for (temporary) prohibition are:
 - a. Provide City the opportunity to study experiences of other cities which will allow these uses in 2018.
 - b. Concerns expressed by Fire Chief over health and safety.
 - c. Allow time for City to review state regulations which are pending issuance in November, 2017.
 - d. Allow time for consideration by City voters of a cannabis tax measure.
 7. Deliveries (Medical) - Allow as follows (consistent generally with prior Council direction):
 - a. Require issuance of a City business license.
 - b. Proof of association with lawful medical cannabis dispensary (either located in City or elsewhere).
 - c. Require delivery driver to maintain records, subject to inspection by City and law enforcement, including state and local permit, personal identification and copy of delivery order(s).
 8. Deliveries (Recreational) – Prohibit. **New recommendation from Subcommittee.**

CONCLUSION

The Council Cannabis Subcommittee, with input from staff, recommends that the City Council affirm the recommendations above, or provide further direction, for a cannabis ordinance to be brought back to City Council for introduction and a first reading on October 24, 2017. The Subcommittee recommendations above are generally consistent with prior Council direction, with new recommendations that testing, manufacturing and recreational deliveries not be allowed (with reconsideration if City voters approve a future cannabis tax ballot measure), and applications for City medical cannabis dispensary permits be accepted no earlier than July 1, 2018.

ATTACHMENT

None.