



City Council Work Session on Cannabis Policies

April 24, 2017

Agenda

- ▶ Background - federal, state, local
- ▶ Overview of laws governing medical cannabis
- ▶ Overview of Proposition 64 and adult (“recreational”) use
- ▶ Overview of current cannabis taxes and fees
- ▶ Overview of permit types
- ▶ Policy considerations/staff recommendations
- ▶ Next Steps

Council Goals

- ▶ Place San Leandro on a firm foundation for long-term fiscal sustainability
- ▶ Advance projects and programs promoting sustainable economic development, including transforming San Leandro into a center for innovation
- ▶ Provide quality public safety service and grow our partnership with the community to keep San Leandro safe
- ▶ Support and implement programs, activities and strengthen communication that enhances the quality of life and wellness

Background - Federal & State

- ▶ 1937 : Marihuana Tax Act
- ▶ 1970: Controlled Substances Act
- ▶ 1973: Creation of DEA
- ▶ 1996: California legalizes medical cannabis
- ▶ 2012: Colorado & Washington State legalize adult use + sales
- ▶ Aug. 2013: U.S. Dept. of Justice (DOJ) issues Cole Memo
- ▶ Dec. 2014: Rohrabacher-Farr Amendment goes into effect
- ▶ Oct. 9, 2015 Medical Cannabis Regulation & Safety Act (MCRSA)
- ▶ Nov. 2016: Proposition 64 (AUMA) [statewide passage rate: ~57%]
- ▶ Feb. 2017: Bi-partisan Cannabis Caucus formed in Congress
- ▶ Feb. 2017: HR 975 - Respect State Marijuana Laws Act of 2017 (introduced)
- ▶ April, 2017: CA Governor introduces trailer bill to merge MCRSA & AUMA
- ▶ On-going: Uncertainty regarding DOJ approach/future actions

Background - Local

- ▶ Oct., 2010: Council adopts interim ban on cannabis businesses, extended in 2011 & 2012
- ▶ Feb. 12, 2013: Town Hall meeting to discuss medical cannabis policy
- ▶ Dec. 16, 2013: Council approves medical cannabis dispensary ordinance
- ▶ Sept. 8, 2015: Council awards 1st dispensary permit
- ▶ July 18, 2016: Council awards 2nd dispensary permit
- ▶ Oct. 17, 2016: Council awards 3rd dispensary permit
- ▶ Nov. 8, 2016: San Leandro voters authorize Measure NN (passage rate: ~75%)
(passage rate of Proposition 64 in San Leandro: ~60%)
- ▶ March 20, 2017: City Council sets cannabis business tax rate

Medical Cannabis Regulation & Safety Act (2015)

- Comprehensive statewide regulations governing medical cannabis
- Dual-licensing framework, requires local & state permits
- Established state Bureau of Medical Cannabis Regulation (BMCR)
- Established permit types, limits cross-licensing to two categories
- Dept. of Food and Agriculture (DFA) in charge of licensing and regulation of cultivation
- Requires track & trace system
- Dept. of Public Health (DPH) to develop standards for regulation of manufactured cannabis products, including edibles
- Upholds local power to levy local fees and taxes

Proposition 64 (2016)

The Adult Use of Marijuana Act (AUMA)

- Legalized non-medical adult use by persons ≥ 21 years of age and the personal cultivation of up to six plants
- Adults may possess, process, transport, purchase, obtain, or give away:
 - 28.5 grams of cannabis, or
 - 8 grams of concentrated cannabis products
- State regulatory & licensing system for commercial cultivation, testing, and distribution of non-medical cannabis and manufactured products
- Allows local governments to prohibit or regulate and license commercial non-medical cannabis

AUMA - Personal Cultivation

- Local governments may “reasonably regulate” but not prohibit personal indoor cultivation of up to 6 plants within a residence
 - Includes cultivation within a greenhouse or other structure on the same parcel that is not visible from a public space
- Local governments may regulate or prohibit personal outdoor cultivation
 - Complete bans on outdoor personal cultivation may make local agencies ineligible for state grant funding
- Cities may enact ordinances requiring inspections for Fire Safety & Public Health
- City may also pursue nuisance abatement action
 - Current law limits fines to no greater than twice the state license fee
- In absence of local action, state regulations govern

AUMA - Statewide Restrictions on Personal Use

- No smoking in a public place (except where authorized locally)
- No smoking where tobacco smoking is prohibited
- No smoking within 1,000 feet of a school, day care center or youth center
- No smoking while driving or riding in a vehicle
- Cities may prohibit smoking and possession in buildings owned, leased, or occupied by the city

San Leandro Smoking Pollution Control Ordinance

“Smoking” (definition): engaging in an act that generates smoke, such as for example: possessing a lighted pipe, lighted hookah pipe or shisha pipe, an operating electronic cigarette, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting of a pipe, cigar, hookah pipe, cigarette of any kind, or any other weed or plant.

San Leandro Smoking Pollution Control Ordinance

Smoking is prohibited in the following enclosed places:

- (a) Public places
- (b) Places of employment
- (c) Enclosed areas adjacent to an enclosed area in which smoking is prohibited
- (d) Enclosed areas that have a common or shared ventilation

Smoking is also prohibited in the following unenclosed places:

- (a) Places of employment
- (b) Service areas
- (c) Public places, including dining areas
- (d) Ticket, boarding, and waiting areas of transit depots and bus stops
- (e) City and private parks, playgrounds, athletic facilities, golf practice facilities
- (f) The sites of public events including, sports events, entertainment, speaking performances, ceremonies, pageants, farmers markets, festivals, carnivals, and fairs

Current Cannabis Taxes & Fees

- ▶ City Dispensary Fee \$60,000 per year
- ▶ City Business Tax 6% of gross receipts through June 30, 2019
- ▶ CA Excise Tax: 15% on gross receipts of retail sale
- ▶ CA Sales Tax: 9.75% at point of sale
(excludes medical patients w/ ID)
- ▶ Federal Taxes: Vary, Rule 280E disallows business expense deductions
- ▶ State Cultivation Tax: Excise tax of \$9.25/dry-weight ounce (flowers)
Excise tax of \$2.75/dry- weight ounce (leaves)

Summary of 15% State Tax Allocation*

60%

youth programs, substance abuse
education, prevention and treatment

20%

environmental cleanup,
remediation

20%

Reduce DUI, reduce negative health
impacts

*may be altered by majority vote of the Legislature after 2027

AUMA - State Licensing

- ▶ All cannabis businesses must have a state license
- ▶ State license cannot be issued to an applicant whose operations violate the provisions of any local ordinance or regulations
- ▶ State expected to begin issuing annual licenses after Jan. 1, 2018
- ▶ Separate state license required for each business location or category
- ▶ Cities not required to enact a regulatory scheme or prohibition by certain date
- ▶ If a City enacts local regulations before business applies for state license, state will either not issue license, or license will be subject to local regulations
- ▶ In the absence of local regulations, State could potentially issue permits

State Permit Types

- ▶ Type 1A = Cultivation; Specialty indoor; Small
- ▶ Type 1B = Cultivation; Specialty mixed-light; Small
- ▶ Type 2 = Cultivation; Outdoor; Small
- ▶ Type 2A = Cultivation; Indoor; Small
- ▶ Type 2B = Cultivation; Mixed-light; Small
- ▶ Type 3 = Cultivation; Outdoor; Medium
- ▶ Type 3A = Cultivation; Indoor; Medium
- ▶ Type 3B = Cultivation; Mixed-light; Medium
- ▶ Type 4 = Cultivation; Nursery
- ▶ Type 5 = Cultivation; Outdoor; Large
- ▶ Type 5A = Cultivation; Indoor; Large
- ▶ Type 5B = Cultivation; Mixed-light; Large
- ▶ **Type 6 = Manufacturer 1**
- ▶ **Type 7 = Manufacturer 2**
- ▶ **Type 8 = Testing**
- ▶ **Type 10 = Retailer**
- ▶ Type 11 = Distributor
- ▶ Type 12 = Microbusiness

Retail Dispensaries in San Leandro (Type 10)

- ▶ Adopted Local Ordinance Allows Up to 3 Dispensaries
- ▶ All 3 dispensary permits have been issued
- ▶ Approved dispensaries are currently allowed to sell only medical cannabis and related products
- ▶ Non-medical sales could begin as soon as Jan. 1, 2018, if authorized by City Council

Policy question:

Does the City Council want to allow non-medical sales?

Adult Use Retail Sales - Policy Considerations


- ▶ Little practical difference between medical & non-medical sales in terms of dispensary operations
- ▶ Non-medical sales would likely generate increased revenue for the City
- ▶ Approved business plans assumed only medical sales
- ▶ None of the three permitted dispensaries have yet opened - **impacts unknown**
- ▶ There is no requirement for the City to allow non-medical sales
- ▶ Competitiveness of medical-only dispensaries may be impacted if neighboring communities permit non-medical sales

Adult Use Retail Sales - Recommendation

- ▶ Wait until local dispensaries have commenced operations to determine impacts
- ▶ Monitor neighboring jurisdictions and explore best practices
- ▶ Adopt local code requirements to address non-medical sales
- ▶ Return to City Council in 2018 to revisit issue

Overview of Conditional Use Permits

- All three dispensaries are required to receive a Conditional Use Permit
- A CUP ensures project compatibility with surrounding land uses
- Consideration of a CUP is before the Board of Zoning Adjustments (BZA) at a noticed public hearing with opportunity for public notification and public comment
- The BZA may impose conditions to mitigate impacts, or deny based on various grounds
- If there are reasonable grounds, a CUP can be recalled by the City for reconsideration or revocation at any time.



CITY OF SAN LEANDRO PLANNING SERVICES

www.sanleandro.org/depts/cd/plan

CONDITIONAL USE PERMIT INFO SHEET

835 East 14th Street, San Leandro, CA 94577 | (510) 577-3325 | planner@sanleandro.org

CITY OF SAN LEANDRO

Community Development Department

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General Information

A Conditional Use is a use that is not permitted as a matter of right in a particular Zoning District. Conditional Uses require a Board of Zoning Adjustments (BZA) hearing in order to determine if the proposed use meets ALL of the required findings necessary for approval.

If a Conditional Use Permit is required, you must apply through our Planning Division before submitting for a Building Permit. A Conditional Use Permit is an entitlement that runs with the property.

Application Process

The process takes about 3 to 6 months from date of application submittal. Approval is not guaranteed and you may be required to modify your proposal. The Board of Zoning Adjustments will make a decision at an formal public hearing. All property owners and businesses within 500 feet are notified of the meeting by mail.

When is a Conditional Use Permit necessary?

For each Zoning District, the Zoning Code lists types of uses that are either Permitted, Conditionally Permitted, or require Administrative Review. Uses that are not listed are not permitted within the Zoning District.

Residential Districts: A Conditional Use Permit is required for any proposed new use on a legal lot that does not meet the minimum lot width or area requirements in the current Zoning Code.

Check with a Planner to find out if the use you are proposing requires a Conditional Use Permit.

What findings are necessary for approval?

The proposed Conditional Use application must meet ALL of the required findings. [5-21.12]

1. **Complies with the Zoning District.** The proposed location of the project conforms to the objectives of the Zoning Code as well as the purposes of the district in which the site is located.

2. **Complies with the General Plan.** The proposed location of the project and the proposed conditions under which it will be operated and maintained will be consistent with the General Plan; will not be harmful to the public health, safety, or welfare of persons living in or working in, or nearby, to the neighborhood of the proposed use; and will not be detrimental to properties or improvements in the area or to the general welfare of the City.

3. **Meet the Requirements of the Zoning Code.** The proposed use will meet the requirements of the Zoning Code, including any specific condition required in the district in which it will be located.

4. **No Negative Public Service and Facility Impacts.** The proposed use will not create negative impacts on traffic or create demands exceeding the capacity of public services and facilities, which cannot be mitigated.

Conditions of Approval may be crafted to address issues that may arise in order to meet all of the required findings for approval.

How does the process work?

1. **Read through this handout.** Contact a Planner if you have any questions on the required application materials or process.

2. **Consider scheduling a pre-application meeting.** At this meeting, City staff can review your preliminary application materials to ensure that it is complete. Any subsequent meetings incur a [Planning Fee](#).

3. **Submit all required materials at the Permit Center (see back page).** The Planner of the Day will take in your application and issue you a receipt. Your application materials will then be assigned to a specific Planner, who will review your application and distribute the plans to other City Staff for comment during the initial 30-day review period.

4. **Environmental Review.** All applications are reviewed to determine whether the California Environmental Quality Act (CEQA) applies to the proposed development.

5. **Schedule and Notice of BZA Hearing date.** If your application is deemed complete, the Planner will coordinate with you to set a public hearing date. At least 10 days prior to the hearing, the Planner will: (1) Publish the hearing in a local newspaper; (2) Mail notices to property owners and businesses within 500 feet of the proposed property; and (3) Post a notice on the proposed property.

6. **Conditions of Approval.** If staff recommends approval, the staff report includes a list of recommended Conditions of Approval.

7. **BZA Hearing.** All public comments will be attached in a staff report that is presented at the BZA hearing, along with the Planning Staff's recommendation for approval or disapproval of the proposed conditional use. After closing the public hearing, the BZA may grant approval with conditions if the proposed use meets all of the required findings for approval. The action is final unless appealed to the City Council within 15 days from the date of the action.

8. **Recorded Agreement to Conditions.** Following a 15 day appeal period, the conditions will be mailed to the property owner and/or applicant after the appeal period ends. The returned signed and notarized copy must then be recorded with the Alameda County Recorder.

Page 1 of 2

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19

Laboratory Testing Definition (Type 8)

Laboratories, Cannabis Testing Facilities.

Laboratories conducting safety, quality control, and analytical testing services of cannabis and products derived from cannabis as a service to cannabis dispensaries, medical facilities, government agencies, cannabis product manufacturers, or other entities as allowed by state law. This definition includes cannabis testing and laboratory facilities requiring a Type 8 license from the State of California. This definition does not include the cloning, planting or cultivation of cannabis plants or the direct sales, distribution, delivery, or dispensing of cannabis and cannabis products to the public.



Laboratory Testing - Policy Considerations

- ▶ Laboratories are generally small, non-descript facilities with minimal (non-retail) customer traffic
- ▶ Operations are indistinguishable from other types of labs
- ▶ Labs protect patient safety by testing for molds, pesticides, harmful products
- ▶ Provide quality jobs
- ▶ Generate revenue, subject to gross receipts tax
- ▶ Use aligns with broader goals for industrial areas
- ▶ Minimal public safety risk; limited quantities of cannabis involved
- ▶ Building, Fire, & Police Departments have permit review/inspection authority



Laboratory Testing - Recommendation

- ▶ Allow cannabis lab testing as a conditionally permitted land use (CUP) in certain Commercial and Industrial zones
- ▶ Each application to be analyzed for appropriateness with neighboring land uses
- ▶ Conditions applied to mitigate public impact and protect public safety
- ▶ Consistent with the Planning Commission recommendation, bring draft Zoning Code revisions to allow “Laboratories, Cannabis Testing Facilities” to City Council for consideration on June 5, 2017

Cannabis Manufacturing Definition (Type 6 & 7)

Industry, Cannabis Product Manufacturing.

Cannabis manufacturing, processing, and packaging of products derived from or infused with cannabis, including edibles, concentrates and extracts for wholesale or retail trade to cannabis dispensaries or other cannabis product distributors and manufacturers as allowed by state law. This definition includes cannabis manufacturers requiring a Type 6 or 7 license from the State of California. This definition does not include the cloning, planting or cultivation of cannabis plants or the direct sales, distribution, delivery, or dispensing of manufactured cannabis products to the public.



Examples of Manufactured Products

topicals



tinctures



edibles



capsules



extracts

Cannabis Manufacturing Policy Considerations

- ▶ Strong demand from the cannabis industry for locations
- ▶ Provide quality jobs, subject to gross receipts tax
- ▶ Use aligns with broader goals for industrial areas
- ▶ Impact and appearance no different from other types of manufacturing facilities; industry prefers a low profile
- ▶ No direct sales to the public allowed, minimal foot traffic
- ▶ Each proposed project requires evaluation and public hearing by the BZA
- ▶ Conditional Use Permits can be conditioned, revoked or amended at the City's discretion
- ▶ Staff proposes additional code section with mandatory findings to ensure facilities have minimal impacts/issues
- ▶ Building, Fire, and Police Dept. staff can review/inspect for public safety



Article 16: Cannabis Manufacturing (Proposed)

- ▶ Rely on the existing Conditional Use Permit process to regulate
- ▶ Proposed new code section to identify mandatory findings for CUP approval
 - ▶ Facility is situated in an appropriate location and is not within proximity to schools, childcare centers, residences or other sensitive land uses
 - ▶ Appropriate measures have been taken to prevent nuisances related to odor, noise, exhaust, and waste
 - ▶ Facility has been designed with appropriate safety and security measures
 - ▶ Operations will not burden or adversely affect public health and safety
- ▶ Specific operating procedures and safety measures may be imposed

Other Cities that Allow Manufacturing*

- ▶ Oakland
 - ▶ Berkeley
 - ▶ Santa Rosa
 - ▶ Sacramento
 - ▶ Lynwood (LA County)
 - ▶ Grover Beach (San Luis Obispo County)
 - ▶ Arcata (Humboldt County)
 - ▶ Desert Hot Springs (Riverside County)
- ▶ *according to CannaBusiness Law journal and other available online sources

Cannabis Manufacturing - Recommendation

Staff recommendation:

- Consistent with the Planning Commission recommendation, bring draft Zoning Code revisions to allow Cannabis Product Manufacturing and include an additional code section with mandatory findings to City Council for consideration on June 5, 2017

Cannabis Cultivation (Types 1-5)

Policy Considerations:

- ▶ Potential to inflate industrial real estate rents
- ▶ Significant energy usage
 - ▶ Inconsistent with Climate Action Plan goals
- ▶ Minimal job creation
- ▶ Public safety concerns
- ▶ Impacts to neighboring properties

Staff recommendation:

- ▶ Not recommended at this time



Enforcement / Public Safety Concerns

- ▶ Increased usage in public places
- ▶ Driving under the influence
- ▶ District Attorney's prosecutorial discretion
- ▶ Ongoing challenges associated with unpermitted cultivation sites
- ▶ Advertising
- ▶ Access by minors

Next Steps/ Future Actions

- ▶ Monitor state legislation to merge AUMA and MCRSA
- ▶ Monitor state rule-making process
- ▶ Return to Council with relevant code changes, if so directed
 - ▶ Non-medical/ adult use
 - ▶ Manufacturing/lab testing



Questions?

(industry representatives are present tonight)