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Update from the Alameda County Fire Department Regarding the Timothy Drive Fire and Staff Report for City Council Discussion and Direction Regarding City of San Leandro's Type 7 Cannabis Product Manufacturing Regulations

SUMMARY AND RECOMMENDATIONS

Per the request of the City Council at the May 18, 2020 City Council meeting, staff presents the following information regarding the City’s Type 7 cannabis product manufacturing regulations and seeks policy direction regarding the status of the program.

BACKGROUND

Three legislative bills that passed in 2015 (Assembly Bills 243 and 266, and Senate Bill 643) established the state-level licensing and regulatory framework for medicinal cannabis. These laws, along with the subsequent passage of the Adult Use of Marijuana Act via Proposition 64 in 2016, designated three State agencies with the responsibility to regulate both adult-use and medicinal cannabis businesses throughout the State of California. Those agencies include: the California Bureau of Cannabis Control (which primarily regulates retailers, distributors and testing laboratories), the California Department of Public Health (which regulates cannabis manufacturing businesses), and the California Department of Food & Agriculture (which regulates cannabis cultivation).

In addition to the above State agencies, State law has created a “dual licensing structure” that requires cannabis businesses to secure local permits from the municipalities in which they are seeking to operate. As such, all cannabis businesses in California are required to obtain permits from *both* the City as well as the State in order to operate legally.

San Leandro’s local regulations presently authorize three types of cannabis businesses: retail dispensaries (capped at no more than three in total), cannabis testing laboratories, and cannabis

product manufacturers. These latter two business types were authorized by the City Council following extensive discussion and analysis, including at a public hearing held on December 19, 2016, which was continued for further research and discussion at a City Council work session held on April 24, 2017.

City Council direction provided at that meeting was to allow cannabis laboratories and develop special required findings for approval of Cannabis Product Manufacturing uses. Those findings and regulations were subsequently presented to the City Council and adopted on June 19, 2017. At the time of initial adoption, the cannabis manufacturing regulations were set up as a pilot program that allowed no more than five such permits to be issued, although that cap was subsequently eliminated by the City Council earlier this year.

Analysis

“Industry, Cannabis Product Manufacturing” is defined in the City of San Leandro Zoning Code Articles 3, 6, & 7 as follows:

“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 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.”

Cannabis Product Manufacturing businesses are further limited to only the following zoning districts: Industrial General (IG), Industrial General - Assembly Use (IG-AU), and Industrial Park (IP), and subject to a Conditional Use Permit, which requires a noticed public hearing before the Board of Zoning Adjustments.

As noted above, cannabis manufacturers are also required to receive a State license. For cannabis manufacturers engaged in extraction, the California Department of Public Health offers two primary license types:

- Type 6 - for extraction using a mechanical method or non-volatile solvent (e.g.: carbon dioxide, ethanol, water, cooking oils, butter, or food-grade dry ice)
- Type 7 - for extraction using a volatile solvent (e.g.: butane, propane, and hexane)

Of these two license types, Type 7 is considered a higher-risk license type. Although a variety of methods exist, one common method of Type 7 processing involves sending flammable solvents (such as butane) through an extraction tube or other device filled with cannabis. The butane then evaporates, leaving a sticky quasi-liquid concentrated form of cannabis extract. Because this type of processing involves the use of volatile solvents, it can cause explosions when not properly handled or administered in a manner that is consistent with appropriate building safety and fire codes.

Special Findings for Approval of Cannabis Product Manufacturing

In addition to limiting cannabis manufacturing to certain specified zoning districts, the City of San Leandro Zoning Code requires that special findings be met prior to the approval of any Conditional Use Permit (CUP), in addition to the standard findings that are required for all other types of CUPs. These following special findings allow some flexibility while still maintaining appropriate standards to protect the public health, safety, and welfare:

1. The cannabis product manufacturing facility is situated in an appropriate location where schools, residences, childcare centers, parks, or other sensitive land uses will not be adversely impacted.
2. Appropriate measures have been taken to address nuisances related to odor, noise, exhaust, and waste.
3. The cannabis product manufacturing facility is suitably designed to be secure and aesthetically compatible with the surrounding area.
4. The cannabis product manufacturing facility will not place a burden on the provision of public services disproportionate to other industrial uses. The adopted program also establishes strict application requirements, including: detailed property and applicant information; project and operational plans i.e. security measures and measures to control inventory and cannabis waste; a traffic generation report; a noise study; and an odor control mitigation plan.

These criteria were adopted so that each application for such uses could be considered by the City on a case-by-case basis, with robust opportunities for the Board of Zoning Adjustments to deny any application if it cannot be found to comport with all standards. The City also retains the authority to issue citations, and to revisit or revoke a Conditional Use Permit, should problems arise subsequent to approval.

Status of San Leandro's Cannabis Manufacturing Program

Since the time that the above program requirements were adopted by the City Planning Commission and the City Council several years ago, the City has approved only two Conditional Use Permits for cannabis product manufacturing: Dispersa Labs at 1655 Abram Ct. (on 12/7/2017) and Fantasy Elixirs and Medicinals at 2994 Teagarden St. (on 2/6/2020). Dispersa Labs manufactures and packages a powdered inhalant and Fantasy Elixirs manufactures cannabis-infused kombucha tea drinks. Both of these facilities use cannabis extract that is manufactured outside of the City and neither are licensed for Type 7 volatile cannabis extractions. Both of these facilities are currently operating, and the City has had no prior incidents or issues associated with their operations.

The City's Board of Zoning Adjustments was scheduled to consider two new Conditional Use Permits for cannabis product manufacturing on May 7, 2020 from unrelated businesses proposing to conduct volatile extractions requiring a Type 7 state license. On the morning of the hearing, an explosion took place at 1798 Timothy Drive, the location of one of the two proposed cannabis manufacturing facilities to be considered that evening. This was a serious incident that resulted in injuries, property damage, and arrests for criminal charges. The applicant was not permitted or licensed for any cannabis manufacturing activities and the City was unaware any activity was occurring on the

property prior to the incident. The project applicant subsequently withdrew their application. Additional details on that explosion will be provided by the Alameda County Fire Department as part of its visual presentation to the City Council, which is associated with this staff report.

The second, unrelated Conditional Use Permit application for cannabis product manufacturing is proposed at 14509 Catalina Street (PLN19-0052). In the aftermath of the explosion at 1798 Timothy Drive, the applicants for the Catalina Street project proactively requested to amend their application to remove the proposed Type 7 volatile extractions. Their revised application had not yet been submitted at the time of this report and will be rescheduled and re-noticed for consideration by the Board of Zoning Adjustments once it is deemed complete. *As a result, the City presently has no active applications for Type 7 facilities, nor are any applications pending.*

Policy Considerations

Based on the request provided by the City Council at the May 18, 2020 City Council meeting, staff presents the following policy considerations and seeks direction from the City Council regarding the future of Type 7 licenses in the City of San Leandro.

Arguments in support of retaining local regulations that facilitate Type 7 manufacturing

- The City previously spent considerable effort analyzing this use type and developed robust regulations that are designed to protect the public health, safety, and welfare. These regulations co-exist with another set of stringent State-level regulations and inspection requirements.
- Staff research has thus far been unable to identify examples of fully-licensed Type 7 facilities in California that exploded (i.e. previously identified examples of facilities that exploded took place at illegal operations).
- By continuing to allow all types of cannabis manufacturing, the City will retain its position to accommodate the anticipated growth in the cannabis manufacturing industry as well as the anticipated employment and local tax revenue stemming from those uses. These uses also advance the City's goal to support employment-intensive businesses in the industrial area, as opposed to warehousing.
- Banning Type 7 uses could inadvertently incentivize increased occurrences of clandestine and unsafe cannabis extraction businesses by removing a legal path to conduct this use type in a safe and well-regulated manner.
- Due to market conditions, common landlord concerns, and limitations commonly applicable to investor-owned properties held by exchange-traded Real Estate Investment Trusts (REITs) and those indebted by federally-backed mortgages, it is already challenging for interested parties to identify viable sites in San Leandro in which to obtain permits to conduct Type 7 manufacturing. Therefore, the likelihood of a vast proliferation of these use types under the current local and State regulatory framework is already highly constrained.

Arguments Against Continuing to Allow Type 7 Cannabis Manufacturing

- San Leandro is presently the only member agency of the Alameda County Fire Department service area that allows this use type.
- Just like many other existing San Leandro-based industrial businesses that utilize volatile chemicals as part of their operations, Type 7 facilities are an inherently higher-risk business type.
- Even with robust regulations in place, the long-term safety of Type 7 facilities ultimately depends on the actions of private business owners and their willingness to be good actors who operate in compliance with all applicable regulations and safety standards on an ongoing basis.
- Although the operators of the facility on Timothy Drive were operating outside the bounds of what is legally permissible, this explosion and others like it demonstrate the dangers involved when rogue actors fail to comply with established regulations.

Conclusion

As noted above, there are inherent policy trade-offs that the City Council must balance in its decision to either continue to allow or, conversely, to disallow Type 7 cannabis product manufacturing businesses in San Leandro. Staff seeks policy direction from the City Council regarding the future of the program. If the City Council desires to disallow this use type, staff will prepare proposed amendments to the City's Municipal Code that would explicitly disallow this use type, which could be presented to the City Council for its consideration and adoption at a City Council meeting next month. To the extent the City Council desires to retain its existing regulatory structure that allows this use type, City staff will continue to explore additional safety protocols and procedures that could be added to the Building and Fire safety plan check process to further ensure such license are operated in as safe a manner as possible.

Previous Actions

- The City Council adopted Ordinance 2013-020 in December 2013, which allowed for the establishment of one medical cannabis dispensary subject to performance standards.
- The City Council adopted Ordinance 2014-003 in April 2014, implementing performance standards for medical cannabis dispensaries, by amending the Zoning Code to enable the use of medical cannabis dispensaries.
- The City Council adopted Ordinance 2016-007 in February 2016, allowing the establishment of a second medical cannabis dispensary.
- The City Council adopted Ordinance 2016-013 in September 2016, allowing the establishment of a third medical cannabis dispensary.
- The City Council adopted Ordinance 2017-001 on January 17, 2017 to bring the Zoning Code's medical cannabis dispensary provisions into consistency with the Municipal Code.

- The City Council considered authorizing cannabis manufacturing uses on December 19, 2016 and continued the item so that staff could prepare additional information and hold a work session to discuss cannabis policy at a future date.
- The City Council held a work session to discuss cannabis policy on April 24, 2017, and directed staff to move forward with the cannabis manufacturing program and development of appropriate regulations.
- Relevant findings and regulations were presented to the City Council and adopted on June 19, 2017

Applicable General Plan Policies

The existing previously adopted cannabis manufacturing regulations are consistent with the recently adopted 2035 General Plan, which identifies policies and actions to ensure the City remains flexible and responsive to industrial trends:

- Policy LU-7.3 - Zoning Flexibility. “Ensure that industrial zoning regulations are flexible enough to achieve the vision of San Leandro’s industrial area as an “innovation ecosystem”, where new methods of production, operations, and design are supported.”
- Action LU-7.3.A - Zoning Review. “Regularly review the Zoning Code to respond to real estate market and development trends, as well as changes in technology. The City shall routinely review the lists of permitted and conditionally permitted uses in industrial areas to ensure that desired and potentially compatible uses are not excluded.”
- Policy LU-7.4 - Tax Base Enhancement. “Encourage business development that improves the City’s ability to provide the public with high-quality services and which minimizes increases in the tax burden for existing businesses and residents.”

PREPARED BY: Eric Engelbart, Deputy City Manager, City Manager’s Office