



Legislation Text

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Staff Report for an Ordinance Amending Zoning Code Article 3, Definitions; Article 6, Commercial and Professional Districts; Article 7, Industrial Districts; and Article 16, Non-Residential Districts, Involving Updates to Definitions and Regulations Enabling Cannabis Product Manufacturing and Laboratories, and a Resolution Adding Title 5, Chapter 6 to the Administrative Code to identify a pilot program for Cannabis Product Manufacturing applications.

SUMMARY AND RECOMMENDATIONS

Staff requests the City Council consider a proposed Ordinance to enable Cannabis Product Manufacturing and Laboratories and a concurrent Resolution containing Administrative Code provisions for a new pilot program for Cannabis Product Manufacturing applications. The purpose of the proposed changes are to enable cannabis manufacturing and cannabis testing laboratories as conditionally permitted uses and to establish a pilot program placing limitations on the total number of cannabis manufacturing use permits allowed. Staff and the Planning Commission recommend City Council approval of the proposed ordinance. Staff also recommends City Council approval of the proposed Resolution to amend the Administrative Code.

BACKGROUND

Three assembly bills that passed in 2015 (Assembly Bills 243 and 266, and Senate Bill 643) established the state-level licensing and regulatory framework for medical cannabis as well as the new California Bureau of Medical Cannabis Regulation. The Bureau is responsible for developing regulations and issuing licenses at the State level for the cultivation, manufacture, distribution, laboratory testing, and public sale of medical cannabis. Following the passage of the Adult Use of Marijuana Act as part of the November 2016 ballot, this state agency will be charged with regulating non-medical cannabis businesses as well. All businesses involving the use of cannabis will be required to obtain both a City permit and a State license in order to operate. This proposed Ordinance and pilot program will operate in conjunction with the new State-level cannabis licensing regulations.

This item was previously considered by the City Council at a public hearing held on December 19, 2016 and continued for further research and discussion. During the follow-up City Council work session held on April 24, 2017, the direction provided by Council was to allow cannabis laboratories and develop special required findings for approval of Cannabis Product Manufacturing uses, as well as a concurrent pilot program to limit the total number of manufacturing permits allowed on a trial basis.

Analysis

This proposal enables two new conditionally permitted land uses in the Zoning Code related to cannabis: "Industry, Cannabis Product Manufacturing," and "Laboratories, Cannabis Testing

Facilities.” The first will enable the manufacturing of cannabis products and the second will enable laboratories that provide analytical data, quality control, and testing services of cannabis and cannabis products. Proposed uses under these new categories would require review and approval of a Conditional Use Permit by the Board of Zoning Adjustments and State licensure prior to establishment.

Staff is also proposing a new pilot program for Cannabis Product Manufacturing applications in the City’s Administrative Code. The pilot program will be a “first-come, first-served” system for interested applicants, who will be required to comply with specific application submittal and processing timeframe requirements. Staff proposes to limit the total number of conditionally permitted Cannabis Product Manufacturing facilities to five (5) permits. The City Council will have the option to expand or modify the pilot program after reviewing the outcome, once the initial permitted Cannabis Product Manufacturing uses have been established and become operational.

For the Zoning Code update, staff proposes to define and identify “Laboratories, Cannabis Testing Facilities” and “Industry, Cannabis Product Manufacturing” in Zoning Code Articles 3, 6, & 7 as follows:

“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.”

“Laboratories, Cannabis Testing Facilities” would only be allowed in the Community Commercial (CC), Industrial General (IG), Industrial General - Assembly Use (IG-AU), and Industrial Park (IP) zoning districts with an approved Conditional Use Permit. Laboratories, Cannabis Testing Facilities are not proposed to be subject to buffer or distance requirements as they have minimal product on hand, limited interaction with clients, and are required to destroy or securely dispose of test samples. Cannabis testing laboratories will be limited to performing independent analytical testing and quality control as a service to other cannabis businesses and are prohibited from growing, selling, or delivering cannabis.

“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.”

“Industry, Cannabis Product Manufacturing” would only be allowed in the Industrial General (IG), Industrial General - Assembly Use (IG-AU), and Industrial Park (IP) zoning districts with a Conditional Use Permit.

Special Findings Necessary

In addition to the zoning locations, staff also proposes to require special findings be met prior to the approval of any Cannabis Product Manufacturing Conditional Use Permit. Requiring special findings is preferred over prescriptive requirements (such as a fixed numerical setback based on geographical distance) because findings allow some flexibility while still maintaining an appropriate standard. In addition to the required findings for all Conditional Use Permits (identified in Section 5-2212), Cannabis Product Manufacturing projects will also need to meet the following findings prior to approval, identified in proposed Section 4-1640 (Exhibit D):

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.

Staff believes that evaluating each application on a case-by-case basis based on these proposed findings is the most appropriate means of regulation.

Cannabis product manufacturing facilities and cannabis testing laboratories are not anticipated to be noticeably different from laboratories or manufacturing facilities that do not involve cannabis. The City will have the ability to evaluate and condition each proposed business on a case-by-case basis through the Conditional Use Permit process, which requires review and approval by the Board of Zoning Adjustments at a public hearing. Should problems arise in the future, the City has the authority to issue citations, revisit or revoke a Conditional Use Permit.

Pilot Program for Cannabis Manufacturing

The proposed pilot program places strict requirements on Conditional Use Permit applications for cannabis product manufacturing. Applications must meet all of the required submittal criteria in order to be accepted for processing. This criteria includes: 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. If additional information or changes are required, applicants will have 60 days to respond.

The pilot program will limit the number of manufacturers to five (5) in order to provide the City the opportunity to evaluate their impact. Speculative or third party applications would be disqualified from consideration. Under the five use permit limitation, any approvals that lapse or are revoked will allow a new application to be considered.

By enabling laboratories and a limited pilot program for cannabis manufacturing, the City will position itself to measurably accommodate the anticipated growth in the cannabis manufacturing industry as

well as the anticipated employment and tax revenue stemming from those new uses. These uses also advance the City's goal to support employment-intensive businesses in the industrial area as opposed to warehousing. Over the past year, staff has received a number of inquiries from manufacturers who have been seeking potential locations to legally manufacture products containing cannabis to supply to existing, legally permitted dispensaries. These provisions will enable manufacturers to consider locating their operations in San Leandro.

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 and to replace the term "marijuana" with "cannabis."
- The City Council reviewed this item 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, confirming direction for this proposal. Representatives from the cannabis industry were invited to attend the work session and a number of speakers provided the Council with insight into their business operations.

Applicable General Plan Policies

The proposed recommendations 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.”

Environmental Review

The proposed Zoning Code amendments are exempt from environmental review under Section 15061(b)(3) of the CEQA Guidelines, as they constitute minor amendments to the Zoning Code necessary for consistency with the Municipal Code and state law, and that any potential project enabled under the amendments will be further subject to review under CEQA. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA.

Board/Commission Review and Actions

The Planning Commission considered the proposed amendments at its November 17, 2016 meeting and unanimously recommended City Council approval of the proposed Ordinance. The Planning Commission posed a number of questions to staff and noted support for additional revenue generation. There were no public comments presented at the Planning Commission or received prior to the preparation of this report.

Summary of Public Outreach Efforts

Staff reached out to members of the cannabis manufacturing industry who had previously expressed an interest in these provisions at the City Council work session held on April 24, 2017. Those individuals were again contacted in advance of scheduling for this hearing item. Since that time, staff has received several additional inquiries from interested parties regarding this proposal.

A legal advertisement for this hearing item was published in the East Bay Times Daily Review on June 9, 2017. No public comments were received as of the filing of this report.

Legal Analysis

The City Attorney reviewed the draft Zoning Code amendments, and the amendments to the Administrative Code; they are approved as to form.

Fiscal Impacts

With the approval of Measure NN, which enables the City of San Leandro to tax up to 10% of the gross receipts of cannabis businesses (currently set at 6% of gross receipts), approval of the proposed ordinance could expand potential revenue sources for the City.

ATTACHMENTS

- Draft Zoning Code Ordinance (17-220)
 - Exhibit A, Article 3, Definitions, Proposed Changes
 - Exhibit B, Article 6, Commercial and Professional, Proposed Changes
 - Exhibit C, Article 7, Industrial, Proposed Changes
 - Exhibit D, Article 16, Development Regulations, Non-Residential Districts, Cannabis Product Manufacturing

- Draft Administrative Code Resolution, Exhibit A (17-339)

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