



## Legislation Text

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### Presentation Regarding Potential Approval of Retail Sales of Cannabis for Adult Use at San Leandro Cannabis Dispensaries

#### **SUMMARY AND RECOMMENDATIONS**

Consistent with the City Council's request at its January 7, 2019 City Council meeting and February 2, 2019 City Council planning session, staff requests that the Council consider the analysis presented in this report and provide direction regarding whether to develop modifications to the medical cannabis dispensary ordinance to allow adult use (i.e. non-medicinal) sales at the City's three permitted dispensaries.

#### **BACKGROUND**

Since the passage of Proposition 215 in 1996, medical cannabis has been legal in California longer than virtually anywhere else in the United States. Nevertheless, prior to the passage of the Medical Cannabis Regulation and Safety Act (MCRSA) in 2015, California lacked comprehensive statewide cannabis regulations. With the passage of MCRSA, California launched a comprehensive statewide regulatory framework for the cultivation, production, transportation and sale of medicinal cannabis throughout the state, to be overseen by a new statewide bureau, now known as the California Bureau of Cannabis Control. In November 2016, Proposition 64, also known as the Adult-Use of Marijuana Act or "AUMA", was passed by 57% of statewide voters and 60% of San Leandro voters. Among its various provisions, AUMA established a new licensing and taxation scheme for the *non-medicinal* or "adult use" of cannabis in California.

In an effort to reconcile the various sets of overlapping regulations between the existing medical and emerging adult use markets, on June 27, 2017, the State of California enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). MAUCRSA consolidated the regulation of commercial medical and adult use cannabis activities.

The City of San Leandro also currently has in place its own set of local regulations for several cannabis-related business activities, including the retail sale of medicinal cannabis, non-retail cannabis manufacturing, and cannabis laboratory testing facilities. These San Leandro regulations were developed and adopted prior to the enactment of any of the above-referenced state regulations. Furthermore, because the City's local ordinance was written before the adoption of Proposition 64, the City's local regulations did not specifically facilitate or envision the retail sale of cannabis products for adult use.

Based on a request from the City Council at its January 7, 2019 regular meeting, as well as the prioritized project list that was developed at the February 2, 2019 City Council Retreat, staff seeks direction from the Council regarding whether to bring forward draft amendments to the City's existing medical cannabis dispensary ordinance that would incorporate adult use/ retail sales under one

unified local ordinance.

### Analysis

Although cannabis technically remains a Schedule I controlled substance under Federal law, there have been a number of federal actions that have established autonomy at the State level to locally regulate cannabis activities. For example, in 2013, the US Department of Justice issued a document known as the Cole Memorandum, which effectively shifted federal enforcement priorities away from strict enforcement of federal cannabis laws towards a more hands-off approach in “jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale and possession of marijuana.”

Although the Cole Memorandum was subsequently rescinded by former US Attorney General Jeff Sessions, the US Justice Department continues to exercise limited intervention in the 30+ states that have now legalized either medical or adult use of cannabis. Furthermore, the Justice Department’s ability to intervene in the local regulation of cannabis activities continues to be constrained by recurring federal appropriations language enacted by Congress (formerly known as the Rohrbacher-Farr and Rohrbacher-Blumenauer amendments), which explicitly prohibits federal funds from being expended by the Justice Department to enforce federal law against state-compliant medical cannabis activities. This amendment has been renewed and extended multiple times since its initial adoption several years ago and most legal experts do not foresee any substantial changes in federal enforcement activity as public sentiment, legislative activity and election outcomes continue to move in the direction of legalization and robust State-level regulation.

### *Adult-Use Implementation*

Following the passage of Proposition 64, many jurisdictions throughout the State that only allowed for the operation of medicinal cannabis related activities have transitioned into an adult use framework. For example, staff identified the following nearby municipalities that adopted regulations permitting adult use/non-medical retail sales of cannabis at dispensaries located in their respective jurisdictions:

- City of Berkeley
- City of Emeryville
- City of Oakland
- City of Alameda
- City of Hayward
- Alameda County, including unincorporated Ashland
- City of Richmond
- Contra Costa County
- City and County of San Francisco

It is also important to note that San Leandro residents continue to retain the ability to have cannabis delivered at home from dispensaries operating outside of San Leandro without the need for a doctor’s recommendation letter. Furthermore, recently announced state level regulations specifically preempt local jurisdictions from banning such deliveries.

It is currently unclear whether medical-only cannabis dispensaries will remain financially viable in San

Leandro over the long term given the close proximity of alternative access to the adult use market. Representatives from San Leandro's three permitted dispensaries expressed to staff that their businesses would remain at a competitive disadvantage if the City does not allow them to serve the adult use market.

Most of the jurisdictions highlighted above facilitated adult use sales via City Council adoption of a minor amendment to their existing regulations to expressly authorize adult use sales. Such an approach also aligns with recent efforts at the State level that have largely blended the medicinal and adult use regulations into one unified statewide framework. Furthermore, from a logistical standpoint, the practical difference between medical-only sales and adult use sales to customers over the age of 21 relates to whether or not customers must present proof of a physician's recommendation prior to entering the dispensary.

If the City Council desires to allow adult use sales at the City's three previously authorized dispensaries, staff will provide proposed ordinance amendments for the City Council's consideration at a subsequent City Council meeting in the near future.

#### *Longer-term Revisions to Other Sections of the City's Dispensary Ordinance*

Regardless of whether the City Council decides to allow adult use sales at the City's previously permitted dispensaries, it's important to note that there are a number of additional revisions to the existing cannabis dispensary ordinance that staff recommends eventually bringing forward for City Council Committee or City Council discussion in the coming months. As noted above, the City's current ordinance was drafted and adopted prior to the creation of robust statewide regulations. As such, the current city ordinance includes various detailed regulations that overlap with, or may be otherwise redundant given new statewide regulations. For example, the existing ordinance includes detailed regulations and operations standards related to package labeling, product handling, product testing, and manufacturing procedures that are now regulated by the State.

In order to allow additional time to amend or eliminate these types of local regulatory provisions that are redundant or preempted by State regulations, staff recommends bifurcating the review of any such changes through a separate process outside of the broader policy decision of whether to allow retail sales for adult use. Such a dual-track process would allow staff time to quickly propose an amended ordinance to allow adult use sales, should the Council so choose, while providing sufficient time for staff to work with the dispensary operators, the public, and other relevant stakeholders to thoughtfully develop more comprehensive changes to the various other sections of the ordinance. In the meantime, however, dispensary permittees would still be required to comply with all of the City's regulations, as codified in the existing ordinance.

#### *Potential Time Limit for Commencement of Operations*

The City Council's January 7, 2019 request to consider allowing retail sales of cannabis for adult use also included a request to consider coupling any such authorization with a time limitation for dispensaries to commence operations and begin serving customers. As further background, several years have now passed by since the operating permits for the City's three permitted dispensaries were issued by the City Council. More specifically, Harborside San Leandro was issued its operating permit on September 8, 2015, Davis Street Wellness Center was issued its permit on July 18, 2016, and Blum San Leandro was issued its permit on October 17, 2016 (with an effective date of June 1,

2017). Out of the three, only Blum San Leandro has commenced operations. If so directed by the City Council to bring back draft ordinance amendments to allow adult use sales, additional language could also be incorporated into the authorizing resolution that would concurrently impose a time limit, or “shot clock” that would automatically rescind the operating permit of any previously permitted dispensary that fails to commence operations prior to December 31, 2019. To the extent the City Council decides to move forward with allowing adult use sales, staff seeks clarifying direction from the City Council as to whether to also include such a time limitation.

### **Fiscal Impacts**

Implementing a regulatory process that allows for adult use sales at previously permitted dispensaries could have considerable positive impacts to the City’s budget. By broadening the dispensaries’ customer base, such sales activity would increase the level of General Fund revenue generated by the City’s local gross receipts tax, which was authorized by voters via Measure NN in November 2016. San Leandro’s local gross recent tax is currently set at 6% through June 30, 2019, and will increase to 7% thereafter through June 30, 2021, after which point it will increase to 8%. Although long term revenue forecasts are inherently speculative given the rapidly evolving nature of the industry, based on preliminary estimates provided by one of the City’s existing permit holders that were derived from their experiences in other jurisdictions, it is estimated that adult use sales could generate several hundred thousand dollars in additional annual General Fund revenue for the City.

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