



REPORT TO THE CITY COUNCIL

DATE: Meeting of October 10, 2017

TO: Mayor de Vera and Members of the City Council

SUBMITTED BY: David Biggs, City Manager
J. Patrick Tang, City Attorney

SUBJECT: **Proposed Ordinance to Regulate Local Marijuana Activities.**

RECOMMENDED ACTION:

Conduct a Public Hearing, Waive the First Reading, and Introduce an Ordinance Amending Title 4, Chapter 18 of the Hercules Municipal Code to Enact Additional Local Restrictions on the Use, Sale, Cultivation, and Delivery of Marijuana within City Limits

BACKGROUND:

Discussion of a proposed ordinance to regulate local marijuana activities took place at the prior council meetings of August 8, September 12, and September 26, 2017. This report addresses some of the additional issues raised by Council at the most recent meeting of September 26th, and includes a revised draft ordinance for the Council's further consideration, provided as Attachment 1 to this report (separate "redline" and "clean" copies are not provided, as there were only minor changes to two sections as a result of Council's review on September 26; these minor changes are reflected in Attachment 1 in redline and strikethrough).

As previously reported to the Council, with the November 2016 passage of statewide Proposition 64, the Adult Use of Marijuana Act ("AUMA"), there is a potential for the state to issue licenses for cannabis businesses to operate in the City beginning in January 2018.

While nothing in the AUMA requires a city to enact an ordinance or regulation by a certain date, if a city does not have a ban or regulatory scheme in place at the time a permit is processed by the state, the City would have no ability to impose local conditions on a permit thus issued. For this reason, staff recommends that any local restrictions be adopted and effective before the state begins to issue licenses.

Copies of the several staff reports from prior meetings are provided as Attachment 2 to this report.

DISCUSSION:

At the September 26, 2017 Council meeting, staff was directed to respond to several follow up questions and to make the following additional changes to the draft ordinance:

- How do the proposed state regulations define “marijuana plant” for the purpose of imposing a six plant cultivation limit?

Unknown at the time this report was drafted. Should information become available prior to the Council meeting of October 10 that information will be made available to the Council as a Supplement to this report.

- Provide state law definition of “primary caregiver.”

Health and Safety Code Section 11362.7. For purposes of this article, the following definitions shall apply.....

(d) “Primary caregiver” means the individual, designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that patient, and may include any of the following:

(1) In a case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Section 6922, 7002, 7050, or 7120 of the Family Code.

- Accept the proposed changes to the draft ordinance as presented to Council at the meeting of September 26th, to include exceptions to allow deliveries of medical marijuana by primary caregivers and to require persons who cultivate marijuana indoors for personal use to sign an acknowledgment and Consent Form that they will comply with local regulatory requirements and consent to inspection on a complaint only basis.
- Make the following additional minor changes to the draft Ordinance:
 - Sec. 4-18.03(F)(6)- Edit this subsection to read, “6. Manufacture concentrated cannabis using a volatile solvent ~~unless done in accordance with a license under Chapter 3.5 of Division 8 or Division 10 of the Business and Professions Code.~~”
 - Amend Section 4-18.04 Title to read, “Personal ~~Indoor~~ Marijuana Cultivation.”

Additional Comments:

- Staff has added to the draft Ordinance additional findings and new sections identifying the effective date, publication requirements, and CEQA exemption, including a severability clause; these changes are indicated in *italics*.
- Staff has identified additional language in the draft that relates to the inspection and permit program that has been determined to be infeasible at this time, and recommends deletion of that language, indicated in ~~striketrough~~ below:

Sec. 4-18.04(b)(11). The Acknowledgment and Consent Form will expire after twelve months and must be renewed annually ~~with approval from the building department~~ if indoor personal use marijuana cultivation is to continue.

- At the September 26th meeting, Council discussed whether a draft of the Acknowledgment and Consent Form should be provided with the agenda materials for this meeting. After discussion, Council decided to defer that matter to staff for future development, as the form and content has not yet been determined by the City Manager, and the relevant forms can be promulgated administratively upon final passage of the Ordinance.
- Consistent with other provisions of the municipal code, the Definitions section has been relocated within the draft Ordinance to precede the other substantive ordinance provisions. This has resulted in the need to adjust the section numbers.
- Should the draft Ordinance be approved for final passage, based on information obtained by our City Clerk, Lori Martin, the Ordinance must be transmitted to the state as follows:

Where Local Governments Should Submit Their Ordinances

1. Per AB 133, the latest cannabis trailer bill, all cities and counties are required to submit their ordinances directly to the **Bureau of Cannabis Control** within the Department of Consumer Affairs. The Bureau is then required to disseminate the information on local ordinances to the relevant state licensing entities.
 2. Cities are also required to designate a specific individual as the point person to interact with state agencies on questions pertaining to local regulations. If cities fail to designate someone, then AB 133 provides that the state will by default treat the city clerk as the designated point person.
 3. All ordinances should be emailed to the Bureau at: bcc.localgov.submit@dca.ca.gov
 4. It is not required, but it is strongly recommended that each ordinance submitted be accompanied by a brief summary explaining in plain English what activities are and are not authorized within a specific city. Otherwise state agencies may be forced to start *interpreting* local ordinances, with unpredictable results.
 5. Any questions should be directed to Tim Cromartie at tcromartie@cacities.org
- Given the number of references in the draft Ordinance to provisions of the AUMA and the several questions posed by the Council at prior meetings regarding AUMA provisions, a link to the [full text of the AUMA](#) is being provided:

[https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20\(Marijuana\)_1.pdf?](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20(Marijuana)_1.pdf?)
 - Staff was directed to return to Council in the first quarter of the next calendar year with a staff report making recommendations regarding updates to the City's current smoking ordinance. This matter has been placed on staff's Pending Items List.

CONCLUSION:

Adoption of the proposed Ordinance would put in place local regulations of marijuana as expressly authorized under state law. The proposed Ordinance would ban marijuana related activities that otherwise might be permitted by the state in the absence of local regulations, including a ban on commercial sales of cannabis, a ban on the delivery of cannabis (except delivery of medical cannabis by primary caregivers), a ban on outdoor cultivation of cannabis, and imposing local health and safety requirements on the indoor cultivation of six plants or less for personal use.

ATTACHMENTS:

Attachment 1 – Revised Draft Ordinance.

Attachment 2 – Related Staff reports from prior council meetings.