

## **AGENDA ITEM #4**

### **RECEIVED CORRESPONDENCE**

**KAUFMAN LEGAL GROUP**  
A PROFESSIONAL CORPORATION

May 16, 2018

Direct: (213) 452-6576

**VIA E-MAIL**

Chair and Planning Commissioners  
City of Long Beach Planning Commission  
333 W. Ocean Blvd.  
Long Beach, CA 90802  
c/o City Clerk Monique De La Garza  
E-mail: cityclerk@longbeach.gov

**Re: Long Beach Planning Commission Agenda Item No. 4--Amendments to Zoning Ordinance to Designate Adult-Use Cannabis Uses**

Dear Honorable Chair and Planning Commissioners:

I am writing to you on behalf of my clients, United Food and Commercial Workers Local 324 and the Long Beach Collective Association (LBCA), to express our deep concern and opposition to the regulatory direction that has been proposed by the Development Services Department (Application 1804-20) for zoning rules governing adult-use cannabis uses in the City.

As you know, on November 8, 2016, the citizens of Long Beach voted to approve Measure MM, making it legal to own and operate a medical marijuana business in the City of Long Beach. The ordinance provided a comprehensive regulation, enforcement, and licensing scheme for medical marijuana dispensaries, delivery, manufacturing, cultivation, distribution, and laboratory testing. Since the adoption of Measure MM, the City has invested a great deal of time, funds, and effort into setting up the administrative and regulatory apparatus to implement Measure MM. UFCW Local 324 and the LBCA have supported this effort. Working together, the City now has one of the best functioning systems of cannabis regulation in the state.

While Measure MM was originally drafted at a time when medical cannabis was the only legal form of cannabis allowed in California, the regulatory landscape changed dramatically with the approval of Proposition 64, the Adult Use of Marijuana Act (AUMA) in 2016. AUMA created a statewide regulatory and licensing system for adult-use marijuana businesses. And, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which merged state regulations for medical and adult-use cannabis into a single regulatory framework.

While MAUCRSA grants local governments the ability to regulate commercial marijuana activity within their jurisdictions, the law represents the emerging trend at the state and local

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level of merging medical and adult-use cannabis laws into a single set of regulations. This approach has been taken up by other recent regulatory proposals, such as AB 2929 (introduced in February 2018), which would allow cannabis licensees, including those that have only obtained a license for adult-use or medical cannabis business, to conduct business with any other cannabis licensee. AB 2929 removes the distinction between adult-use and medical cannabis. The regulatory approach taken at the statewide level makes sense. Legislators recognize that there is now no substantive difference between medical and adult-use cannabis. There is also no substantive difference between medical and adult-use cannabis from a local land use perspective. Operationally, medical and adult-use dispensary, cultivation, manufacturing, distribution, and testing sites are the same. Thus, the proposal by the Development Services Department to impose widely different zoning regulations for adult-use versus medical cannabis uses, is a step backwards.

In addition, Measure MM was intended to set up a comprehensive regulatory framework for cannabis in the City. And, with the “legalization” of adult-use cannabis on a statewide level, it makes sense to adopt and/or apply the City’s existing regulatory framework, including land use regulations, to adult-use cannabis uses. There is no need to reinvent the wheel. Since there is no difference between medical and adult-use cannabis products and uses, there is no need for two drastically different regulatory systems. Moreover, current cannabis operators in the City applied in good faith under the existing system and have worked diligently to comply with City regulations and City staff requests. By adopting two sets of rules for the same products and uses, many of the current operators will be severely harmed, leading to economic losses, unemployment, and the seeking of relief through legal remedies.

The general approach ushered in by Measure MM has great support in the City. The initiative passed in 2016 with 60% of the voters of Long Beach voting to approve it. By approving Measure MM, the voters of Long Beach signaled their desire for an orderly and effective set of cannabis regulations in the City. Having two separate regulatory schemes will cause confusion, chaos, and economic harm to the City’s residents and those existing cannabis businesses who residents have come to know and who have worked cooperatively with the City at every step of the process.

If you have any questions, please contact me at your convenience. We would appreciate the opportunity to work with you and with staff to come up with a cooperative solution.

Very truly yours,



George M. Yin

Enclosure

Date of Hearing: April 17, 2018

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 2929 (Quirk) – As Introduced February 16, 2018

**SUBJECT:** Cannabis.

**SUMMARY:** This bill would allow cannabis licensees, including those that have only obtained a license for adult-use or medicinal cannabis business, to conduct business with any other cannabis licensee.

**EXISTING LAW:**

- 1) Establishes the Bureau of Cannabis Control (Bureau), under the Department of Consumer Affairs (DCA), to establish a comprehensive system to control and regulate the, distribution, transport, storage, , processing, and sale of cannabis products. (Business and Professions Code (BPC) Section 26000 et seq.)
- 2) Sets requirements for licensure of cannabis related businesses. (BPC Section 26051.5)
- 3) Specifies that commercial cannabis activity may only be conducted between licensees. (BPC Section 26053)
- 4) Beginning July 2018, A-licensees may only conduct business with other A-licensees and M-licensees may only conduct business with M-Licensees, except for testing laboratories. (California Code of Regulations (CCR) Section 5032) *(Note this is an emergency regulation adopted by the Bureau of Cannabis Control; final regulations have not yet been adopted.)*

**THIS BILL:**

- 1) Would allow licensees to conduct commercial cannabis activity with any other licensee, not just A or M licensees.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel

**COMMENTS:**

**Purpose.** This bill is sponsored by Caliva. According to the author, “There are no distinguishing traits between an adult use and medical use cannabis plant, or its derivatives or distribution methods. The only difference is the designation afforded to it because of its license type. Until a product is sold to an adult use customer or a medical use customer, it’s all just cannabis. AB 2929 makes it explicit that any licensee may conduct business with any other licensee so long as the activity is allowed by their respective licenses and is not otherwise prohibited by the code. This will allow industry to remain flexible with their plants and ensure the sustainability of the medical market.”

**Background.** This bill would allow adult-use licensees (A-licensees) and medicinal licensees (M-licensees) to conduct business between themselves, regardless of whether the licensee holds an A or M license. This is a shift from current regulations that stipulate that licensees may only conduct business with other licensees of the same type.

*History of Legal Cannabis in California.* In 1996, California voters passed Proposition 215, legalizing the use of medical cannabis (MC) in the state. In October 2015, nearly 20 years after the authorization of the use of MC, Governor Jerry Brown signed into law a trio of bills [AB 243 (Wood), Chapter 688, Statutes of 2015, AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood), Chapter 689, Statutes of 2015, and SB 643 (McGuire), Chapter 719, Statutes of 2015] collectively known as the Medical Cannabis Regulation and Safety Act (MCRSA). MCRSA established the state's first comprehensive regulatory framework for MC.

In 2016, the voters of California passed Proposition 64, the Adult Use of Marijuana Act (AUMA) to legalize the recreational use of cannabis in the state by 2018. In June 2017, AUMA and MCRSA were combined via the budget process to form one system for the regulation of cannabis, MAUCRSA.

*Current law.* Existing law and its interpretation by the bureau has resulted in regulations that strictly prohibit conducting business between A and M licensees. Though this provision is not implemented until July 1, 2018, there exists concern within the industry that this prohibition will result in negative repercussions for industry and stakeholders alike.

Chief among the complaints of existing regulations is that they do not acknowledge that cannabis plants and the products they yield are indistinguishable until they reach the point of total dosing or packaging. In other words, a cannabis plant could be used for either medicinal or adult-use or both; the flower, oil, or other associated products are identical. The exception to this is in total dosage, which for adult-use may not exceed 100 mg THC per package and in medicinal can far exceed that standard. Despite the difference in total allowable dosage, many manufacturers only sell 100 mg packages in the interest of streamlining the manufacturing process.

*Potential benefits.* Advocates of this legislation argue that allowing A and M licensees to do business with one another would prevent oversaturation of expensive and perishable inventory that is identical to products in the other product stream, other than its labeling. Additionally, it may limit the role of the black market if licensees are able to more readily acquire and sell product without being constrained by the distinction between A and M license types. A clear exception would be products that exceed dosing standards for adult-use retail.

**Prior Related Legislation.** SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017) of the current legislative session combined AUMA and MCRSA into one system for the regulation of cannabis, resulting in MAUCRSA.

AB 64 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) of the current legislative session seeks to reconcile a number of differences between MCRSA and AUMA to provide clarity in regulation and enforcement of both medical and recreational cannabis. *STATUS: This bill was passed by the Assembly Committee on Business and Professions on April 18, 2017 and was held in the Assembly Committee on Appropriations.*

#### **ARGUMENTS IN SUPPORT:**

The California Cannabis Manufacturers Association writes, "Given the track and trace requirements for every plant, as well as the substantial regulatory requirements for every licensee, this firewall between A and M adds nothing to the public safety while creating complications for licensed businesses in the industry. For these reasons, we offer our support of AB 2929 and respectfully encourage its passage."

Flow Kana writes, "During the first 6 months of 2018, the regulations provided that cannabis licensees could do business with one another regardless of their M or A designation. AB 2929 would make permanent this interoperability of the cannabis supply chain and help ensure businesses remain viable in both the M and A cannabis markets."

The California Cannabis Delivery Alliance writes, "On behalf of the California Cannabis Delivery Alliance, with chapters in Los Angeles, San Diego, the Bay Area, and Marin county, I want to express our support for AB 2929 (Quirk) Cannabis Supply Chain Interoperability."

**ARGUMENTS IN OPPOSITION:**

None on file

**POLICY ISSUE(S) FOR CONSIDERATION:**

It is notable that the creation of legalized cannabis for adult-use and medicinal use was done separately with a lapse in time between them. As both were done via the initiative process 20 years apart, it is worth acknowledging the possible intent of the voters in allowing the two systems. This could be attributed to a change in public perception of cannabis but it should be acknowledged and monitored as the bill progresses to address potential concerns from constituents.

Analysis Prepared by: Jimmy Fremgen / B. & P. / (916) 319-3301



# CITY OF LONG BEACH

DEPARTMENT OF DEVELOPMENT SERVICES

333 West Ocean Blvd., 5<sup>th</sup> Floor Long Beach, CA 90802 (562) 570-8194 FAX (562) 570-8088

May 17, 2018

CHAIR AND PLANNING COMMISSIONERS  
City of Long Beach  
California

## RECOMMENDATION:

Recommend that the City Council accept Negative Declaration ND 13-17 and approve Zoning Code Amendment (ZCA18-003) and Local Coastal Program Amendment (LCPA17-009) to amend Title 21 of the Long Beach Municipal Code (Zoning Ordinance) to define and designate Adult-Use Cannabis uses as permitted, conditionally permitted, or prohibited within specific zoning districts in the City. (Citywide)

APPLICANT: City of Long Beach, Development Services Department  
333 West Ocean Boulevard, 5th Floor  
Long Beach, CA 90802  
(Application 1804-20)

## BACKGROUND

March 23, 2010, the City adopted Chapter 5.87 to establish a permitting process to allow medical marijuana collectives. As a result, approximately 22 medical marijuana collectives were established in Long Beach. In 2011, a Court of Appeals decision (*Pack v. City of Long Beach*) affected the City's ability to regulate dispensaries and collectives, finding that this was contrary to Federal law. On February 14, 2012, the City Council voted to ban all medical marijuana collectives in the City of Long Beach.

In 2015, the City Council convened a Medical Marijuana Task Force to study and develop regulations for medical marijuana businesses. After numerous Task Force meetings and extensive deliberation, in February 2016, the City Council elected not to adopt regulations to permit medical marijuana collectives.

In 2016, a voter initiative to require the City to allow for and regulate medical marijuana businesses was placed on the ballot. On November 8, 2016, the voters of the City of Long Beach adopted Measure MM, establishing Chapter 5.90 of the Long Beach Municipal Code and setting forth a process in 2017 to begin permitting medical marijuana businesses, establishing priority for those that were formerly in operation. To date, seven medical marijuana dispensaries have opened in Long Beach.

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Also, on November 8, 2016, the Control, Regulate and Tax Adult Use of Cannabis Act ("AUMA" or "Proposition 64") was approved by the voters of the State of California to legalize the recreational adult use of marijuana (now referred to using the scientific name of "cannabis") for individuals twenty-one (21) years of age and older. Subsequently, the California Legislature passed Senate Bill 94 in June 2017, which was signed by the Governor and went into effect immediately, and which merged certain portions of existing regulations governing medicinal cannabis with AUMA to create a more comprehensive regulatory structure for both medical and adult-use cannabis.

While AUMA would allow cities to begin allowing for and regulating adult-use cannabis uses beginning January 1, 2018, these State laws do not prevent a city from using its constitutional authority to enact nuisance, health, and safety, and land use regulations regarding commercial cannabis activities and personal adult-use or medical cannabis uses. Therefore, the City Council desires to regulate all adult-use Cannabis Businesses operating in the City of Long Beach, as well as the personal adult-use and medical cultivation of cannabis at residentially zoned properties in a manner that mitigates potential negative impacts, prevents cannabis from reaching minors or the illicit market, preserves public health and safety, protects the environment, drives diverse economic opportunities, and implements the City's General Plan.

On December 19, 2017, the City declared a moratorium prohibiting adult-use cannabis uses from establishing in the City for 180 days, and directed staff to develop recommendations to legalize and regulate adult-use cannabis businesses in Long Beach, and request that the City Attorney prepare a draft ordinance to allow, license, and regulate adult-use cannabis businesses. The City Manager's Office convened an interdisciplinary team of City representatives to develop recommendations in concert with the City Attorney's Office.

### DISCUSSION

This Zoning Code Amendment request involves additions to Title 21 of the Long Beach Municipal Code (Zoning Ordinance) to regulate adult-use cannabis uses. Currently, adult-use cannabis uses are not defined or permitted uses in the City's Zoning Ordinance. The proposed adult-use cannabis regulations would add definitions for and designate whether adult-use cannabis uses are permitted, conditionally permitted, or prohibited within specific zones in the City.

The Zoning Ordinance regulates land uses based on physical layout, intensity of use, and placement in relation to other uses. Land uses are divided into specific categories, such as retail (selling of consumer goods directly to customers), professional services (selling of services directly to customers), industrial/manufacturing (turning raw materials into a product), industrial/distribution (an establishment that transports goods), etc. Land uses in one category may include many different products; therefore, retail establishments could sell apparel, housewares, or groceries and all have a similar land use pattern, such as traffic intensity, number of people inside a building, parking requirements, and hours of operation. Defining adult-use cannabis uses within specific land use categories creates clarity and certainty when business owners are seeking a location.



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The following definitions would be added to the Zoning Ordinance:

- 21.15.XXX **Adult-Use Cannabis Dispensary.** A retail use (SIC Code 59) where cannabis goods or devices for the use of cannabis goods are offered, either individually or in any combination, for retail sale to customers at an on-site fixed location, including an establishment that also offers delivery of cannabis goods as part of a retail sale, in addition to on-site sales, in compliance with Title 5.90 and 5.92.
- 21.15.XXX **Cannabis Cultivation.** An industrial use (SIC Code 072) that engaged in the commercial cultivation of cannabis, and all associated commercial cultivation activities involved in the cultivation of cannabis, pursuant to this Chapter, including a nursery which produces clones, immature plants, seeds, or other agricultural products specifically for the planting, propagation, and cultivation of cannabis.
- 21.15.XXX **Cannabis Manufacturing/Processing.** An industrial use (SIC Code 283) engaged in the production, conversion, preparation, propagation, deriving, processing, or compounding of cannabis goods either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis goods or labels or relabels its container.
- 21.15.XXX **Cannabis Distribution.** An industrial use (SIC Code 42) engaged in the business of the distribution of cannabis goods between licensed cannabis facilities.
- 21.15.XXX **Cannabis Testing.** A professional service use (SIC Code 873) that offers or performs tests of cannabis goods and that is ISO/IEC 17025 accredited, or pending ISO/IEC 17025 accreditation, and licensed by the California Bureau of Cannabis Control that provides independent testing of marijuana or marijuana products.

Correspondingly, the Zoning Ordinance has various chapters which pertain to zoning districts to indicate whether uses are permitted, conditionally permitted, or prohibited in those zoning districts, Specific Plans, and in Planned Development Districts. Each chapter contains a "use table" that lays out land uses and indicates whether or not they can be permitted. The proposed changes to the Zoning Ordinance would allow for the above-referenced adult-use cannabis uses to be regulated in the same manner as other uses in their land use category. The "red-lined" changes to the Zoning Ordinance are included as Exhibit A to this report.

Table 1 provides a summary of how the different types of adult-use cannabis businesses would be permitted. Note that the allowance designations (Y, N, C, AP) are established for the Land Use Category and are not specific to adult-use cannabis businesses.

**Table 1  
Adult-Use Cannabis Business – Regulations by Land Use Category**

Adult-Use Cannabis Businesses			Zoning District							
Business Type	Land Use Category	SIC Code	Residential	Institutional	Park	Commercial	Industrial (Light)	Industrial (Medium)	Industrial (General)	Industrial (Port)
Dispensary	Retail	59	N	N	N	Y	Y	C	C	N
Cultivation	Industrial	072	N	N	N	N	Y	Y	C	N
Manufacturing	Industrial	283	N	N	N	N	Y	Y	Y	N
Distribution	Industrial	42	N	N	N	N	C	C	C*	N
Testing	Professional Service	873	N	N	N	Y	Y	AP	AP	N

N = Not Permitted  
 Y = Permitted  
 C = Conditional Use Permit  
 AP = Administrative Use Permit  
 \*Regulations Pertaining to Trucking Uses May Apply

In addition to the definitions and amendment to the use tables, references to Title 5 are included in Title 21 to direct users to the business and operational regulations within that code section. The purpose of Title 5 (Sec 5.02.010) is to identify those businesses, trades and professions conducted and carried on in the City that require local regulation in order to promote and protect the public health, safety and welfare of Long Beach and its citizens. Chapter 5.92 of the Long Beach Municipal Code would be added to provide regulations pertaining to the following general topics relating to adult-use cannabis.

- At-Home Cultivation Regulations
- Requirement for Professionally-Prepared Project Plans
- Locational Requirements / Separation Buffers from Sensitive Uses
- Signage, Lighting, Advertising
- Cannabis Handling Storage / Employee Health
- Product Regulation
  - Testing / Quality Assurance
  - Adulterated / Misbranded Products
  - Packaging

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- Facilities Regulation
  - Building Appearance
  - Fire Prevention
  - Visibility / Safety / Nuisance Provisions
  - Building Code Compliance
- Operating Conditions
- Process / Penalties / Violations / Suspensions

Additional locational requirements and buffers are detailed in Chapter 5.92 that largely reflect those in Chapter 5.90, which currently governs medical marijuana. The buffers include: 1) 1,000 feet from a public or private school, or public beach, and 2) 600 feet from a public park or public library. The City Council may also consider additional locational requirements. Exhibit B is a map which indicates existing buffers in Chapter 5.90 and maps industrial areas to provide an indication of where adult-use cannabis manufacturing, distribution, and cultivation could locate.

Plan review and permitting for adult-use cannabis is a multi-departmental effort, led by the Department of Financial Management. The Planning Bureau would be responsible for verifying that the proposed location for a specific type of adult-use cannabis business is within an allowable zone, and process any necessary planning applications (Administrative Use Permit, Conditional Use Permits, etc.) if necessary. The Planning Bureau would also work in tandem with other City Departments on regulations that are ultimately within Chapter 5.92, including locational requirements (buffers), and ensuring that proposed building plans comply with both Zoning Regulations and other design requirements found in Chapter 5.92.

### PUBLIC HEARING NOTICE

Notice of this public hearing was published in the Long Beach Press-Telegram on May 3, 2018, in accordance with provisions of the Zoning Ordinance. Additionally, written notices were sent to the California Coastal Commission and all City libraries, and three public hearing notices were posted in public places throughout the City. Furthermore, staff conducted a study session on this matter with the Planning Commission on May 3, 2018. Five speakers were present at the meeting, generally in support of adult-use cannabis uses, and commenting on various aspects of regulation.

### ENVIRONMENTAL REVIEW

In accordance with the California Environmental Quality Act (CEQA), a Negative Declaration was prepared for the Adult-Use Cannabis Regulations. The Negative Declaration was posted on the City's website and has been circulated for a 30-day review period. As of the date of preparation of this report, no comments have been received. The Negative Declaration is available as an attachment to this report (Exhibit C – Negative Declaration 13-17).

CHAIR AND PLANNING COMMISSIONERS

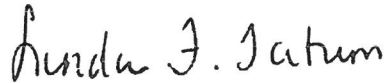
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Respectfully submitted,



CARRIE TAI, AICP  
CURRENT PLANNING OFFICER



LINDA F. TATUM, FAICP  
DIRECTOR OF DEVELOPMENT SERVICES

LFT:ct

Attachments:            Exhibit A – Draft Code Amendment with Redlines  
                                 Exhibit B – Adult-Use Cannabis GIS Buffer Map Analysis  
                                 Exhibit C – Negative Declaration ND 13-17