



CITY OF LONG BEACH

OFFICE OF THE CITY MANAGER

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November 14, 2017

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive and file a report on the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) related to commercial adult-use marijuana regulations; and,

Approve one of the following actions:

- 1) Request the City Attorney to draft an Ordinance to ban the retail sale, cultivation, manufacture, distribution, and laboratory testing of adult-use marijuana in Long Beach;

OR

- 2) Request the City Manager to work with affected City departments to develop recommendations to legalize and regulate Commercial Adult-Use Marijuana Businesses in Long Beach; request the City Attorney to prepare a draft Ordinance to allow, license, and regulate the retail sale, cultivation, manufacture, distribution, and laboratory testing of adult-use marijuana in Long Beach, based on findings and recommendations of the study conducted by the City Manager; and, in the interim, request the City Attorney to prepare a draft Ordinance to implement a temporary hold on adult-use marijuana businesses in Long Beach until a commercial adult-use marijuana Ordinance can be prepared and presented to the City Council. (Citywide)

DISCUSSION

On January 1, 2016, the Medical Cannabis Regulation and Safety Act (MCRSA) went into effect. MCRSA created a statewide regulatory and licensing system for medical marijuana businesses in California. On November 8, 2016, Long Beach voters approved Measures MM and MA. Measure MM granted local approval for medical marijuana businesses to operate in the City. Measure MA established business license tax rates for medical and adult-use marijuana businesses in Long Beach.

Also on November 8, 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). AUMA created a statewide regulatory and licensing system for adult-use marijuana businesses. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). The new law merged regulations for medical and adult-use cannabis into a single regulatory framework.

MAUCRSA grants local governments the ability to regulate and/or prohibit commercial marijuana activity within their jurisdictions. While Measure MM approved medical marijuana businesses to operate in Long Beach, the ballot measure did not approve adult-use marijuana businesses to operate locally. Neither the Long Beach voters, nor the City Council have taken a formal position on whether to allow commercial adult-use marijuana businesses in Long Beach.

Currently, there is an implicit ban on commercial adult-use marijuana activity through the City's "permissive zoning" laws. Under permissive zoning, permitted uses are only allowed if they are listed in the Zoning Code. If a use is not listed, it is not permitted. Since adult-use marijuana activities are not listed in the Zoning Code, the City maintains it is currently illegal to operate a commercial adult-use marijuana business in Long Beach. However, the California League of Cities has cautioned member cities against relying exclusively on local permissive zoning codes to maintain a ban on commercial adult-use marijuana activity. Cities relying on permissive zoning laws will likely face costly and uncertain litigation from marijuana advocates challenging the City's interpretation of permissive zoning laws. Therefore, should the City Council wish to maintain a ban on commercial adult-use marijuana businesses, staff recommends it request the City Attorney to draft an Ordinance to ban the retail sale, cultivation, manufacture, distribution, and laboratory testing of commercial adult-use marijuana businesses in Long Beach prior to State law taking effect on January 1, 2018.

Should the City Council wish to legalize and regulate commercial adult-use marijuana businesses in Long Beach, staff proposes the following actions to prepare an Ordinance:

1. **The City Manager's Office will work with affected City departments to research best practices and develop recommendations to appropriately regulate Commercial Adult-Use Marijuana Businesses in Long Beach.** The decision to permit commercial adult-use marijuana businesses in Long Beach will have significant impacts on numerous policy areas, including public health, public safety, land use, business oversight, and enforcement. Fortunately, through the implementation of Measure MM, staff has developed the policy expertise necessary to effectively deal with these impacts. Staff has also spent considerable time researching best practices implemented by cities in other states that have chosen to legalize commercial adult-use marijuana. Taking advantage of these efforts, the City Manager's Office will take the lead in consolidating policy recommendations, and will work with the City Attorney's Office to incorporate these recommendations into the draft Ordinance. Upon preparation of the draft Ordinance, the City Manager's Office will provide a report to the City Council outlining the key findings from staff's research and outline the recommendations included in the draft Ordinance.
2. **The City Attorney's Office will prepare a draft Ordinance to allow, license, and regulate the retail sale, cultivation, manufacture, distribution, and laboratory testing of adult-use marijuana in Long Beach.** The draft Ordinance will incorporate recommendations from staff, and consider recent changes to State laws and regulations for the marijuana industry. The State is currently in the process of drafting regulations to implement the provisions outlined in the MAUCRSA. These

regulations are scheduled to be released in late November. To ensure the draft Ordinance is consistent with State law, it is necessary that the City Attorney's Office wait for the release of these regulations before proposing a draft Ordinance to the City Council.

- 3. The City Attorney's Office will prepare an Urgency Interim Ordinance to establish a temporary hold on commercial adult-use marijuana businesses in Long Beach until a comprehensive commercial adult-use marijuana Ordinance is adopted by the City Council.** The proposed temporary hold should not be interpreted as a sign that the City is taking a position in opposition to the establishment of commercial adult-use marijuana businesses in Long Beach. Rather, the temporary hold is necessary to avoid challenges from marijuana businesses seeking to apply directly with the State for a commercial adult-use business license prior to the adoption of local regulations, as the MAUCRSA permits the State to begin issuing adult-use marijuana business licenses on January 1, 2018. The City Attorney will draft an Urgency Interim Ordinance establishing a 180-day citywide temporary hold on commercial adult-use marijuana activity. If necessary, the City Council will have the option to extend the temporary hold prior to its expiration.

Key Policy Issues

To develop a comprehensive commercial adult-use marijuana Ordinance, the City must resolve a number of outstanding policy issues, some of which are listed below. Preliminary recommendations from staff on how they might be addressed are also included. Staff will seek further direction from the City Council on these policies through the Ordinance development process.

- 1. Number of dispensaries.** Pursuant to Chapter 5.90 of the Long Beach Municipal Code (LBMC), the City must maintain a minimum number of licensed medical marijuana dispensaries. The minimum number is calculated using a formula dependent upon Long Beach population levels, and is currently set at 32 medical marijuana dispensary licenses citywide.

If commercial adult-use marijuana is permitted in Long Beach, the City Council must decide how many commercial adult-use dispensaries will be licensed to operate. Staff recommends that the maximum number of commercial adult-use dispensaries be calculated using the same population-based formula defined in Chapter 5.90 of the LBMC. This means that, at current population levels, no more than 32 commercial adult-use dispensaries would be permitted to operate in Long Beach.

- 2. Co-located medical and adult-use dispensaries.** In addition to setting a cap on the maximum number of adult-use dispensaries that may operate in the City, staff recommends requiring medical and adult-use dispensaries to co-locate within the same facility. Recent changes to State law allow for medical and adult-use dispensary license holders to co-locate on the same premise. Co-location will ensure that the total number of dispensaries does not exceed the level approved by the voters through Measure MM, currently set at 32 dispensaries citywide. Without

this co-location requirement, each new adult-use dispensary facility would be in addition to the 32 medical dispensaries already approved. Co-location will provide the public with access to both the medical and adult-use markets, while minimizing the impact on neighborhoods by limiting the total number of dispensaries citywide.

- 3. Where businesses may locate.** Medical marijuana businesses may locate in any area that is not zoned exclusively for residential use, and which falls outside of certain minimum distances from schools, parks, libraries, beaches, and day care centers. Staff recommends reexamining these zoning requirements for adult-use marijuana businesses, with the potential to further restrict where adult-use businesses may locate. The Department of Development Services will take the lead in this analysis, and will develop individual recommendations for the proper zoning of each marijuana facility type, including dispensaries, cultivators, manufacturers, testing laboratories, and distributors.
- 4. Non-dispensary businesses wishing to convert to adult-use.** Staff anticipates that a significant number of non-dispensary medical marijuana businesses will seek to apply for an adult-use license. For example, a licensed medical marijuana cultivator may wish to apply for an adult-use cultivation license, in order to begin supplying the adult-use market. To accommodate these conversions, staff recommends developing an expedited adult-use application process for businesses that have already received a medical marijuana license, or that have reached a certain point in the medical marijuana application process. The purpose of the expedited process will be to avoid duplicating reviews and inspections conducted earlier during the medical marijuana application process.
- 5. Discretionary review of adult-use applications.** Certain types of businesses require discretionary review by the City Council to determine whether the proposed business is compatible with, or through the imposition of reasonable conditions, can be made compatible with the surrounding community. Pursuant to Measure MM, the City of Long Beach does not require this level of review for medical marijuana businesses. Instead, medical marijuana businesses follow a ministerial review process, whereby applicants can obtain a license from the City without receiving input from the City Council or Long Beach residents. The Department of Development Services will take the lead in examining this process to determine what requirements the City may want to add when granting an adult-use license.

This matter was reviewed by Deputy City Attorney Arturo D. Sanchez on October 11, 2017 and by Budget Analysis Officer Julissa José-Murray on October 24, 2017.

TIMING CONSIDERATIONS

Statewide marijuana industry regulations are scheduled to be released in late November of this year. The regulations are being drafted by multiple State agencies, including the Department of Consumer Affairs, the Department of Food and Agriculture, and the Department of Public Health. Once released, the draft regulations will help inform key policy decisions that must be made by the City while developing a local commercial adult-

use Ordinance. Staff requests that any deadline for the City Attorney to draft an adult-use marijuana Ordinance be extended into 2018, to ensure the Ordinance is consistent with State rules and regulations.

Beginning January 1, 2018, the State will start issuing licenses for adult-use marijuana businesses. To accommodate the requested timeline to prepare the Ordinance, staff recommends the City Council approve a temporary hold on commercial adult-use marijuana activity. As stated earlier, the temporary hold will help avoid potential litigation from marijuana advocates challenging the City's implicit ban on adult-use marijuana businesses, in addition to preventing possible issuance of State licenses should the State refuse to acknowledge the City's implicit ban.

FISCAL IMPACT

There is no fiscal impact associated with a ban on the retail sale, cultivation, manufacture, distribution, and laboratory testing of adult-use marijuana, as a ban would continue the existing policy of prohibiting adult-use marijuana businesses in Long Beach.

At this time, it is unclear what the fiscal impact of a policy to legalize and regulate adult-use marijuana businesses would be. The fiscal impact would depend on several factors, including the specific requirements set forth in the Ordinance, and the regulatory model utilized by the City to enforce those requirements. Should the City Council request the City Attorney draft an Ordinance to legalize and regulate commercial adult-use marijuana activity in Long Beach, staff will release an updated fiscal impact report at the time the Ordinance is presented to the City Council.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



PATRICK H. WEST
CITY MANAGER



CHARLES PARKIN
CITY ATTORNEY