



Legislation Text

File #: 17-0710, Version: 1

Recommendation to receive and file a report on the Medicinal and Adult-Use Cannabis Regulation and Safety Act to update the City Council on new State buffer requirements, including youth center and daycare center buffers, for marijuana facilities; and

Request City Attorney to draft an ordinance amending Chapter 5.90, Medical Marijuana Businesses, of the Long Beach Municipal Code, to eliminate the 600-foot radius buffer for youth centers, add a 600-foot radius buffer for daycare centers, and establish an exemption from the daycare center buffer requirement for businesses that submit medical marijuana business license applications prior to January 1, 2018. (Citywide)

On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). The new law merges regulations for medical and recreational cannabis into a single regulatory framework.

Prior to the adoption of MAUCRSA, medical marijuana businesses were regulated by the Medical Cannabis Regulation and Safety Act (MCRSA) and recreational marijuana was regulated by the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA). MAUCRSA repealed MCRSA and inserted certain licensing provisions from the MCRSA into the AUMA.

In addition to State regulations, Long Beach medical marijuana businesses are required to comply with the regulations set forth in Measure MM, a ballot initiative passed by Long Beach voters in November 2016. Measure MM added Chapter 5.90 to the Long Beach Municipal Code (LBMC), and created a regulatory structure for medical marijuana businesses.

Pursuant to LBMC Chapter 5.90, no medical marijuana business may locate in an area zoned exclusively for residential use, within a 1,000-foot radius of a K-12 school or public beach, or within a 600-foot radius of a public park or public library. These local buffer requirements were previously compliant with state law under MCRSA.

However, under MAUCRSA, the State legislature established new buffer requirements that were not included in MCRSA and that currently are not addressed in LBMC Chapter 5.90. MAUCRSA specifically states:

*No premises licensed under this division shall be located within a **600-foot radius** of a school providing instruction in kindergarten or any grades 1 through 12, **day care center, or youth center** that is in existence at the time the license is issued, **unless a licensing authority or a local jurisdiction specifies a different radius.***

MAUCRSA defines “day care centers” and “youth centers” as follows:

- Day care center means any public or private child day care facility, other than a family day care home, and includes infant centers, preschools, extended day care facilities, and schoolage child care centers.
- Youth center means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

It is the City Attorney’s opinion that the language in MAUCRSA requires the City of Long Beach to consider applying a buffer for day care centers and youth centers to medical marijuana businesses. Since the 1,000-foot buffer for K-12 schools under LBMC Chapter 5.90 was established through voter initiative, the City Council does not have the authority to change the radius of the K-12 buffer without obtaining voter approval. City Council does, however, have the authority to authorize, reduce, or eliminate the new State buffer requirements for day care centers and youth centers, as those facility types were never identified in Measure MM.

For more information on day care center and youth center buffers, see Attachment A for a citywide map showing the eligible areas where Long Beach medical marijuana businesses could locate both before and after adoption of MAUCRSA. See Attachment B for the same information, broken down by Council District.

In light of the new buffers for youth centers and day care centers mandated by the State, staff is presenting the City Council with the following options:

1. **Take no action** - The youth center and day care center buffers will be applied retroactively to all medical marijuana business license applications that have been submitted to date, as well as to new applications moving forward. If an applicant’s location falls within 600 feet of a day care center or youth center, the application will be rejected. City staff will continue to apply buffers set forth under LBMC Chapter 5.90, including K-12 schools, beaches, parks and libraries.
2. **Eliminate buffers for youth centers and daycare centers** - MAUCRSA grants local jurisdictions the authority to eliminate buffers established through State law. By eliminating youth center and day care center buffers, medical marijuana businesses will be held only to those buffer requirements set forth under LBMC Chapter 5.90, which include K-12 schools, beaches, parks and libraries.
3. **Affirm buffers under MAUCRSA for youth centers and daycare centers, with exemptions for medical marijuana businesses who applied before a certain date.** In addition to its ability to authorize, reduce, or eliminate the 600-foot buffers for day care centers and youth centers, the City Council may also define what date those buffers shall take effect. All medical marijuana applications submitted before a specified date would be

exempt from the youth center or day care center buffer requirements. The day care center and youth center buffers would apply to all applications submitted after such cut-off date.

After careful consideration of these options, staff recommends that the City Council pursue eliminating the buffer requirement only for youth centers (Option #2) and affirming the buffer requirement for day care centers (Option #3). In doing so, staff recommends that the City Council request the City Attorney to draft an Ordinance amending Chapter 5.90 of the LBMC to eliminate youth centers as buffers for all medical marijuana businesses, recognize day care centers as buffers with a 600-foot radius for all medical marijuana businesses, and exempt businesses who have submitted applications for a medical marijuana business license prior to January 1, 2018 from the day care center buffer requirement.

The recommended action of eliminating youth centers as buffers will provide greater long-term certainty over where medical marijuana businesses can locate in the City. The MAUCRSA definition for youth centers leaves open-ended the types of facilities that qualify for this designation. For instance, a strict interpretation of the MAUCRSA definition of youth center may include:

- Karate Studios
- Dance Studios
- Swim Schools
- Music Classes
- Painting Classes
- Gymnastic Classes
- Theatre Companies
- Ballet Companies
- Birthday Party Rooms
- Science/Education Facilities
- Tutoring Services

There are likely more facilities not yet identified by City Staff that could be added to this list. Given the level of uncertainty inherent in the definition of youth centers, and the number of legal challenges that could be expected due to this uncertainty, staff recommends eliminating the 600-foot youth center buffer requirement.

Unlike youth centers, day care centers are both clearly defined in MAUCRSA and easily identifiable using the California Department of Social Services day care licensing database. Including day care centers as buffers will prohibit medical marijuana businesses from locating next to pre-schools and other child care facilities, in addition to the existing prohibition against operating near a K-12 school, in furtherance of the public health and safety.

By setting an effective date of January 1, 2018 for day care center buffers, businesses will have sufficient time to apply for a medical marijuana business license before the new buffers take effect. The recommended action will result in improved consistency between LBMC

Chapter 5.90 and MAUCRSA while also ensuring fair treatment of applicants who acted in good faith prior to the passage of MAUCRSA, but who would otherwise be rejected due to the new buffer requirements.

This matter was reviewed by Deputy City Attorney Monica J. Kilaita on August 3, 2017 and by Budget Analysis Officer Julissa José-Murray on August 2, 2017.

City Council action is requested on August 22, 2017, to allow the medical marijuana application process to continue for those businesses who apply prior to January 1, 2018, and to provide clarification for staff on how to proceed with applications submitted after January 1, 2017.

At this time, the fiscal impact of this recommendation is unknown. The regulation of medical marijuana businesses is an emerging sector and historical data to predict the fiscal outcome of a regulatory change is not yet available.

Approve recommendation.

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