



Legislation Text

File #: 18-0492, **Version:** 2

Recommendation to declare ordinance amending use tables in Chapters 21.31, 21.32, 21.33, 21.34 and 21.35; and by adding Chapter 5.92, and Sections 21.15.113, 21.15.441.1, 21.15.441.2, 21.15.441.3 and 21.15.441.4; all related to adult-use cannabis, read and adopted as read. (Citywide)

On January 1, 2016, the Medical Cannabis Regulation and Safety Act (MCRSA) took effect, creating a statewide regulatory and licensing system for medical cannabis businesses in California. On November 8, 2016, Long Beach voters approved Measures MM and MA. Measure MM established Chapter 5.90 of the Long Beach Municipal Code (LBMC) and created a regulatory structure for medical cannabis businesses in Long Beach. Measure MA established business license tax rates for medicinal and adult-use (recreational) cannabis businesses in Long Beach.

Also on November 8, 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). AUMA established a statewide regulatory and licensing system for adult-use cannabis businesses. 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 medicinal and adult-use commercial cannabis activity into a single regulatory framework.

Under MAUCRSA, local governments have the ability to regulate and/or prohibit commercial cannabis activity within their jurisdictions. The City of Long Beach (City) is currently licensing and regulating medical cannabis businesses but has not approved adult-use cannabis businesses to operate locally. On November 14, 2017, the City Council requested the City Manager's Office to work with City departments to develop recommendations to regulate commercial adult-use cannabis businesses in Long Beach. As part of this request, the City Council directed staff to include social equity policies within the proposed Adult-Use Cannabis Ordinance (Ordinance), making specific reference to other cities that had recently approved cannabis social equity programs. To provide adequate time to prepare the draft Ordinance, the City Council approved a 180-day temporary ban on all adult-use cannabis business activity in Long Beach.

Using recommendations from the City Manager's Office and City departments, the City Attorney's Office has prepared an Ordinance to license and regulate the retail sale, cultivation, manufacture, distribution, and laboratory testing of adult-use cannabis in Long Beach. As directed by the City Council, the proposed Ordinance includes a cannabis Social Equity Program (Program). The overall goal of the Ordinance is to provide residents and visitors access to the legal adult-use cannabis market, while minimizing potential negative

impacts associated with adult-use cannabis activity. In developing the Ordinance, staff drew from recent experience with licensed medical cannabis businesses in Long Beach, as well as lessons learned from other cities that have authorized commercial cannabis activity. In addition, staff have attended numerous neighborhood and industry meetings to discuss cannabis issues with residents, and received direct feedback through the Cannabis Complaint Hotline, Cannabis Business Hotline, and dedicated City cannabis email accounts. Through these efforts, staff sought to balance the interests of all members of the community, including residents, visitors, consumers, employees, and business owners.

The following discussion identifies some of the key provisions that are included in the proposed Ordinance:

Existing State regulations. The proposed Ordinance reaffirms existing State laws and regulations for cannabis businesses. The inclusion of State requirements in the proposed Ordinance will strengthen the City's ability to enforce statewide standards for commercial cannabis activity. The State laws and regulations prioritized in the Ordinance were selected due to their significance in protecting the health, safety, and welfare of Long Beach residents. This includes regulations for product packaging, labeling, advertising, storage, product testing, sanitation, food handling, and quality assurance.

Co-location of medical and adult-use cannabis dispensaries. The proposed Ordinance requires a licensed dispensary to co-locate (i.e. hold both a medical license and an adult-use license at one location) to sell adult-use cannabis. Co-location will allow the City to maintain its current cap on the total number of medical and adult-use cannabis dispensaries, while simultaneously providing consumers full access to the legal adult-use market. If, at any time, the medical cannabis license becomes inactive, the adult-use cannabis dispensary license will become inactive as well.

Co-location of non-retail cannabis business types. Under the proposed Ordinance, non-retail cannabis businesses - including cultivators, manufacturers, testing laboratories, and distributors - will be authorized to co-locate adult-use and medical cannabis operations on the same premises. Businesses that choose to co-locate will be subject to the inspection, penalty, suspension, revocation, and appeals processes and requirements under the proposed Ordinance.

Unlike dispensaries, non-retail businesses are not required to co-locate. Non-dispensary businesses may instead choose to apply exclusively for a medical cannabis business license, or an adult-use cannabis business license. Cannabis businesses that choose to operate as medical-only will continue to be regulated under the authority of Chapter 5.90 of the LBMC.

Recently, the State of California (State) released emergency regulations to allow non-retail licensees to conduct business with other cannabis licensees regardless of their adult-use (A) or medical (M) designation. Based on these changes, the State will allow medical cannabis businesses to grow, produce, distribute, and test adult-use cannabis products for the adult-

use market. Despite this change, Long Beach cannabis businesses licensed under Chapter 5.90 of the LBMC are strictly limited to medical cannabis activity only. Long Beach voters, through Measure MM, did not authorize local medical cannabis businesses to grow, produce, distribute, or test adult-use cannabis. Measure MM was approved by Long Beach voters with the expressed purpose of “allowing medical marijuana businesses to operate in the City of Long Beach.” Measure MM, with a ballot title of “Regulation of Medical Marijuana Businesses,” cannot be reinterpreted to accommodate commercial adult-use cannabis activities. For this reason, businesses wishing to participate in the adult-use cannabis market will be required to obtain an adult-use cannabis license from the City. Medical cannabis business licensees found to be operating an adult-use cannabis business, or conducting business with adult-use licensees, will be subject to penalty, suspension, or revocation of their medical cannabis business license.

Adult-use cannabis buffers. The proposed Ordinance reaffirms the sensitive-use buffers that currently exist for medical cannabis facilities. Currently, no medical cannabis business may be located:

- Within a 1,000-foot radius of a public or private school.
- Within a 1,000-foot radius of a public beach.
- Within a 600-foot radius of a public park, public library, or day care center.

Zoning regulations. Currently, adult-use cannabis uses are not defined or permitted in Title 21 of the LBMC (Zoning Ordinance). The proposed Zoning Code Amendment regulations add definitions for adult-use cannabis uses, designating them as common land uses, such as retail or industrial. This will allow adult-use cannabis businesses to be treated in the same manner as other types of similar land uses and be permitted, conditionally permitted, or prohibited within specific zones in the City.

The Zoning Code Amendment proposes to: (1) define dispensaries as a retail use; (2) define cultivators, manufacturers, and distributors as industrial uses; and, (3) define testing laboratories as a professional service or an industrial use. As such, dispensaries and testing laboratories will be authorized to locate in commercial or industrial areas, whereas cultivators, manufacturers, and distributors will only be authorized to locate in industrial areas of the City. Depending on the use type and proposed location, an adult-use cannabis business may be required to obtain an Administrative Use Permit (AUP) or Conditional Use Permit (CUP), consistent with the treatment of other types of uses in the same land use category. As a result, the proposed standards do not grant special treatment, nor place any unique burden on cannabis businesses relative to similar business activities in the City.

On May 17, 2018, the Planning Commission conducted a public hearing on the proposed Zoning Code Amendment. After the Planning Commission took public testimony, asked questions of staff and the City Attorney, and discussed the recommended approach, the Planning Commission voted unanimously to forward a recommendation of approval to the City Council.

Citywide and Council District maps showing the proposed buffer and zoning requirements are provided in Attachment A. Supplemental materials relating to the proposed zoning changes have been provided in Attachment B.

Exemptions for existing medical cannabis business locations. Existing non-dispensary medical cannabis businesses and applicants will have 180 days after the Ordinance becomes effective to apply for an adult-use cannabis license from their existing location regardless of new zoning requirements. Existing Priority 1, Priority 2, and Non-Priority dispensary applicants and licensees who were successful in the City's Non-Priority Dispensary Lottery in September 2017, are also eligible to apply to co-locate an adult-use cannabis license from their existing location regardless of new zoning requirements.

The purpose of this exemption is to allow existing medical cannabis businesses that currently do not meet the new zoning standards to be eligible for an adult-use cannabis license. Many medical cannabis applicants have made significant investments in their building plans and properties based on previous location requirements. Without this exemption, a significant number of medical cannabis businesses will be forced to remain medical cannabis only, placing them at a significant disadvantage in the overall cannabis market.

Health permits. The proposed Ordinance requires businesses to obtain a public health permit prior to operation. The health permit grants the City's Health Officer authority to regulate adult-use cannabis businesses to protect the health and safety of Long Beach customers, employees, and residents. Specifically, the Health Officer may conduct quality assurance of cannabis goods, embargo adulterated product, exclude employees diagnosed with an illness from handling product, require sanitation facilities, and take other necessary precautions when public health or safety require emergency action. The administrative procedures and authority of the health permit are consistent with other permits the Health Officer oversees, including food and tobacco permits.

Responsible Cannabis Vendor Program. Managers and employees of adult-use dispensaries will be required to attend a Responsible Cannabis Vendor (RCV) Program, offered by the Department of Health and Human Services (DHHS), commencing December 1, 2018. Training topics will include preventing youth access, risks of driving under the influence, methods for safe storage, and other important public health topics. The goal of the program will be to provide dispensary employees with the information they need to properly educate customers on issues related to public health and cannabis. The RCV Program will provide training to cannabis vendors and dispensary managers, similar to California's Responsible Beverage Service program, which recommends 3-4 hours of training for all alcohol retail professional staff who offer direct service or sales of alcohol, or have the responsibility of supervising them.

The RCV Program must be completed by all new hires within the first 60 days of employment. A refresher course will be required of all employees every two years after the

initial training is completed. DHHS estimates the cost of the program will be approximately \$40,000 per year. Program costs will be offset through a fee charged to dispensaries for participation in the program. Establishment of the RCV Program fee will be requested through proposed changes to the Master Fees and Charges Schedule prior to commencement of the program.

Enforcement. The proposed Ordinance grants the City the authority to pursue various administrative, civil, and criminal remedies for noncompliance with the adult-use chapter of the LBMC. Specifically, these remedies include declaration of a public nuisance, administrative holds on cannabis products, permit suspension and revocation, administrative citations, civil penalties, criminal penalties, liens and special assessments, and injunctive relief. Proposed enforcement tools may be used against licensed or unlicensed facilities. The broad range of enforcement measures available in the Ordinance will allow the City to tailor enforcement actions to the nature and seriousness of each individual violation.

Appeals process. The proposed appeals process for adult-use cannabis permit suspension, revocation, or denial follows the standard appeals procedure for other non-cannabis businesses in the City. Specifically, businesses may appeal suspensions, revocations or denials to the City Council. The City Council may conduct a hearing on the appeal, or refer the matter to a hearing officer, pursuant to Chapter 2.93 of the LBMC.

Advertising. State law prohibits licensed cannabis businesses from advertising or marketing cannabis or cannabis products on an advertising sign within 1,000 feet of a school, day care center, playground or youth center. The proposed Ordinance reaffirms advertising buffers for schools and day care centers, while removing advertising buffers for youth centers and playgrounds. However, the proposed Ordinance adds public parks to the 1,000-foot buffer requirements for cannabis billboards. Staff proposes to omit youth center buffers on advertising because the State definition for youth centers and playgrounds leaves open-ended the types of facilities that qualify for this designation. Without a clear definition from the State, the City has no practical means of identifying facilities that potentially qualify as a youth center or playground for the purposes of consistent application of such a buffer requirement. Staff recommends adding public parks as a buffer requirement to ensure the spirit of the law is met by recognizing sensitive uses that the City is able to identify, while leaving youth center and playground requirements as a state-driven regulation.

Social equity. On November 14, 2017, the City Council directed staff to research social equity policies for consideration as part of the proposed Ordinance. Since that time, the Office of Cannabis Oversight (OCO) has worked with the Office of Equity to prepare recommendations on a potential Cannabis Social Equity Program (Program) in Long Beach. The recommendations are based on research into other California cities that have passed cannabis social equity laws, as well as meetings with City departments that would be responsible for implementing the Program.

The goal of cannabis social equity is to recognize and address the impact that federal and

state cannabis enforcement policies have had on low income communities across the country. Specifically, low income communities have experienced the greatest impact of arrests and convictions for low-level offenses such as cannabis use and possession. Cannabis convictions have led to permanent loss of property, disqualification from employment opportunities, reduced earnings potential, exclusion from public benefits such as housing assistance or student financial aid, and other negative impacts.

Recently, California citizens voted to decriminalize cannabis activity at the state and local level. Cities have taken this a step further by working to ensure equal opportunity in the cannabis industry for individuals who may have been impacted by previous cannabis laws. California cities that have adopted cannabis equity ordinances include Los Angeles, San Francisco, Sacramento, and Oakland. In addition, state legislatures have begun to consider cannabis social equity programs, including California, Florida, Ohio, Pennsylvania, and Massachusetts.

Staff is proposing a Program for Long Beach that is consistent with the general framework created by other jurisdictions. Specifically, staff recommends establishing the following criteria to qualify an individual for the Program:

1. Annual family income at or below 80 percent of the Area Median Income (AMI), and net worth below \$250,000;
2. At least one of the following:
 - a. Was arrested or convicted for a crime relating to the sale, possession, use, or cultivation of cannabis in Long Beach prior to November 8, 2016 that could have been prosecuted as a misdemeanor or citation under current California law; or,
 - b. Lived in a Long Beach census tract for a minimum of three years where at least 51 percent of current residents have a household income at or below 80 percent of the AMI.

Income limits will allow the City to target Program benefits to only those individuals with the greatest need for assistance. Proof of a cannabis arrest or conviction will identify individuals who were directly impacted by the enforcement of cannabis laws that are no longer considered serious crimes. Geographic criteria will qualify individuals from neighborhoods whose communities have the greatest need for assistance.

Individuals who are eligible for the Program may receive benefits in two ways:

1. Cannabis application benefits; or
2. Cannabis employment opportunities.

Proposed application benefits include fee waivers, expedited application reviews, expedited plan checks, tax deferrals, and access to workshops to help navigate the City's licensing

process. The proposed application benefits are intended to help Program applicants overcome barriers to entry into the cannabis market. In addition, Proposition 64 created a process whereby individuals may petition a judge to have prior cannabis convictions reclassified or dismissed. DHHS has proposed hosting “Fresh Start” clinics to facilitate the dismissal process. Cannabis-related reclassification or dismissal for Program applicants can serve to further mitigate market barriers such as the inability to obtain a loan or lease agreement based on prior criminal history.

The second category of benefits involves employment opportunities in the cannabis industry. Staff has proposed a 25 percent “Equity Hire” requirement for all adult-use cannabis businesses. To meet this requirement, businesses must ensure that at least 25 percent of annual work hours are performed by employees who are eligible for the Program. Businesses will be expected to meet the 25 percent Equity Hire requirement beginning their second full year of operation. Staff from the Pacific Gateway Workforce Innovation Network (PGWIN) will have the authority to reduce or grant exemptions from the 25 percent hire requirement upon determination that an insufficient labor pool exists to meet employer demand. PGWIN may also reduce or grant equity hire exemptions for businesses that show a good-faith effort to hire Program employees. This includes, but is not limited to, submitting documents demonstrating Program hiring efforts to the PGWIN for review. Failure to meet minimum Equity Hire requirements or show a good-faith effort to hire Program employees will result in warnings, administrative citation, or other violations under the authority of Chapter 5.92 of the LBMC.

In addition, for consistency purposes, staff recommends mandating that all adult-use cannabis businesses enter into a labor peace agreement or collective bargaining agreement with a labor union that represents cannabis workers in Long Beach. This requirement is consistent with the labor provision that voters approved for medical cannabis businesses through Measure MM, now Chapter 5.90 of the LBMC. The requirement for a labor peace agreement will ensure the jobs made available through the 25 percent Equity Hire requirement are union represented positions consistent with voter intent through Measure MM. Further details on the Program are provided in Attachment C.

This matter was reviewed by Deputy City Attorney Taylor Anderson and by Interim Budget Bureau Manager Grace H. Yoon on June 1, 2018.

Should the City Council adopt the proposed Ordinance, staff estimates that adult-use cannabis sales from licensed Long Beach dispensaries could begin as early as August 2018.

The temporary moratorium on commercial adult-use cannabis activities expires on June 19, 2018. Upon expiration, the City will maintain an implicit ban on commercial adult-use cannabis 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 cannabis activities are not listed in the Zoning Code, the City will maintain its prohibition on commercial adult-use cannabis businesses activity,

regardless of expiration of the temporary moratorium.

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 cannabis activity. Cities relying on permissive zoning laws will likely face costly and uncertain litigation from cannabis advocates challenging the City's interpretation of permissive zoning laws. Therefore, action on the proposed Ordinance is requested before expiration of the temporary moratorium. If the City Council is unable to achieve a resolution on the proposed Ordinance, staff recommends extending the temporary moratorium until an Ordinance can be approved.

The hearing date of June 19, 2018, was published in the Long Beach Press-Telegram, posted at City libraries, and distributed on June 5, 2018, and no responses were received as of the date of preparation of this report. Any responses and comments received will be conveyed to the City Council prior to the public hearing.

In accordance with the Guidelines for implementation of the California Environmental Quality Act (CEQA), a Negative Declaration (ND 13-17) was prepared for the proposed adult-use cannabis amendments (Attachment D). The Negative Declaration was made available for a 30-day public review and comment period that began on April 16, 2018, and ended on May 16, 2018. No comment letters were received.

A resolution directing the Director of Development Services to submit a request to the California Coastal Commission to certify an amendment to the Certified Local Coastal Program has been prepared.

Approval of the proposed Ordinance will result in increased expenditures in the General Fund. In FY 18, staff estimates a one-time cost of \$266,000 to develop the Program, based on assumed applicant volume. This cost is made up of \$200,000 for the PGWIN to establish the Equity Hire program, \$50,000 for the Development Services Department to offset the cost of providing automatic expedited plan checks to equity applicants, and \$16,000 for the Equity Office to coordinate the Fresh Start Program. This one-time cost of \$266,000 is anticipated to be offset by citywide budget savings in excess of established Department General Fund savings targets in FY 18. However, regardless of these savings, it is uncertain whether the General Fund will end the year in a net surplus or deficit and it is possible this one-time cost could add to a budget shortfall.

Ongoing costs related to PGWIN oversight of the Equity Hire program will be offset through an Equity Hire fee charged to adult-use cannabis businesses. Establishment of the fee will be requested through proposed changes to the Master Fees and Charges Schedule following passage of the proposed Ordinance. The annual fee amount will depend on the number of businesses that apply for an adult-use cannabis license. Staff estimates the annual Equity Hire fee to be approximately \$2,000 per cannabis business. The fee will be dedicated to funding PGWIN's ongoing role in overseeing the Equity Hire program. Ongoing costs related

to automatic plan checks for equity applicants are difficult to project, and will depend on the number of equity applications received by the City.

Outside of the proposed Program, staff does not anticipate requiring additional resources in FY 18 to regulate the adult-use cannabis industry. Existing staff levels should be sufficient to process adult-use cannabis applications and regulate businesses in the current fiscal year. It is unclear what the ongoing costs will be to regulate the cannabis industry beginning in FY 19. Staff will evaluate both medical and adult-use cannabis regulatory and enforcement costs through the FY 19 Proposed Budget development process. Staff will also propose new fees to fully recover the cost of licensing and regulating adult-use cannabis businesses in Long Beach.

Approval of the proposed Ordinance will result in an increase in business license tax revenues above what is currently collected from the medical cannabis market. Staff projects a potential increase of up to \$750,000 in FY 19 General Fund tax revenues from authorization of commercial adult-use cannabis. This projection is based on a gross receipts tax rate of 8 percent applied to all adult-use cannabis sales, as opposed to the 6 percent tax rate for medical cannabis sales at dispensaries and will be further analyzed as part of the FY 19 Proposed Budget process.

However, it should be noted that FY 18 medical cannabis tax revenues are projected to end the fiscal year significantly below budget. The Adopted FY 18 General Fund budget assumed \$5.2 million for medical cannabis business license tax revenues. Staff estimates actual year-end General Fund revenues will be approximately \$2.0 million. See the table below for a summary of estimated FY 18 medical cannabis revenues:

PROJECTED REVENUES (MEDICAL ONLY)		FY 2018
Business Type	Tax	Revenue
Cultivation	Square Footage Tax	\$ 1,472,74
Dispensary	Gross Receipt Tax	\$ 463,05
Manufacturing	Gross Receipt Tax	\$ 30,00
Laboratory Testing	Gross Receipt Tax	\$ 15,00
Distribution	Gross Receipt Tax	\$ -
SUBTOTAL		\$1,980.8

The primary reason for the projected FY 18 deficit is the current pace of medical cannabis business openings. The pace of openings is outside of the City’s control and is dependent on applicants submitting plans and completing construction of the cannabis facility. During the FY 18 budget adoption cycle, staff anticipated a greater number of medical cannabis businesses would be licensed and operating by this time. Thus far, most applicants have proceeded to the plan check or construction phase, but have not yet completed project construction. Businesses will not be authorized to open until they are inspected and found to meet standard California Codes for construction.

Recently, a significant number of medical cannabis businesses have made notable progress on construction, which has been reflected in an uptick in business openings. As a result, staff is projecting a significant growth in medical cannabis business license tax revenues in FY 19 to approximately \$4.5 million. See the table below for a summary of estimated FY 19 medical cannabis revenues.

PROJECTED REVENUES (MEDICAL ONLY)		FY 2019
Business Type	Tax	Revenue
Cultivation	Square Footage Tax	\$ 1,472,74
Dispensary	Gross Receipt Tax	\$ 1,550,00
Manufacturing	Gross Receipt Tax	\$ 1,215,00
Laboratory Testing	Gross Receipt Tax	\$ 150,00
Distribution	Gross Receipt Tax	\$ 90,00
SUBTOTAL		\$4,477.7

Staff will revisit General Fund cannabis revenue projections through the FY 19 budget development process.

Approve recommendation.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING USE TABLES IN CHAPTERS 21.31, 21.32, 21.33, 21.34 AND 21.35; AND BY ADDING CHAPTER 5.92, AND SECTIONS 21.15.113, 21.15.441.1, 21.15.441.2, 21.15.441.3 AND 21.15.441.4; ALL RELATED TO ADULT -USE CANNABIS

PATRICK H. WEST
CITY MANAGER