



Staff Reports

File #: 1369-2018, **Version:** 1

To: Honorable Mayor and Members of City Council

From: Mike Parness, City Manager

Prepared By: Rick Tooker, Community Development Director

TITLE:

Medicinal and Adult-Use Cannabis Ordinance

RECOMMENDED ACTION:

Approved first reading and introduction of an Ordinance amending the Napa Municipal Code Section 17.52.275 to modify the distance separation standards for medicinal cannabis retailers and small cannabis manufacturers from youth oriented property and the visibility requirements of cannabis-related uses from a public street; and determining that the actions authorized by this Ordinance are exempt from CEQA.

DISCUSSION:

BACKGROUND

The Council adopted the Medicinal and Adult-use Cannabis Regulations and Safety Ordinance (Ordinance O2017-018) on December 19, 2017 establishing regulations for cannabis-related uses in certain zoning districts in Napa. Since the Ordinance became effective on January 18, 2018, five applications to locate commercial cannabis uses in Napa have been received. Two applications have been approved, one is under review, and two are awaiting possible changes by the Council to amend the regulations (the subject of this Agenda Report). Additionally, Staff continues to receive more than a dozen calls each week relating to cannabis-related uses in Napa. Based on these communications, Staff anticipates three more applications to be submitted shortly if modifications are made to the cannabis regulations relating to setbacks. This activity is occurring within a few months of adoption of Ordinance O2017-018. Those projects approved by the City are undergoing plan development for future tenant improvements, which is common as part of change in tenancy. As a result, cannabis retailers are not likely to open until later this year.

On March 6, 2018, Staff provided an update to the Council on implementation of Ordinance O2017-018, identifying concerns expressed by individuals interested in operating cannabis business in the community. The concerns focused on the difficulty people are encountering finding locations for businesses that comply with the 1,000-foot separation standard from youth oriented facilities. This distance separation standard was incorporated into Ordinance O2017-018 to coincide with portions of State law which prohibit signs for cannabis uses and prohibit smoking of cannabis within 1,000 feet from specified youth oriented property, and federal law which imposes enhanced penalties for the distribution of marijuana within 1,000 feet of any school, playground, or public housing facility.

However, State law also allows commercial cannabis uses that are separated by at least 600 feet from any school, playground, or youth centers.

After considering public comments and Council deliberations on March 6, 2018, Staff was directed to prepare revisions to the Ordinance reducing the distance separation standards between cannabis-related uses and youth oriented property, in addition to other revisions for future Council consideration such as modifying the maximum distance a cannabis-related use could be set back from a street.

The proposed Ordinance amendment as part of this Agenda Report achieves the Council's direction by reducing the distance separation standards between cannabis-related uses and youth oriented property from 1,000 to 600 feet, and by removing the 200-foot maximum distance a cannabis-related use may be located from a street. The proposed Ordinance also expands the range of impenetrable barriers to pedestrian access between medicinal cannabis retailers and youth oriented properties (e.g., dance studios, martial arts, parks, schools etc.). Ordinance O2017-018 identifies State Route 29 as a possible barrier, however, there are others the City could consider in review of future applications (e.g., Napa River, Asylum Slough, etc.).

PROPOSED REVISIONS

The following section identifies the existing regulations contained in Ordinance O2017-018 and the proposed Ordinance revisions using strikeout and underline. The proposed Ordinance and Ordinance O2017-018 adopted in December 2017 are attached to this report (Attachment 1 and 2, respectively).

17.52.275 Medicinal and Adult-Use Cannabis Regulation and Safety Ordinance

E. Zoning and Locational Restrictions

1. Medicinal Cannabis Retailers.

(b) No medicinal cannabis retailer may be located on a property that is within 600 ~~1,000~~ feet of any youth oriented property.

2. Small Cannabis Manufacturers

(b) No small cannabis manufacturers may be located on a property that is within 600 ~~1,000~~ feet of any youth oriented property.

3. Exceptions for Distance Separation Standards

(a) The distance separation standards set forth in this section may be reduced only to the extent that the Director determines, based on substantial evidence, that ~~California State Route 29 provides~~ an impenetrable barrier to pedestrian access between the uses exists, so that the separation of the uses is functionally equivalent to the requirements of this section, including but not limited to a highway, watercourse, or similar barrier.

(b) The distance separation standards from youth oriented property set forth in this section shall not apply to any commercial cannabis activity if: (1) at the time the commercial cannabis

activity first received a Cannabis Establishment Clearance in accordance with this section, there was no youth oriented property within ~~600~~ 4,000 feet of the property on which the commercial cannabis activity is located, and (2) the commercial cannabis activity has continuously held a valid Cannabis Establishment Clearance (in accordance with subsections (D)(2) through (D)(5)).

24. The public entry ~~door~~ to the medicinal cannabis retailer must be visible from, and within 200 feet of, a public ~~street~~ right-of-way.

PLANNING COMMISSION MEETING SUMMARY

The Planning Commission considered the proposed Ordinance on May 3, 2018. After receiving public comments expressing general support for the modifications, in addition to expressing interest in providing additional flexibility in the regulations, the Commission offered its support for the Ordinance.

Attachment 3 to the Agenda Report describes the comments raised by the public and Commission at the hearing. In summary, most who spoke at the meeting expressed difficulty finding suitable locations for retail operations and supported reducing the separation standard between cannabis uses and youth oriented property from 1,000' to 600' (or less in the case of private, non-educational youth facilities such as dance studios or martial arts uses). It should be noted that since the Commission meeting on May 3rd, two additional applications have been submitted to the City for cannabis retail uses, one of which is by Mr. Malan who commented on his difficulty in finding a suitable location. If the Council were to introduce and pass the proposed Ordinance, the application appears to meet the 600' separation standards from youth oriented property. Moreover, as noted by Mr. Malan in his comments to the Commission, it is recommended that a dispensary can serve approximately 20,000 people. There are currently five applications either approved or under City review and three more are likely to be submitted shortly, reflecting possibly eight applications in the first five months of adoption of Ordinance 02017-018.

The issue of requiring two security guards in a retail operation was also raised by the public and Commissioners on May 3rd. Generally, those who commented expressed that over time the need for this level of security in addition to other security measures will be determined to be unnecessary. Others commented on the definition of terms in the Ordinance, such as barriers relating to watercourses or public rights-of-way, which Staff addressed in its responses to comments. Several of the speakers also expressed support for recreational cannabis use, understanding that they did not wish to slow down the progress in amending the regulations as presented in this proposed Ordinance.

In response to public comments, the Commission noted the process of developing regulations associated with cannabis use has taken time, but significant progress has been made over the years and progress will continue to be made in the future. The Commission encouraged an open dialogue and Staff to reach out to businesses experienced in operation of cannabis facilities. This will assist the City in better understanding whether regulations associated with onsite security guards, onsite consumption, setbacks, or more broadly recreational use should be considered later for modifications by the Council.

In summary, the Commission supported the proposed Ordinance forwarding a recommendation to

the Council to adopt the Ordinance as drafted.

FINANCIAL IMPACTS:

The Recommended Action to adopt the Ordinance will have no financial impacts on the City. The processing of Cannabis Establishment Clearances is offset by a fee adopted by Council resolution and Clearances will be provided by the Community Development Director when determining that a commercial cannabis activity is in compliance with all applicable local ordinances and regulations. The costs of the Staff time to review applications for commercial cannabis activities will be borne by applicants and there will be no impact on the Adopted Budget.

CEQA:

The Community Development Director has determined that the Recommended Action described in this Agenda Report is not subject to the California Environmental Quality Act ("CEQA," as codified in the California Public Resources Code Division 13), because it has no potential for resulting in physical change in the environment, directly or ultimately (see CEQA Guidelines Section 15378). In the event that this Ordinance is found to be a project under CEQA, City staff recommends that the City Council determine that the Recommended Action is subject to the CEQA exemption contained in California Business and Professions Code Section 26055(h) (adoption of an ordinance that establishes other authorizations to engage in commercial cannabis activity); and it is subject to the CEQA exemption contained in CEQA Guideline Section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. Finally, in the event that the Recommended Action is not exempt from CEQA, City staff recommends that the potential environmental effects of the Recommended Action fall within the scope of, and were adequately examined by, the Environmental Impact Report (EIR) for Envision Napa 2020, the City's General Plan (the "General Plan EIR"), certified on December 1, 1998, pursuant to CEQA Guidelines section 15168. Section 15168(c) states that if the City determines that, pursuant to CEQA Guidelines section 15162, no new effects could occur and no new mitigation measures would be required due to adoption of the ordinance, then the City can approve the ordinance as being within the scope of the impacts examined in the General Plan EIR. The City has made such a determination based on substantial evidence in the record, and therefore no subsequent environmental review is required.

DOCUMENTS ATTACHED:

ATCH 1 - Draft Ordinance

ATCH 2 - Ordinance O2017-018 adopted in December 2017

ATCH 3 - Planning Commission Meeting Minutes Excerpt from May 3, 2018

NOTIFICATION:

Notice of the public hearing was published in the Napa Valley Register on May 25, 2018 and provided to interested parties who requested notification of meetings on cannabis related regulations.