



CITY OF SALINAS COUNCIL STAFF REPORT

DATE: NOVEMBER 7, 2017

DEPARTMENT: CITY MANAGER'S OFFICE

FROM: ANDREW MYRICK, ECONOMIC DEVELOPMENT MANAGER

TITLE: UPDATE TO CANNABIS ORDINANCE

RECOMMENDED MOTION:

Staff Recommends that the City Council adopt the proposed Ordinance amending Chapter 5, Article VII of the Salinas Municipal Code.

RECOMMENDATION:

Staff recommends that the Council adopt the attached Ordinance..

EXECUTIVE SUMMARY:

The attached Ordinance would establish the parameters for the operation of all adult-use and medicinal commercial cannabis activities, provide regulation for the growing of cannabis for personal use, and regulate both of these so as to preserve the quality of life for residents that choose not to engage in these activities.

BACKGROUND:

History of Cannabis Regulations

Chapter 5, Article VII (formerly Chapter 16B) of the Salinas Municipal Code regulates the commercial cannabis industry. Under Proposition 64, passed by California voters in November 2016, the use of cannabis by adults 21 years and over for non-medicinal purposes (defined as "adult-use" in the law and colloquially referred to as "recreational use") will be legal in the State of California effective January 1, 2018.

The City of Salinas has previously adopted two Ordinances. The first is Chapter 19A of the Municipal Code, which was adopted by the voters in November 2016, and places taxes upon commercial cannabis businesses engaging in Cultivation, Manufacturing, Delivery, and Dispensary uses. The second is Chapter 5, Article VII (originally adopted as Chapter 16B but relocated to Chapter 5, Article VII in September 2017), which regulates the operations of commercial cannabis businesses in Salinas. This second Chapter was amended in August 2017 in order to bring it into alignment with several provisions of the California Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which was adopted by the State in June 2017.

However, the August amendment left open the question of whether the City of Salinas would prohibit commercial cannabis businesses from engaging in the adult-use market.

This Ordinance attempts to address a number of items, each of which is discussed in more detail below:

- 1) Growth of Cannabis for Personal Consumption
- 2) Adult-Use Commercial Cannabis Activity
- 3) Permitting Procedures
- 4) Regulations

ANALYSIS:

Growth of Cannabis for Personal Consumption (“Personal Grow”)

Under State Law, a person may now have up to six living plants at their residence for their own personal use. Local jurisdictions may not prohibit growing these plants inside a residence or an enclosed accessory structure (such as a shed), although a jurisdiction may adopt “reasonable regulations.” The attached Ordinance proposes several regulations to clarify the requirements. Jurisdictions may prohibit the cultivation of cannabis outdoors – this Ordinance would do so. At this point, the primary concerns among staff relate to potential odors from the plants (particularly given that most schools and parks are located in residential areas) as well as potential security concerns that could arise.

Under MAUCRSA, by prohibiting the growing of cannabis outdoors for personal use, the City would be ineligible for a particular grant established by that law that would be available through the California Board of State and Community Corrections. These grants would be funded through State taxes collected from cannabis businesses, and could be used to law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of MAUCRSA. However, because these grants would be funded through taxes collected from cannabis businesses, the level of funding is unknown at this time, and the grants would likely not be available until the second half of 2018 at the earliest. Staff recommends that outdoor grows be prohibited for the time being, while the experiences of jurisdictions that choose to permit these grows are studied. Once more information about the potential grant opportunity becomes available, the City will be able to reassess whether the prohibition on outdoor grows is appropriate.

Staff explored the possibility of establishing a required administrative permit for Personal Grows. While there would be potential benefits to knowing the locations of these uses and ensuring through the permit that those engaging in a Personal Grow would be aware of the requirements, it was determined that requiring a permit of this type would create a significant burden on staffing resources. Therefore, staff is recommending that no permit be required at this time. However, staff will analyze data from Code Enforcement activities related to this subject and will provide additional information on this topic in the next Council update to determine whether a permit would be necessary.

Adult-Use Commercial Cannabis Activity

There are six types of commercial cannabis businesses that may be permitted by the City of Salinas: Cultivation, Delivery, Dispensary, Distribution, Manufacturing, and Testing Laboratories. Commercial Cannabis Activity is currently limited to activities related to the medicinal market, with the exception of Testing Laboratories (as described below).

This Ordinance proposes to permit all businesses to engage in either or both the adult-use and medicinal markets; however, retailers (Delivery and Dispensary) would be required to participate in the medicinal market regardless of whether they also wish to engage in the adult use market. This requirement is to ensure that medicinal products remain available to Salinas residents. The total number of permits authorized by the Code would not be increased (ie there would not be separate “medicinal” and “adult-use” permits).

Staff is aware that there is a high level of controversy in allowing businesses to engage in the adult-use market. Staff has approached this analysis under the principal that while adult-use cannabis usage is undesirable, its use has also been permitted by the voters of the State of California, and any actions taken by the City must focus on how the City can take advantage of this reality while mitigating negative impacts. Additionally, staff has approached this on the principal that medicinal cannabis can and does treat many actual medical conditions, and that residents that would benefit from this should continue to have access.

Regardless of the actions of the City, residents will have access to legal cannabis through other jurisdictions, and will in fact be able to grow their own. Also, the legal market is unlikely to totally eliminate the illegal market, and legal businesses will need to continue to be competitive if they are to survive. If the legal market fails, the City would be supplied with cannabis only through the illegal market, but with significantly less ability to ensure that operations do not detract from resident’s quality of life. Given these parameters, it is the opinion of staff that prohibition would be ineffective at curtailing the potential destructive impacts, but would reduce the potential positive benefits to the City.

A more detailed summary of staff’s analysis on the impacts of adding adult-use cannabis to the existing operations currently allowed for medicinal cannabis for each type of business is below:

- 1) Analytical Type (Testing Facilities) – These facilities deal in only very minute amounts of cannabis with little to no market value. Furthermore, as there is little cannabis on-site, the impacts on surrounding areas would be no greater than any other laboratory, which is generally a low-impact use. Jobs created in these facilities would generally be higher-skill and higher-wage technical positions. The State heavily regulates these facilities. State law explicitly states that Testing Facilities may engage in testing both medicinal and adult-use cannabis and cannabis products. Given all this, staff believes that the public interest is best served by allowing this business type to participate in the adult-use market.
- 2) Industrial Businesses (Cultivation, Manufacturing, and Distribution) – These businesses have no public interaction. However, they have the capability of meeting consumer demand not only in the City of Salinas, but throughout the State of California. These

businesses would be the largest job generators of all cannabis industry types, and as their sales increase so would their economic impact. Security requirements being imposed by the City of Salinas are significant. However, given their larger market, the growth of industrial businesses here in Salinas shouldn't have any impact on local consumption, which would be a mix of products produced locally and from out-of-the area. Prohibiting the growing, manufacture, or transport of adult-use cannabis would put our businesses at a significant disadvantage over their competitors while doing little if anything to impact cannabis usage. Given the lack of benefits of prohibition, coupled with the real harm caused by not permitting it, staff recommends the allowance of adult-use cannabis for industrial processes.

- 3) Retail Businesses (Delivery, Dispensary) – These businesses are the ones that interact with the customers and sell cannabis directly to the public. This point-of-sale means that the operations of these businesses will have a potentially greater impact on the community than other business types.

Dispensaries operate as a physical point-of-sale. Staff believes the potential negative impacts of dispensaries engaging in adult-use cannabis would be similar to those of a liquor store – however, like liquor stores, if properly regulated, these impacts can be mitigated and the business can coexist with its neighbors. Currently, these businesses are required to engage in a number of measures to enhance site security (such as buzz-in doors and internal and external security), implement a track-and-trace program, and provide guidance to customers at the site. Staff believes that these procedures, coupled with the ability of the City to immediately shut down any businesses found to be operating in a manner that would constitute a nuisance, would keep the impacts minimal.

Staff examined several alternatives to allowing adult-use cannabis to be sold at dispensaries. Total prohibition of sales of adult-use was considered – however, given that the products could be obtained from elsewhere, including other jurisdictions, the illegal market, or even grown at home, this was deemed to be ineffective. Staff also examined whether segregating adult-use and medicinal cannabis would have a positive impact – none were identified, and doing so may have necessitated an increase in the number of permits and created challenges for businesses to respond to shifting demands. Given the options available, staff believes that the best option is for the Council to allow the sale of adult-use cannabis at dispensaries, with the understanding that permittees will need to work hard to prevent their business from becoming a nuisance to the neighborhood.

Delivery businesses have a very different set of challenges, as there is no centralized point of sale. However, the point of sale could potentially occur anywhere. Medicinal Delivery is already permitted, so staff examined the impacts of adult-use delivery. After analysis, staff is recommending that adult-use cannabis be permitted for delivery.

This conclusion is based upon an analysis of the alternatives. The City has the option of prohibiting Deliveries within the City. While this is legally permissible, it would be very difficult to enforce. Furthermore, although the City can regulate and tax businesses within the City, those from outside the City could continue to do so (and collect tax revenue for

their respective jurisdiction), and the City would have a greatly reduced ability to respond to concerns. Furthermore, even if the legal market could be stopped, residents could grow their own cannabis, and the illegal market would still be available. Given that allowing the delivery of adult-use cannabis would provide the City with the most leverage in dealing with the businesses, would provide the most revenue to the City, and would likely occur whether the City allows it or not, staff is recommending that Delivery businesses be allowed to sell cannabis for adult-use. However, staff is recommending several new restrictions to the actual delivery of cannabis in Salinas, including a prohibition of delivering within 1,000 feet of a school, park, or daycare center (unless it is to a private residence).

Permitting Procedures (Division 3)

The Ordinance provides a reorganization of various sections to provide clarity regarding the permits that are available and which requirements apply to which permit types. Procedures for amending existing permits have also been added.

Regulations (Divisions 4 through 10)

Many regulations have been modified, added, and deleted due to information obtained through the regulation of the industry up to this point.

CEQA CONSIDERATION:

The City Council's approval of the proposed Ordinance and/or Resolutions is exempt from environmental review under the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. [CEQA Guidelines Section 15061(b)(3)]

STRATEGIC PLAN INITIATIVE:

The City Council's approval of the proposed Ordinance and/or Resolutions is not among the City Council's current goals and objectives as identified in the City Council's current Strategic Plan.

FISCAL AND SUSTAINABILITY IMPACT:

Enabling Industrial-Type businesses to engage in the Adult-Use Market would make them more competitive and likely more successful than they would be if limited to the medicinal market. Allowing the sale of Adult-Use Cannabis would likely result in a significant increase in revenues, particularly given that medicinal products are exempt from sales and use tax.

Personal Grows may result in an increase in the number of response requests for service from City Departments, which would result in unknown costs to the City; however, the City has not allowed any uses other than what the State has already permitted, and the City can mitigate its costs by responding to complaints through Code Enforcement, rather than the Police Department.

It should be noted that these projections are based only on existing law and the proposed Ordinance. State regulations have not yet been released as of the date this Report was authored, and it is unknown how any potential regulations would interact with the Ordinance to impact the financial impact.

ATTACHMENTS:

Proposed Ordinance Amending Chapter 5, Article VII of the Salinas Municipal Code
Redlined Ordinance Showing Proposed Changes