



# City of Sunnyvale

## Agenda Item

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**17-0716****Agenda Date: 8/28/2017**

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### **REPORT TO PLANNING COMMISSION**

#### **SUBJECT**

Adopt ordinance amending Chapter 9.86 the Sunnyvale Municipal Code and amending various sections of Title 19 to update the existing prohibition against commercial marijuana activity in the City to expressly include non-medical marijuana, to reasonably regulate indoor personal cultivation of marijuana consistent with state law, and to prohibit outdoor personal cultivation of marijuana. Exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) and 15305.

#### **BACKGROUND**

Sunnyvale Municipal Code (including Chapter 9.86 Public Peace, Safety or Welfare code and Title 19 Zoning code) has included an express ban on medical marijuana dispensaries since 2010. In early 2016, in response to the Medical Marijuana Regulation and Safety Act (now known as the Medical Cannabis Regulation and Safety Act or MCRSA), a law which required cities to take affirmative action to prohibit or regulate cultivation and delivery of medical marijuana, the Sunnyvale City Council amended the Sunnyvale Municipal Code (SMC) to explicitly prohibit medical marijuana cultivation, delivery, and commercial marijuana activity within the City of Sunnyvale. The City viewed those amendments as merely making explicit the City's longstanding practice prohibiting cultivation and commercial activity, as the City's existing permissive zoning scheme did not address those issues.

On November 8, 2016, California voters approved the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA). The AUMA legalizes the possession, use, and cultivation of non-medical marijuana by individuals age 21 or older and authorizes a comprehensive state system to regulate commercial marijuana activity.

The provisions of the AUMA related to personal possession, use, and cultivation of non-medical marijuana became effective on November 9, 2016. The AUMA allows for the cultivation of up to six marijuana plants in or upon the grounds of a private residence. Cities may not completely prohibit personal cultivation at or below this level, but may enact and enforce an ordinance that reasonably regulates cultivation inside a private residence or fully enclosed secure accessory structure on the grounds of a private residence. Cities may also prohibit outdoor cultivation altogether.

Commercial marijuana activity under the AUMA includes cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of marijuana and marijuana products. The AUMA provides for state agencies that have the authority to create, issue, renew, discipline, suspend, and revoke licenses for commercial marijuana businesses. The state is currently developing a detailed permitting scheme for different types of businesses and is anticipated to begin issuing permits on January 1, 2018. However, the AUMA gives cities the authority to adopt and enforce ordinances, including zoning and land use regulations, to regulate commercial marijuana businesses or prohibit them completely. The state will not approve permits for businesses that violate local ordinances or propose operation where a city has prohibited that activity.

(see Attachment 3, League of California Cities Overview of the AUMA). Consistent with City Council's November 2016 and February 2017 policy direction following passage of the AUMA, staff is recommending amendments to SMC Chapter 9.86 and Title 19.

On February 23, 2016, the Council adopted Ordinance 2072-16 to protect against the harmful effects of secondhand smoke by prohibiting smoking in outdoor dining areas; within 25 feet of building entryways; in service areas; at public events; within 25 feet of public transit stops; and in all units, common areas, and within 25 feet of doors and windows of multi-family residences. Smoking marijuana is prohibited anywhere smoking is prohibited.

Because some of the proposed amendments will be made to Title 19, the Planning Commission must review the Title 19 amendments and make a recommendation to the City Council. The City Council is scheduled to consider the entire ordinance (amendments to Chapter 9.86 and Title 19) on September 26, 2017. The public may comment on the substance of the medical marijuana regulations (Chapter 9.86) at that time.

## **EXISTING POLICY**

### **General Plan**

**Policy CC-1.6** Maintain City Neighborhoods as Safe, Health Places to Live. (Chapter 4: Community Character)

**Goal SN-1** Acceptable Levels of Risk for Natural and Human-Caused Hazards (Chapter 6: Safety and Noise): Ensure that natural and human-caused hazards are recognized and considered in decisions affecting the community and that land uses reflect acceptable levels of risk based on identified hazards and occupancy.

**Policy SN-3.2** Control Conduct Recognized as Threatening to Life and Property. (Chapter 6: Safety and Noise)

**Federal Law** Federal Controlled Substance Act (CSA) which was adopted in 1970 (see Attachment 4, Federal Drug Classification Schedule).

**State Law and Guidelines** Prop 215- Compassionate Use Act of 1996 (CUA)

SB 420- Medical Marijuana Program Act (MMPA), signed by the Governor on October 12, 2003, effective January 1, 2004

Attorney General Guidelines- issued October 2008

## **ENVIRONMENTAL REVIEW**

The proposed revisions to the SMC related to medical and recreational marijuana do not require review under the California Environmental Quality Act ("CEQA") pursuant CEQA guidelines section 15305 (minor alterations in land use limitations in areas with an average slope of less than 20% that do not result in any changes in land use or density), and section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The City has a longstanding history of regulation prohibiting all marijuana uses and permissive zoning provisions that already prohibit all uses that are being expressly prohibited by this ordinance. Therefore, this ordinance has no impact on the physical environment as it will not result in any changes.

## **DISCUSSION**

### Summary of Proposed Ordinance Updates and Planning Commission Purview

Following passage of the AUMA, the City's existing marijuana regulations require updating in two areas:

- (1) Amending personal cultivation rules to ensure consistency with state law, which requires the City to allow limited cultivation of up to six marijuana plants per residence; and
- (2) Maintaining the City's existing prohibition on commercial marijuana activity by amending the ordinance to expressly clarify that the prohibition applies to both medical and non-medical commercial marijuana activities.

In early 2017, the City Council gave staff direction to take appropriate action and update the SMC in these two areas before the state begins issuing marijuana licenses in 2018. The proposed ordinance implements that direction.

The proposed ordinance maintains the status quo on the City's existing prohibition on commercial activity and is consistent with AUMA requirements related to personal cultivation. Key changes to Chapter 9.86 include:

- Clarifying that "commercial marijuana activity" includes both medical and recreational marijuana.
- Explicitly stating that activities for which a state license is required under either the AUMA or MCRSA are prohibited in Sunnyvale, clarifying that the existing prohibition on commercial marijuana activity in all zones applies equally to medical and non-medical marijuana, and stating that the City will not issue permits or entitlements for any activity that requires a state license under AUMA or MCRSA.
- Allowing indoor marijuana cultivation for personal use, subject to the limit of six plants consistent with state law and several "reasonable regulations." Those regulations are recommended in the interest of public health, safety and welfare, and include: (1) limiting cultivation to a fully enclosed, secure structure inaccessible to minors and not visible from a public right of way; (2) requiring that cultivation comply with all municipal codes including building, fire, electrical, and zoning; (3) providing that cultivation may not be conducted in any manner that rises to the level of a nuisance; (4) requiring that the residential structure must remain primarily for residential use; (5) imposing regulations for use of lighting and certain gases commonly used for growing marijuana to protect against fire and life safety hazards; and (6) prohibiting cultivation from displacing off-street parking.

However, only the Title 19 amendments (sections 2-9 of the attached ordinance) are within the Planning Commission's purview. The proposed amendments to Title 19 update section 19.62.010 reflect the updated prohibitions described in Chapter 9.86, and eliminate zoning table references to marijuana activities, which are redundant and unnecessary given the clear prohibitions established in SMC sections 9.86.030 and 19.62.010.

### Public Safety Concerns About Amendments to SMC Chapter 9.86

DPS is concerned with the secondary effects and adverse impacts associated with the use of marijuana, including negative public health, life safety, fire safety, and environmental issues. Recent data and trend information from Colorado and Washington states, where recreational marijuana is

legal - has revealed numerous negative consequences including an increase in the number of impaired drivers, emergency room visits, and traffic fatalities. An increase in marijuana usage among youth is another notable consequence.

AUMA allows for the cultivation of up to six marijuana plants per residence. DPS recommends allowing the cultivation of marijuana indoors only to help minimize criminal activities, such as burglaries and robberies, and to reduce access to minors. In addition to these issues, there are also concerns associated with indoor growing. For example, indoor cultivation of marijuana raises concerns about lighting, dehumidification, space heating, cooling, and drying, all of which increase the potential for electrical fires.

#### Other Issues

Staff is aware of ongoing communications to the City Council from marijuana lobbying and advocacy organizations, and certain businesses that have expressed an interest in cultivating marijuana for business or research purposes. The Council considered the commercial cultivation issue during the study issue process at the beginning of the year and it was not prioritized for review in 2017. Pursuant to Council Policy 7.3.26, Item 4(A), this issue will automatically return for Council's consideration as part of the 2018 study issues process.

Adoption of the attached ordinance would accomplish two main items: ensure that the municipal code complies with state law related to personal cultivation, and maintain the existing prohibition on commercial marijuana activities by clarifying that the prohibition also applies to recreational marijuana following passage of the AUMA. The local prohibition on commercial marijuana activity is expected to be in place when the California Department of Food and Agriculture begins issuing licenses to marijuana businesses on January 1, 2018.

#### **FISCAL IMPACT**

The fiscal impact of regulating and enforcing indoor marijuana cultivation in private residences is expected to be minimal because the use is allowed by state law and does not require a permit.

#### **PUBLIC CONTACT**

Public contact was made through posting of the Planning Commission agenda on the City's official-notice bulletin board, on the City's website, and the availability of the agenda and report in the Office of the City Clerk.

#### **ALTERNATIVES**

Recommend that City Council:

1. Find that the activity is exempt from environmental review pursuant to CEQA Guideline sections 15061 (b)(3) and 15305, and recommend that the City Council adopt an ordinance amending various sections of Title 19 to update the existing prohibition against commercial marijuana activity in the City to expressly include non-medical marijuana.
2. Do not find that the activity is exempt from environmental review pursuant to CEQA Guideline sections 15061 (b)(3) and 15305, and recommend that the City Council not adopt an ordinance amending various sections of Title 19 to update the existing prohibition against commercial marijuana activity in the City to expressly include non-medical marijuana.

#### **RECOMMENDATION**

Recommend Alternative 1 to City Council: Find that the activity is exempt from environmental review pursuant to CEQA Guideline sections 15061 (b)(3) and 15305, and recommend that the City Council adopt an ordinance amending various sections of Title 19 to update the existing prohibition against commercial marijuana activity in the City to expressly include non-medical marijuana.

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Reviewed by: Trudi Ryan, Director, Community Development

Reviewed by: Walter C. Rossmann, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Not Used (*Reserved for Report to Council*)
2. Proposed Ordinance (sections 2-9 for Planning Commission review and recommendation)
3. League of California Cities Overview of the AUMA
4. Federal Drug Classification Schedule