REPORT
To the Redwood City Planning Commission
From Planning Staff

October 3, 2017

SUBJECT
Cannabis Zoning Ordinance Amendment

RECOMMENDATION
(1) Hold a public hearing and (2) Adopt a resolution recommending that City Council adopt an ordinance amending Article 59 of the Redwood City Zoning Ordinance

BACKGROUND
Federal Cannabis Regulatory Framework

Cannabis is classified as a Schedule 1 substance under the Federal Controlled Substances Act. Federal law controls, thus cannabis activities allowed under state law remain prohibited by federal law.

During the Obama administration, the federal government largely took a hands-off approach towards states that allow cannabis activities. In 2013, Deputy Attorney General James Cole issued a guidance memorandum advising federal prosecutors to rely on state authorities to address cannabis activity unless the activity implicated certain federal enforcement priorities, such as preventing cannabis from being taken across state lines into jurisdictions where it is illegal. In 2015, Congress began defunding federal enforcement efforts in states that allowed medical cannabis activities.

Given the recent change in federal administration, the direction of federal cannabis enforcement efforts is unclear. President Donald Trump has voiced support for medical cannabis in the past, and he recently signed a spending bill extending the congressional ban on the Justice Department’s use of federal funds to interfere with the operation of medical cannabis programs in states where they are legal. However, when President Trump signed the spending bill, he added a signing statement that may signal his intent to ignore the congressional ban. Further, U.S. Attorney General Jeff Sessions has been outspoken critic of cannabis legalization. Ultimately, how the current Justice Department will handle federal cannabis enforcement policy as pertains to recreational cannabis remains to be seen.

California Cannabis Regulatory Framework

In 1996, the voters passed Proposition 215, which was codified at California Health and Safety Code, section 11362.5 et seq., “The Compassionate Use Act of 1996” (CUA). The CUA exempts patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana.
In 2003, the California Legislature enacted the Medical Marijuana Program Act ("MMPA"), codified at Health and Safety Code, Section 11362.7, et seq. The MMPA provides that qualified patients and primary caregivers could collectively or cooperatively cultivate cannabis for medical purposes.

Subsequently, the California Supreme Court in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729, unanimously held that the CUA and MMPA do not preempt local zoning regulations that completely and permanently ban medical cannabis dispensaries, collectives, and cooperatives. The Court further held that the CUA and MMPA do not require cities to accommodate medical cannabis facilities in any way.

Then, in 2015, California enacted the Medical Cannabis Regulation and Safety Act (MCRSA). MCRSA established a state licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution and sale of medical cannabis. MCRSA set a target of implementing the State’s medical cannabis licensing program by January 1, 2018.

On November 8, 2016, voters passed Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA). AUMA legalizes recreational cannabis use by adults age 21 and over, authorizes cultivation of up to six plants for personal consumption, and established a new state licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, sale and taxation of recreational cannabis.

AUMA’s provisions legalizing consumption of cannabis and allowing personal cultivation took effect the day after the election. AUMA provisions legalizing recreational cannabis businesses will not be operational until the State begins issuing licenses. AUMA required the State to begin issuing licenses on January 1, 2018.

Before the State had the opportunity to fully implement the MCRSA or AUMA, in June 2017, the California Legislature passed Senate Bill 94. Senate Bill 94 repealed MCRSA, incorporated certain provisions of the MCRSA into the licensing provisions of the AUMA, and consolidated the state regulatory and licensing framework for medical and recreational cannabis. The consolidated provisions are known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

Under Senate Bill 94, a local jurisdiction may reasonably regulate, but cannot ban, personal cultivation of up to six cannabis plants within a single private residence. A local jurisdiction may ban or regulate personal outdoor cultivation. Further, a local jurisdiction may ban or regulate all commercial cannabis activities, except for the lawful transportation of cannabis or cannabis products on public roads.

The State has indicated that it will begin issuing licenses to medical and recreational cannabis business on January 2, 2018. Accordingly, local jurisdictions that wish to regulate or prohibit cannabis businesses should do so before the State begins issuing licenses.
Current Local Regulatory Framework

Presently, Redwood City’s only regulation addressing cannabis-related activity is Zoning Ordinance Article 59, which prohibits medical cannabis distribution facilities in all zoning districts. Delivery of medical cannabis is not explicitly prohibited by the City, therefore it is allowed though it has not subject to City business licenses obligations or any local taxes. City staff requested, from its sales tax consultant, a list of medical cannabis businesses that might deliver to Redwood City customers within a fifty-mile radius; this produced a list of 48 potential medical cannabis delivery businesses in the region.

**Analysis**

A. Local Regulatory Options

1) Cultivation

*Personal cultivation*

Adults age 21 and over have a right to grow up to six cannabis plants per private residence for personal consumption. Property owners, including landlords, can prohibit cannabis cultivation on their property.

The City can reasonably regulate, but cannot ban, personal indoor cultivation of up to six plants. The City can ban or allow personal outdoor cultivation. For personal indoor cultivation, whether the building that houses the cultivation meets certain health and safety requirements is of concern in light of the increased electricity needed for indoor cultivation due to the lighting and temperature controls required. Fire prevention issues must be carefully addressed with indoor cultivation. For personal outdoor cultivation, security and aesthetics are of concern if the cultivation is visible from other properties, especially the public right of way. Security is a particular concern if the cultivation is visible from other properties or the right of way, as cannabis plants have financial value and can easily be stolen.

*Commercial cultivation*

The City can ban or allow commercial cultivation. For indoor commercial cultivation, as with indoor personal cultivation, the primary concern is whether the building that houses the cultivation meets certain fire prevention and health and safety requirements in light of the increased electricity needed for indoor cultivation due to the lighting and temperature controls required. In addition, proper ventilation is important to control for odor and to reduce the risk of mold infecting the plants. For outdoor commercial cultivation, security is of great concern if the cultivation is visible from other properties, especially the public right of way. Impacts associated with both indoor and outdoor commercial cultivation include odor, pesticide use, and security. Impact on water quality is also a concern because if potting soil and mulch, fertilizers or pesticides are stored or applied improperly they can be mobilized by runoff from watering or rain and discharge into surface waters. On a commercial cultivation scale, this could potentially result in contamination of those waters and the inspection of water runoff from cultivation sites is paramount to prevent contamination.
2) Manufacturing and Testing

Manufacturing of cannabis products can involve either the extraction of cannabinoids from the raw flower or the production of consumable goods made with cannabis extracts. For extraction, there are two subcategories: one using volatile solvents and one using non-volatile solvents. The use of volatile solvents can result in an increased risk of lab explosions. Cannabis testing facilities will test cannabis and cannabis products for the concentration of cannabinoids and contamination of the products.

The City can ban or allow manufacturing facilities and/or testing facilities. Impacts associated with extraction, preparation of consumables, and testing include security issues, odor and building safety issues, particularly in the context of fire prevention standards.

3) Distribution and Retail

Cannabis distributors are engaged in the procurement, sale, and transport of cannabis and cannabis products between entities licensed to engage in recreational cannabis business. Cannabis retailers are engaged in retail sale and delivery of cannabis and cannabis products to customers. Currently, delivery of medical cannabis is allowed in Redwood City.

The City can ban or allow distribution and/or retail facilities. However, the City cannot prevent a licensed entity from using public roads to simply pass through its jurisdiction to a delivery location outside of its boundaries. Impacts from distribution facilities and retail stores may include security issues, loitering, nuisance, driving under the influence, and odor from smoking. In addition, retail stores may generate conventional retail impacts on traffic and parking.

4) Local Taxes and Fees

If the City permits local recreational or medical cannabis business, the City may impose taxes or fees on the privilege of cultivating, manufacturing, selling or distributing cannabis within City limits. The only statutory limitations are that the City cannot impose a local sales tax on medical cannabis and cannabis cultivated for personal use is exempt from taxation.

B. Redwood City Council Direction

On June 26, 2017, the Redwood City Council held a study session on California cannabis legislation, its implication for local agencies, and local regulatory options. The Council provided direction to staff to continue to allow delivery of cannabis. Further, the Council provided direction to staff to develop explicit regulations:

- Limiting indoor cultivation to six cannabis plants for personal consumption;
- Banning outdoor cultivation; and
- Banning commercial cultivation, manufacturing, testing, retail and distribution, for both medical and recreational cannabis.
C. Proposed Ordinance Amending Zoning Ordinance Article 59

As discussed above, Redwood City’s only regulation addressing cannabis-related activity is Zoning Ordinance Article 59, which prohibits medical cannabis distribution facilities in all zoning districts. The City Attorney’s office recommends that the City adopt the proposed Zoning Code amendment, which would amend Article 59 by repealing it in its entirety and adding express provisions limiting indoor cultivation to six cannabis plants for personal consumption, banning outdoor cultivation, and banning all commercial cultivation, manufacturing, testing, retail and distribution. The proposed Zoning Code amendment would implement the City Council’s direction on local cannabis regulations, and is intended to protect the public health, safety, and welfare.

The proposed Zoning Code amendment would not prohibit or otherwise regulate delivery of cannabis and cannabis products. Delivery of cannabis and cannabis products is not a land use. Further, under the proposed Zoning Code amendment, property owners, including landlords, can prohibit cannabis cultivation on their property.

Under Senate Bill 94, smoking of cannabis is prohibited where the smoking of tobacco is prohibited. In Redwood City, smoking is prohibited in all enclosed public places within the City. Staff anticipates presenting an ordinance prohibiting smoking in multi-family housing for City Council’s consideration on October 2, 2017. Accordingly, the City’s adoption of any smoking ordinance will prohibit smoking of both tobacco and cannabis in the specified locations unless the City specifically exempts recreational and/or medical cannabis from that ordinance.

GENERAL PLAN AND ZONING COMPLIANCE
General Plan Policy BE-2.5 states, “Protect neighborhoods from the encroachment of incompatible activities or land uses that may have a negative impact on the residential living environment.” The proposed ordinance would help to ensure that incompatible uses such as outdoor cultivation and cannabis retail or distribution facilities would not be located in residential areas.

ENVIRONMENTAL REVIEW
This activity is not a project under CEQA as defined in CEQA Guidelines, section 15378, because this ordinance has no potential for resulting in either a direct or foreseeable physical change in the environment.

PUBLIC NOTIFICATION
The hearing notice was published in the Daily News and the Daily Journal on September 22, 2017.

FUTURE STEPS
Upon approval of the resolution, the City Council will conduct a public hearing to consider the ordinance. The City Council is scheduled to consider the ordinance at their meeting of October 23, 2017.

ALTERNATIVES
1. Planning Commission may direct staff to consider other possible alternatives to present to City Council.
ATTACHMENTS
1. Resolution Recommending That the City Council Adopt an Ordinance Amending Article 59 of the Zoning Ordinance

RELATED DOCUMENTS IN PLANNING DEPARTMENT
None