



CITY of CALABASAS

CITY COUNCIL AGENDA REPORT

DATE: JANUARY 13, 2023

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: KINDON MEIK, CITY MANAGER
 MATT SUMMERS, CITY ATTORNEY
 MICHAEL KLEIN, COMMUNITY DEVELOPMENT DIRECTOR *MAK*

SUBJECT: DISCUSSION OF OPTIONS AVAILABLE TO THE CITY TO AUTHORIZE COMMERCIAL CANNABIS ACTIVITIES AND LAND USES.

MEETING DATE: JANUARY 25, 2023

SUMMARY RECOMMENDATION:

Staff recommends the City Council discuss options available to the City to authorize commercial cannabis activities under the 2015 Medical Cannabis Regulation and Safety Act (MCRSA), the 2016 Adult Use of Marijuana Act (AUMA), and the 2017 Medicinal and Adult-Use Cannabis Regulation and Safety ACT (MAUCRSA) and provide direction to staff as deemed appropriate.

BACKGROUND:

This report analyzes the City of Calabasas’ current land use regulations and options in light of the Medical Cannabis Regulation and Safety Act (“MCRSA”), adopted by the California Legislature and signed by Governor Brown in November 2015; and Proposition 64, which is known as the “Control, Regulate and Tax Adult Use of Marijuana Act” (“AUMA”) and was approved by voters on November 8, 2016. Implementing Prop. 64, in 2017 the Legislature adopted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). This legislation repealed much

of the earlier Medical Cannabis Regulation and Safety Act and incorporated certain provisions of it into the Adult Use of Marijuana Act, integrating California's medical and adult-use/recreational cannabis regulatory systems. The law and subsequent Department of Cannabis Control regulations create a unified licensing program for cultivation, manufacturing, distribution, testing labs, retail, and microbusinesses. Under these state laws, a variety of medical and non-medical cannabis businesses may legally operate if authorized by local jurisdictions and subject to local ordinances. In addition, individuals may cultivate cannabis for their own personal medical or recreational uses, provided they comply with local regulations and meet applicable state limits.^a

California State Law

Previously, state law prohibited cannabis activities, and the Compassionate Use Act (CUA) (passed by California voters in 1996) and the Medical Marijuana Program Act (MMPA) (adopted by the State Legislature in 2003) provided limited exceptions from the general state law, where qualified patients and their primary caregivers could engage in specified cannabis activities for medical use only. The 2015 MCRSA supplements the CUA and MMPA by providing a regulatory framework for the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product. Under MCRSA as later modified by 2017's MAUCRSA, all medical cannabis businesses, or commercial cannabis activities, must have a state license and a local permit, license, or other authorization in order to operate lawfully within California. The state of California Bureau of Medical Cannabis Regulation (now renamed the Department of Cannabis Control) began issuing licenses to medical cannabis businesses in January 2018 under MAUCRSA.

On November 8, 2016, California voters approved Proposition 64 (AUMA), which now allows individuals to possess, use, and cultivate recreational cannabis in certain amounts. In addition, an individual may cultivate up to six marijuana plants at his or her private residence provided that no more than six plants are being cultivated on the property at one time. AUMA also established a regulatory system for commercial businesses that is very similar to the medical cannabis regulatory system under MCRSA and MAUCRSA. Under AUMA, recreational cannabis cultivators, manufacturers, distributors, retailers, and testing laboratories may operate lawfully, if they obtain a state license and comply with local ordinances. The State began issuing licenses for commercial cannabis activities under the AUMA starting January 2018.

^a State law, as implemented by Calabasas Municipal Code section 17.12.125, allows indoor cultivation of up to six cannabis plants per residence for personal use only by a person over twenty-one (21) years of age, conducted in accord with applicable state and local requirements and inside a primary dwelling unit or inside a legally established accessory structure.

Cities may still completely prohibit commercial cannabis businesses from operating if they so choose, including prohibiting deliveries of cannabis products within their jurisdiction. If cities choose to allow such businesses, they have the authority to restrict the number that may operate within the city, as well as the location, and impose other reasonable regulations, such as security requirements, signage restrictions, or other operating rules. Furthermore, cities may, with voter approval, establish taxes related to commercial cannabis sales and deliveries.

City of Calabasas Municipal Code

Currently, the Calabasas Municipal Code (CMC) Sections 17.12.125 and 8.13 prohibit any land use, facility or activity that involves cultivation, manufacturing, processing, packaging, warehousing, distributing, transporting, or any other commercial activity or business related to cannabis whether for medical or recreational uses, except for private cultivation for personal use as authorized by State law. As a result, retail dispensaries are not currently allowed in the City; however, the CMC does not prohibit deliveries into the City from nearby licensed retail dispensaries.

On November 3, 2020, the City's voters adopted Ordinance No. 2020-390, adding Chapter 56 to Title 3 of the CMC to establish a general business license tax on cannabis business activities. While the ordinance does not modify the above mentioned regulations prohibiting cannabis business activities in the City, the intent of the ordinance is to ensure a cannabis tax is in place in the event that commercial cannabis activities are permitted in the future. As a result, the City can collect up to 10% of gross revenues from any permitted cannabis business operating in the City. The rate is set by the City Council by resolution, up to the 10% approved by the voters. According to the City's tax consultant, HDL, gross annual sales of cannabis in the City of Calabasas could range between \$10,000,000 to \$20,000,000 depending on the number of retail dispensaries and local competition.

DISCUSSION/ANALYSIS:

Regulatory Options for Consideration

As a first step, the City Council should determine whether it wants to allow cannabis businesses, and if so, how it wants to regulate commercial cannabis businesses. State law includes several provisions that protect local police power authority over medical cannabis establishments, including the authority to prohibit such businesses. Business and Professions Code section 26200, which is part of AUMA, provides that cities may "completely prohibit the establishment or operation of one or more types of businesses licensed under" AUMA. Therefore, cities have a wide range of regulatory options under state law to deal with cannabis land uses.

The City could allow all or some of the cannabis businesses types recognized under state law and regulations -e.g., retail sales, distribution, manufacturing, cultivation, testing, and vertically integrated micro-businesses. If the City Council decides to allow one or more types of cannabis businesses under a regulatory scheme, it should consider the following additional issues/policy questions:

1. **Allow or not Allow Cannabis Businesses.** As stated above, the City currently prohibits all forms of commercial land uses related to cannabis. Therefore, the first question is whether or not the City wants to allow cannabis businesses? Furthermore, does the City want to only allow medical cannabis businesses or both medical and adult use cannabis businesses?
2. **Type of Cannabis Businesses to Allow.** Which types of cannabis businesses does the City want to allow? For example, the California Department of Cannabis Control issues licenses for cultivation, manufacturing, distribution/transport, testing, retail sales, and microbusinesses. The City can choose to authorize one or more of the above mentioned license types.
3. **Number of Allowed Businesses.** How many cannabis businesses does the City want to allow? Under AUMA, the City can choose to limit the total number of allowed businesses within its jurisdiction.
4. **Location and Zoning/Operating Standards.** What type of restrictions should apply to cannabis land uses? Some possible restrictions include: locational restrictions, which designate certain zoning districts or subsets via a cannabis overlay zone as permissible locations; separation requirements to avoid clustering of cannabis land uses; and security and operating requirements, which can be extensive and include the use of licensed security guards, designated hours of operation, prohibition against on-site consumption, installation of adequate odor control devices and ventilation systems, and limitations on access to minors. Note that state law provides for a minimum 600' buffer from any school, day care center, or youth center that is in existence at the time the license is issued. The City can increase the buffer distance and expand the entities subject to the buffer, including requiring a minimum distance from parks or residentially zoned properties.
5. **Types of Permits.** What type of permit or permits will be required? Some cities have imposed conditional use permit requirements for cannabis land uses, while others have required annual renewable regulatory permits. Similarly, other cities require both a land use permit and an annual renewable regulatory permit. A conditional use permit is a one-time discretionary land use permit that requires a Planning Commission decision at a public hearing. Conditional use permits are entitlements that run with the land, not the operator. A regulatory permit is renewed annually and is not a land use entitlement that "runs with the land." Furthermore, the City Council could designate the approval authority for annual regulatory permits to be staff, the Planning Commission, or the Council. Any decisions made by the Planning Commission

or staff would be subject to appeal to the Planning Commission if made by staff, and in turn to the City Council.

6. **Permit Processing/Procedures.** How will the City process cannabis land use applications? A city could take a number of approaches for processing applications: (1) first come, first served; (2) lottery; and/or (3) scoring system. Under a lottery system, pre-qualified applicants meeting applicable standards are selected through a random lottery to apply for the required cannabis land use permit or regulatory permit. Under a scoring system model, applicants would receive a score based on a review of their applications. Those applicants who receive the highest scores would then be recommended for approval to the decision making authority. If this selection method is used, it is important to ensure that objective scoring criteria be developed and used.
7. **Deliveries.** Under state law, a city retains the police power authority to prohibit cannabis deliveries that begin or end within the city's boundaries. A city, however, cannot prevent a delivery service from using public roads to simply pass through its jurisdiction from a licensed dispensary to a delivery location outside of its boundaries. State regulations, subject to an on-going dispute, also protect medical deliveries into a City, regardless of local rules. Thus, it is recommended that the City Council decide whether it wants to prohibit or allow cannabis deliveries, and whether it wants to impose any regulations on cannabis deliveries. Under state law, cannabis deliveries may only be made by licensed businesses, although enforcement of delivery regulations can be challenging given their nature.

FISCAL IMPACT/SOURCE OF FUNDING:

There is no fiscal impact to the discussion of these issues. However, if the City determines to allow some type of cannabis facilities in the City, a fee schedule should be established for cost recovery of staff time needed to process applications. Revenues from taxing the activities are estimated to generate between \$500,000 - \$750,000 per licensed entity for a retail dispensary.

REQUESTED ACTION:

Staff recommends the City Council discuss options available to the City to authorize commercial cannabis activities under the 2015 Medical Cannabis Regulation and Safety Act (MCRSA), the 2016 Adult Use of Marijuana Act (AUMA), and the 2017 Medicinal and Adult-Use Cannabis Regulation and Safety ACT (MAUCRSA), and provide direction to staff as deemed appropriate.

ATTACHMENTS:

- Attachment A: Comparison of neighboring communities
- Attachment B: PowerPoint Presentation