



# CITY COUNCIL AGENDA REPORT



**DEPARTMENT:** Community Development

**MEETING DATE:** October 17, 2017

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**AGENDA LOCATION:** PH -2

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**TITLE:** Amendment to Title 5 (Business Taxes, Licenses and Regulations) and Title 17 (Zoning) of the Monrovia Municipal Code to Adopt Regulations Pertaining to Cannabis; Introduction and First Reading of Ordinance No. 2017-05

**OBJECTIVE:** To adopt regulations that (1) prohibit the issuance of a business license for all commercial cannabis activity except for laboratory testing and manufacturing facilities, (2) prohibit all commercial cannabis uses except for laboratory testing and manufacturing facilities, (3) prohibit outdoor cannabis cultivation, and (4) regulate indoor cannabis cultivation in private residences.

**EXECUTIVE SUMMARY:** As California's cannabis laws have evolved over the past few decades, the City of Monrovia has generally followed federal cannabis regulations which prohibit the use, cultivation and production of cannabis or products containing cannabis. However, in response to recent changes in California, both through voter initiative and legislative actions, local jurisdictions must adopt regulations that establish provisions that define how cannabis will be regulated, pursuant to state law.

Staff prepared a draft ordinance (Exhibit B) that contains a set of regulations that does the following:

- Prohibits all commercial cannabis uses such as retail sales or commercial cultivation. However, state licensed businesses that manufacture or test cannabis would be classified as a manufacturing or a research and development use and regulated as other manufacturing uses. No retail sales or other commercial activity would be permitted.
- Regulate personal cultivation on residential properties consistent with state regulations with a limitation of six plants per dwelling. Cultivation could only occur in an enclosed structure, such as a house, accessory structure or a green house. Outdoor cultivation would be prohibited.

The Planning Commission reviewed the proposed ordinance on September 12, 2017. At the close of the hearing, the Commission voted to amend their resolution (Exhibit A) outlining their recommendation to allow the following:

- Expand the residential cultivation to include outdoor cultivation with the following restrictions: it must be in a rear yard, not visible to the general public and in a secured area.

The Commission did not recommend any modifications to the commercial/industrial regulations contained in the draft Ordinance.

**ANALYSIS:** The City currently prohibits the issuance of a business license for medical marijuana stores, dispensaries or co-ops and mobile marijuana dispensaries. The City also prohibits all medical marijuana stores, dispensaries, or coops that are broadly defined to mean "any location, structure, facility, vehicle, store, coop, residence or similar facility used, in full or in part, as a place at or in which

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marijuana is sold, traded, exchanged, bartered for in any way, made available, located, stored, placed, or cultivated, including any of the foregoing is used in the delivery of marijuana.” The City’s current cannabis regulations prohibit some conduct that is allowed under the AUMA (i.e., all cannabis cultivation), and do not expressly address all forms of commercial cannabis activity.

The proposed Ordinance would amend Chapters 5.96 and 17.44 of the Monrovia Municipal Code to expressly prohibit commercial cannabis activity and uses, except for laboratory testing and manufacturing facilities. The proposed Ordinance would also explicitly prohibit outdoor cultivation of cannabis throughout the City, and allow limited indoor cultivation of cannabis at private residences subject to compliance with specified regulations.

### ***Commercial Activity***

The City currently prohibits medical marijuana dispensaries. The proposed Ordinance would amend Chapter 5.04 pertaining to business licenses to delete the definitions and references to “Delivery,” “Marijuana,” “Medical marijuana product,” “Medical marijuana store, dispensary, or coop,” and “Mobile medical marijuana dispensary” since those terms only apply in the context of medicinal cannabis, and the City is expanding its regulations to address both medicinal and adult-use cannabis. The proposed Ordinance would add the definition of “commercial cannabis activity” which is broadly defined to include the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, packaging, transportation, delivery or sale of cannabis and/or cannabis products, for medicinal, adult-use, or any other purposes. “Commercial cannabis activity” does not include:

- (1) Cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient (as that term is defined in California Health and Safety Code section 11362.7) for his or her personal medical use so long as the qualified patient does not provide, donate, sell or distribute cannabis to any other person; or
- (2) Cultivation, possession, storage, manufacturing, transportation, donation or provision of cannabis by a primary caregiver, exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver (as that term is defined in California Health and Safety Code section 11362.7), but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code section 11362.765.

The proposed Ordinance would also amend Chapter 17.44 to prohibit all outdoor cannabis cultivation and all commercial cannabis uses, except as discussed below. The proposed Ordinance would expressly prohibit all cannabis deliveries into and out of the City. The proposed Ordinance would not prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery to a person located outside the city, where such transport does not involve delivery within the jurisdictional limits of the city, since the City is not authorized to prohibit these activities under State law. The proposed Ordinance would also not prohibit the transport of cannabis and cannabis products by a State licensed distributor to and from laboratory testing and manufacturing facilities.

Cannabis laboratory testing and manufacturing facilities will be allowed to operate in the Manufacturing, O/RD/LM, and Business Enterprise zones, and will be subject to the same standards as all other manufacturing type uses located in these zones. For instance, if a cannabis business will be engaged in light manufacturing in the Manufacturing, O/RD/LM, and Business Enterprise zones, this use would be permitted as a matter of these zones. If a cannabis business will be engaged in heavy manufacturing, this use would be conditionally permitted in the Manufacturing zone, but would not be permitted in the O/RD/LM and Business Enterprise zones. The manufacture or testing of cannabis would be classified similar to any other type of manufacturing or research and development uses and would be regulated as such. This is similar to how the City regulates alcoholic beverage production. To lawfully operate in the City, the laboratory testing and manufacturing facilities must be licensed by the State, and must not engage in any other “commercial cannabis activity” except for the possession, storing, packaging, distribution, or labeling of cannabis or cannabis product.

### ***Cultivation***

The City currently prohibits the cultivation of cannabis for commercial and non-commercial purposes, including cultivation by a qualified patient, primary caregiver, or person with identification card, in all zones and all specific plan areas in the city. This provision is now inconsistent with State law. The proposed Ordinance would explicitly prohibit all outdoor cannabis cultivation. It would also prohibit all commercial cannabis cultivation.

Consistent with State law, the proposed Ordinance allows the indoor cultivation of cannabis in a private residence, or inside a fully enclosed and secured structure located at the residential site. As proposed, a “fully enclosed and secure structure” is defined to mean a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.

In addition, indoor cultivation may be carried out only by a person who is at least 21 years old, and is limited to six plants total, whether immature or mature, regardless of how many persons who are at least 21 years old reside at that private residence. The proposed Ordinance also contains standards on indoor cultivation to preserve and protect the environment and prevent adverse impacts on neighboring properties such as ensuring that the cultivation activities are not visible from adjoining properties, and that the cultivation does not become a public nuisance to neighbors.

One important health and safety consideration is prohibiting compressed gases such as carbon dioxide and butane from being injected into the residence during the cultivation process. Injecting gases such as butane or carbon dioxide into an enclosed room to speed the growth of the cannabis plant significantly increases the risk of fire or explosion. There have been documented occurrences in other cities where unpermitted indoor cultivation facilities have exploded due to the use of compressed gases as a component of the cultivation process.

The proposed Ordinance also requires that all electrical equipment used in the cultivation of cannabis be plugged directly into a wall outlet or be hardwired. When electrical equipment is not plugged directly into the wall or hardwired, this increases the risk of fire. The proposed Ordinance also requires that a fully functional fire extinguisher be maintained at the private residence so that any potential fire can be more easily extinguished.

Additionally, on-site personal cultivation may include the use of the garage. The proposed Ordinance states that the on-site cultivation activity cannot displace required on-site garage parking.

### ***Personal Use of Cannabis Exempt***

Consistent with State law, the amendments also contain exemptions that allow persons 21 years of age or older to: smoke or ingest cannabis or cannabis products; possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older 28.5 grams (one ounce) of cannabis, or eight grams of concentrated cannabis; and possess, plant, cultivate, harvest, dry or process up to six cannabis plants for personal use in a private residence, or inside an accessory structure located upon the grounds of a private residence, subject to compliance with indoor cultivation requirements set forth in Section 17.44.140 of the proposed Ordinance.

### ***General Plan Consistency***

Staff has determined the proposed Ordinance is consistent with the City’s General Plan. Specifically, the proposed Ordinance furthers the following objectives of the Safety Element: Objective 3.2 “Adopt and enforce ordinances promoting fire prevention” and Objective 3.3 “Control hazardous or potentially dangerous operations or land uses.”

### ***Planning Commission Action***

The proposed Ordinance makes regulatory changes to the City’s land use regulations contained in the Monrovia Municipal Code. As the advisory body to the City Council on matters related to land use and zoning, the Planning Commission held a public hearing to review the proposed Ordinance at a special meeting held on September 12, 2017. At the public hearing, one resident spoke in opposition to the proposed regulations.

The Planning Commission discussed the proposed regulations and generally agreed with the prohibition on commercial cannabis activity, except for laboratory testing and manufacturing facilities, as specified in the proposed Ordinance. The Planning Commission noted there was some confusion because the definition of commercial cannabis activity included laboratory testing and manufacturing, and yet the proposed Ordinance also stated that laboratory testing facilities and manufacturing facilities were excluded from the definition of commercial cannabis activity. Staff revised the proposed Ordinance to clarify this issue.

The Planning Commission expressed concern regarding the prohibition on outdoor cultivation for personal use. Based on the large number of older residential structures in Monrovia, there was discussion that the requirement to cultivate in an enclosed structure would encourage more people to install electrical equipment in their houses that could overburden older electrical systems causing unintended safety issues due to potential electrical fires. The Planning Commission recommended that the draft Ordinance be revised to allow outdoor cannabis cultivation that meets the following standards:

- Plants must be grown in the rear yard;
- The plants cannot be visible to the general public; and
- The area where the plants are being cultivated must be secured (e.g., behind a locked gate).

One of staff's primary concerns about outdoor cultivation is odor, which was the reason the draft Ordinance proposed that plants must be grown in an enclosed structure. The Planning Commission discussed the possibility that the regulations should make the property owner responsible for containing the smell and should also include a performance standard that would allow a neighbor to complain if there was a problem. Staff explained that regulating odor would be very difficult to enforce and strongly recommended against including such a provision in the Ordinance. The Planning Commission acknowledged the difficulty in enforcing this type of regulation and did not include it in their recommendation.

At the close of the hearing, the Planning Commission adopted Planning Commission Resolution No. 2017-02 (attached hereto as Exhibit A) containing their recommendation. The draft Ordinance that is attached to Resolution No. 2017-02 was revised by staff to incorporate the Planning Commission's recommendations which are primarily contained in Section 17.44.104(C) as well as some minor non-substantive clean up revisions to the Ordinance.

**ENVIRONMENTAL IMPACT:** City staff has analyzed the proposed Ordinance pursuant to the California Environmental Quality Act (CEQA) and determined that the project is exempt from CEQA under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed Ordinance will have a significant effect on the environment. The Ordinance also is eligible for a class 5 categorical exemption (Section 15305 of Title 14 of the California Code of Regulations) because it makes minor alternations in land use limitations in areas with an average slope of less than 20%, and such alterations do not result in any changes in land use or density because all commercial cannabis land uses and activity will continue to be prohibited.

**FISCAL IMPACT:** Staff does not anticipate a fiscal impact related to the adoption of this Ordinance.

**OPTIONS:** The following options are provided for the consideration of the City Council:

1. Introduce for first reading the ordinance proposed by staff which is attached as Exhibit B.
2. Introduce for first reading the ordinance as revised by the Planning Commission which is attached to Resolution No. 2017-02 (Exhibit A).
3. Reject both versions of the ordinance and refer the matter back to the Planning Commission to address any stated concerns of the City Council.

**RECOMMENDATION:** The Planning Commission reviewed the proposed ordinance and adopted Planning Commission Resolution PCR2017-02 recommending adoption of Ordinance No. 2017-05 that is described in Option 2.

**COUNCIL ACTION REQUIRED:** If the City Council concurs, then following the public hearing, the appropriate action would be a motion to introduce, waive further reading, and read by title only Ordinance No. 2017-05.