



Recreational Marijuana

Council Subcommittee

Monday October 9, 2017

Presented on behalf of the City Attorney's Office

By Amanda Charne

Overview

- Legal/Regulatory Update
- Review status of Santa Clara County cities
- Timeline for Adoption of Ordinance
- Review Potential Commercial Marijuana Uses

Federal Legality

- **New Attorney General Jeff Sessions:**
 - “States, they can pass the laws they choose,” he added. “I would just say it does remain a violation of federal law to distribute marijuana throughout any place in the United States, whether a state legalizes it or not.”
- **2013 Cole Memorandum remains in effect**
 - DOJ would not prioritize marijuana enforcement against businesses that were following state law and adhering to certain criteria.

California Legislative Update

- SB 94 – Effective June 27, 2017
 - Repealed MCRSA and created a single regulatory scheme that addresses both medical cannabis and recreational cannabis – now called Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)
 - Delivery services are now treated as a type of retailer license
 - Retains local control and dual permitting scheme
 - Requires the State to work with local agencies to compile a database of local laws and allows applicants to voluntarily submit proof of local authorization
 - Requires local jurisdictions to notify the State whether an applicant is either compliant or non-compliant with local ordinances. Failure to respond to the State's inquiry within a 60-business-day period results in a rebuttable presumption that applicants are in compliance with local ordinances.
 - Removed California residency requirement for licensees

California Legislative Update

- AB 133 – Effective September 16, 2017
 - Removes the requirement that different commercial license types of cannabis businesses maintain “separate and distinct” premises
 - Amends the definition of “delivery” to remove the requirement that use of a technology platform by a retailer must be owned and controlled by the retailer
 - Removed the word “physical” from the requirement that licensees maintain a “physical copy” of customers’ delivery requests, opening the door for use of electronic methods
 - Removed the restriction that medicinal cannabis manufacturers only manufacture products for sale by medicinal retailers
 - Applicants who voluntarily submit a valid, unexpired local license will be presumed to be in compliance with “all local ordinances,” unless otherwise notified by the local jurisdiction

California Legislative Update

- AB 350, ~~would prohibit a cannabis product from being made in the shape of a person, animal, insect, or fruit.~~ Vetoed by Governor on Friday, 10/6/17.
- SJR-5 (Stone), a joint resolution calling for Congress to reschedule cannabis.

California Regulatory Update

- State licensing agencies formally withdrew proposed medical cannabis regulations on 10/6/17.
- Emergency rulemaking process for the new regulations under MAUCRSA are expected to be published in November.
- The implementation date for the issuance of state commercial cannabis licenses remains the same: January 1, 2018.

In the News

- A Los Angeles City Council committee is exploring the idea of starting its own bank, which would give marijuana dispensary operators access to banking services (as reported by MyNewsLA.com)
- Bureau of Cannabis Control is hosting three public licensing workshops geared toward industry licensing requirements (Oct. 12, 13 and 17)
- *City of Vallejo v. NCORP4, Inc.* (Sept. 29, 2017) – California Court of Appeal held that City lawfully denied immunity from prosecution for medical marijuana dispensary that had not timely paid local business tax

Which BBK city clients have authorized recreational cannabis uses?

- Calexico – various, but no retail
- Coachella – various, but no retail
- Colton – various, but no retail – pending PC review
- Davis – various, including retail
- Palm Desert – various, not final
- San Jacinto - cultivation

Santa Clara County Cities

Status of Commercial Use Regulations

- **Campbell** – medical delivery only; 2 year moratorium on all commercial in city
- **Cupertino** – medical dispensary ban; interim urgency ordinance for nonmedical
- **Gilroy** – ban on cultivation, processing, delivery and dispensaries
- **Los Altos** – ban on cultivation, processing, delivery and dispensaries
- **Los Altos Hills** – ban on commercial medical uses, but medical delivery allowed
- **Los Gatos** –ban on medical dispensaries, cultivation and delivery
- **Monte Sereno** –ban on medical uses; except medical deliveries allowed
- **Morgan Hill** – ban on medical uses
- **Mountain View** – ban on medical dispensaries; action expected in December
- **Palo Alto** – ban on medical dispensaries
- **San Jose** – allows medical collectives and deliveries by registered collectives
- **Santa Clara** – ban on medical dispensaries
- **Saratoga** – ban on commercial marijuana activity
- **Sunnyvale** – ban on commercial marijuana activity

Current Regulations in Milpitas

- Milpitas Muni. Code XI-5-3.00 prohibits medical marijuana uses including cannabis dispensaries, cannabis cultivation, cannabis manufacturers and delivery of cannabis
- Urgency Ordinance 291.1 extended temporary moratorium on all medical and adult-use commercial marijuana activity, and outdoor cultivation for personal use
- **Expires February 21, 2018**

Timeline

- **Possible Planning Commission Hearing Dates**
 - November 8
 - November 22
 - December 13 – only available if City Council will meet on Jan. 2
- **Possible Regular City Council Meetings**
 - November 21
 - December 5 and 19
 - January 2 (?)
 - January 16 – last possible City Council meeting for second reading of permanent ordinance
 - **February 21, 2018** – Ordinance 291.1 moratorium expires

Notes

- Permanent zoning ordinance(s) require PC review
- Due to notice requirements, CC hearing must occur at least 10 days after the PC's hearing, plus any additional lead time required to publish the notice
- Ordinance(s) require two readings by CC and 30 days to become effective (must be passed at a regular CC meeting)

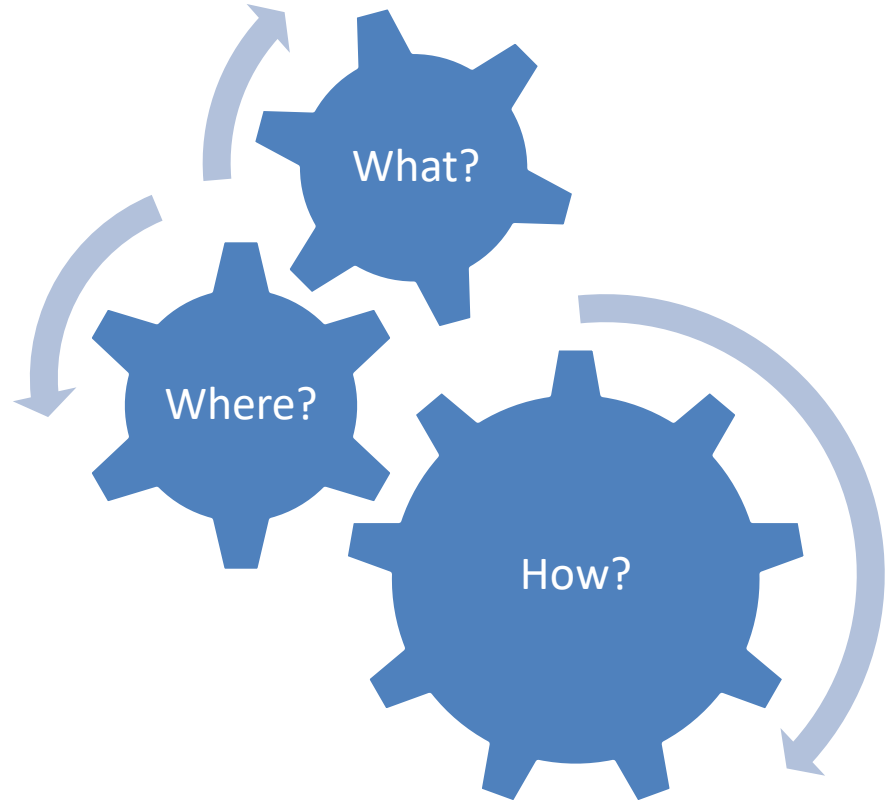
Recommendation:

Planning Commission recommendation should be finalized in November to allow City Council review and second reading no later than its January 16, 2018 meeting

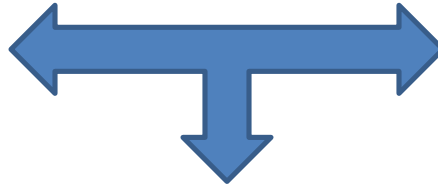
Policy Decisions

What types of commercial cannabis uses should be allowed in Milpitas?

- Manufacturing
- Testing
- Cultivating
- Distribution
- Retailers / Delivery Services
- Microbusinesses



Next Steps



Option 1: Permanent Ordinance(s) to Allow One or More Commercial Cannabis Uses

- Decide which commercial uses should be allowed, in which zones and appropriate regulatory mechanisms and standards
- Could allow some uses and continue to study others
- Input from City departments and stakeholders
- Schedule further subcommittee meetings?

Option 2: Permanent Ordinance(s) to Prohibit Commercial Uses and Address Personal Cultivation

- Decide whether to permanently ban outdoor cultivation
- Decide whether to create additional standards for indoor cultivation

Option 3: Continue studying and extend moratorium for 1 more year

- Extend via one reading by City Council prior to expiration date (2/21/18)
- Possible extension to Feb. 21, 2019
- Moratorium could be repealed earlier, if desired
- Allows time to study, engage with experts and review state regulations and legislative changes

Questions?

