



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: September 27, 2022

TO: Honorable Mayor and Members of the City Council

FROM: Jovan D. Grogan, City Manager

PREPARED BY: Darcy Smith, Assistant City Manager

SUBJECT: Hold Public Hearing and Introduce, Read by Title Only, and Waive Further Reading of the Following Ordinances of the City of San Bruno:

- An Ordinance of the City of San Bruno Amending Article III (Zoning) of Title 12 (Land Use) of the Municipal Code by Adding Chapter 12.300 to Authorize Commercial Cannabis Retailers (Storefront Sales) in the Transit Corridors Plan Area CBD, MX-R, TOD-1, TOD-2, and PD Zones and in the PD Zones for the Shops at Tanforan, and Cannabis Distribution Facilities in the M-1 Zone, and Making a Finding of Exemption Under CEQA
- An Ordinance of the City of San Bruno Amending Title 3 (Revenue and Finance) of the Municipal Code to Lower the Tax Imposed on Cannabis Businesses, Amending Title 4 (Licenses and Regulations) to Add a New Chapter Pertaining to Commercial Cannabis Operators Permits, and Amending Title 6 (Public Peace, Morals and Welfare) to Eliminate the Prohibition on Commercial Cannabis Activity in the City, and Making a Finding of Exemption Under CEQA

BACKGROUND:

The City Council held a Study Session meeting on February 8, 2022 where they considered options for allowing commercial cannabis operations in the city . At the conclusion of the Study Session, Council directed staff to proceed with preparation of draft Municipal Code amendments and related procedures. This direction was to provide for a total of up to three commercial cannabis operations consisting of any combination of cannabis retailers, commonly referred to as storefront sales directly to consumers, in specific zoning districts. The direction provided was to focus these locations in the downtown, along portions of San Bruno Avenue and El Camino Real, and at The Shops at Tanforan. Additionally, the Council recommended that the regulations accommodate no more than one distribution use in the M-1 Zone north of Interstate 380.

In addition to City Zoning Code amendments related to land use regulations for commercial cannabis operations, amendments are also proposed related to the cannabis business taxes and repealing/amending cannabis prohibitions in Title 6, as well as a new Chapter 4.70 pertaining to commercial cannabis operator's permits. These ordinances are provided as Attachments 1 and 2. Draft application procedures and guidelines for the commercial cannabis operators permit provided as Attachment 3. If the ordinances are introduced, these procedures

and guidelines will be presented at a future City Council meeting for adoption by resolution. The Council may review and provide any feedback to be incorporated into the final version.

Previous Cannabis Regulatory Actions in California and San Bruno

The State of California's Proposition 64 was adopted on the November 8, 2016 ballot (the Adult Use of Marijuana Act or "AUMA"). The Act provides that:

1. Recreational cannabis use, possession, transportation, and purchase of specified amounts by adults 21 years or older is legalized, except those certain activities, such as possession or smoking cannabis will still be prohibited in those places otherwise prohibited by state law (such as places of employment) or public places;
2. Individuals who are 21 years or older are allowed to grow up to six cannabis plants per residence, indoors, for their personal recreational use; and
3. Commercial cultivation, processing, laboratory testing, labeling, storing, wholesale distribution and retail sales of cannabis is now controlled and licensed by the Department of Cannabis Control.

With the approval of Proposition 64, state licenses for adult-use cannabis businesses started to be issued in January 2018. Under Proposition 64, local jurisdictions may regulate, but cannot ban, personal cultivation of up to six (6) 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.

Presently, San Bruno Municipal Code Chapter 6.58 prohibits all medical marijuana distribution facilities throughout the city. Collective or cooperative cultivation of medical marijuana is also prohibited. When it was adopted in 2011, this ordinance did not apply to any of the adult-use, personal, or commercial cannabis activities that Proposition 64 later authorized cities to permit.

In November 2018, the City Council adopted an ordinance, codified as Chapter 6.59 of the Municipal Code, regulating indoor cultivation of cannabis in residences for personal use and only to the extent allowed by state law, and prohibiting the manufacture, processing, laboratory testing, labeling, storing, wholesale and retail sale and distribution of adult-use cannabis throughout the city.

In November 2020, following City Council action to place a measure on the ballot, San Bruno voters approved a cannabis business tax measure which imposes up to a 10% tax on the gross receipts generated by any cannabis business activity that may be ultimately allowed to operate in the city.

Cannabis Uses in Nearby Cities

Eleven cities (San Bruno, Burlingame, Millbrae, Colma, Hillsborough, Foster City, Menlo Park, Atherton, Belmont, East Palo Alto and Woodside) continue to prohibit any commercial cannabis activities, and therefore do not receive revenue from such activities.

Eight cities (San Mateo, Redwood City, Daly City, San Carlos, South San Francisco, Half Moon

Bay, Brisbane, and Pacifica) and the County of San Mateo have adopted cannabis ballot measures to tax and/or regulate specific commercial activities in their respective cities. The tax rates adopted by the voters in these jurisdictions range from 3% to 6%. Within the cities that permit commercial cannabis uses, licenses have been obtained for cannabis retailers, distribution services, indoor cultivation and laboratory testing. Licensing of commercial cannabis in San Mateo County jurisdictions has been primarily for cultivation/nurseries. A summary of local jurisdiction commercial cannabis regulations is attached to this staff report, Attachment 4. In addition, a listing of Bay Area local tax rates can be found in Attachment 5.

Planning Commission Review and Recommendation

The zoning code amendments were considered by the San Bruno Planning Commission on July 19, 2022 and August 16, 2022 at duly noticed public hearings. At the conclusion of the August 16, 2022 public hearing, the Planning Commission adopted Resolution No. 2022-10 by a 4-2-0 vote recommending that the City Council adopt the zoning code amendments allowing for establishment of commercial cannabis storefront sales and a cannabis distribution facility as conditionally permitted uses in certain zones in the City. See Planning Commission Resolution, Attachment 6. The Planning Commission recommended that the City Council consider expanding the locations where retail cannabis businesses could be conditionally permitted uses to include the Bayhill Shopping Center and Towne Center properties. The ordinance has not been updated to reflect this suggestion, as the City Council previously provided direction to staff on the appropriate locations focused primarily in the downtown core and along transportation corridors. The Planning Commission also discussed the list of potential security measures and expressed concerns with the use of “mosquito” devices emitting sound as a theft and loitering deterrent in pedestrian heavy areas such as the downtown where it may be a nuisance. Since the “mosquito” device is one of many options for security included in Section 12.300.100(A)(17) of the draft ordinance, it would only be used in locations where the Police Department deems it appropriate. Therefore, staff does not recommend modifying the ordinance to eliminate this as an option.

DISCUSSION:

Required Code Amendments to Enact a Commercial Cannabis Program

To enact changes to allow for cannabis retailers and a commercial distribution facility, the following amendments are required to the Municipal Code:

Land Use and Zoning: A new Chapter (12.300) would be added to the Zoning provisions of Municipal Code providing for cannabis uses in specified area with a Conditional Use Permit.

Remove Existing Prohibitions: San Bruno Municipal Code Chapter 6.58 currently prohibits all medical marijuana distribution facilities throughout the city. Collective or cooperative cultivation of medical marijuana is also prohibited. This section of the Municipal Code is proposed to be repealed if the City Council approves cannabis sales and distribution.

Commercial Cannabis Activities: San Bruno Municipal Chapter 6.59 currently prohibits various cannabis business activities. Amendments are proposed in the ordinance that would continue to prohibit cultivation, manufacturing, processing, testing and wholesale activities but allow for storefront sales and distribution within the limitations spelled out in the zoning.

Commercial Cannabis Operator’s Permit (CCOP): Amendments are proposed in the ordinance to permit retail and distribution activities, Chapter 4.70 is proposed to be added to the

Municipal Code to define the Operator's Permit process. The draft application procedures and guidelines for the commercial cannabis operators permit provided as Attachment 3, to be adopted at a future meeting if the enabling ordinances are introduced.

Proposed Commercial Cannabis Program

The City's cannabis program would do the following:

- Maintain provisions for personal cultivation/use of up to six plants (as currently provided for in the Code).
- Allow for up to three Cannabis Retailers (previously termed "dispensaries") in selected areas of the city – see location discussion, below. Cannabis retailers would allow for general retail storefront sales of cannabis or cannabis products, packaging and labeling of cannabis for sale, and could also include delivery services to residences or end-users. Cannabis retailers would be allowed subject to obtaining approval of a Commercial Cannabis Operators Permit as well as a Conditional Use Permit. Cannabis retailers would be required to comply with security and transportation requirements.
- Allow for one Cannabis Distribution Facility (commercial cannabis distribution) in selected areas of the city – see location discussion, below. Cannabis distribution facilities would provide for storage and distribution of commercial cannabis products to licensed commercial cannabis operators, though no retail sales would be allowed from the site. These uses would be allowed subject to obtaining approval of a Commercial Cannabis Operators Permit as well as a Conditional Use Permit. Any distribution service would be required to comply with security and transportation requirements.

There would be no other types of commercial cannabis operations permitted; all of these uses are currently and would continue to be prohibited by the city:

- No commercial cannabis cultivation. This use involves the commercial planting, growing, harvesting, drying, grading and trimming of cannabis, and can occur indoors or outdoors, including in a nursery setting.
- No commercial cannabis manufacturing, including CBD (cannabidiol) extract derived from cannabis. This use involves subjecting cannabis to a process which concentrates cannabis into an edible or topical product.
- No commercial cannabis testing/laboratories. This use involves state-mandated testing of cannabis products in a state-licensed laboratory setting prior to distribution and sale.
- No cannabis microbusinesses. This is a business involved in at least three types of commercial cannabis activities, including retail sale, cultivation, distribution and/or manufacturing.
- No temporary cannabis events. This is an event where cannabis may be consumed over a short period of time and at a temporary event location.
- No "cannabis cafes" for onsite consumption of cannabis products.

Qualifying Locations for Commercial Cannabis Uses

Staff evaluated several areas that could adequately support retail commercial cannabis activities, which was discussed by City Council at the Study Session. Considerations for the appropriateness of these locations included: adequate vehicular, bicycle, and pedestrian access; underlying zoning (commercial or mixed-use zoning); and nearby sensitive land uses.

The primary areas for potential commercial cannabis uses focused on the downtown and major transportation corridors (portions of El Camino Real and San Bruno Avenue, as well as San Mateo Avenue). In these targeted areas, consisting of C-B-D, MXR, TOD1, TOD2 and P-D zones within the Transit Corridors Plan (TCP) area, there is mainly a mix of commercial and office uses. Cannabis retailers would also be conditionally permitted at The Shops at Tanforan. Additionally, commercial cannabis distribution facilities would be considered an appropriate land use in the M-1 (Industrial) Zone north of San Bruno Avenue. See Attachment 7 for the Commercial Cannabis Qualifying Zones Map.

Consideration of Sensitive Uses Near Commercial Cannabis Operations

State cannabis law (Business and Professions Code) identifies several categories of land uses that are considered sensitive uses when in proximity to commercial cannabis activities:

- Youth Centers (defined as any public or private facility that is primarily used to host recreational or social activities for minors).
- Daycare Centers (defined as a childcare center, other than home-based day care operations, and includes licensed childcare centers).
- Schools (defined as K-12 public or private schools).

State law identifies a standard 600-foot separation, or mandatory buffer distance, between a proposed commercial cannabis use and a youth center, daycare center and school. However, this 600-foot separation can be modified by local ordinance, making the required separation distance greater or less than 600 feet.

Additionally, by local regulation, other uses can be included in the list of sensitive uses. Staff recommends that city neighborhood or community parks also be included as a sensitive use when considering potential locations for commercial cannabis uses. These larger park sites can be a potential area of outdoor congregation of people in an unregulated public setting that may also include substantial numbers of children at any given time. See Attachment 8 for the Commercial Cannabis Sensitive Uses Map. This map shows existing sensitive uses (schools and parks) overlaid on the potential commercial cannabis area map provided in Attachment 7 and depicts a 600-foot buffer around these sensitive use property boundaries.

Commercial Cannabis Regulations and Application Review Process

Commercial Cannabis Operations for cannabis retailers or cannabis distribution facilities will require both a Commercial Cannabis Operators Permit (CCOP) and a Conditional Use Permit (CUP). Jurisdictions that permit commercial cannabis uses frequently utilize similar processes. These permits are appropriate for commercial cannabis activities as the cannabis industry is highly regulated, and as the nature of commercial cannabis uses has the potential to raise concerns as to safety, operational details, and with respect to land use compatibility. CUPs for site specific locations are appropriate and would require public noticing, public hearings, and review and action by the Planning Commission. This action of the Commission is final, unless appealed to the City Council by applicants or the public.

The first step in the process would be for a prospective commercial cannabis operator to file a CCOP. The process would have an application filing timeline during which CCOP applications

can be filed with the city. While only up to three cannabis retailer locations and one distribution facility may ultimately be approved, the city could receive and process more than four applications.

The CCOP application would require the cannabis business to identify the owners and managers of the business, require the business submit certain information pertaining to the business including financial information, and require the owners and managers to submit to background checks. These applications would be reviewed by a team of staff from different City Departments and Divisions, including Planning, Building, Public Works Engineering, Fire, and Police. The applications would be assigned a “Pass” or “Fail” status by the team based on review criteria to be established by the city, which may include such factors as a proposed business plan, community benefits, neighborhood compatibility, safety and hazardous materials plan, security plan and odor control plan.

Those CCOP applications achieving a “pass” rating would be cleared to proceed to the second step, consisting of City Council review and selection of up to three retail businesses and up to one distribution business.

Those businesses approved by the City Council would then proceed to the third step, formally filing a Conditional Use Permit (CUP) application for a specific location. CUP applications would be reviewed by staff and presented to the Planning Commission for consideration at a noticed public hearing. With CUP approval, the third and final step would be for staff to formally issue the CCOP to those applicants who have obtained their CUP approvals.

Additionally, State licenses would also be required for all commercial cannabis operations. There are many types of licenses, though the most likely licenses applicable to San Bruno cannabis businesses would be for Type 10A (Retailer) and Type 11 (Distributor). Licenses are issued by the state for a period of one year, and can be renewed annually. Type A licenses prohibit sales of commercial cannabis products to persons under the age of 21 and do not allow persons under 21 to be on licensed premises.

The following table summarizes key proposed commercial cannabis land use regulations proposed in the Zoning Code:

| | Cannabis Retailers (Storefront Dispensaries) | Cannabis Distribution Facilities |
|--|--|--|
| <i>Qualifying Locations, by Zoning District</i> | In TCP areas in C-B-D, MXR, TOD1, TOD2 and P-D Zones | In M-1 Zone north of San Bruno Avenue |
| <i>Operators Permit and CUP Required</i> | Yes | Yes |
| <i>State License Required</i> | Yes | Yes |
| <i>Age Restrictions (21 or older)</i> | Yes | Yes |
| <i>Separations Required</i> | 600 feet from: Youth Centers, K-12 Schools and Day Care operations; parks (excepting pocket parks) | 600 feet from: Youth Centers, K-12 Schools and Day Care operations; parks (excepting pocket parks) |
| <i>Suggested Maximum Number of Cannabis Uses</i> | Up to 3 cannabis retailers (and/or cannabis distribution facilities) | Up to 1 cannabis distribution facilities |
| <i>Operational Criteria:</i> | | |
| <i>Hours of operation</i> | Per CUP conditions | Per CUP conditions |

| | | |
|---|------------------------|------------------------|
| <i>Employee training</i> | Required with CUP | Required with CUP |
| <i>Odor control plan</i> | Required with CUP | Required with CUP |
| <i>Security plan</i> | Required with CUP | Required with CUP |
| <i>Security systems</i> | Required with CUP | Required with CUP |
| <i>Parking and loading</i> | As required by CUP | As required by CUP |
| <i>Hazardous materials plan</i> | N/A | Required with CUP |
| <i>Storage of product and disposal of unused cannabis</i> | Limited with CUP | Limited with CUP |
| <i>Signage</i> | Per City Sign Code | No outside signs |
| <i>On-site consumption</i> | Not allowed | Not allowed |
| <i>Delivery/transport plans and/or routes</i> | Plan required with CUP | Plan required with CUP |
| <i>GIS for delivery vehicles</i> | N/A | Required |
| <i>Insurance</i> | Required | Required |

Security Provisions for Commercial Cannabis Operations

A commercial cannabis operation will be required to implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing cannabis or cannabis products and to deter and prevent the theft of cannabis or cannabis products at the commercial cannabis operation. The specific security measures are required to be identified in the operations plan, which is subject to review and approval by the City, including the Police Department. Compliance with the operations plan will be always required during operation as a condition of approval of the CUP. Security provision requirements are included in the Zoning Code Section 12.300.100 "Security" (see ordinance, Attachment 1).

Application Fees and Taxes

Application and Renewal Fees

If the City Council approves the introduction of the ordinances, staff would return to the City Council with processing fees using a deposit-based system, similar to most Planning Division applications. Staff will provide comparisons with other jurisdictions when presenting this information.

Taxes for Commercial Cannabis Operations

In November 2020, San Bruno voters approved a ballot measure imposing up to a 10% tax on the gross revenues of any commercial cannabis activity that the city ultimately allows. The tax will apply in addition to the general business license tax imposed by the city. The City Council can adopt a lower tax rate without requiring voter approval. An increase above 10 percent would require voter approval. The text of the adopted ordinance is as follows:

"This Ordinance may be amended by the City Council in any respect without a vote of the people. Specifically, the City Council may reduce the rate of the tax set forth herein, may create exemptions to the tax, and may create special procedures for the collection of the tax (including, but not limited to, requiring that the tax be paid in advance or that the tax be payable as often as monthly). The City Council may, without a vote of the people, adjust the rate of the tax so long as no cannabis business is subject to a cannabis business tax that is higher than a maximum rate of 10% of Gross Receipts. However, as required by the California Constitution, the City

Council may not raise the rate of the tax above that maximum rate unless such increase is approved by the voters."

In 2020, when evaluating the potential to place this ballot measure before San Bruno voters, the City Council was advised by cannabis consultant HdL that there are a variety of barriers to entry in locations where no cannabis businesses already exist including: 1) the permitting fees established by local cost recovery ordinances, 2) the lack of authorized banking services in the state, 3) the continued existence of a robust underground business that is not taxed, and 4) the reticence of both foreign and US investors and property owners to invest in a business whose product is still illegal to possess under federal law. Staff reviewed local municipality cannabis projected annual revenues (and obtained actual revenue figures, where available) where commercial cannabis activities are permitted, and found that they range from less than \$100,000 (in South San Francisco, which has two licensed commercial cannabis operations), +\$200,000 (in Redwood City, with four licensed operations), to a 2021 annual program income of \$572,000 (in Pacifica, which has five licensed operations, including "legacy" operations which preceded recent state enabling cannabis law).

Retail cannabis sales include a state excise tax (15% tax to purchaser), sales tax for non-medicinal products (7.25-10.25%) and may include an additional local tax. Due to the high tax burden on the cannabis industry, local jurisdictions should consider the implications of setting high local taxes on cannabis sales. While it is desirable to have a high tax rate to generate local revenue, taxes that are too high may serve as a deterrent to businesses wishing to locate in a particular jurisdiction. As a result, businesses may choose to locate in adjacent jurisdictions with a lower local tax rate. As shown in Attachment 5, local tax rates vary for nearby jurisdictions, ranging from 3% (Brisbane) to 6% (Pacifica and Half Moon Bay) on retail sales, while approved local tax rates in California range from 2 to 20%. Staff is recommending the tax rate be set at 5%, which is slightly lower than Pacifica and Half Moon Bay, but above the local average of 3.7% for retail operations and 2.2% for distribution operations.

NEXT STEPS

If the City Council approves the introduction of the ordinances, the second reading and adoption would be scheduled as a consent calendar item at the next regular City Council meeting. If adopted, the ordinance would go into effect 30 days after adoption. The Council would be presented with resolutions setting application fees and approving the Application Procedures and Guidelines for the Commercial Cannabis Operators Permit.

FISCAL IMPACT:

There is no fiscal impact from the introduction of the ordinances. There would be an undetermined net positive fiscal impact if new commercial cannabis businesses locate in the city.

ENVIRONMENTAL IMPACT:

The introduction of the ordinances do not have the potential for creation of a significant environmental impact pursuant to the California Environmental Quality Act (CEQA), and as such are exempt from further environmental consideration per CEQA Guidelines Section 15061(b)(3).

RECOMMENDATION: Hold Public Hearing and Introduce, Read by Title Only, and Waive Further Reading of the Following Ordinances of the City of San Bruno:

- An Ordinance of the City of San Bruno Amending Article III (Zoning) of Title 12 (Land Use) of

the Municipal Code by Adding Chapter 12.300 to Authorize Commercial Cannabis Retailers (Storefront Sales) in the Transit Corridors Plan Area CBD, MX-R, TOD-1, TOD-2, and PD Zones and in the PD Zones for the Shops at Tanforan, and Cannabis Distribution Facilities in the M-1 Zone, and Making a Finding of Exemption Under CEQA

- An Ordinance of the City of San Bruno Amending Title 3 (Revenue and Finance) of the Municipal Code to Lower the Tax Imposed on Cannabis Businesses, Amending Title 4 (Licenses and Regulations) to Add a New Chapter Pertaining to Commercial Cannabis Operators Permits, and Amending Title 6 (Public Peace, Morals and Welfare) to Eliminate the Prohibition on Commercial Cannabis Activity in the City, and Making a Finding of Exemption Under CEQA

ALTERNATIVES:

1. Decline to introduce the ordinances; or
2. Provide additional direction to staff regarding the provisions of the ordinances.

ATTACHMENTS:

1. Ordinance Amending Chapter 12.300
2. Ordinance with Municipal Code Amendments
3. Draft Application Procedures and Guidelines for the Commercial Cannabis Operators Permit
4. San Mateo County Comparison of Cannabis Regulations
5. Jurisdictional Comparison of Local Cannabis Business Tax Rates
6. Planning Commission Resolution No. 2022-10 Recommending Approval to City Council
7. Commercial Cannabis Qualifying Zones Map
8. Commercial Cannabis Sensitive Uses Map