



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: October 11, 2022

TO: Honorable Mayor and Members of the City Council

FROM: Jovan D. Grogan, City Manager

PREPARED BY: Darcy Smith, Assistant City Manager

SUBJECT: Waive Second Reading and Adopt 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:

On September 27, 2022 at a duly noticed Public Hearing, the City Council waived the first reading and introduced two Ordinances. The first Ordinance would amend the City Zoning Code to add a new chapter to permit and regulate commercial cannabis retailers (storefront sales) and commercial cannabis distribution facilities. The second Ordinance would include various Municipal Code Amendments, including primarily amendments to Title 3 (Revenue and Finance) to lower the cannabis business tax to 5%, amendments to 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 business activity in the City. During the September 27, 2022 Public Hearing, the City Council directed staff to modify the Ordinances to add public library as a “sensitive use.” Commercial cannabis operations are not permitted to be established or located within 600 feet of sensitive uses. After the meeting, staff modified the Ordinances to include a definition of a public library, and both Ordinances add public libraries to the list of sensitive uses. The modified Ordinances are presented in Attachment 1 and Attachment 2.

DISCUSSION:

The purpose of this consent item is to serve as a second reading and action for adoption of the two Ordinances.

Overview of Required Municipal 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.

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.

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).
- Public Library (defined as a building or room operated by a government entity containing collections of books, periodicals, and sometimes films and recorded music for people to read, borrow, or refer to. A public library may also provide digital or computer resources).

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. On September 27, 2022 as part of the City Council motion to vote to introduce the Ordinances, the City Council directed staff to add Public Library to the list of sensitive uses.

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. The Planning Commission shall be the recommending body with the City Council being the final approving authority on which commercial cannabis operations obtain a CUP. 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 approval.

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.

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 Attachment 1).

Taxes

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. Local cannabis business 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 more widely, from 2 to 20%. The Ordinance introduced by the City Council on September 27, 2022 includes a 5% tax rate on both retail and distribution facilities.

FISCAL IMPACT:

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

ENVIRONMENTAL IMPACT:

The adoption 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:

Waive Second Reading and Adopt the Following Ordinances of the City of San Bruno:

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ALTERNATIVES:

Direct staff to make modifications to one or both of the Ordinances; substantive modifications will require re-introduction at a subsequent meeting.

ATTACHMENTS:

1. Ordinance Amending Chapter 12.300
2. Ordinance With Municipal Code Amendments