



**CITY OF PACIFICA
CITY COUNCIL AGENDA**

**Council Chambers
2212 Beach Blvd
Pacifica, CA 94044**

Mayor Mike O'Neill
Mayor Pro Tem John Keener
Councilmember Sue Digre
Councilmember Sue Vaterlaus
Councilmember Deirdre Martin

**SPECIAL MEETING
JOINT CITY COUNCIL AND PLANNING COMMISSION STUDY SESSION**

**March 06, 2017 (MONDAY)
www.cityofpacifica.org**

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PLEASE SILENCE CELL PHONES DURING MEETING

6:30 PM OPEN SESSION

1. Call to Order
2. Presentation by Staff on Marijuana Business Legislation and City Hall Listens Survey Results
 - a. City Council and Planning Commission Joint Study Session on Marijuana Businesses
PROPOSED ACTION: Accept the Marijuana Joint Study Session Staff report and provide direction to staff regarding marijuana businesses in Pacifica.
3. Council and Commission Questions and Discussion
4. Public Comments
5. Final Council and Commission Comments

ADJOURN

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printed in a larger font or taped, advance notice is necessary. All meeting rooms are accessible to the disabled.

The Pacifica Municipal Code is available on line at the City's website (www.cityofpacifica.org/municode);

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HOW TO REACH YOUR GOVERNMENT OFFICIALS

- Governor Jerry Brown, State Capitol Building, Sacramento CA 95814 (916) 445-2841
- State Senator Jerry Hill, 1528 So. El Camino Real, Suite 303, San Mateo CA 94402 (650) 212-3313
- Assembly Member Kevin Mullin, 1528 South El Camino Real, Suite 302 San Mateo, CA 94402 (650) 349-2200
- Congresswoman Jackie Speier, 155 Bovet Road, Suite 780, San Mateo CA 94402 (650) 342-0300
- Senator Kamala Harris, 1700 Montgomery Street, Suite 240, San Francisco CA 94111 (415) 403-0100
- Senator Dianne Feinstein, #1 Post Street, Suite 2450, San Francisco CA 94104 (415) 393-0710
- President Donald J. Trump, 1600 Pennsylvania Ave. NW, Washington DC 20500

CITY COUNCIL

- Mayor Mike O'Neill, o'neillm@ci.pacificaca.us
- Mayor pro Tem, John Keener, keener@ci.pacificaca.us
- Councilmember Sue Digre, digres@ci.pacificaca.us
- Councilmember Sue Vaterlaus, vaterlauss@ci.pacificaca.us
- Councilmember Deirdre Martin, martind@ci.pacificaca.us



**CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT**

3/6/2017

SUBJECT:

City Council and Planning Commission Joint Study Session on Marijuana Businesses

RECOMMENDED ACTION:

Accept the Marijuana Joint Study Session Staff report and provide direction to staff regarding marijuana businesses in Pacifica.

STAFF CONTACT:

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BACKGROUND/DISCUSSION:

On January 23, 2017, staff presented a report to City Council regarding the Medical Marijuana Regulation and Safety Act (MMRSA) which was adopted by California legislators in 2015, and the Adult Use of Marijuana Act (AUMA/Proposition 64), which was approved by voters in 2016. Both MMRSA and AUMA put into place a dual licensing system that provides for state and local licensing of marijuana businesses. Further, local jurisdictions are allowed to place reasonable regulations on marijuana business, or prohibit them entirely. Staff sought direction from Council regarding the types of marijuana businesses they wished to consider to allow to operate in Pacifica, and potential regulation regarding the outdoor growing of marijuana on private property.

Since the City Council meeting of January 23, 2017, staff has researched Council's questions and in some cases has presented preliminary recommendations for Council and Planning Commission input. The key topics and follow-up discussion are outlined below. The goal of this study session is for staff to receive additional feedback and to begin drafting an ordinance.

Public Outreach

After this study session, the public process will include at minimum 1) early public release of a draft ordinance for comment; 2) Planning Commission hearings on the draft zoning components of the ordinance and recommendation to Council (at least two to three public meetings are anticipated); and 3) first reading and adoption of the ordinance by Council.

Staff also initiated a community survey via City Hall Listens. The results of the survey will be presented at the March 6th study session.

Marijuana Dispensaries (Storefront Businesses)

Staff believes there is a desire to permit medical marijuana storefront businesses subject to certain locational restrictions and licensing requirements. Because of the limited functional differences between medical and non-medical marijuana dispensaries, staff recommends applying consistent zoning regulations to both with the option to sell medical or non-medical marijuana at the discretion of the business owner (e.g. a business may self-select to be a medical only dispensary). Other regulatory requirements will also be identical to the extent allowed by law (e.g. medical purchases with State issued card have some taxing restrictions). The primary operational differences between medical and non-medical marijuana dispensaries are that medical marijuana dispensaries may only sell marijuana to persons possessing a physician's prescription for marijuana or a person possessing a state-issued marijuana identification card; and, that medical marijuana sales to persons possessing state-issued marijuana identification cards are exempt from state and local sales tax.

Staff recommends a two-pronged approach to regulating marijuana dispensaries: land use regulations and licensing regulations. Each method of regulation has strengths and limitations as briefly discussed in this report.

Land Use Regulations

Staff recommends the implementation of land use regulations through issuance of a use permit. A use permit is a discretionary permit usually granted by the Planning Commission and subject to appeal to the City Council. The use permit review process allows consideration of compliance with detailed zoning standards as well as location-specific factors that affect public health, safety, and welfare. A condition of approval for each marijuana business use permit would be to obtain and keep in good standing a license to operate the marijuana business with the Police Department.

There are several land use considerations that will need to be addressed in an ordinance regulating dispensaries, some of these considerations could also be addressed in the licensing provisions. Staff is requesting direction on the following:

- a. State law requires a 600 foot buffer from K-12 schools, daycare and youth centers. Are there other sensitive use types appropriate for Pacifica?

Once staff receives direction on this question we will conduct a detailed analysis and make a recommendation regarding land use locational criteria tools such as buffers or overlay zones. Consideration will be given to ensuring that there are reasonably enough possible commercial location options in the City.

- b. Feedback on hours of operation.

- c. Staff is recommending that on-site consumption be prohibited. This would eliminate the possibility of Microbusiness - State License Type 12 from operating in Pacifica. State License Type 12 allows smoking or ingesting on-site.
- d. Feedback on combining a dispensary with other uses. Staff is recommending that dispensaries not be combined with other uses at this time. State law already prohibits dispensing in conjunction with a use that requires an ABC license or tobacco sales.
- e. Require that dispensaries provide full ADA accessibility upgrades to the tenant space. Currently, upgrades are dependent on the type and extent of required tenant improvements.

Licensing Regulations

Staff recommends a robust, transparent City licensing system to compliment both the State's licensing requirements and the City's land use regulations. Licensing regulations will require marijuana business owners to obtain a license from the Police Department, subject to the approval of the Chief of Police. To avoid certain unintended consequences, staff recommends making any licenses issued to marijuana businesses non-transferrable and subject to surrender to the City upon cessation of business operations for a defined period of time. Business owners and employees would be subject to background checks, including a criminal history check via Live Scan fingerprinting to ensure persons with certain criminal convictions are not licensed to own or work in a marijuana business in Pacifica. Licenses would be required to be renewed each year and would be revocable by the Police Department in the event of violations of the marijuana ordinance.

Given the likelihood that numerous operators will seek to open marijuana businesses in Pacifica, staff recommends a two-part licensing system to determine which operators will be granted licenses. Staff recommends the first step to comprise a merit-based application review whereby operators would be screened for satisfaction of minimum standards. Minimum standards would include, but not limited to, satisfactory criminal background and preparation of a business plan. Standards could be expanded to also include, among other items, consideration of whether the operator has operated marijuana businesses or other businesses in a lawful manner in other jurisdictions, whether the business has a relationship with a bank that will accept its deposits, whether the business has adequate financial resources to start-up and comply with all regulations, and whether the business plan appears adequate for successful operation. Applications would be scored based on these various attributes and those receiving a qualifying score would continue to the next stage - a lottery. The lottery process would rely on a random drawing to determine which candidates would be granted a City license to operate a marijuana business. The number of licenses available for drawing in the lottery would be determined by other criteria which limit the total number of marijuana dispensaries in Pacifica.

Number of Dispensaries / Location

Staff recommends no more than three marijuana dispensaries be allowed to operate in Pacifica.

Information received from consultants shows an average of one marijuana dispensary per 18,000 residents is a common ratio for municipalities. If more than three dispensaries are permitted to operate, concerns regarding over saturation and regulatory considerations (staff time required to regulate) begin to emerge.

Staff recommends marijuana dispensaries to be spread out over three defined areas of the city. As a simplified example, no more than one dispensary would be allowed to operate in to be defined areas of Northern Pacifica, Central Pacifica and Southern Pacifica. Spreading these businesses out allows for more convenient access to the product for customers and medical patients as well as avoiding over-saturation of one small area of the city with this type of business.

Existing Dispensaries

Staff has confirmed at least three unpermitted marijuana businesses operating in the city in violation of the Pacifica Municipal Code. Two are located on Palmetto Avenue in West Sharp Park and one is located in Rockaway Beach. Staff has identified a potential fourth marijuana business, also located on Palmetto Avenue in West Sharp Park, although its operator has refused access to City staff investigating the nature of its operations.

There are no simple solutions to resolve the issue of existing, unpermitted marijuana businesses. It is possible the City Council may adopt locational standards for marijuana businesses that make continued operation of one or more existing dispensaries infeasible. Until such time as the impact of any Council-adopted standards is known, staff recommends allowing the existing, unpermitted marijuana businesses to apply for licenses to operate as may any other prospective operator.

In the event one of the existing, unpermitted operators is granted a license, it would then be necessary for the City to consider the proposed operating location in light of any adopted locational restrictions. Should an existing location be unsuitable for marijuana business operations based on the City's standards, the operator could choose to relocate its marijuana business to a suitable location, or else choose to cease operations. Any existing, unpermitted marijuana business that is not granted a license to operate would be required to cease operations or else be subject to code enforcement or other enforcement activity.

Taxation

Staff recommends placing a measure on the ballot to impose a local excise tax on both medical and non-medical marijuana sales. The measure would be drafted as follows: In the event the excise tax measure fails, sales of non-medical marijuana would be prohibited in the City, but sales of medical marijuana would be permitted pursuant to the marijuana ordinance. If the excise tax measure passed, sales of both medical and non-medical marijuana would be permitted pursuant to the marijuana ordinance.

Staff recommends the excise tax be a general tax requiring a majority (rather than 2/3) vote for passage.

Staff believes it is the will of the Council to allow medical marijuana patients to purchase their medicine in Pacifica, and would likely wish these sales to continue even if an excise tax measure failed. However, given that non-medical marijuana sales in other states where legalization has occurred has been robust, staff recommends that the City position itself to benefit financially from the addition of non-medical marijuana sales in Pacifica.

It is important to note that, whatever the outcome of a tax measure, the City Council would still retain authority without a vote of the people to impose fees directly related to administration of a marijuana dispensary licensing program to offset staff costs.

If the Council desires to place an excise tax measure on the ballot in 2017, a special election could occur on November 7, 2017. The deadline to file with San Mateo County for this election date is August 10, 2017.

Delivery Services

Staff believes there is a desire to allow marijuana delivery services to operate in Pacifica. Staff recommends requiring any delivery operation to be affiliated with and located on the same property as a marijuana dispensary. This vertical integration keeps delivery service regulation manageable for staff because the operator would be located within the territory subject to City jurisdiction. The City Council would not have authority to regulate marijuana deliveries passing through the city on public roadways to destinations outside Pacifica.

Cultivation

The Council desired additional information before providing direction on this topic. Cultivation for purposes of this report is broken down into two categories: commercial and personal.

Personal Cultivation

Under Proposition 64, private persons may cultivate up to six marijuana plants in their residences or accessory structures. Municipalities may not prohibit cultivation of six or fewer plants inside a residence, but may impose reasonable regulations regarding indoor personal cultivation and may prohibit outdoor cultivation.

Staff recommends development of reasonable regulations regarding indoor personal cultivation to protect public safety. Unsafe practices regarding the use of pesticides, chemicals and improper electrical wiring could pose a danger to occupants of a residence, including children. Staff believes reasonable regulations would allow people to grow their authorized number of marijuana plants while maintaining the safety of the dwelling and occupants.

Staff recommends outdoor personal cultivation of marijuana plants be prohibited. Openly growing marijuana plants is an inviting target for theft, and leaves plants within reach of children. The intention of Proposition 64 is to allow adults to lawfully possess and consume marijuana. Allowing plants to be grown in the open and unsecure will undoubtedly result in cases of theft by juveniles, creating a public safety problem.

Commercial Cultivation

Staff does not recommend permitting outdoor commercial marijuana cultivation due to the amount of water required, due to the potential environmental impacts from use of pesticides and other chemicals, and, due to the lack of expertise in agricultural regulation enforcement among City staff. Moreover, staff believes there are security concerns caused by marijuana plants grown openly where they are subject to theft. Illegal marijuana grows, which are usually hidden, are often protected by armed criminals to prevent theft. Concerns of theft and the ability to secure such a crop are also prevalent with a legal marijuana grow, which would not be hidden.

Indoor commercial marijuana growing facilities also present similar security issues. Although located in secure buildings or greenhouses, the sheer concentration of large quantities of marijuana in one location makes them also subject to theft and unusual security measures to protect them.

If staff receives direction to prohibit cultivation, the ordinance prepared by staff will also include amendments to the Agricultural zone (A) and other districts, as appropriate.

Other Marijuana Businesses

Manufacturing/Production Facilities

Staff recommends prohibiting marijuana manufacturing/production facilities. Staff's primary basis for this recommendation is public safety. Marijuana manufacturing/production facilities often use volatile compounds which present fire and explosion hazards. Moreover, the nature of Pacifica's existing "light industrial" areas where these types of facilities would most likely be located would make operation of these facilities especially hazardous. Many areas zoned C-3 (Service Commercial), the City's light industrial zoning classification, are located in close proximity to residential land uses and/or are located on narrow parcels where a fire or explosion would adversely affect adjacent properties. For these reasons, staff recommends prohibiting marijuana manufacturing/production facilities at this time.

Testing Facilities

Staff recommends permitting marijuana testing facilities subject to certain location requirements. Proposition 64 requires testing of all marijuana products prior to sale in order to quantify their potency and to screen for other safety factors. Testing facilities may not possess any other license type, which means they will not be permitted under State law to dispense or cultivate marijuana. Staff believes the testing facility use would be most similar to a laboratory or pharmacy compounding use, which could be appropriate in certain locations.

Law Enforcement Concerns

The different aspects of marijuana business (dispensaries, deliveries, and cultivation), have created law enforcement concerns. As with any type of drug where the user may experience a "high," there is a black market for the product. Those who operate in the black market will often

obtain their product illegally, which include committing robberies or burglaries at lawfully operating marijuana businesses. Local pharmacies, dispensing drugs other than marijuana that are known to produce a “high” or other desired physiological effect have been target for robbery and burglary.

In addition to the security and public safety concerns presented by criminals who target lawful marijuana businesses for their product, the fact that these businesses operate as primarily cash-only businesses creates the concern that they will be target for robbery.

The law enforcement concerns addressed here are not designed to persuade Council to disallow these businesses in Pacifica, but to provide the recommendation that marijuana business be properly regulated and the number of businesses kept at a number that can be adequately serviced by the Police Department while keeping the community safe.

The Chief of Police will recommend in any ordinance regulating marijuana businesses in Pacifica that businesses have features such as alarm systems, security cameras, defined levels of interior and exterior lighting and commercial grade-non-residential locks on exterior doors.

It is the intention of the Chief of Police to work closely with marijuana business owners and employees to assure the safety of both employees and customers.

Response to Council Questions

At the January 23, 2017 Council meeting, Council raised two questions for staff to answer:

- 1) How will the City manage cash payments from marijuana businesses?
 - Staff is still researching this issue. Questions remain regarding banking and the City’s need to deposit cash into a federal banking institution.
 - Staff is researching the potential of requiring large cash payments to the City to be delivered by armored vehicle in conjunction with the service of accounting for cash payments, alleviating the need for staff to handle cash contaminated with residue from marijuana products.

- 2) May the City impose testing requirements on marijuana products, including edible marijuana products?
 - Staff believes this is being adequately addressed at the State level. State law mandates that various state agencies set up rules and systems for quality assurance testing standards, robust labeling and packaging, and safe product handling of marijuana products.

Council and Commission Direction

In order to draft an ordinance for consideration, staff requests direction on the following:

1. Implementation of a merit based, lottery system for selecting the marijuana dispensaries that

may operate in Pacifica.

2. Implementation of a two-pronged process to regulating marijuana dispensaries: land use regulations and licensing regulations.

3. Land use provisions:

- a. State law requires a 600 foot buffer from K-12 schools, daycare and youth centers. Are there other sensitive use types appropriate for Pacifica?
- b. Feedback on hours of operation.
- c. Confirmation that on-site consumption be prohibited. This would eliminate the possibility of Microbusiness - State License Type 12 from operating in Pacifica. State License Type 12 allows smoking or ingesting on-site.
- d. Feedback on combining a dispensary with other uses. Staff is recommending that dispensaries not be combined with other uses at this time. State law already prohibits dispensing in conjunction with a use that requires an ABC license or tobacco sales.
- e. Confirmation that dispensaries provide full ADA accessibility upgrades to the tenant space. Currently, upgrades are dependent on the type and extent of required tenant improvements.

4. Confirmation that three dispensaries is appropriate for Pacifica.

5. Confirmation that dispensaries shall be spread out over defined areas of the city.

6. Is there a desire to place a local excise tax on the ballot in November, 2017 taxing medical and non-medical marijuana sales? If yes, and the ballot measure fails, is there a desire to prohibit medical marijuana dispensaries, non-medical dispensaries, or both?

7. Should there be vertical integration between marijuana dispensaries and marijuana delivery services (ie: Delivery services must originate from a licensed dispensary)?

8. Should outdoor personal cultivation of six or fewer marijuana plants be prohibited?

9. Should commercial cultivation of marijuana be prohibited in Pacifica?

10. Should manufacturing/production facilities be prohibited in Pacifica?

11. Should testing facilities be allowed to operate in Pacifica, subject to certain location requirements?

ALTERNATIVE ACTION:

Request further information/research from staff regarding marijuana businesses in Pacifica.

RELATION TO CITY COUNCIL GOALS AND WORK PLAN:

Fiscal Sustainability: The topic of marijuana businesses calls into question the staff time and resources that would be required to regulate these businesses, and how / if cost recovery could be achieved.

Healthy and Compassionate Community: Proponents of medical marijuana attest to the medical benefits of its use. It is common for those suffering from chronic pain or the effects of cancer to ingest marijuana to alleviate discomfort. Marijuana is reportedly used to treat a myriad of physical ailments.

FISCAL IMPACT:

Currently, the fiscal impact is limited to staff time required to conduct research and prepare staff reports.

Future fiscal impacts may be affected by revenue generated from local sales taxes from marijuana sales and local excise tax (if placed on ballot and passed), and staff time required to manage and regulate marijuana businesses.

ORIGINATED BY:

Police
Planning Department
City Attorney

ATTACHMENT LIST:

None (TXT)

None

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