



**TOWN OF LOS GATOS
COUNCIL POLICY COMMITTEE REPORT**

MEETING DATE: 04/27/2021

ITEM NO: 4

DATE: April 27, 2021
TO: Council Policy Committee
FROM: Robert Schultz, Town Attorney
SUBJECT: Commercial Cannabis Business Use Policy Framework Discussion

RECOMMENDATION:

Staff recommends that the Town Policy Committee receive and discuss an initial analysis and assessment of various aspects concerning potentially permitting commercial cannabis businesses within the Town of Gatos.

BACKGROUND:

Medical cannabis use has been legal in California since 1996. On November 9, 2016, adult recreational use of cannabis by persons age 21 or over became legal in California. In June 2017, California enacted the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), which consolidated the state regulatory and licensing framework for medical and recreational adult-use cannabis. The state agencies responsible for regulating commercial cannabis activity adopted regulations addressing commercial cannabis activity. These state regulations affect commercial cannabis activity and include a variety of licensing, operation, and business location requirements.

On January 1, 2018, the state began issuing state licenses allowing businesses to sell cannabis products for medical use to individuals who are at least 18 and have a valid physician's recommendation, and recreational adult use to adults 21 or over. With recent state law changes, cities and counties across California are exploring these new regulations and policy options concerning both medicinal and recreational cannabis. Legalized cannabis and related business activity are an entirely new area of the law and land use regulation for California communities to consider.

The possession of cannabis (medical and recreational) remains illegal under the Federal

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Reviewed by: Town Manager and Assistant Town Manager

BACKGROUND (continued):

Controlled Substances Act. Federal enforcement remains at the discretion of the executive branch and the current administration has not focused on such enforcement.

According to local governments' cannabis policy experts HdL Companies, two years ago there were 16,000 cannabis businesses nationally. In California, there are 661 storefront retail licenses in 120 jurisdictions that allow retail. HdL indicates the market demand in California is for 1,842 retail licenses.

The only other city in Santa Clara County that has, to this point, permitted commercial cannabis businesses is San Jose. The City of San Jose has a total of 16 cannabis retail facilities, approximately one per every 64,000 residents. Many other cities are currently studying whether to allow commercial cannabis businesses including Mountain View.

The Town of Los Gatos has maintained a moratorium or prohibition of cannabis dispensaries or any other cultivation, sales, exchanges, or distribution of cannabis within the Town's limits. However, in January 2021, the Town Council gave direction to staff to examine the potential of updating the Town's cannabis regulations to allow commercial cannabis businesses.

Over the next few months, the Town will be gathering information to help decide which types of cannabis-related businesses, if any, should be allowed in Los Gatos and, if allowed, where they would go and how they would operate. To obtain community input, the Town will be holding community workshops and conducting a survey. The goal of the workshops will be to gauge the community's interest and concerns associated with allowing commercial cannabis businesses to operate in the Town.

Overview of State Law

In 1996, California voters enacted the Compassionate Use Act, legalizing the medical use and possession of cannabis for qualified patients. In 2003, the California Legislature adopted the Medical Cannabis Program Act (MMPA), allowing for the cultivation and distribution of medical cannabis at collectives and dispensaries. In 2015, the state enacted the Medical Cannabis Regulation and Safety Act (now Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), which created a framework for state-level licensing and regulation for cultivation, manufacturing, distribution, transport, laboratory testing and dispensing of medical cannabis. The MAUCRSA legalized and currently regulates for-profit commercial medical cannabis businesses in the state.

In 2016, California voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Cannabis Act (AUMA). AUMA legalized recreational use (referred to as "adult use") of cannabis for adults 21 years of age or older. The Act created a new regulatory and licensing

BACKGROUND (continued):

framework for adult use commercial cannabis businesses. In 2017, the State legislature passed SB 94, which essentially merged the regulations and licensing requirements of the MAUCRSA and AUMA. According to the Santa Clara County Registrar of Voters, approximately X percent of Los Gatos voters and 58 percent of Santa Clara County voters cast ballots in favor of Proposition 64. 57 percent of California voters supported Proposition 64.

Cities still retain full regulatory authority over all commercial cannabis businesses (both medical and recreational adult use). Cities must allow indoor cultivation for personal use but can reasonably regulate it. Commercial indoor cultivation may still be banned. All cannabis businesses must have a State license.

Revenue Generation

HdL has been tracking sales tax gross receipts over a 14-year period. There is almost \$26 billion in revenue being put into the legal cannabis market. For 2018-2019, gross receipts were \$4,499,679,511 and local tax allocations of (1%) were \$44,996,795.

Effective January 1, 2018, a 15% State excise tax became imposed upon retail purchasers of all cannabis and cannabis products. On top of this tax rate, cannabis sales are subject to local sales tax. In addition to the excise and sales tax, local taxation is possible but would require the approval of Town of Los Gatos voters at a general election.

Estimating future tax revenues for commercial cannabis business activities is difficult but not impossible. It is important to understand and evaluate the complexities and changing cannabis industry environment when making revenue projections. Additionally, the Town's determination on the type, size, location and number of cannabis businesses will also impact any expected tax revenue. Dispensaries are generally similar in size to a small convenience store, and will likely range from approximately 1,000 to 3,000 square feet. Average Gross Receipts per Dispensary commonly range from \$4.5 million in smaller communities, and up to \$8.0 million in large, urban areas. Therefore, a local tax rate of between 4% and 6% would potentially generate between approximately \$800,000 to \$1.5 Million in revenue for the Town.

Retail Operations

Retail establishments include both brick-and-mortar storefront retail businesses (dispensaries) and delivery services. Under State law, the Town may prohibit retail storefront sales. State law allows sales from 6:00 a.m. to 10:00 p.m.; the Town may further limit hours of operation. Retail establishments may not be within 600 feet of a K-12 school, day care or youth center; the Town may impose additional zoning restrictions such as greater distances from schools and Town parks, or require additional distances from existing cannabis retail

BACKGROUND (continued):

establishments or other uses. In addition, other jurisdictions that have adopted ordinances permitting commercial cannabis businesses have established a maximum number of businesses allowed in the City. It is possible that as the industry and regulatory frameworks change, maximum quotas can increase or go away altogether.

Cultivation, Manufacturing, and/or Microbusinesses

Cultivators grow medical and adult use cannabis in indoor and/or outdoor settings and are annually licensed by the CalCannabis division of the California Department of Food and Agriculture (CDFA). Indoor cultivation may be appropriate in a industrial zone due to the need for warehousing and storage facilities and to minimize impacts, such as odors, to residential neighborhoods.

Manufacturers produce adult-use and medical cannabis concentrate and cannabis-infused edible or topical products. Annual licensing is required by MCSB. Manufacturing businesses may be best located in the Commercial and IR zones due to their use of medical lab equipment and commercial kitchens. Manufacturing facilities require careful review and regulation due to potential fire and waste issues.

Under State law, microbusinesses must engage in at least three of the following commercial cannabis activities: cultivation, manufacturing, distribution and retail sales. Cultivation areas must be less than 10,000 square feet. The concept is similar to small-scale breweries or vineyards and tasting rooms: in-house cultivation, production, distribution and retail operations.

Individual activities for each microbusiness should be located as previously described. Should a prospective microbusiness desires to conduct all activities in one location, it may be best located in the IR zone.

Few of the commercial cannabis license types are applicable to Los Gatos. For example, with respect to cultivation, cannabis grows need to occur either in greenhouses or on land that can be fully secured and Los Gatos does not lend itself to either of these options due to a lack of agriculture land.

DISCUSSION:

The Policy Committee should consider and discuss the following preliminary issues:

1. What should the Town's objectives and goals be with respect to cannabis?

2. What should the Town's vision be for Los Gatos business districts and adjacent neighborhoods if commercial/retail cannabis businesses were allowed?
3. What are the top issues of concern related to cannabis use and sales that the Town may be able to address through its regulations?
4. If allowed, how many commercial/retail cannabis businesses should be allowed in the Town?
5. If allowed, in which zoning districts should commercial/retail cannabis businesses be allowed in the Town?
6. If allowed, what type of restrictions should be placed on each of the operations?
7. If allowed, the Town would consider establishing administrative and license fees for cannabis related businesses to ensure that the costs of regulations are covered. What level of taxation should the Town pursue in addition to its efforts to pursue cost recovery (low, medium, or high)?
8. If allowed, what type of application process should be established for the issuance of the permits?
9. What other issues and considerations should be evaluated based on the experiences of other jurisdictions, such as associated impacts, enforcement, etc.

CONCLUSION:

In January 2021, the Council directed staff to study permitting and regulating commercial cannabis businesses in Los Gatos. The purpose of this item is to facilitate the discussion requested and seek direction from the Policy Committee on whether the Council should consider potential amendments to the cannabis regulations (ordinances and resolutions).