



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/21/2022

ITEM NO: 23

DATE: June 16, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Maintain a Ban on Cannabis Businesses in Los Gatos and Consider a Ballot Measure to Tax Cannabis Businesses

RECOMMENDATION:

Maintain a ban on cannabis businesses in Los Gatos and consider a ballot measure to tax cannabis businesses.

BACKGROUND:

While California legalized cannabis (marijuana) with the passage of Proposition 64 in 2016, it is up to each municipality to decide if and how commercial cannabis retail, manufacturing, cultivation, events, and/or testing should be conducted in their communities.

To date, the Town of Los Gatos has not allowed for commercial cannabis retail, manufacturing, or cultivation. In the Bay Area region, the cities of San Jose, Santa Cruz, Capitola, Scotts Valley, Mountain View, Brisbane, Foster City, Half Moon Bay, Pacifica, San Carlos, South San Francisco, San Francisco, Alameda, Albany, Berkeley, Emeryville, Hayward, Livermore, Oakland, Piedmont, Pleasanton, San Leandro, and Union City have allowed some form of commercial cannabis operations.

Background on California Cannabis Legislation is available at the California Cannabis Portal at <https://cannabis.ca.gov/>. While the legislation begins at the State level, each City and Town has the opportunity to enact its own cannabis laws and regulations based on many factors, including what's best for a particular community as a whole; provided those regulations do not conflict with State law.

At the January 26, 2021, Town Council meeting on Strategic Priorities, Council gave direction to start obtaining community feedback in order for Council to determine whether to amend its Municipal Code to allow commercial cannabis businesses in Los Gatos.

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

SUBJECT: Maintain a Ban on Cannabis Businesses in Los Gatos and Consider a Ballot Measure to Tax Cannabis Businesses

DATE: June 16, 2022

BACKGROUND (continued):

In response, the Town held approximately ten public meetings with various community groups and Town Boards/Commissions/Committees to obtain input on whether the Council should consider potential amendments to the Town's cannabis regulations. At these public meetings, the feedback included an interest in allowing cannabis businesses in Town, concerns and uncertainty about allowing cannabis operations and the potential health and safety impacts, and interest in the potential new source of tax revenue. In addition, the Town conducted an unscientific Survey Monkey poll to solicit general input from the public (results are included with the January 18, 2022 Council staff report) with the majority of responses opposed to allowing cannabis businesses.

On January 18, 2022, the Town Council voted to continue to explore possible taxation and asked staff to return to the Council with a consultant scope of services focused on community outreach, a scientific survey, and evaluation of potential taxation and revenues.

On February 1, 2022, the Town Council approved the Cannabis Consultant Services Proposal submitted by Hinderliter, deLlamas & Associates (HdL) Companies and authorized the Town Manager to execute the agreement. The scope included the preparation of a tax revenue analysis, assessment of a cost recovery program for the permitting of cannabis businesses, comparable data from other California jurisdictions, and assistance with community outreach. This report provides the results of the HdL work and other staff analysis.

DISCUSSION:

Consultant Study

HdL completed the requested consultant report (see Attachment 1). The revenue analysis is based on an estimated service area and its population that could be served by a cannabis retail storefront in Los Gatos. The consultants further refined the estimates assuming leakage to licensed retailers outside of Los Gatos and to the black market. Figure 5 depicts a range of \$12.0 million to \$27.0 million of adjusted gross receipts for a storefront in Los Gatos.

Based on this range of adjusted gross receipts, HdL applied different tax rates to estimate potential revenue from a tax. At 4%, tax revenues could range from \$493,000 to \$1.085 million. At 5%, the range is \$616,000 to \$1.35 million and at 7%, the range is \$863,000 to \$1.9 million. These estimates are for tax revenue only.

The report also describes the cost recovery opportunity for licensing and permitting establishments. Town services beyond licensing and permitting (e.g., calls for Police or Code Compliance services) are discussed under Public Safety Considerations and Impact to Other Town and County Services. These service costs would need to be deducted from the tax

SUBJECT: Maintain a Ban on Cannabis Businesses in Los Gatos and Consider a Ballot Measure to Tax Cannabis Businesses

DATE: June 16, 2022

DISCUSSION (continued):

revenue to determine a net revenue estimate. As discussed below, it is difficult to quantify the net fiscal impact of a dispensary; however, a qualitative understanding of potential impacts is important in this policy discussion.

The HdL report has useful comparable data for other jurisdictions in terms of regulatory programs, zoning parameters, tax rates, and permit fees.

Public Safety Considerations

The Los Gatos-Monte Sereno Police Department researched the impacts of marijuana dispensaries to law enforcement and within similar sized communities throughout Monterey County. The general conclusion did not suggest any significant increase in calls for service to law enforcement directly related to dispensary operations; however, there have been preliminary trends of more serious crimes, civil challenges, and concerns indirectly associated with dispensaries as they foster an opportunity for illegal behavior and civil conflict related to tax evasion, real estate crime, property management challenges, and other illegal items.

These criminal activities sometimes occur because of the limited resources of local law enforcement to provide ongoing oversight to dispensary operations. Legal dispensaries generally have a very inviting and professional appearance on the exterior and extensive security measures. Many legal dispensaries in the jurisdictions visited had surveillance cameras, multiple armed security guards, and periodic inspections. Unfortunately, these mechanisms do not always deter illegal activities and provide a false sense of security against criminal elements. The LGMSPD is conducting concerted efforts to provide adequate staffing to meet the community's needs and the additional need for oversight of the dispensaries will likely not be sufficient for the Department's current staffing models, leaving the Town particularly vulnerable to potential illegal activities.

To date, the LGMSPD has experienced minimal law enforcement demand related to cannabis, including calls pertaining to operating a motor vehicle under the influence, sales, or use of the substance. Current narcotic enforcement is focused on Methamphetamines (Meth), Heroin, Fentanyl, and other opiate-based medicines. If law enforcement needs increase related to marijuana, there will be increased impacts in addition to staffing. For example, if marijuana is collected as evidence and the case is not filed by the District Attorney, the Police Department must return the product in its pre-existing condition. Since cannabis must be stored in a manor to preserve it, there are administrative and engineered controls required for storing the cannabis evidence which can potentially result in financial implications for the Town.

SUBJECT: Maintain a Ban on Cannabis Businesses in Los Gatos and Consider a Ballot Measure to Tax Cannabis Businesses

DATE: June 16, 2022

DISCUSSION (continued):

In the event of a cannabis-related incident, it is estimated that the staff impact would involve three Officers, one Sergeant, one Dispatcher, one Community Service Officer, and one Captain. The cost per hour of these positions is approximately \$1,053 (salary and benefits prior to the implementation of the recent bargaining agreements). A cannabis tax could potentially provide cost recovery of law enforcement response and fund a dispensary oversight program. The fiscal impacts of a serious crime indirectly related to dispensary operations would preoccupy the Investigations Division, Patrol, and professional staff and are difficult to estimate.

Conversations with staff from the Monterey County Cannabis Program and other law enforcement agencies revealed that Santa Clara County does not have a trained and dedicated framework to monitor and provide law enforcement oversight of dispensary operations. The Monterey County Cannabis Program has grown from 6 to 28 FTEs in five years specifically for management of commercial cannabis to address regulation, policy, enforcement, and education. Santa Clara County does not have a similar multi-disciplinary team for oversight of commercial cannabis. Elements of a law enforcement oversight program include:

- Toxicity testing – to verify that the product is contaminant free (no mold or harmful chemicals);
- Dispensary product monitoring – to verify proper labeling to inform the consumer of the correct THC amount and not labeled in a manner to entice minors (e.g., Birthday Cake or Orange Crush);
- Monitoring of the Marijuana Enforcement Tracking Reporting Compliance (METRC) - California Cannabis Track-and-Trace System designed to track the product from plant to sellable in-store product;
- Liaison with Department of Cannabis Control – to ensure compliance of Medicinal and Adult Use Commercial Cannabis Regulations (CCRs);
- Legal counsel available and knowledgeable about dispensary local, state, and federal laws to guide the local jurisdictions in their work with the dispensaries' legal teams;
- Public Health Department coordination; and
- Forensic Accountant – oversight of taxes and other monetary monitoring/auditing.

Other law enforcement considerations include:

- California does not currently have any Police Officer Standards and Training (POST) course(s) available to teach local law enforcement about commercial cannabis businesses and regulations, State laws, interactions with dispensaries, etc. Therefore, LGMSPD would be on its own to learn about the industry and relevant laws;
- It is understood that Los Gatos and Monte Sereno residents currently benefit from cannabis delivery services that operate out of other jurisdictions. With a retail

SUBJECT: Maintain a Ban on Cannabis Businesses in Los Gatos and Consider a Ballot Measure to Tax Cannabis Businesses

DATE: June 16, 2022

DISCUSSION (continued):

storefront or delivery business in Los Gatos, the risks increase with the transportation of product valued potentially up to \$1.0 million into Town. Based on the consultant analysis, it is unlikely that commercial scale cultivation would occur in Town;

- Increased number of people transporting more marijuana throughout Town due to access and supply in Town; and
- Limited Town resources to educate youth on the risks associated with cannabis (the Town currently has one part-time School Resource Officer shared between Los Gatos Unified School District and the Los Gatos Union High School District).

Based on this information, staff is recommending that the Town Council maintain the ban on cannabis retail sales. Even with a tax to offset some enforcement costs, the Town would be challenged to address the potential accompanying law enforcement issues and additional necessary oversight resources.

Impact on Other Town and County Services

If the Town Council is interested in allowing cannabis retail store(s) and/or delivery, the Town would need to develop its own licensing, permitting, and regulatory program, and adopt an Ordinance amending the Municipal Code. In Attachment 1, HdL explained the components of a regulatory program and that the costs associated with its implementation could be borne by the cannabis businesses seeking to locate in Los Gatos.

Once established, the Town would likely have a monitoring program to ensure compliance with the Town ordinance and the Business and Profession Code for cannabis business called Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA). To the extent that non-law enforcement complaints are submitted to the Town, Code Compliance would be responsible to respond, inspect, and determine appropriate action for the complaint. A cannabis tax would bring in revenue that would offset the response costs.

There may be other impacts to other services; however, it is difficult to anticipate all of them. It is also likely that County health, behavioral health, and/or social services may also experience increased demands with additional storefronts and/or delivery businesses.

Scientific Survey

The Town is working with a professional consultant, ETC Institute, to conduct a scientific cannabis community survey. ETC mailed out the survey to a random sample of 2,100 households in Los Gatos. These households were selected at random from an address list of all residences located within the Town's boundaries. The consultant offered these households

SUBJECT: Maintain a Ban on Cannabis Businesses in Los Gatos and Consider a Ballot Measure to Tax Cannabis Businesses

DATE: June 16, 2022

DISCUSSION (continued):

three ways to complete the survey: by mail; online; or phone. Follow up will occur until at least 300 surveys are returned. If more than 300 are returned, the larger number will be analyzed at no additional cost to the Town. With 300 completed surveys, the results will have a precision of at least +/- 5.6% or a 95% confidence level. The consultant will ensure the results reflect the community's demographics, ensuring results are statistically valid, and will provide the Town with accurate data.

The results of the survey are expected to be distributed in an Addendum on Monday, June 20 or Desk Item on June 21.

Pending State Legislation

Senator Scott Wiener authored SB 1186 which originally would have restricted municipalities from banning medical cannabis retail sales. The bill has since been amended to eliminate bans of medical cannabis delivery services only. This bill would also provide that the California Environmental Quality Act (CEQA) does not apply to specified actions taken by a local jurisdiction relating to medicinal cannabis businesses, including the repeal of any local regulation prohibiting the operation of medicinal cannabis businesses. The bill is currently in the Assembly for consideration.

Should the bill pass and the Governor signs it, the Town would be obligated to establish a regulatory program for medical cannabis delivery businesses. This means that the Town Council would need to identify appropriate zoning districts, distances from sensitive uses, permitting requirements, and a monitoring program. All of these parameters would be considered during public meetings regarding the introduction and adoption of an Ordinance to the Town Code. Permitting and application fees would be required to be considered in the Town's Fee Resolution, also requiring a public meeting.

Ballot Measures

Throughout the discussion of cannabis businesses, two potential ballot measures have been suggested.

The first is a ballot measure asking the question if cannabis businesses should be allowed in Los Gatos. Putting this question to the voters requires a simple majority of the Council. When jurisdictions ask these questions, typically a draft Ordinance containing the proposed regulations is included so the public knows exactly what it is voting on.

SUBJECT: Maintain a Ban on Cannabis Businesses in Los Gatos and Consider a Ballot Measure to Tax Cannabis Businesses

DATE: June 16, 2022

DISCUSSION (continued):

The second is a ballot measure to establish a tax on cannabis businesses. As a tax measure, it requires a 4/5 vote of the Town Council to place it on the ballot. If this is of interest to the Town Council, the measure would need to specify the level of tax (e.g., 4% of gross sales receipts).

For a tax measure to be placed on the ballot, it is not required for the voters to decide the land use question. The Town Council is the elected body that makes land use policy and legislative decisions regarding the General Plan, zoning, allowable uses, requirements for allowed uses, number of allowed cannabis businesses, etc. For most jurisdictions, land use issues are not determined by the voters because if circumstances change or adjustments are needed, such changes can only be considered with another ballot measure.

With the November 2022 election scheduled, the last regular Council meeting to add an item on this ballot is at its August 2nd meeting.

Community Outreach

The Town conducted a community workshop on May 4, 2022 at 7:00 p.m. via teleconference. The workshop provided an opportunity for the community to learn more about cannabis regulation and share input regarding the potential for commercial cannabis in Los Gatos. The materials from the meeting are available at www.losgatosca.gov/cannabis.

Though lightly attended, the community answered several Zoom poll questions:

- 55% said cannabis retail sales should not be allowed in Los Gatos
- 62.5% preferred delivery only cannabis business(es)
- Of various non-residential zoning districts, 60% preferred the Controlled Manufacturing Zone (generally located along University Avenue north of Vasona Park)
- 70% preferred a distance of 1,200 feet from sensitive uses (e.g., schools and commercial day care) which is greater than the State distance of 600 feet (see Attachment 2 for a map of the State buffer areas)

In addition to the Town's workshop, staff has also met on multiple occasions with residents who expressed their opposition to cannabis businesses in Town.

The dedicated webpage also provided a unique email address for public comments: cannabis@losgatosca.gov. Through this address and others, the Town has received numerous communications on this issue (see Attachment 3). The majority of the correspondence is opposed to cannabis storefronts in Los Gatos.

SUBJECT: Maintain a Ban on Cannabis Businesses in Los Gatos and Consider a Ballot Measure to Tax Cannabis Businesses

DATE: June 16, 2022

DISCUSSION (continued):

Policy Questions/Alternatives for the Town Council

As Council continues its exploration of considering the allowance of cannabis businesses, the following questions may be useful during the deliberation. For each question, the major next steps are identified.

- Should the Town maintain its ban on cannabis businesses? If yes, then the exploration of land use regulations and permitting for cannabis businesses is not needed. If future State law mandates local jurisdictions to allow medical cannabis delivery services or other cannabis business types, then the Council would need to develop regulations.
- Should the Town consider retail storefronts, delivery only, or both? If the Council is interested in this option, then a study session should be scheduled to identify the Council's land use parameters for these uses. A draft Ordinance would be prepared based on these parameters. The Town would also need to develop its operational regulations for the businesses, including the application and selection process.
- Should the question of whether to allow cannabis businesses go before the voters? If the Council would like to move forward with this option, then staff would return to the Council on August 2nd with proposed ballot language. If the Council would like the voters to decide on a cannabis land use Ordinance, then the Council would need to convene in July to work on the Ordinance in time to place it before the voters.
- Should the Council consider placing a ballot measure to establish a tax on cannabis businesses? Regardless of its decision on the land use question, the Council may want to consider a tax for the 2022 ballot. Even if Council would like to maintain its ban, a tax could be in place in the event State law requires municipalities to allow medical cannabis delivery businesses or other types of cannabis businesses in the future. If the Council is interested in this option, then staff would return with proposed ballot language at the August 2nd meeting. At that time, the Council can determine a specific tax rate.

CONCLUSION AND NEXT STEPS:

Staff is looking forward to Council's discussion and direction on cannabis businesses. The Council's direction will determine appropriate next steps as discussed above.

PAGE 9 OF 9

SUBJECT: Maintain a Ban on Cannabis Businesses in Los Gatos and Consider a Ballot Measure to Tax Cannabis Businesses

DATE: June 16, 2022

COORDINATION:

The preparation of this report was coordinated with the Town Attorney's Office, Police Department, Community Development Department, and Finance Department.

FISCAL IMPACT:

Depending on the alternative the Council would like to pursue, there are fiscal impacts associated with cannabis businesses in the Town as discussed in this report. A potential tax revenue may offset some of the costs of municipal services.

A single ballot measure costs approximately \$58,256 and the Proposed Fiscal Year 2022/23 Operating Budget includes funding for potential measures.

ENVIRONMENTAL ASSESSMENT:

Council direction on this item is not a project defined under CEQA, and no further action is required. If Council would like to allow cannabis businesses, then an ordinance would need to be drafted and it would need environmental clearance.

Attachments:

1. Consultant Study
2. Map of State Buffer Areas
3. Public Comment