



Legislation Text

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Report regarding an ordinance amending Chapter 20.410 of the South San Francisco Municipal Code to permit and regulate indoor commercial cultivation of cannabis. (*Rozalynne Thompson, Associate Planner*)

RECOMMENDATION

Staff recommends that the City Council introduce an ordinance amending Chapter 20.410 of the South San Francisco Municipal Code to permit and regulate indoor commercial cultivation of cannabis citywide, and waive further reading.

BACKGROUND

On November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Cannabis Act (AUMA). The AUMA legalized the possession, use, and cultivation of non-medical cannabis for those who are 21 years of age or older and established a state system to regulate commercial cannabis activity. On June 27, 2017, Governor Jerry Brown signed into law Senate Bill 94 (the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)), which repealed the Medical Cannabis Regulation and Safety Act (MCRSA), incorporated certain licensing provisions from MCRSA, and created a single regulatory scheme for both medical and non-medical cannabis.

The MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions the authority to adopt and enforce local ordinances, including zoning and land use requirements, to regulate and/or prohibit commercial cannabis-related activities. Furthermore, MAUCRSA provides that state licensing authorities shall not approve an application for a State license for a cannabis business if approval of the State license will violate the provisions of any local ordinance or regulation. Prior to issuing a State license, the state licensing authorities are required to contact the City to confirm that a proposed cannabis business complies with the City's regulations.

Proposed Zoning Amendments to Regulate Commercial Cannabis Indoor Cultivation

On January 24, 2018, the City Council considered an ordinance to permit and regulate commercial cannabis manufacturing, testing, distribution, and delivery-only businesses and to prohibit commercial cannabis microbusinesses and indoor cultivation. While the City Council voted to introduce the ordinance permitting commercial cannabis manufacturing, testing, distribution, and delivery-only uses and to prohibit cannabis microbusiness, it directed staff to prepare an ordinance to permit and regulate commercial cannabis indoor cultivation uses.

Staff prepared the proposed ordinance to regulate indoor commercial cultivation of cannabis, based on feedback received from the City Council at a series of study sessions that took place throughout 2017 and the City Council's direction at the January 24th City Council meeting. Chapter 20.410 of the Zoning Ordinance defines "indoor commercial cannabis cultivation" to guide implementation and administration of the regulations. Specifically, "indoor commercial cannabis cultivation" is defined as cultivation of cannabis within a "fully enclosed, permanent, secure structure" that uses exclusively artificial lighting, which would allow businesses

with state cultivator license Type 1A “Specialty Indoor “ (between 501 and 5,000 square feet of total canopy size), Type 2A “Small Indoor” (between 5,001 and 10,000 square feet of total canopy size), and Type 3A “Indoor” (between 10,001 and 22,000 square feet of total canopy size) to operate within the city. Similar to the regulations for cannabis manufacturing, testing, distribution, and delivery-only uses, the proposed ordinance limits indoor cultivation uses to the following zoning districts east of Highway 101: Business Commercial (BC), Business Technology Park (BTP), Bay West Cove Specific Plan District (BWCSPD), Gateway Specific Plan (GSPD), Mixed Industrial (MI), and Oyster Point Specific Plan District (OPSD). Like the other commercial cannabis uses, cultivation uses will be permitted only upon issuance of a conditional use permit and in compliance with operational standards specific to indoor cultivation uses, including renewable energy requirements and installation and maintenance of air filtration systems to prevent the detection of odors. In addition, the 600-foot minimum distance restriction from residential uses, day care centers, youth centers, and K-12 schools, as well as the operator permit requirements, will also apply to indoor cultivation uses.

Planning Commission Meeting

The draft ordinance was introduced to the Planning Commission for recommendation to the City Council at its March 15, 2018 meeting. The Planning Commission recommended 7-0 that City Council adopt an ordinance permitting and regulating commercial cannabis indoor cultivation. During the March 15th meeting, the Planning Commission had a few questions related to the proposed ordinance. A discussion of those issues raised by the Planning Commission is provided below.

Signage

The Commission raised a question about signage requirements due to safety and security concerns associated with commercial cannabis operations. The proposed ordinance requires that cannabis operations shall not be visible from the public right-of-way, exterior of the structure, and/or vehicle(s) where those commercial cannabis activities take place. Advertising and marketing restrictions for commercial cannabis operations are governed under Chapter 15 of Division 10 of the California Business and Professions Code.

Cultivation related to Scientific Research

The Commission asked for clarification on whether federally-regulated scientific research would be impacted. The definition of “Indoor Commercial Cultivation” in the proposed ordinance specifically excludes cannabis cultivation conducted as part of federally-regulated scientific research, because such cultivation is subject to a separate set of federal rules and such cannabis is not intended to enter the stream of commerce.

Safety and Security Plan

The Commission expressed concerns regarding enforcement, day-to-day operations, and security concerns. Applicants are required to submit a safety and security plan meeting certain minimum requirements as part of the operator permit application process. Such plans must be approved by the Police Department. In addition, commercial cannabis businesses are required to comply with the provisions of their submitted safety and security plan at all times. Failure to do so subjects the businesses to enforcement, including suspension or revocation of an operator permit. Further, operator permits must be renewed each year, and any renewal application requires a site and vehicle inspection. An annual license fee is also paid at the time of application and upon renewal to address additional costs associated with regulating such commercial cannabis businesses, such as police review. Finally, any violation or non-compliance with the requirements of Chapter 20.410 is declared a public nuisance and the City may remedy or abate the violation through criminal and/or civil action.

Cultivation Regulations in San Mateo County

The Commissioners inquired as to whether other jurisdictions in San Mateo County are permitting commercial cannabis establishments. The majority of jurisdictions prohibit most commercial cannabis uses, but the City of Brisbane and City of Pacifica allow certain cannabis-related businesses. Brisbane specifically permits laboratory testing, warehousing, distribution, manufacturing, and delivery-only retail, while commercial cultivation is prohibited. Pacifica permits manufacturing, testing, and retail operations for both medical and non-medical cannabis.

Concentration Regulations

The Commission asked whether the City had authority to regulate density and concentration of commercial cannabis operations. The total number of commercial cannabis operator permits granted for each State license type may be established or limited by City Council by resolution. Concentration restrictions were not included in Chapter 20.410 due to the non-public facing nature of the uses permitted and the limited number of zoning districts East of 101 where such uses could be located.

Environmental Review

Staff has determined the proposed ordinance is categorically exempt from the California Environmental Quality Act (CEQA) review pursuant to Section 15061(b)(3) of the California Code of Regulations (CEQA Guidelines). Introduction and adoption of this ordinance is not subject to review under CEQA, pursuant to the general exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA (CEQA Guidelines, § 15061(b)(3)). A “significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project (CEQA Guidelines, § 15382). This ordinance would permit the establishment and operation of commercial cannabis indoor cultivation, as defined herein. However, no specific operation would be permitted pursuant to this ordinance. Any specific operation would be subject to discretionary review and be subject to environmental evaluation prior to commencing operations. Therefore, it can be seen with certainty that there is no possibility that the ordinance in question would have a significant effect on the environment; accordingly, the ordinance is exempt from CEQA review.

Further, pursuant to Business and Professions Code § 26055(h), adoption of an ordinance, rule or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses or other authorizations to engage in commercial cannabis activity is not subject to CEQA provided that the ordinance is adopted prior to July 1, 2019 and any specific discretionary review or approval authorized by said ordinance includes any applicable environmental review. As the proposed ordinance requires each applicant for an operator permit for an indoor commercial cultivation use to obtain a conditional use permit, which requires applicable environmental analysis and environmental review, adoption of the proposed ordinance is not subject to CEQA.

CONCLUSION

Staff recommends that the City Council introduce an ordinance amending Title 20 of the South San Francisco Municipal Code to permit and regulate indoor commercial cultivation of cannabis, citywide, and waive further reading, in accordance with South San Francisco Municipal Code Chapter 20.550.

Attachments

1. Draft Minutes of the March 15, 2018 Planning Commission Meeting
2. Planning Commission Resolution 2819-2018
3. PowerPoint Presentation