

Date: August 28, 2020

To: Thomas B. Modica, City Manager 

From: Oscar W. Orci, Director of Development Services 

For: Mayor and Members of the City Council

Subject: **Cannabis Uses within Mixed-Use Development**

At its May 5, 2020 meeting, the City Council requested an amendment to Long Beach Municipal Code (LBMC) Section 5.92.420 with specific attention to allowing retail cannabis uses within the ground floor of mixed-use structures. Staff reviewed the relevant land-use and environmental planning issues associated with this change, consulted other California cities and have compiled six options for City Council consideration. Staff recommends proceeding with Option C, which would incorporate cannabis uses in the comprehensive update of the Downtown (PD-30) Plan, which is anticipated to start in late 2021.

Land Use Regulation of Cannabis

On January 1, 2016, the Medical Cannabis Regulation and Safety Act (MCRSA) took effect, creating a statewide regulatory and licensing system for medical cannabis businesses in California. Locally, Long Beach voters approved Measure MM and MA on November 8, 2016. Measure MM, placed on the ballot through a citizen petition and initiative, repealed a ban on medical marijuana establishments in the City and established locational criteria for medical dispensaries. Measure MA, placed on the ballot by the City Council, assured that appropriate tax revenues are collected from cannabis businesses.

In that same 2016 election, California voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). AUMA serves as the equivalent of MCRSA, from the standpoint of adult-use cannabis businesses. The following year, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which merged state regulations for medicinal and adult-use commercial cannabis activity into a single framework. MAUCRSA has given local governments the ability to regulate and/or prohibit adult cannabis activity within their jurisdictions.

Subsequently, in 2018, the City of Long Beach (City) adopted changes to portions of LBMC Title 21 – Zoning and Title 5 – Regulation of Businesses, Trades, and Professions, pertaining to the regulation of adult-use cannabis. These 2018 regulations for adult-use cannabis businesses are distinguished from voter approved medical regulations which cannot be modified without a subsequent ratification by the electorate. Nearly all cannabis businesses serve either a medical and adult-use (recreational) market or a purely adult-use market.

LBMC Title 21 (the zoning code) does not include specific special development standards for adult-use cannabis facilities. Cannabis uses are regulated through LBMC Title 5, Chapter 5.92 – Adult-Use Cannabis Businesses and Activities. Chapter 5.92 consists of general operating

conditions such as building design, location requirements, and security. Building design standards are implemented to minimize impacts associated with remodeled or new adult-use cannabis facilities. Title 5 requirements further address the security of adult-use cannabis facilities and cover a wide range of requirements from digital surveillance and alarm systems to record-keeping, security barriers, and secure transportation areas.

Due to potential issues associated with mixing of uses or conflicts between residents and business, security and odors, the 2018 regulations set forth in Title 5 do not contemplate nor allow a retail cannabis business to locate within a mixed-use building. Staff contacted 26 peer cities within California and found that while most prohibit cannabis operations within mixed-use buildings, six cities allow cannabis retailers within mixed use buildings (Chula Vista, Los Angeles, Oakland, Sacramento, San Francisco, and Stockton). The cities of Fresno and Santa Monica have pending ordinances that would allow cannabis retail businesses within a mixed-use context. The full peer city analysis is attached to this memorandum.

Environmental Impacts and the California Environmental Quality Act (CEQA)

The City currently issues a categorical exemption (CE) to most cannabis businesses because they are constructed pursuant to existing zoning code and no physical impacts to the environment are anticipated. The CE expedites cannabis businesses in support of the City's economic and employment goals, often saving applicants a year in time and up to \$500,000 in cost compared to preparing an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND). The use of the CE also saves cannabis business from costs associated with individual mitigation measures and mitigation monitoring.

CEQA Guidelines Section 15300.2(c), however, prohibits the City from utilizing an exemption when there is a reasonable likelihood of impacts to the environment. The exposure of residents and visitors to odors from a cannabis business within a mixed-use building is a potential impact and other impacts may exist upon further study. The requirements of CEQA apply not only to individual projects but also to the City's adoption of an ordinance authorizing the activity. Any ordinance allowing retail cannabis uses within mixed-use buildings would require either an EIR or MND to be undertaken. Staff estimate these costs at \$100,000 or more to prepare the initial document and significant costs for each individual business application. While typically a Program EIR is prepared once and each individual project later relies on that document, the individual nature of each cannabis establishment will require some level of individual analysis even after the program level review is completed for the ordinance.

Potential mitigations to be examined in the environmental document would include, but not be limited to, high-efficiency particulate arrestance (HEPA) air filters, separate heating, ventilation, and air conditioning (HVAC) and venting systems to isolate the cannabis use from other uses within the mixed-use building, disclosure to building residents, security (separated ingress/egress), cleaning protocols, and separate refuse locations, storage and pick-up processes. These mitigations, although necessary, add construction and operating costs to the cannabis business and the building owner. Depending on the air handling and ventilation systems in place in existing buildings, the cost to segregate air from the cannabis tenant space and filter the inflow and exhaust to HEPA levels may add significant costs to such projects.

Mixed-Use within Long Beach

The City Council discussed both the option of allowing retail cannabis within mixed-use buildings downtown (within the PD-30 zoning district) or citywide. Downtown is commonly associated with mixed-use activity but geographically only makes up 2 percent of the city by acreage. Areas of mixed-use are common throughout Long Beach, on major corridors such as Long Beach Boulevard, Atlantic Avenue, Pacific Coast Highway, Anaheim Street and Broadway. Within Long Beach, 1,849 acres, or 6 percent, of the land area, is designated for mixed-use under the adopted General Plan Land Use Element. Downtown represents only one-third of those mixed-use areas. Of all areas that allow for any retail activity, 82 percent allow mixed-use. Before proceeding with any update to the LBMC, City Council direction is needed on whether to provide the opportunity for retail cannabis in mixed-use buildings citywide or, if in the case of only downtown, articulate a specific reasoning differentiating downtown from other mixed-use areas. Staff would then develop an ordinance with the written findings. Potential options for approaching this task follow below. All of these options are consistent with the City's discretion under MAUCRSA.

Option A – Update the Downtown Plan (PD-30) to allow retail cannabis within mixed-use buildings through an administrative land use approval. This would allow retail cannabis buildings to open throughout the downtown area (meeting other requirements otherwise found in Title 5) without the need for subsequent hearings. The administrative land use approval, which is currently used for review of tattoo facilities, allows Planning staff to carefully review sensitive land-uses and assure compliance with environmental and other standards, but does not involve a hearing or the ability to deny the request if the requisite criteria are met. This option would require approximately 200 staff hours to complete and \$100,000 in consultant costs for the CEQA document. These City costs do not include the standard administrative approval, environmental, and building permit fees that would be borne by the applicant for any individual cannabis establishment.

Option B – Update regulations within Title 5 to allow retail cannabis uses within mixed-use buildings citywide by updating the Zoning Code. Retail cannabis uses would be allowed with an administrative land use approval citywide. This approach would be like Option A and would have similar impacts but would apply citywide. This option would require approximately 280 staff hours and \$100,000 in consultant costs to prepare the CEQA document. These City costs do not include standard administrative approval, environmental, and building permit fees that would be borne by the applicant for any individual cannabis establishment.

Option C – Include the study of retail cannabis in the larger update of the Downtown Plan (PD-30). This effort was anticipated to start in late 2020 to update the Downtown Plan land-use policies and regulations as well as the Program EIR. The Downtown Plan was last updated in 2012. The COVID-19 crisis and lack of available funding for long-range planning has delayed this effort. It is anticipated that the update will resume in October 2021, depending on levels of economic activity and the health of the Development Services Fund. Cannabis uses could be integrated as one of many issues to be addressed in that larger update and thus would not result in the need for supplemental funding or staffing.

Option D – Update the Downtown Plan (PD-30) to allow retail cannabis within mixed-use buildings through a Conditional Use Permit (CUP). This would allow the Planning Commission to carefully review each application for retail cannabis within a mixed-use building. This option was discussed during the City Council’s May meeting. Like Option A, Planning Bureau staff would review applications and apply conditions to achieve compliance; however, this information would be presented to the Planning Commission and the public in the form of a public hearing. Planning Commission decisions are appealable to the City Council. This option also results in approximately \$15,000 in costs to applicants to complete the CUP process. Like Option A, this option would require approximately 200 staff hours to process and \$100,000 in consultant costs for the CEQA document. These City costs do not include the standard CUP, environmental, and building permit fees that would be borne by the applicant for any individual cannabis establishment.

Option E –Update regulations within Title 5 and Title 21 to allow retail cannabis uses within mixed-use buildings citywide with a CUP. This approach would have similar implications as Option D, but would apply citywide. This option requires approximately 320 hours of staff time plus \$100,000 in consultant costs to prepare the CEQA document. These City costs do not include the CUP, environmental, and building permit fees that would be borne by the applicant for any individual cannabis establishment.

Option F – Applicant-initiated Zoning Code amendment. In this option a cannabis business would apply for a code amendment and would bear the costs associated with the code amendment, the environmental document, as well as the individual project application fees and expenses. This option would cover the City’s costs to prepare the EIR and code amendment and the costs to the applicant are estimated at approximately \$150,000. Use of contracted staff for this application would further increase costs to the applicant.

The available options are summarized in the matrix below:

Cannabis Code Amendment Options

Option	Approval Process	Applicability	Code Amendments
A	ALUP	Downtown	Title 5 (Cannabis) PD-30 Downtown Plan
B	ALUP	Citywide	Title 5 (Cannabis) Title 21 (Zoning Code)
C	ALUP or CUP	Downtown	Title 5 (Cannabis) PD-30 Downtown Plan
D	CUP	Downtown	Title 5 (Cannabis) PD-30 Downtown Plan
E	CUP	Citywide	Title 5 (Cannabis) Title 21 (Zoning Code)
F	based on applicant request	based on applicant request	based on applicant request

Resources Challenges

In all options, except Option C, commitment of staffing resources is limited given current and future economic constraints coupled with COVID-related support.

To proceed with an any option other than Option C, the Planning Bureau would need to shift priorities and discontinue or delay projects such as: the resurvey and update of the Drake-Wilmore Historic District, the update of the Victory Park Design Guidelines, and/or the completion of the City's local CEQA thresholds. Alternatively, the City Council could appropriate additional funds of approximately \$30,000 to offset additional contract staffing services for the cannabis-related work. These costs would be in addition to any environmental consulting fees.

In conclusion, while allowing retail cannabis sales within mixed-use buildings is uncommon and may have potential impacts, such a change can be accommodated through changes to the LBMC and completion of environmental studies. Should the City Council desire to move forward with this item, staff request direction in terms of the option or approach of the code changes and the necessary budget appropriation to complete the effort.

If you have any questions, please contact Christopher Koontz, Deputy Director, at (562) 570-6288.

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DEPARTMENT HEADS

Cannabis Regulations for Mixed-Use Buildings				
City	Research Method	Cannabis Allowed in Mixed-Use Buildings?	If Yes, Under What Regulations?	Response
Anaheim	Email	N	N/A	As it is now, city regulations prohibit the sale, commercial cultivation and processing of recreational or medical cannabis in Anaheim. The City is evaluating changes to this policy including a potential ballot initiative.
Bakersfield	Email	N	N/A	Bakersfield Municipal Code Section 17.08.050 specifically prohibits the following uses within the City Of Bakersfield. The following uses are specifically prohibited within any zone district: A. Medical marijuana dispensary. B. Commercial cannabis activity.
Chula Vista	Email	Y	Allowed by building/tenant improvement as by right	The City of Chula Vista permits cannabis storefront retailers by right in commercial zones (including mixed uses zones).
County of Orange	Code	N	N/A	All cannabis dispensaries is expressly prohibited and not an allowable activity within any zoning district within unincorporated areas of Orange County.
Fontana	Email	N	N/A	The City of Fontana has prohibited retail cannabis sales. Fontana only permits the State mandate of allowing residents to grow six plants in their residence with a permit.
Fremont	Email	N	N/A	Fremont does not allow any cannabis uses.
Fresno	Email	Y*	CUP	This City's ordinance is pending adopted, the current draft would allow cannabis dispensaries on the ground floor of mixed-use buildings with a conditional use permit.
Glendale	Phone	N	N/A	Glendale does not allow any cannabis uses.
Huntington Beach	Email	N	N/A	Huntington Beach does not allow any cannabis uses.
Irvine	Code	N	N/A	Irvine does not allow any cannabis uses.
LA City	Email	Y	Permit needed form LA Cannabis Commission	Cannabis uses are treated like a typical retail store in the LAMC they are not restricted to or from any particular floor. Also they are not prohibited in mixed use facilities. Must obtain permit from the LA Cannabis Commission
LA County	Email	N	N/A	Currently, we have a ban for commercial cannabis in the unincorporated parts of Los Angeles County. These regulatoins may be updated in the future.
Modesto	Phone	N/Maybe	N/A*	CUP, award of applications thru annual lottery and randomly select two, location requirements can be waived by council They have issued all of their licenses but they have a residential use buffer of 100 feet that can be waived.
Oakland	Email	Y	Permit handled by the City Administrators's Office	In Oakland, cannabis is not contained within the planning code but is in the municipal code (similar to cabaret, massage, etc) under 5.81 and handled by the city administrator's office/special activity unit – the muni code lists its own set of uses (cultivator, manufacturer, etc) and cross-lists with acceptable zones. The use is allowed in zones with mixed use and no specific prohibition applies.
Pasadena	Phone	N	N/A	No cannabis retailer is permitted to be established or located within a mixed-use development project containing a residential use component.
Riverside (city)	Email	N	N/A	Riverside allows some cannabis facilities but does not allow dispensaries.

Cannabis Regulations for Mixed-Use Buildings				
City	Research Method	Cannabis Allowed in Mixed-Use Buildings?	If Yes, Under What Regulations?	Response
Sacramento	Email	Y	CUP	Cannabis Dispensaries are only conditionally permitted uses in specific zoning designations and are subject to several limitations. If a mixed-use building is located in an area and a zoning designation that supports the use and successfully goes through the Use Permit process, a dispensary can be permitted. Dispensaries are subject to a Conditional Use Permit.
San Bernardino (city)	Code	N	N/A	The parcel shall be no closer than six hundred (600) feet of any residentially zoned or residentially used parcel in the City, the City' s sphere of influence, a neighboring incorporated city, or unincorporated county.
San Diego	Email	N	N/A*	San Diego mixed use zones don't allow cannabis uses. Cannabis uses are allowed with commercial zones that allow residential uses such as live work or shopkeeper; that would be allowed.
San Francisco	Email	Y	Handled by the Office of Cannabis, but some areas require a CUP. Reached out for more details.	The answer is yes to ground floor cannabis uses in mixed-use buildings. You may refer to the following website for more information on our process.
San Jose	Email	N	N/A	A cannabis business is only be allowed in some Industrial Zoning Districts.
Santa Ana	Email	N	N/A	Cannabis businesses must be located 1,000 feet from residential land uses and would not be permitted inside a mixed-use building.
Santa Clarita	Code	N	N/A	Santa Clarita does not allow any cannabis uses.
Santa Monica	Email	Y*	Allows medical retail, but requires a CUP and has yet to be tested.	The City of Santa Monica currently only allows Medicinal Cannabis Retailers pursuant to an Interim Zoning Ordinance. Due to delays in the processing of the applications, currently there are no retailers operational in the city. In theory, however, a retailer could be located on the ground floor of a mixed-use building if it meets the location requirements of the Interim Zoning Ordinance. A Medicinal Cannabis Retailer would be required to obtain approval of a Conditional Use Permit.
Stockton	Code	Y	CUP, award of applications thru annual lottery and randomly select two, location requirements can be waived by council	A retailer operator permit may be issued for property located in Commercial, Office (CO), Commercial, Neighborhood (CN), Commercial, General (CG), Commercial Downtown (CD), Commercial, Large-Scale (CL), Industrial, General (IG) or Industrial, Limited (IL) zones, as indicated in Table 2-2. They are also allowed in the Mixed Use (MX) zone. As permitted by 16 Cal. Code Regs. 5026(b), the Review Authority may waive the location requirements as provided in Chapter 16.176. Waivers shall only be considered for unique situations where the literal application of the distance requirement is not reasonable. Waiver determinations will be made on a case-by-case basis. Only those uses established and in operation as of the date that the application for a retailer operator commission use permit is determined or deemed to be complete shall be considered for purposes of determining whether the location requirements are met.
Torrance	Email	N	N/A	Torrance does not allow any retail cannabis uses.