

CITY OF WILDOMAR – PLANNING COMMISSION
Agenda Item #2.1
PUBLIC HEARING
Meeting Date: May 6, 2020

TO: Chairman and Members of the Planning Commission

FROM: Matthew Bassi, Planning Director
Erica Vega, Assistant City Attorney

SUBJECT: Zoning Ordinance Amendment No. 2020-04 (Cannabis Code Amend.):
Planning Commission review of a CEQA Exemption and a proposed amendment to the Wildomar Municipal Code (Title 17 - Zoning) to revise Sections 17.12.040, 17.12.050, 17.72.010, 17.76.010, 17.88.010 and 17.92.010, add Chapter 17.315 (a new chapter) to establish cannabis business zoning and use regulations.

STAFF REPORT

RECOMMENDATION:

The City Council Ad-Hoc Sub-Committee is recommending the Planning Commission adopt a Resolution entitled:

PC RESOLUTION NO. 2020-14

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WILDOMAR, CALIFORNIA, RECOMMENDING CITY COUNCIL ADOPTION OF A CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) EXEMPTION PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 26055(H), AND APPROVAL OF ZONING ORDINANCE AMENDMENT NO. 2020-04 AMENDING TITLE 17 (ZONING) OF THE WILDOMAR MUNICIPAL CODE TO REVISE SECTIONS 17.12.040, 17.12.050, 17.72.010, 17.76.010, 17.88.010, AND 17.92.010, AND ADD CHAPTER 17.315 (A NEW CHAPTER) TO ESTABLISH CANNABIS BUSINESS ZONING AND USE REGULATIONS

BACKGROUND:

There have been a number of major developments relating to cannabis laws over the past several years as follows:

- On October 9, 2015, Assembly Bills 243 and 266 and Senate Bill 643 (collectively, the “Medical Cannabis Regulation and Safety Act” or “MCRSA”) were enacted to create a state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, the manufacturing of medical marijuana products, and physician recommendations for medical marijuana. MCRSA

expressly preserved local control over medical marijuana facilities and land uses, including the authority to prohibit medical marijuana facilities and cultivation completely.

- On November 8, 2016, the voters of the State of California approved Proposition 64, entitled the “Control, Regulate and Tax Adult Use of Marijuana Act” (the “AUMA”). Proposition 64 established a statewide regulatory system for “adult use” commercial cannabis businesses commencing at Business and Professions Code section 26000. Under Proposition 64, adult use cannabis cultivators, manufacturers, distributors, retailers, and testing laboratories may operate lawfully if they obtain a state license to operate and comply with local ordinances. The state will not issue licenses if the proposed cannabis business violates a local ordinance. Business and Professions Code section 26200, which is part of Proposition 64, expressly recognized the ability of cities to completely prohibit all adult use cannabis businesses or to regulate such businesses.
- On June 27, 2017, the Governor signed Senate Bill 94, which repealed MCRSA and included provisions from MCRSA regarding medical cannabis in the AUMA, so that the regulations governing both medical and non-medical cannabis were contained under one regulatory structure. Senate Bill 94 renamed the AUMA as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). In addition to consolidating state laws regarding medical cannabis and adult-use cannabis, Senate Bill 94 introduced more uniform terminology. Senate Bill 94 revised references in existing law to “marijuana” or “medical marijuana” to instead refer to “cannabis” or “medicinal cannabis”, and revised references to “nonmedical” to “adult-use.”
- On September 16, 2017, the Governor signed Assembly Bill 133, which further revised MAUCRSA’s provisions regarding cannabis deliveries, the state licensing of cannabis businesses, and cannabis taxation.

Since incorporation the City has prohibited medicinal cannabis businesses, and upon the passage of the AUMA the City also prohibited adult-use cannabis businesses. Despite the City’s existing prohibition against all types of marijuana facilities and commercial cannabis activity, codified in Sections 17.12.040 and 17.12.050, numerous illegal commercial cannabis facilities have opened in the City, and the City has incurred significant costs and expenses associated with shutting down these illegal commercial cannabis facilities.

Even with aggressive enforcement, individuals continue to open new illegal businesses in the City. Illegal commercial cannabis facilities pose significant risks to the public health and safety because such businesses are operated without regulatory oversight to ensure that dangerous conditions, such as mold, electrical overload, improper hazardous materials storage, and improper ventilation and odor control, do not exist. By way of contrast, allowing commercial cannabis facilities in the City, subject to regulation, may

lessen the financial burdens and public health and safety risks caused by current illegally operated commercial cannabis facilities.

The City Council, on May 8, 2019, directed staff to engage in research regarding a proposal to prepare a code amendment to establish a commercial cannabis regulatory framework and an ordinance to propose regulations for commercial cannabis activity in the City. The Council created an “Ad-Hoc Subcommittee” to assist staff with oversight and guidance. The Council on June 12, 2019 appointed now Mayor Dustin Nigg and now Mayor Pro-Tem Bridgette Moore to the ad-hoc subcommittee. On June 26, 2019, the Council appropriated \$50,000 to for staff/city attorney to prepare a Cannabis Ordinance that would establish licensing and land use/zoning regulations for cannabis activity in the City.

DESCRIPTION / ANALYSIS:

CEQA Environmental Review Process:

Staff, in coordination with our PlaceWorks consultant team (Mark Teague and Jasmine Osman) prepared a draft Initial Study/Negative Declaration, which was released for a 30-day public review/comment period that began on January 30, 2020 and concluded on February 28, 2020. The City has decided not to move forward with the IS/ND and instead find the project statutorily exempt from CEQA review under Business and Professions Code Section 26055(h), which exempts from CEQA review the 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. As the proposed cannabis ordinance is requiring a conditional use permit and a development agreement for the retail sales and cultivation, etc., of cannabis, Zoning Ordinance Amendment No. 2020-04 meets the requirements of Business and Professions Code Section 26055(h). .

Though the project is CEQA exempt, in the interests of transparency and public engagement the City decided to prepare responses to the public comments received during the Negative Declaration 30-day review/comment period.

A copy of the response to comments package is provided in Attachment C.

CEQA Determination/Finding:

Based on the above and in accordance with the requirements of the California Environmental Quality Act (Public Resources Code §21000, et seq. (“CEQA")), a review of the potential environmental impacts was conducted by the Planning Department for Zoning Ordinance Amendment No. 2020-04. Based on this review, the Planning Department has determined that the proposed zoning ordinance amendment is exempt from review under the California Environmental Quality Act (CEQA) pursuant to Business and Professions Code Section 26055(h). This provision in the Business and Professions Code exempts from CEQA review the 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.

As proposed in the draft City Council Ordinance (Attachment A, Exhibit 1 of PC Resolution No. 2020-14), the Ordinance requires discretionary Development Agreements and Conditional Use Permits to be approved for each cannabis business seeking to operate in the City, and any applicable CEQA review will be done prior to the approval of these discretionary entitlements. Given this, the Planning Department is recommending the Planning Commission recommend City Council adoption of a CEQA Exemption pursuant to Business and Professions Code Section 26055(h).

Cannabis Zoning Ordinance Amendment Summary:

The proposed amendment is provided in its entirety as Exhibit 1 to PC Resolution No. 2020-14. The following is a brief summary of the proposed changes:

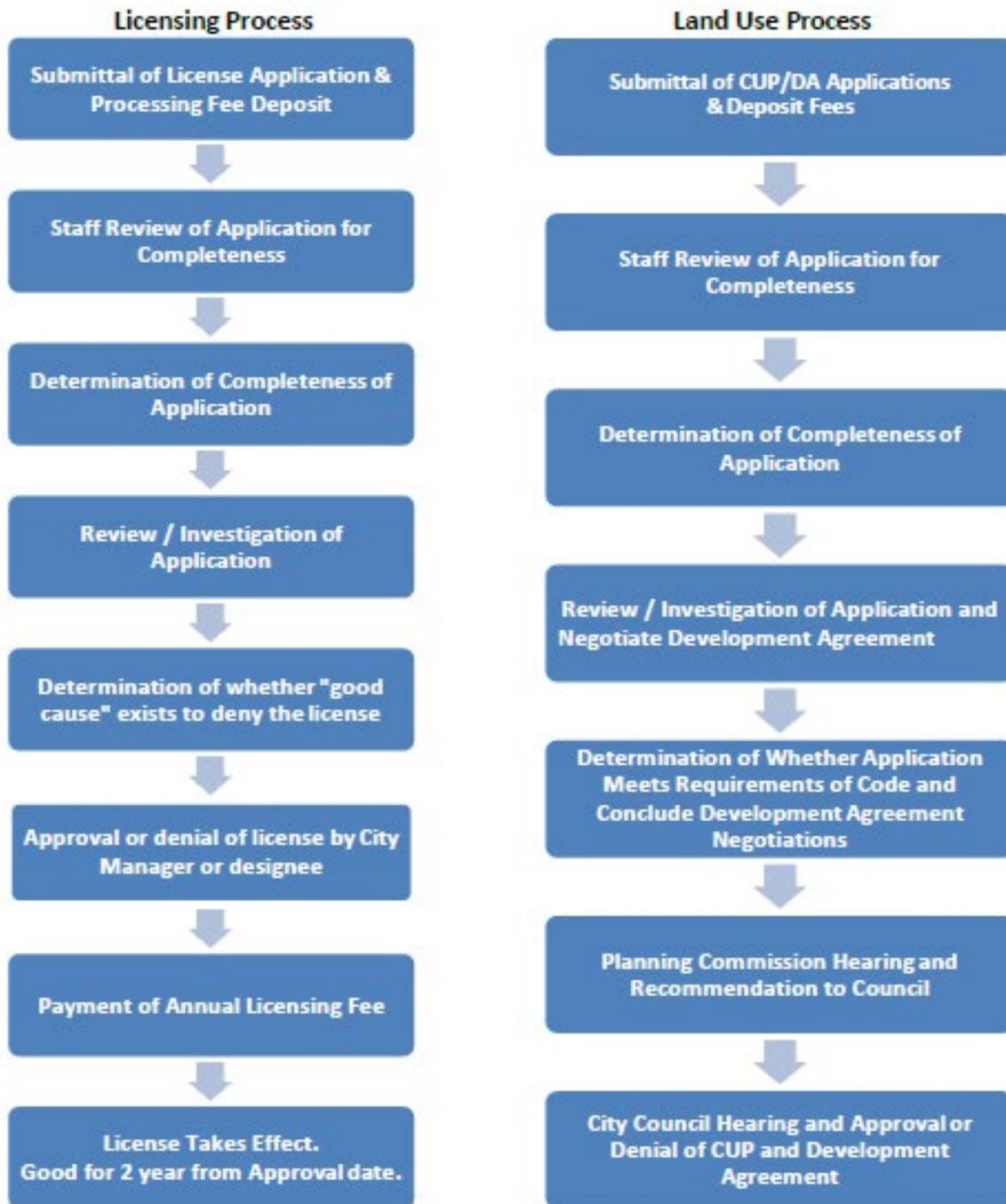
- Section 17.72 (C-1/C-P zone) and Section 17.76 (C-P-S zone) is being amended to allow commercial cannabis retailers subject to the requirements of Chapter 17.315 (Cannabis Businesses).
- Section 17.78 (I-P zone) and Section 17.92 (M-SC zone) is being amended to allow cannabis cultivation, manufacturing, distribution, and testing laboratories, subject to the requirements of Chapter 17.315 (Cannabis Businesses).
- Chapter 17.315 (a new chapter) will establish the zoning and use regulations for commercial cannabis retailers, and cannabis cultivation, manufacturing, distribution, and testing laboratories. A summary of the main regulations are provided below:
 - Commercial cannabis retailers proposed in the C-1/C-P and C-P-S zones are permitted subject to approval of a CUP & Development Agreement by Planning Commission and City Council.
 - Cannabis cultivation, manufacturing, distribution, and testing laboratories proposed in the I-P and M-SC industrial zones are permitted subject to approval of a CUP & Development Agreement by Planning Commission and City Council.
 - Development Agreements (DA) will include a requirement that a business provide public benefits in exchange for the rights under the DA. This will include payment of a public benefit fee that is in addition to the annual license fee.
 - Cannabis businesses will not be allowed within 600 feet of public or private schools (K-12), commercial day care centers, youth centers and parks.
 - Cannabis businesses required to indemnify the City from liability and provide appropriate insurance.
 - The code amendment includes include numerous operational requirements and conditions, including but not limited to:
 - Prohibit cannabis consumption on premises.
 - Prohibit alcohol and tobacco sales on premises.

- Security requirements (video surveillance, secured storage of cannabis, alarm system, illumination, controlled access to non-public areas by visitors).
- Mandatory notification of law enforcement of suspected theft/diversion.
- Can only do business with other legal cannabis businesses.
- Retailer hours of operation of 8:00 a.m. to 10:00 p.m. & age-restricted entry.
- Cannabis products cannot be visible from the exterior of the business.
- No delivery to public places / facilities.
- Odor control systems required for all cannabis businesses.
- Must allow unannounced inspections of premises and records (including video surveillance) by City.

Cannabis Licensing Process/Procedures:

The Ad-Hoc Committee has also proposed an extensive set of licensing regulations that will be added to Title 5 (Business License and Regulation) of the Wildomar Municipal Code. The licensing regulations, including adoption of special cannabis fees are not zoning ordinance related; thus, the City Council has the sole authority to review and approve them. The licensing regulations and fees will be presented to the City Council for consideration at their May 28, 2020 special meeting, along with the Commission recommendation on the zoning ordinance amendments contained herein. Staff has created a licensing process flow chart (see next page), that also includes the land use process flow chart. Attachment B includes this flow chart and a listing of summary points for both the land use and licensing process.

Proposed Cannabis Regulations Processing Flowchart



Conclusion:

The Ad-Hoc Subcommittee has met a number of times from June 2019 to the present to research and evaluate how other cities and counties approached cannabis regulations and licensing. Based on the committee's direction, the first draft Ordinance was presented to the community and Planning Commission at a study session held on October 8, 2019. There was a number of speakers for and against the draft ordinance, and the Commission provided valuable feedback.

The Commission's feedback and public comments were presented to the Ad-Hoc Subcommittee for consideration. Based on this feedback and final deliberations, the Committee directed staff to prepare the final draft Ordinance. The final draft Ordinance is provided in Attachment A, Exhibit 1 of the staff report packet. Pending the Commission's decision on ZOA No. 2020-04, the proposed code amendment is scheduled for review by City Council at a special meeting on May 28, 2020. As noted, the licensing process and regulations will be presented to the Council at this same meeting.

Zoning Ordinance Amendment No. 2020-04 Finding:

In accordance with the provisions of Chapter 17.280 of the Zoning Ordinance, the Planning Department recommends the Planning Commission make the following findings and forward these to the City Council in support of approving Zoning Ordinance Amendment No. 2020-01.

- A. The proposed amendment is consistent with the City of Wildomar General Plan and Zoning Ordinance.

Evidence: The proposed ordinance amends the zoning ordinance to allow cannabis businesses as a conditionally permitted use in commercial, industrial and manufacturing zones. These zones allow other similar uses subject to a conditional use permit. General Plan policies LU 7.1, 7.2 and 7.12 aim at promoting economic development in the City by accommodating development of a balance of land uses, promoting a variety of stable employment and business uses, and improving the jobs-housing ratio. Allowing cannabis businesses to operate within the City furthers each of these General Plan policies.

PUBLIC COMMUNICATION:

Staff has received email communications from various city residents and others since initiation of the cannabis code amendment by City Council. These email comments have been in support of and in opposition to the proposed code amendment project. Staff has also received one petition (signed by 125+/- folks) expressing opposition to the proposed code amendment. A copy of these email letters (Pdf format) are provided for Commission consideration in Attachments E – G.

PUBLIC NOTICING:

In accordance with Chapter 17.04 of the Wildomar Municipal Code, the Planning Department on April 24, 2020, published a legal notice in the Press Enterprise, a local newspaper of general circulation, notifying the general public of the May 6, 2020 Planning Commission hearing where the Commission would discuss Zoning Ordinance Amendment No. 2020-04. Since this code amendment is not a development project, the provisions of Ordinance 135 requiring public hearing sign boards does not apply.

Respectfully Submitted,
Matthew C. Bassi
Planning Director

Reviewed By,
Thomas D. Jex
City Attorney

ATTACHMENTS:

- A. PC Resolution No. 2020-14 for Zoning Ordinance Amendment No. 2020-04
Exhibit 1 – Draft Council Ordinance
- B. Cannabis Licensing and Land Use Summary Points-Flowchart
- C. Responses to CEQA Public Review-Comment Letters
- D. 600-Foot Radius Map Exhibits-Sensitive Uses
- E. Public Comments Letters in Support
- F. Public Comments Letters in Opposition
- G. Neighbors United for Safe-Healthy Community Petition