



THE CITY OF SAN DIEGO

Report to the City Council

DATE ISSUED: July 31, 2017 REPORT NO: 17-035

ATTENTION: Honorable Council President Myrtle Cole and City Council Members,
Agenda of June 27, 2017

SUBJECT: Amendment to the Municipal Code and the Local Coastal Program to
Address the Adult Use of Marijuana Act

REQUESTED ACTION:

Approve the Staff Recommendations

STAFF RECOMMENDATION:

1. Adopt an ordinance amending the Municipal Code and the City's Local Coastal Program to allow testing of marijuana and marijuana products and prohibit marijuana cultivation, distribution and production (Option 1) for the reasons detailed in this report; and
2. Reject the ordinance amending the Municipal Code and the City's Local Coastal Program to allow limited marijuana cultivation, distribution, production, and testing (Option 2) for the reasons specified in this report; and
3. Determine the project is exempt from CEQA.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

On November 8, 2016 the citizens of California voted to approve Proposition 64, the Adult Use of Marijuana Act (AUMA). The AUMA allows, at the discretion of local jurisdictions, the retail sale, cultivation, distribution, production, and testing of marijuana and marijuana products. Pursuant to the AUMA, the State Departments of Food and Agriculture (cultivation), Consumer Affairs (retail sales, transportation, and storage and distribution), and Public Health (manufacturing and testing) is each responsible for developing regulations and permitting processes by no later than January 2018 when the State will begin to issue permits. As such, jurisdictions must have regulations on marijuana and marijuana products in place on or before January 2018.

On January 31, 2017 the City introduced amendments to the Land Development Code (LDC) to include regulations that will allow Marijuana Outlets – a retail establishment (recreational, medicinal, or combination) operating with a Conditional Use Permit (CUP) where marijuana, marijuana products, and marijuana accessories are sold to the public. The City Council adopted these amendments on February 14, 2017.

As part of that action, the Council also approved prohibitions on all non-retail marijuana uses (e.g., cultivation, distribution, storage, processing, manufacturing and testing) with a nine month sunset provision on those prohibitions. As part of their motion, Council

directed staff to review the issues associated with these non-retail uses and return within nine months with recommendations that regulate these aspects of the marijuana business. The motion also included a provision that businesses with a valid Zoning Use Certificate and Business Tax Certificate issued on or before January 31, 2017 be grandfathered and deemed previously conforming until the City Council adopts regulations for these uses.

This report satisfies Council's direction.

DISCUSSION:

A. Implications Associated with Non-Retail Marijuana Uses

During the January 31st hearing, Police Chief Zimmerman and staff raised a number of concerns relative to legal and illegal activities associated with legalized marijuana use. Many of the concerns are based on the City of Denver's experiences after it adopted regulations for adult use of marijuana after the passage of Colorado's version of Proposition 64. Chief Zimmerman's concerns relate directly to public safety such as the potential misuse of hazardous chemicals, gases, and pesticides, and possible explosions and fires. Other issues of concern are increased calls for services and investigations, drug diversions to minors, the potential of attracting organized crime, increases in homelessness, and the potential for marijuana tourism and associated problems (Attachment 3).

B. Proposed Non-Retail Marijuana Uses Ordinances

Given the concerns raised above, staff has provided two ordinances for Council consideration; Option 1 that prohibits non-retail marijuana uses except for testing; and Option 2, which responds to Council's direction and allows for non-retail uses subject to limitations.

1. Option 1 – Testing Only

Two uses in the LDC currently address testing and laboratories. The first is within the *Research & Development* use where testing is allowed when related to scientific research specifically geared toward the development of new products and processes. This use is permitted in numerous commercial zones that also permit residential development and in all industrial zones.

The second use is within the *Medical, Dental, & Health Practitioner* use where testing in laboratories is allowed when specifically limited to medical and dental labs associated with a medical, dental, or health practitioner. This use is permitted in four of the six industrial zones, all but one of the commercial zones, most of which also permit residential use.

Testing marijuana for scientific research or when conducted within a medical or dental laboratory is permitted under the use categories above. However, testing marijuana for the commercial sale at *Marijuana Outlets* does not fit under these use regulations. As such, a new use (*Testing Labs*) is being proposed and defined as follows.

Testing Labs - Uses engaged in testing raw, processed, and manufactured products for health and safety purposes. This subcategory does not include uses that qualify under Medical, Dental, & Health Practitioner or Research & Development.

Testing labs, which would allow the commercial testing of marijuana, is proposed to be permitted as Process One (ministerial) and limited to industrial zones and only those commercial zones that prohibit residential use. Under this option, all other non-retail marijuana uses is prohibited. Attachment 1 is a map that identifies the location of zones that would allow testing labs.

Chapter 4 Article 2, Division 15, Marijuana Outlets, has been amended to revise the definition of marijuana consistent with the state amended definition and to allow for distribution and transport of marijuana and marijuana products to licensed marijuana outlets and testing labs.

2. Option 2 – Separately Regulated Use

Option 2 closely follows the regulatory framework for Marijuana Outlets, which was based on the *Medical Marijuana Consumer Cooperative* regulations adopted by the City Council in 2013 following 14 public hearings over a four year period.

This option creates regulations that would allow for cultivation, distribution, production, and testing of marijuana and marijuana products. To accomplish this, two new industrial uses are proposed. The first is Testing Labs, which is defined and discussed in Option 1.

The second is a new separately regulated industrial use, *Marijuana Production Facilities*, which is defined as follows.

Marijuana Production Facilities are individual or combined facilities engaged in the agricultural raising, harvesting and processing of marijuana; wholesale distribution and storage of marijuana and marijuana products; and production of goods from marijuana and marijuana products consistent with the requirements of the California Departments of Food and Agriculture, Consumer Affairs, and Public Health.

These facilities will generally be regulated in the same manner as *Marijuana Outlets* (and previously *Medical Marijuana Consumer Cooperatives*) as described below. Attachment 2 is a map that identifies the location of zones that would permit marijuana production facilities.

Zoning Requirements

- Limited to industrial zones¹ / Maximum two facilities per Council District²
- Separation requirements from sensitive receptors
 - 1,000' from public parks, churches, childcare, playgrounds, libraries, residential care facilities and schools

¹ Light Industrial (IL-1, -2, -3) and Heavy Industrial Zones (IH-1, -2)

² Each facility may engage in a single listed non-retail use or combination of non-retail uses, but no more than two facilities per district may be permitted

- 100' from residential zones
- 100' feet from marijuana outlets
- No separation requirements from other marijuana production facilities

Permitting Requirements

- CUP Process Three – Hearing Officer; appealable to Planning Commission
- CUP expiration 5 years / CUP extension 5 years

Special Operating Requirements

- Retail sales strictly prohibited
- Facilities must be entirely enclosed / no outdoor storage or operations
- Lighting/security; include operable cameras, alarms and security guard
- Requirements for fingerprinting, background check (similar to *Marijuana Outlets*)

Chapter 4 Article 2, Division 15, Marijuana Outlets, has been amended to revise the definition of marijuana consistent with the state amended definition; add a definition of marijuana production facilities; allow for distribution and transport of marijuana and marijuana products to licensed marijuana outlets, testing labs, and marijuana production facilities; and apply the regulations for marijuana outlets to marijuana production facilities including permit and background checks.

C. Sunset Provision for existing operators

Consistent with the City Council motion, both options include an uncodified section that would provide a 12 month sunset period for cultivation, distribution, production and testing facilities operating with a valid Zoning Use Certificate and Business Tax Certificate issued on or before January 31, 2017. This will provide an opportunity for those businesses to apply for permits as needed for facilities consistent with adopted regulations.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal #3: Create and sustain a resilient and economically prosperous City.

Objective #3: Diversify and grow the local economy.

FISCAL CONSIDERATIONS:

Option 1

There are no fiscal considerations associated with testing labs. They will be allowed ministerially in designated zones. Costs associated with reviewing building plans, tenant improvements, etc. will be covered by associated fees assessed by the Development Services Department.

Option 2

On November 2, 2016 the voters of the City of San Diego approved Ballot Measure N which established a gross receipts tax (Cannabis Business Tax) on non-medical marijuana businesses that retail, cultivate, distribute, and process marijuana and marijuana products. The tax rate is set at 5 percent until July 1, 2019 when the tax rate

increases to 8 percent. The City Council has the authority to either decrease or increase the tax by ordinance at any time, provided it does not increase the tax beyond 15 percent

Fiscal impacts include increased General Fund revenue as well as increased General Fund expenditures on administrative costs related to tax collection. These revenues and costs depend on unknown variables including:

- The number of businesses that operate in the City,
- The rate at which the industry develops,
- Consumer demand within the San Diego region,
- Availability or lack of availability in neighboring jurisdictions, and
- The price of the products, which may change over time.

Costs associated with reviewing building plans, tenant improvements, etc. will be covered by associated fees assessed by the Development Services Department.

ENVIRONMENTAL REVIEW:

With regard to testing labs and transport, both Option 1 and Option 2 were reviewed for consistency with the Land Development Code (LDC) EIR No. 96-0333, in accordance with Public Resources Code Section 21166 and California Environmental Quality Act (CEQA) Guidelines Section 15162. The CEQA and Environmental Policy Section of the Planning Department determined that neither option would result in new impacts or changed circumstances that would require a new environmental document and that the previous environmental document adequately covers the modifications to the LDC resulting from the adoption of either option. Marijuana production facilities in Option 2 are statutorily exempt pursuant to Section 26055(h) of the California Business & Professions Code, as the ordinance requires further discretionary review and review under CEQA for a Marijuana Production Facility and associated activities.

EQUAL OPPORTUNITY CONTRACTING INFORMATION:

N/A

PREVIOUS COUNCIL ACTION:

On February 14, 2017 the City Council adopted ordinances that amended the regulations for medical marijuana consumer cooperatives and permitted the retail sale of marijuana for adult use (non-medical). The motion to approve included a request that staff review the issues of cultivation, distribution, processing, storage, and testing and return within nine months with recommendations that regulate those aspects of the marijuana business.

COMMUNITY PARTICIPATION AND OUTREACH EFFORTS:

Option 2 is based upon the regulatory framework of the City Council adopted ordinance for Medical Marijuana Consumer Cooperatives which included an extensive public outreach effort. The City Council/Council Committees held 14 public hearings between 2009, when the City Council established the Medical Marijuana Task Force, and March 2013 when the the City Council adopted the ordinance. The adopted ordinance was based on the City Council's direction to develop and ordinance based on the repealed 2011 ordinance, with specific changes. Each of the 14 hearings was extremely well attended and each hearing included hours of public testimony and discussion. The testimony generally fell into two categories, those opposed to any regulations that would permit the sale of medical marijuana and those opposed because the proposed regulations were too limiting.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include owners/operators of approved medical marijuana consumer cooperatives, community planning groups, and advocates in favor and against marijuana use.

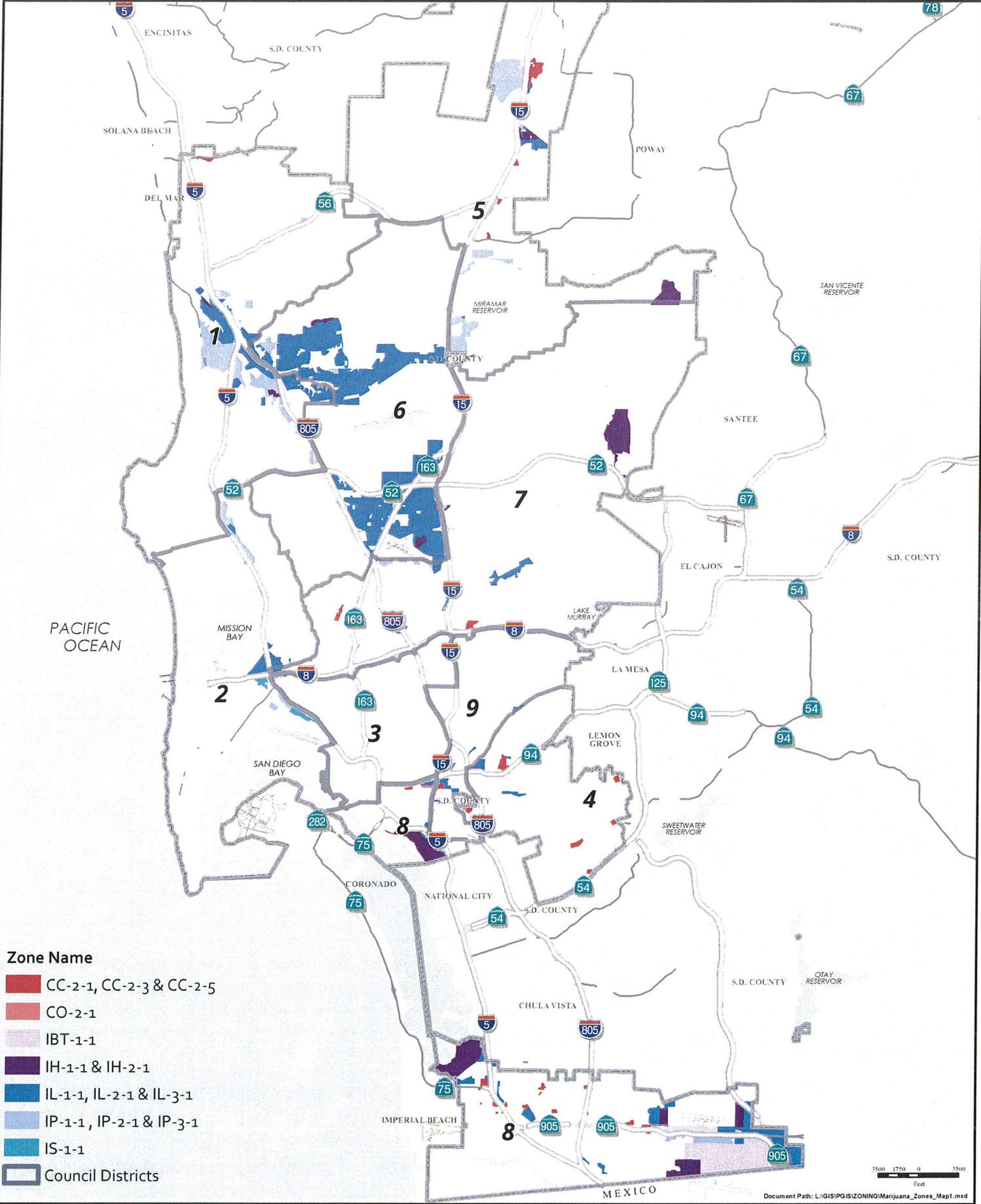


JEFF MURPHY, Director
Planning Department



DAVID GRAHAM
Deputy Chief Operating Officer

- Attachment(s):
1. Location of Zones Proposed to Allow Testing Labs
 2. Location of Zones Proposed to Permit Marijuana Production Facilities
 3. Potential Impacts – Supporting Documents



- Zone Name**
- CC-2-1, CC-2-3 & CC-2-5
 - CO-2-1
 - IBT-1-1
 - IH-1-1 & IH-2-1
 - IL-1-1, IL-2-1 & IL-3-1
 - IP-1-1, IP-2-1 & IP-3-1
 - IS-1-1
 - Council Districts

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