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REGULATION**
-
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May 25, 2021

The Honorable City Council
City of Los Angeles
City Hall, Room 395
Los Angeles, California 90012

Attention: Planning and Land Use Committee Committee

Dear Honorable Members:

**PROPOSED ORDINANCE AMENDMENTS TO SECTIONS 105.01, 105.02, and 105.03
OF THE LOS ANGELES MUNICIPAL CODE CONCERNING CANNABIS LAND USE
RESTRICTIONS**

SUMMARY

This Report by the Department of Cannabis Regulation (DCR) recommends modifications to the proposed Ordinance recommended by the City Planning Commission (CPC) to amend Sections 105.01, 105.02, and 105.03 of the Los Angeles Municipal Code (LAMC) concerning commercial cannabis activity. The proposed amendments add or amend definitions, location restrictions, and sensitive site dating provisions relating to commercial cannabis activity and provisions governing the continuing operation of existing medical marijuana dispensaries.

As stated in the Department of City Planning Recommendation and Supplemental Recommendation Reports (Council File 20-1125), the City Council initiated the proposed Ordinance. The CPC, by Letter of Determination (LOD) dated September 4, 2020, recommended the proposed Ordinance. DCR hereby recommends modifications to the proposed Ordinance recommended by the CPC. Copies of the proposed Ordinance recommended by the CPC, the proposed Ordinance recommended by the CPC with

modification hereby recommended by DCR, and a redline comparing the two versions, are attached hereto as Attachments A, B, and C, respectively.

The proposed Ordinance, if enacted, would be the first amendment to the City's current land use regulations for commercial cannabis activity adopted in 2017. Land use considerations are at the core of the City's cannabis regulations and a central part of the application and licensing process. The reasons for DCR's recommended modifications are generally to make the proposed Ordinance consistent with DCR's licensing process, to update the ordinance to reflect the fees which have been amended since CPC's LOD, and to clarify the identification of sensitive uses based upon government-maintained, publically available data.

BACKGROUND

As stated in the Department of City Planning Recommendation and Supplemental Recommendation Reports (Council File 20-1125), the City enacted its current location and related land use regulations for commercial cannabis activity by Ordinance No. 185,345, effective December 19, 2017.

In addition to this land use ordinance, the City Council adopted the Cannabis Procedures Ordinance, codified in Los Angeles Municipal Code (LAMC) Section 104.00 *et seq.*, which sets forth procedures for cannabis licensing and establishes the City's Social Equity Program. As set forth in LAMC Section 104.20, the Social Equity Program seeks to acknowledge and address the harmful impacts of past cannabis policies and their enforcement. By providing priority licensure and technical assistance to verified applicants, the Social Equity Program is intended to promote equitable ownership and employment opportunities in the cannabis industry, and address disproportionate impacts of cannabis prohibition in adversely-impacted and lower income communities. To be eligible as a Social Equity Applicant, individuals must satisfy certain eligibility requirements, such as low income status or possession of a prior cannabis arrest or conviction.

The City Council initiated proposed amendments to commercial cannabis land use related regulations in 2019, to modify definitions, location restrictions, and sensitive site dating provisions relating to commercial cannabis activity and provisions governing the continuing operation of Existing Medical Marijuana Dispensaries (EMMDs) that formerly operated under Proposition D. The proposed amendments generally intended to address, among other matters, the definition of Public Park, provisions concerning EMMD grandfathering, and provisions regarding the date of evaluation of sensitive sites relative to applicants for cannabis retail licenses.

The CPC considered the proposed amendments and related environmental clearance on February 13, and August 27, 2020 (CPC-2019-6203-CA). The CPC, by LOD dated September 4, 2020, recommended the proposed Ordinance, a copy of which is attached hereto as Attachment A.

FURTHER MODIFICATIONS RECOMMENDED BY THE DEPARTMENT OF CANNABIS REGULATION

DCR's recommended modifications to the proposed Ordinance address certain provisions in the 2017 location restrictions which pose barriers to the licensing of new cannabis businesses and Social Equity Applicants and to the continued operation of EMMDs. The modifications recommended by DCR (Attachments B and C) would:

- Change the Sensitive Use compliance date from when a license is issued to the date when the Pre-Application Filing Fee or Modification Request Form Review Fee(s) is paid;
- Amend existing Sensitive Use definitions to provide clarity and transparency and remain consistent with DCR's implementation and administration of the LAMC;
- Specify certain government-maintained, publicly available data sets used to determine the existence of Sensitive Uses;
- Provide additional context and clarity regarding the measurement of distances between Commercial Cannabis Activity business and a Sensitive Use;
- Clarify when a Retailer or Microbusiness Commercial Cannabis Activity having on-site retail sales creates a 700-foot buffer for the purpose of distancing requirements from other Retailers or Microbusinesses;
- Extend the time Existing Medical Marijuana Dispensaries (EMMDs) may remain at Proposition D compliant locations to December 31, 2025; and,
- Align the land use ordinance with other adopted and proposed amendments to the LAMC.

The Department of City Planning and DCR have considered these topics in the context of the existing commercial cannabis licensure process, specifically those from the Social Equity Program which experience an average 12-to-18 month application processing period between eligibility determination and licensure. The recommended changes are also intended to help mitigate the capital investment costs needed to start a new business, which threaten the intent of the Social Equity Program, the time needed to comply with Building Code and Fire Code permitting requirements, and Sensitive Uses.

These recommendations have been incorporated into a revised version of the proposed ordinance, which is attached to this Report as Attachment B. Attachment C is a redline ordinance showing the modifications proposed by DCR compared with the proposed ordinance recommended by CPC.

DISCUSSION

The City has licensed and regulated commercial cannabis activity for approximately three years. DCR, with the assistance of other City Departments, may propose future amendments to the LAMC to reflect future changes in local, state, and federal law. Currently, commercial cannabis businesses are not similarly situated to other manufacturing and retail businesses because cannabis remains a Schedule 1 controlled substance under the Control Substances Act; therefore, the use, sale and possession of cannabis is illegal under federal law. Due to the federal prohibition, licensed commercial cannabis businesses have unique operational, safety,

and security concerns. Given that the legalized cannabis market is in its infancy, the public and many operators do not have the same level of experience with regulatory compliance as in other more established industries. As documented in case law and in the legislative histories of cannabis regulations in the City, when not appropriately licensed and regulated, there may be negative impacts and secondary effects associated with cannabis activities which are dissimilar to other retail or manufacturing businesses, including neighborhood disruption, diversion, exposure of school-age children to cannabis, and cannabis sales to minors. The City and the public have an interest in mitigating these effects and supporting public safety and welfare through the regulation of commercial cannabis business locations.

DCR recommends modifications to the existing language of LAMC 105.00 *et seq.* as follows.

Sensitive Use Definitions

DCR recommends certain clarifying amendments to the definitions of “School,” “Public Park,” “Day Care,” “Alcoholism or Drug Abuse Recovery or Treatment Facilities,” “Permanent Supportive Housing,” and the addition of a definition of “Sensitive Use,” which encompasses each of these sensitive sites. The criteria for identifying Sensitive Use sites should be clear, objective, and based on publicly available information. This will help to preserve transparency and predictability for DCR staff, applicants, and community members alike.

Schools

1. Current definition: "School" means an institution of learning for minors, whether public or private, which offers instruction in grades K through 12 in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This definition includes kindergarten, elementary, junior high, senior high or any special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.
2. Recommendation: "School" means an institution of learning for minors, whether public or private, which offers **in-person** instruction in grades K through 12 in those courses of study required by the California Education Code and is **licensed** by the State Board of Education. This definition includes kindergarten, elementary, junior high, senior high or any special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.

The proposed “in-person” language is suggested to address licensed locations where children are not regularly present onsite, such as virtual learning centers and home schools. Furthermore, the clarification of “licensed” by the State Board of Education provides clarity and certainty for both DCR and Applicants.

Public Parks

1. Current definition: "Public Park" means an open space, park, playground, swimming pool, beach, pier, reservoir, golf course, or similar athletic field within the City of Los Angeles, which is under the control, operation or management of the City Board of Recreation and Park Commissioners, the Santa Monica Mountain Conservancy, the Mountains Recreation and Conservation Authority, the County of Los Angeles Department of Beaches and Harbors, or the California Department of Parks and Recreation, and shall further include any property in the City of Los Angeles zoned Open Space ("OS") as defined under Section 12.04.05 of the Los Angeles Municipal Code.

2. Recommendation: "Public Park" means an open space, park, playground, swimming pool, beach, pier, reservoir, golf course, or similar recreational facility, which is under the control, operation or management of the City Board of Recreation and Park Commissioners; the Santa Monica Mountains Conservancy; the Mountains Recreation and Conservation Authority; the County of Los Angeles Department of Beaches and Harbors; the County of Los Angeles Department of Parks and Recreation; the California Department of Parks and Recreation; **or the National Park Service**; and shall further include any property in the City of Los Angeles zoned Open Space ("OS") as defined under Section 12.04.05 of the Los Angeles Municipal Code **that is maintained or operated as a parks and recreation facility, including bicycle trails, equestrian trails, walking trails, nature trails, park land/lawn areas, children's play areas, child care facilities, picnic facilities, and athletic fields used for park and recreation purposes.**

An "athletic field" is a subtype of "recreational facility"; thus, DCR recommends using the broader language. LAMC Section 12.04.05 includes sanitary landfill sites, public water supply reservoirs and accessory uses incidental to the operation and continued maintenance of such reservoirs, percolation basins and flood plain areas, and other non-recreational uses. DCR's proposed definition would limit OS as defined under Section 12.04.05 of the Los Angeles Municipal Code to parcels maintained or operated as a parks and/or recreation facility.

Day Care Centers

1. Current definition: "Day Care Center" means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school-age child care centers included in Section 1596.76 of the Health and Safety Code, which are licensed by the state of California.

2. Recommendation: "Day Care Center" means a Child Care - Infant Center, Child Care Center, or Child Care Center Preschool licensed by the State of California Department of Social Services that is not located on a Residentially Zoned Property.

DCR's proposed definition maintains the existing interpretation, but clearly identifies that Day Care Center/Child Care Center are considered Sensitive Uses when licensed by the State, and addresses the existing exclusion of in-home facilities by excluding licenses associated with residentially zoned properties.

Alcoholism or Drug Abuse Recovery or Treatment Facilities

1. Current definition: "Alcoholism or Drug Abuse Recovery or Treatment Facility" shall be construed as defined in Section 11834.02 of the California Health and Safety Code.

Section 11834.02 of the California Health and Safety Code states "As used in this chapter, "alcoholism or drug abuse recovery or treatment facility" or "facility" means any premises, place, or building that provides residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services."

2. Recommendation: "Alcoholism or Drug Abuse Recovery or Treatment Facility" means any non-medical alcoholism and drug abuse recovery or treatment facilities licensed or certified by the State of California Department of Health Care Services to provide residential non-medical services to individuals who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.

Section 11834.02 of the California Health and Safety Code does not require a license. To date, DCR has verified requirements by placing a phone call to facilities licensed or certified by the State to ask if the business provides residential nonmedical services, which may lead to inconsistent responses. Furthermore, under the current definition and DCR interpretation, a business that is not properly licensed or permitted may be considered a Sensitive Use. The recommended definition would require alcoholism and drug abuse recovery or treatment facilities to be licensed or certified by the State of California Department of Health Care Services (DHCS) and provide residential non-medical services. This information is maintained on the DHCS website and can be verified through this government-maintained data without requiring or relying on communication with the business.

Permanent Supportive Housing

1. Current definition: "Permanent Supportive Housing" means Supportive Housing as defined in the Draft Permanent Supportive Housing Ordinance initiated August 30, 2017, CPC-2017-3136-CA, as may hereafter be adopted or amended, to include housing with no limit on length of stay that is occupied by persons with low incomes who have one or more disabilities and may include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people, but only to the extent such Permanent Supportive Housing provides on-site Supportive Services. As may hereafter be adopted or amended, Supportive Services means services that are provided on a voluntary basis to residents of Supportive Housing, including, but not limited to, a combination of subsidized, permanent housing, intensive case management, medical and mental

health care, substance abuse treatment, employment services, benefits advocacy, and other services or service referrals necessary to obtain and maintain housing.

2. Recommendation: “Permanent Supportive Housing” means Supportive Housing as defined in Section 12.03 of the Los Angeles Municipal Code, to include housing with no limit on length of stay that is occupied by persons with low incomes who have one or more disabilities and may include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people, but only to the extent such Permanent Supportive Housing provides on-site Supportive Services. Supportive Services means services that are provided on a voluntary basis to residents of Supportive Housing, including intensive case management, medical and mental health care, substance abuse treatment, employment services, benefits advocacy, and other services necessary to obtain and maintain housing.

The recommended definition removes language that requires multiple “Supportive Services” to be available on-site to qualify as “Permanent Supportive Housing.” DCR also recommends removal of “permanent housing” as a Supportive Service because it is inherent in, and therefore redundant with, the existing meaning of “Permanent Supportive Housing.” Other on-site “Supporting Services” included in the existing definition are carried over and include intensive case management, medical and mental health care, substance abuse treatment, employment services, benefits advocacy, and other services or service referrals necessary to obtain and maintain housing.

Verification of Sensitive Uses Through Government Maintained, Publicly Available Data

A. Specification of Sensitive Use data sources

DCR recommends amendments to identify which government-maintained, publicly available data will be used to determine the existence of Sensitive Uses. This includes databases maintained by specified third party licensing agencies, such as the California Department of Education’s official website for the identification of schools, and the California Department of Social Services’ official website for identification of day care centers, among others. Utilizing government-maintained, publicly available data sources will provide certainty and transparency for DCR, cannabis applicants, and the public concerning compliance with Sensitive Use restrictions.

Additionally, DCR, applicants, and the public will benefit from an amendment that specifies dates on which DCR will retrieve data from identified government-maintained, publicly available sources for purposes of conducting its land use review. DCR recommends to define “Verification Date” as the first business day of the calendar quarter beginning February 1, May 1, August 1 or November 1, which immediately precedes the applicant’s payment of either the Pre-Application Review Fee(s) or Modification Request Form Review Fee(s), whichever is applicable. This amendment will provide certainty to applicants searching for compliant

locations and provide transparency in DCR's land use review process by ensuring both DCR and applicants are relying on the same Sensitive Use data.

B. Specification of the payment of Pre-Application Review Fee or Modification Request Form Review Fee(s) as Sensitive Use Verification Date

Specification of the date on which DCR reviews Sensitive Uses for each Business Premises is important in the context of DCR's phased licensing process. DCR estimates a minimum of three months are needed to process an application and issue a Temporary Approval (a form of licensure available to applicants prior to annual licensure), with 6-12 months being more common for Social Equity Program (SEP) applicants, who tend to have limited access to capital. DCR's licensing procedures were amended by the City Council in July 2020 ([Ordinance No. 186703](#)) to create a pre-application review process allowing for the completion of DCR's land use review at the beginning of the overall application review process, consistent with the changes contained in the proposed ordinance. Currently, DCR has approximately 200 pending applications for retail storefront licenses. All of these pending applications have come from participants in the SEP, which grants priority processing to individuals who are low-income and either have been convicted for a past cannabis-related offense or who reside in an area disproportionately affected by past drug enforcement. Many SEP applicants have incurred significant financial costs, including the acquisition of property, execution of leases, and securing fixtures and equipment that may be jeopardized if the proposed business premises becomes non-compliant as a result of a Sensitive Use that began operating during the months-long period when the application was awaiting action by DCR. Utilizing the payment date of the Pre-Application Review Fee(s) or Modification Request Form Review Fee(s), rather than the date of licensure, would benefit SEP applicants by giving them added certainty regarding identified Sensitive Uses earlier in the licensing process.

Additionally, the existing language in the LAMC creates administrative challenges for DCR, which currently must consider Sensitive Uses that are established up until the date the license is issued -- a moving target that exists by definition in the future. Significant time can elapse between the date the application is submitted and the date it is processed and approved, and during this time it is possible that new Sensitive Uses can come into existence that were not known to DCR or the applicant at the time the application or modification request was submitted, potentially complicating DCR's land use review.

Furthermore, specifying the Verification Date as the payment date of the Pre-Application Review Fee(s) or Modification Request Form Review Fee(s) would also be consistent with other land use review processes administered by the City, in which applicants are assured that the rules against which their projects are evaluated will not change after certain milestones are reached. The Zoning Code, for example, grants a vested right to a project to proceed in accordance with the regulations in effect on the date that a complete set of plans and a plan check fee are submitted to the Department of Building and Safety, even though the plan check process can take weeks to months to complete. More complicated projects requiring discretionary entitlements from City Planning have the option in some cases of submitting a vesting application, with conditional use permits, zone changes, and subdivision maps being three such examples. By setting a fixed date for the purpose of evaluating an application, these processes

help to provide clarity and certainty to all actors involved and avoid surprises that can derail an application after significant time and money have already been expended.

C. Specification of when a Retailer or Microbusiness Commercial Cannabis Activity creates a buffer for other Retailers or Microbusinesses

DCR also proposes an amendment to clarify the point at which a Retailer or Microbusiness Commercial Cannabis Activity having on-site retail sales creates a 700-ft. buffer for other commercial cannabis businesses. DCR suggests that a commercial cannabis business creates such a buffer if that business is licensed by the City to engage in the Commercial Cannabis Activity or has paid Temporary Approval Application fees or Business Premises Relocation fees, whichever is applicable. This removes the existing requirement to obtain both a State and City license, thereby providing expediency and certainty for applicants when there are delays with the State licensing process.

Existing Medical Marijuana Dispensaries (EMMDs)

DCR also proposes a three year extension -- to December 31, 2025 -- for Existing Medical Marijuana Dispensaries (EMMDs) to find new business premises locations that comply with the current land use requirements. EMMDs currently must comply with the land use and Sensitive Use restrictions of Proposition D, notwithstanding its repeal. This amendment would extend the limited period to provide additional time for EMMDs to comply with changing City and State requirements. The existing ordinance allows for a limited period to December 31, 2022 so EMMDs may continue operations in their existing locations if compliant with Proposition D, notwithstanding Proposition D's repeal. A further extension of this period to 2025 is necessary given the challenges created by the COVID-19 pandemic and the current length of time required to process a relocation request. EMMDs represent the vast majority of the licensed retail market in the City; an extension will ensure that consumers continue to have access to safe and tested cannabis products for the foreseeable future.

RECOMMENDATION

That the City Council, subject to approval by the Mayor:

1. Approve the amendments to Article 5, Chapter X of the Los Angeles Municipal Code described herein and in the attached proposed ordinance (Attachment B);
2. Request the Office of the City Attorney to prepare and present an ordinance to amend Article 5, Chapter X of the Los Angeles Municipal Code in accordance with the proposed amendments; and
3. Include an urgency clause in the ordinance transmitted for City Council consideration.

The above recommendations seek to improve the administration of the City's commercial cannabis licensing program. Your time and consideration of this proposal is greatly appreciated. If you have any questions or concerns, please contact Rocky Wiles at (213) 978-0738.

Sincerely,



CAT PACKER
Executive Director

CP:RW

cc: William Chun, Deputy Mayor of Economic Development
Ron L. Frierson, Director of Economic Policy
Richard H. Llewellyn, Jr., City Administrative Officer
Sharon Tso, Chief Legislative Analyst
Vince Bertoni, Director of Planning
Steve Blau, Deputy City Attorney

Copies of the proposed Ordinance recommended by the CPC and by the CPC with the modification hereby recommended by DCR, and a redline comparing the two versions, are attached hereto as Attachments A, B, and C, respectively.

Attachments:

- A – Proposed Ordinance recommended by the City Planning Commission
- B – Proposed Ordinance recommended by City Planning Commission
with modifications recommended by the Department of Cannabis Regulation
- C – Redline comparison of Proposed Ordinance recommended by City Planning
Commission with modifications recommended by the Department of Cannabis
Regulation