DEPARTMENT OF CITY PLANNING
RECOMMENDATION REPORT

CITY PLANNING COMMISSION
DATE: September 14, 2017
TIME: After 11 a.m.
PLACE: Los Angeles City Hall
200 North Spring Street
Room 340
Los Angeles, CA 90012

CASE NO: CPC-2017-2260-CA
COUNCIL FILE: 14-0366-S4
CEQA: ENV-2017-2261-ND; ENV-2017-3361-SE
LOCATION: Citywide
COUNCIL DISTRICT: All
PLAN AREAS: All

PUBLIC HEARING: June 29, 2017

SUMMARY: A proposed ordinance (Appendix A) amending the Los Angeles Municipal Code (LAMC) to establish location restrictions for commercial cannabis activity consistent with Measure M adopted by Los Angeles City voters on March 7, 2017.

RECOMMENDED ACTIONS:

1. **Find**, pursuant to CEQA Guidelines Section 15074(b), after consideration of the whole of the administrative record, including Negative Declaration No. ENV-2017-2261-ND ("Negative Declaration"), and all comments received, that there is no substantial evidence that the project will have a significant effect on the environment;
2. **Determine** that based on the whole of the administrative record, the project is exempt from CEQA pursuant to California Business and Professions Code Section 26055(h) on the basis that the project will adopt ordinances, rules and/or regulations, that will require discretionary review under CEQA to approve licenses to engage in commercial cannabis activity in the City of Los Angeles (ENV-2017-3361-SE).
3. **Recommend** that the City Council adopt the proposed Ordinance (Appendix A);
4. **Adopt** the staff report as the Commission's report on the subject; and
5. **Adopt** the Findings.

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ADVICE TO PUBLIC: *The exact time this report will be considered during the meeting is uncertain since there may be several other items on the agenda. Written communication may be mailed to the Commission Secretariat, 200 North Spring Street, Room 532, Los Angeles, CA 90012 (Phone No. 213/978-1300). While all written communications are given to the Commission for consideration, the initial packets are sent a week prior to the Commission's meeting date. If you challenge these agenda items in court, you may be limited to raising only those issues you or someone else raised at the public hearing agendized herein, or in written correspondence on these matters delivered to this agency at or prior to the public hearing. As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability, and upon request, will provide reasonable accommodation to ensure equal access to these programs, services, and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or other services may be provided upon request. To ensure availability of services, please make your request no later than three working days (72 hours) prior to the meeting by calling the Commission Secretariat at 213/978-1300.

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Summary

The Commercial Cannabis Location Restriction Ordinance is a proposed Los Angeles Municipal Code (LAMC) amendment that would establish location and distancing requirements for commercial cannabis activity within the City. The Department of City Planning drafted the ordinance in response to the passage of Proposition M, which requires the City Council to repeal the City's existing regulations concerning medical cannabis dispensaries and states the City's intent to adopt a comprehensive regulatory process and structure for all medical and nonmedical commercial cannabis activity.

The Commercial Cannabis Location Restriction Ordinance is one component of that larger regulatory structure. This draft ordinance is limited in scope to restricting the location of various types of commercial cannabis activity. Another component of the regulatory structure, an ordinance creating a Department of Cannabis Regulation and Cannabis Commission, has already been adopted by the City Council. Additional regulations regarding the specifics of the application and review/approval process, operating standards, enforcement, and other topics are being developed by other City departments and will be processed separately.

The draft ordinance:

- Allows certain defined commercial cannabis activity to take place in the City, so long as it is:
    - Conducted by persons operating under a State license.
    - Authorized by the City's Department of Cannabis Regulation.
    - In compliance with the location restrictions specified in the ordinance, as well as with additional regulations.
- Identifies zones within which specified types of commercial cannabis activity are eligible to operate.
- Requires that cannabis retail activity with on-site sales observe a specified distance from sensitive sites, as well as from other cannabis retail activity with on-site sales.

In addition to the main text of the ordinance, the Department has also prepared an ordinance supplement providing a land use review process option with the Zoning Administrator as the initial decision-maker, which the Commission may incorporate into the ordinance at its discretion. This optional ordinance supplement was requested by the Planning and Land Use Management (PLUM) Committee of the City Council. However, it is now understood that the new Department of Cannabis Regulation will have discretionary authority over commercial cannabis activity; thus, the Department does not recommend that the ordinance supplement be incorporated at this time.

Initiation

This Commercial Cannabis Location Restriction Ordinance, a proposed amendment to the Los Angeles Municipal Code (LAMC), was initiated on June 6, 2017 by the Director of Planning in response to recent State legislation – including the 2015 Medical Cannabis

Regulation and Safety Act, and the 2016 Adult Use of Marijuana Act (Proposition 64) – as well as Proposition M, passed by City voters in March 2017. Given that Proposition M states the City's intent to adopt a comprehensive regulatory process and structure for all cannabis-related commercial activity, the Director determined that as part of that process and structure, it is in the interest of public safety and welfare to regulate the location and distance requirements of cannabis-related businesses to ensure compatibility with surrounding neighborhoods and protect sensitive sites from negative impacts.

Background

Federal Law

Currently, activities involving cannabis or cannabis-derived products are subject to prohibitions in Federal law, including the Controlled Substances Act. The draft ordinance is not intended to conflict with Federal law, but is intended to be interpreted to be compatible with Federal enactments and in furtherance of the public purposes that those enactments encompass. The draft ordinance is not intended to authorize any violation of Federal law, nor is it intended to stand as an obstacle or conflict with any efforts by the Federal government to enforce Federal laws concerning cannabis.

Proposition D

Commercial cannabis activity in the City currently is subject to restrictions specified in Proposition D, approved by voters in 2013. Proposition D prohibits the operation or establishment of medical cannabis businesses in the City, but provides for the assertion of limited immunity for medical cannabis businesses that comply with certain requirements, including having registered with the City Clerk under the 2007 Interim Control Ordinance and subsequent legislation. As a condition of the limited immunity, Proposition D requires medical cannabis businesses to observe specified distances from various types of sensitive sites.

Recent Changes in City and State Legislation

On March 7, 2017, Los Angeles voters passed Proposition M, which requires the City Council to adopt an ordinance repealing Proposition D effective January 1, 2018. Proposition M also states the City's intent to adopt a comprehensive regulatory process and structure covering both medical and nonmedical commercial cannabis activity.

Proposition M was prompted by two recent pieces of State legislation. In 2015, the State Legislature passed the Medical Cannabis Regulation and Safety Act (MCRSA), which established a State licensing system for medical cannabis commercial activity. In 2016, California voters passed Proposition 64, also known as the Adult Use of Marijuana Act (AUMA), which removed State prohibitions on personal possession and use of small amounts of cannabis for nonmedical purposes and established a State licensing system for nonmedical cannabis commercial activity. These two laws were later modified in June

2017 by the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), which merged the State licensing systems for medical and nonmedical cannabis.

The draft ordinance seeks to directly address the challenges presented by the recent State legislation to license and regulate both medical and nonmedical cannabis, and responds to the voter mandate provided by Proposition M to establish a comprehensive regulatory structure for commercial cannabis activity within the City.

The following paragraphs provide further discussion of the history of cannabis regulation in the City, up to and through the passage of Proposition D.

Commercial Cannabis Regulation Prior to Proposition D

Prior to Proposition D, medical cannabis businesses were regulated by a series of City ordinances, some of which were challenged in court, and all of which are now expired. These ordinances responded to State legislation and were intended to control the unlawful proliferation of medical cannabis dispensaries across the City.

The Compassionate Use Act (CUA), adopted by State voters in 1996, as well as the Medical Marijuana Program Act (MMPA), enacted by the Legislature in 2003, provided California's qualified patients and their primary caregivers with limited immunities to certain criminal prosecutions under State law. This legislation was intended in part to exempt qualified patients and primary caregivers who obtain and use marijuana for medical purposes from specified and limited State criminal penalties.

In the years following the passage of the CUA and MMPA, according to local media reports and neighborhood sightings and complaints, more than 850 medical cannabis businesses may have opened, closed and reopened storefront shops and commercial growing operations in the City without any land use approval under the LAMC or other regulatory authorization from the City. The Police Department reported that, as the number of dispensaries and commercial growing operations proliferated without legal oversight, the City and its neighborhoods experienced an increase in crime and negative secondary harms associated with medical cannabis businesses.

In response, in August 2007 the City enacted an Interim Control Ordinance (ICO) to prohibit medical marijuana businesses in the City and to exempt from this prohibition certain existing facilities that timely registered with the City Clerk. The exemption would remain until such time as the City adopted comprehensive medical cannabis regulations.

The City replaced the ICO in 2010 with the Medical Marijuana Ordinance (MMO; Ordinance No. 181,069). The MMO sought to limit the number of businesses by providing priority registration to those that, among other conditions, timely registered under the ICO.

Several hundred marijuana business and patient plaintiffs filed more lawsuits challenging the MMO. On December 10, 2010, the Los Angeles County Superior Court found portions of the MMO invalid, including its ICO registration restriction. On July 3, 2012, the 2nd

District Court of Appeal reversed the trial court's injunction against the City in its entirety. [*420 Caregivers, et al. v. City of Los Angeles* (2012) 207 Cal.App.4th 703].

Prior to the Court of Appeal ruling in *420 Caregivers*, the City responded to the Superior Court order by passing the Temporary Urgency Ordinance (TUO; Ordinance No. 181,530), effective January 28, 2011. The TUO replaced the ICO registration restriction, found invalid by the Superior Court, with a lottery. Dozens of additional lawsuits followed that challenged the TUO. On October 14, 2011, the trial court ruled, among other matters, that the TUO was valid. Although the trial court upheld its validity, the TUO sunset with the MMO in 2012.

Los Angeles voters approved Proposition D in the May 2013 municipal election. Proposition D provides a limited immunity from specified and limited enforcement for businesses timely registered under the 2007 ICO and meeting other registration, operation, and location restrictions.

Reaction to Proposition D

The cannabis industry and some members of the public became unsatisfied with Proposition D following the State's adoption of MCRSA and AUMA, because these new State laws established State licensing systems for medical and commercial cannabis activity predicated upon, among other requirements, obtaining a local license. MAUCRSA similarly prohibits State licensing authorities from approving a State license if approval of a State license will violation the provisions of any local ordinance, and allows applicants to provide the State proof of a local license, permit or other authorization from the local jurisdiction verifying that the applicant is in compliance with the local jurisdiction.

The cannabis industry and some members of the public assert that Proposition D creates uncertainty because it provides for a limited immunity rather than a license. In comparison, a license would provide certainty regarding which businesses comply with City regulations and which do not. Additional objections include the assertion that Proportion D has been ineffective at controlling the continued unlawful proliferation of illegal marijuana businesses to the detriment of local communities. This is notwithstanding that the City Attorney's Office reports that it has filed 576 criminal cases against 535 businesses, resulting in the successful closure of hundreds of illegal marijuana businesses.

Regulatory Approaches in Other Jurisdictions

In March 2017, the Department reviewed existing and proposed regulations concerning medical and nonmedical cannabis commercial activity in several jurisdictions around California, as well as other states that have legalized or decriminalized either medical or nonmedical cannabis. Among the topics reviewed were: zones where commercial cannabis activity is allowed and/or prohibited; distancing from sensitive sites; distancing from other cannabis businesses; performance/operational standards; and caps, if any, on the number of businesses.

Many jurisdictions that were queried had regulations in various stages of development at the time of the Department's inquiry. Only Boulder, Colorado and Denver, Colorado had regulations for nonmedical cannabis in place at the time of the Department's inquiry, while most others had existing regulations for medical cannabis but only proposed or draft regulations for nonmedical cannabis.

Most of the jurisdictions approach or are considering approaching cannabis retail or dispensary businesses as a retail use, and propose to allow it in commercial and industrial zones, while cultivation, manufacturing, and other non-retail activities are generally proposed for industrial zones. Many jurisdictions also require or are considering some type of distancing between cannabis businesses and sensitive sites of one type or another. For example, Anchorage, Alaska is considering 500 feet; Berkeley, California requires 600 feet for medical cannabis businesses; and a distance of 1,000 feet is required or being considered in Boulder, Colorado; Denver, Colorado; San Diego, California; and Portland, Oregon.

Commonly identified sensitive sites include schools, child care centers, and alcoholism or drug abuse treatment or recovery facilities. Jurisdictions requiring or considering distancing between cannabis businesses include Berkeley (600 ft), Boulder (no license issued if within 500 feet of at least three other cannabis businesses), San Diego (1,000 feet between retail businesses), Portland (1,000 feet between retail/dispensary businesses, not including "retail couriers," or delivery-only retailers), and Denver (1,000 feet between retail/medical cannabis businesses).

Only a few of the jurisdictions have or are considering numerical caps on cannabis businesses. Berkeley's existing requirements for medical cannabis specify a maximum of six medical cannabis businesses in a city of approximately 120,000 residents and 10 square miles, though it is unclear whether a similar cap will be imposed on nonmedical businesses. San Diego (1.4 million residents; 325 square miles) is considering a cap of 36 retail businesses, with 18 currently existing as dispensaries. Denver (700,000 residents; 150 square miles) has a cap of 226 sales locations.

Almost all jurisdictions reviewed have or are considering performance and/or operational standards such as hours of operation, security measures, odor control, limits on square footage, and renewable energy requirements. These standards were not reviewed in detail in this report, as the City of Los Angeles' performance and operational standards for commercial cannabis activity are being developed separately by other City agencies.

Draft Ordinance

The Commercial Cannabis Location Restriction Ordinance is one component of a broader legislative approach to commercial cannabis activity in the City. This draft ordinance (Appendix A) is limited in scope to restricting the location of various types of commercial cannabis activity. Another component of the regulatory structure, an ordinance creating a Department of Cannabis Regulation and Cannabis Commission, has already been

adopted by the City Council. Additional regulations regarding the specifics of the application and review/approval process, operating standards, enforcement, and other topics are being developed by other City departments and will be processed separately. The draft ordinance:

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In addition to the main text of the ordinance, the Department has also prepared an ordinance supplement providing a land use review process option with the Zoning Administrator as the initial decision-maker, which the Commission may incorporate into the ordinance at its discretion. This optional ordinance supplement was requested by the Planning and Land Use Management (PLUM) Committee of the City Council. However, it is now understood that the new Department of Cannabis Regulation will have discretionary authority over commercial cannabis activity; thus, the Department does not recommend that the ordinance supplement be incorporated at this time.

Requirements for Commercial Cannabis Activity

The draft ordinance provides regulation of commercial cannabis activity in the City, but only when: (1) conducted by a person that is both licensed by the State of California to engage in the activity; (2) authorized by the City's Department of Cannabis Regulation; (3) located within certain zones; and (4) observing specified distances from certain sensitive sites.

Types of Activity and Eligible Zones

The types of commercial cannabis activity and the zones in which they would be eligible to operate are summarized as follows:

- Retail commercial cannabis activity – primarily commercial and industrial zones: C1, C1.5, C2. C4, C5, CM, M1, M2, M3
- Microbusiness[1] commercial cannabis activity – primarily industrial zones: M1, M2, M3

[1] A microbusiness license allows a business to cultivate cannabis on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer, and retailer.

- Indoor cultivation and "Level 1"[2] manufacturing commercial cannabis activity – primarily industrial zones: MR1, M1, MR2, M2, M3
- Mixed-light (i.e., greenhouse) cultivation commercial cannabis activity – as an accessory use only in primarily agricultural zones: A1, A2
- "Level 2"[3] manufacturing commercial cannabis activity – primarily industrial zones: MR2, M2, M3
- Distribution commercial cannabis activity – primarily industrial zones: MR1, M1, MR2, M2, M3
- Testing commercial cannabis activity – primarily industrial zones: CM, MR1, M1, MR2, M2, M3

In certain specific plan areas without conventional zoning, the above types of commercial cannabis activity are eligible to operate in specified subareas that most closely correspond to the zones listed above.

Distancing Requirements

The draft ordinance requires businesses to observe specified distances from certain sensitive sites, as follows:

- Retail and microbusiness activity: 800 feet from schools, from alcoholism/drug rehabilitation or treatment facilities, from public libraries, from public parks, and from other cannabis retail and microbusiness activity with on-site sales.

No distancing requirements – either from sensitive sites or from other cannabis-related business sites – are proposed for:

- Cultivation, manufacturing, testing and distribution activity with no retail on the same site.
- Retail and microbusiness activity with no on-site sales (delivery only).

Ordinance Supplement

The Ordinance Supplement is provided as an optional component of the legislation and is intended to create a site-specific land use review process for commercial cannabis activity. This process would require applicants seeking a compliance document from the Cannabis Commission to first submit an application to the Department of City Planning for review and recommendation concerning the proposed activity at a particular location. The initial decision-maker would be the Zoning Administrator, whose discretion would be limited to making findings specified in the Ordinance Supplement. The Zoning Administrator's decision could be appealed to the appropriate Area Planning Commission, with a second level of appeal to the City Council.

[2] Level 1 cannabis manufacturing, as defined in State law, manufactures cannabis products using only nonvolatile solvents, or no solvents.
[3] Level 2 cannabis manufacturing, as defined in State law, manufactures cannabis products using volatile solvents.

This land use review process was requested by the City Council's Planning and Land Use Management Committee and has been included as an optional supplement to the draft ordinance. However, the Department recommends against incorporating this additional level of review, as the Department of Cannabis Regulation has been created specifically to review individual businesses and make decisions regarding whether to authorize commercial cannabis activity in a particular location.

Discussion

Limited Immunity vs. Affirmative Regulation

The public review draft of the ordinance released on June 8, 2017 contained language prohibiting commercial cannabis activity citywide, but allowing specified activities to assert limited immunity from enforcement of the prohibition so long as they complied with certain rules, including the location requirements that are part of the draft ordinance. This approach was very similar to the limited immunity currently available to existing medical marijuana businesses under Proposition D.

Following the release of the public review draft, a large number of comments from stakeholders voiced opposition to the system of prohibition and limited immunity employed under Proposition D, saying that it has created too much ambiguity and uncertainty for the cannabis industry, opening the door to arbitrary and selective enforcement and harming business' ability to obtain financing and enter into leases and employment contracts; that it would contradict a mandate from voters, in the form of Proposition M, to repeal Proposition D; and that a system of affirmative regulation would better serve the needs of the industry by providing more certainty and legitimacy.

After reviewing this and other input, the Department agrees that a system of affirmative regulation would be preferable to the Proposition D system of prohibition and limited immunity. Accordingly, the draft ordinance has been revised to remove all reference to a citywide prohibition on commercial cannabis activity or to limited immunity, with the understanding that the details of how such activity is to be authorized will be addressed separately.

Eligible Zones and Businesses

The draft ordinance distinguishes between the types of businesses that are eligible to operate in specific zones based on the type of State license held by the business. In general, the Department's recommended zones for each business type are based on whether the activities covered by the business' State license – separate from the fact that such activities involve cannabis or cannabis-derived products – are permitted in an existing particular zone. Thus, a business holding a cannabis retail license is generally eligible in zones where retail uses are permitted, a business holding a cannabis manufacturing license is eligible in zones where manufacturing uses are permitted, and so on. There are, however, a few specific instances in which cultivation activities are

recommended to be allowed in a smaller range of zones than their closest equivalent uses, as explained later in this section.

Numerous neighborhoods are covered by specific plans, many of which employ the range of zones that appear in the Zoning Code. In cases where a specific plan employs its own unique zones, the Department reviewed the provisions of the specific plan to determine which subareas would permit the land uses that correspond to the business activities covered by each State license type. These subareas were then added to the list of eligible zones for the appropriate type of commercial cannabis activity.

Some specific cannabis-related activities are not eligible to operate in any zone. This includes businesses holding licenses that permit cultivation wholly outdoors (license types 1, 1C, 2, 3, and 5 under MAUCRSA). The specific rationale for the recommended eligible zones for each type of business is described below.

Cultivation: The closest equivalent uses in the Zoning Code to commercial cannabis cultivation are farming, greenhouses and plant nurseries. Farming is permitted in the A1, A2 and PF Zones, as well as in the MR1 and more permissive zones. Greenhouses are permitted as an accessory use in the A1 and A2 Zones, and as a main use in the C2 and more permissive zones. Plant nurseries are permitted in the A1, A2, and PF Zones, as well as in the C2 and more permissive zones.

Under MAUCRSA, cannabis cultivation licenses are generally divided into outdoor, indoor and mixed-light (i.e., taking place under a combination of natural and artificial light, usually in a greenhouse or similar structure. License types 1, 2, 3 and 5 allow exclusively outdoor cultivation. License types 1A, 2A, 3A, and 5A allow exclusively indoor cultivation. License types 1B, 2B, 3B, and 5B allow mixed-light cultivation. License types 1C and 4 allow for outdoor, indoor or mixed-light cultivation, either alone or in combination.

Additionally, MAUCRSA separates cannabis cultivation licenses by size. License types beginning with “1” are termed “specialty” licenses and are oriented toward businesses growing very small quantities of cannabis. The Type 1 license allows outdoor cultivation of less than 5,000 square feet, the Type 1A license allows indoor cultivation of between 501 and 5,000 square feet, the Type 1B license allows mixed-light cultivation of between 2,501 and 5,000 square feet, and the Type 1C license allows up to 25 mature plants for outdoor cultivation, up to 500 square feet of indoor cultivation, and up to 2,500 square feet of mixed-light cultivation. License types beginning with “2” are termed “small” licenses and allow between 5,001 and 10,000 square feet of cultivation. License types beginning with “3” allow between 10,001 and 22,000 square feet. The Type 4 license does not specify a size limitation, and the license types beginning with “5” allow more than 22,000 square feet, with the Type 5 license limited to one acre of outdoor cultivation.

Outdoor cannabis cultivation is not recommended to be eligible in any zone. An outdoor cultivation site is more difficult to secure against unauthorized entry or theft, and presents an increased risk of cannabis plants being acquired and distributed in an illicit manner. Buildings or greenhouses, on the other hand, offer the benefit of a fully enclosed structure

with a locked door. Additionally, an outdoor cultivation site does not afford any ability to control odors that may emanate from cannabis plants, either through enclosure or air filtration. This is a matter of concern since many of the zones in which farming is permitted lie in close proximity to residential zones. Based on these factors, it is desirable for cannabis cultivation to take place only in enclosed structures with locking doors. Thus, the Department's recommendations do not include identifying eligible zones for businesses licensed for exclusively outdoor cultivation (Types 1, 2, 3, and 5).

Mixed-light cannabis cultivation, which is intended to take place in a greenhouse or similar structure, is recommended to be eligible as an accessory use in the A1 and A2 zones only. Greenhouses offer the possibility of enclosure but are partially or fully transparent to someone looking in from outside, making them superior to outdoor sites in terms of security and odor control, but inferior to permanent habitable buildings. Thus, the Department recommends limiting the scale and extent of mixed-light cultivation, and recommends that it be limited to an accessory use. It is not recommended that businesses holding a Type 5B mixed-light cultivation license be allowed, because this license allows more than 22,000 square feet of canopy on the same premises, and a cultivation operation of this size would not be consistent with an accessory use. Additionally, it is worth noting that license types 5, 5A, and 5B, all of which are classified as "large" scale cannabis cultivation, will not be issued by the State until January 1, 2023.

Because greenhouses are permitted as a main use in commercial and industrial zones, it is not recommended that these zones be made eligible for mixed-light cultivation at this time, and that the use be confined to the A1 and A2 Zones. Additionally, while the A1 and A2 Zones permit a stand selling agricultural products that are grown on-site, it is not recommended that cannabis sales stands be permitted, as a stand does not allow for the level of security and visual screening that a fully enclosed building does. The sale of cannabis is for all intents and purposes a retail use that is most appropriately carried out in zones that permit retail.

For indoor cannabis cultivation, the closest equivalent use in the Zoning Code is farming. Indoor cannabis cultivation, in which the building is fully enclosed and opaque to all natural light, is widely seen as the most lucrative setting in which to grow cannabis, as it allows for total control over temperature and lighting, and for vertical stacking of the plants, all of which can significantly increase the yield from a given site. For this reason, the Department recommends that indoor cultivation be treated as a primarily industrial land use and permitted in the MR1, M1, MR2, M2 and M3 Zones, and not in the A1, A2 or PF Zones.

Additionally, it is not recommended that any eligible zones be identified for "specialty cottage" cultivation conducted under a Type 1C license. The Type 1C license, according to MAUCRSA, allows "cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of 2,500 square feet or less of total canopy size for mixed-light cultivation, up to 25 mature plants for outdoor cultivation, or 500 square feet or less of total canopy size for indoor cultivation, on one premises" [Business & Professions Code Sec. 26061(a)(4)]. From the

title of the license and the limitations imposed by State law, the intent of the Type 1C license appears to be to allow small-scale, home-based commercial cultivation of cannabis. As stated previously, the security and odor control concerns associated with outdoor cultivation have led the Department to recommend against allowing outdoor cultivation in the City. For mixed-light and indoor cultivation, the more lucrative nature of these types of businesses makes them inappropriate in most residential neighborhoods, and the range of currently recommended mixed-light and indoor cultivation license types is adequate to accommodate a wide range of commercial cannabis cultivation businesses of varying sizes. Thus, it is not necessary or appropriate to identify eligible zones for the Type 1C license at this time.

Cannabis nurseries, in which cannabis plants are grown to less than full maturity, are permitted under State law with a Type 4 license, which allows the nursery cultivation to take place outdoors, indoors, or in mixed light. Businesses holding a Type 4 license are appropriate in the City because cannabis nurseries fulfill a particular need (i.e., for young cannabis plants that can be grown to full maturity and repeatedly harvested). Thus, it is recommended that cannabis nurseries be allowed to operate under the rules for either indoor or mixed-light cultivation, but not outdoor cultivation. For this reason, the Type 4 license appears in the draft ordinance as an eligible license for both of these two categories of cultivation, with limitations to allow only indoor and mixed-light nurseries.

Manufacturing: Under MAUCRSA, cannabis manufacturing, which often involves the extraction of key chemical compounds to make concentrates, is separated into Level 1 and Level 2 manufacturing. Level 2 covers manufacturing activities that involve the use of volatile solvents. Under MAUCRSA, a volatile solvent is one “that is or produces a flammable gas or vapor, that when present in the air in sufficient quantities, will create explosive or ignitable mixtures.” Commonly used substances of this nature include, but are not limited to, pentane, hexane, butane, propane, and ethanol.

By definition, there is a risk of fire or explosion where volatile solvents are used to extract concentrated cannabis. Where such processes are used in manufacturing, fire departments typically require that the extraction take place in a “closed loop” system so that no combustible air can escape and come into contact with a spark or anything else that would cause it to ignite. Additional safety measures include walls designed to withstand gas explosions and other methods of containing any explosions that might occur.

Currently, examples of similar uses to Level 2 manufacturing identified in the Zoning Code include oxygen manufacturing/compressing, petroleum products bulk distribution, and adhesive and rubber cement manufacturing, all of which are first allowed in either the MR2 or M2 Zone. Accordingly, the Department recommends allowing Level 2 manufacturing in the MR2, M2 and M3 Zones.

Level 1 manufacturing is closest in nature to uses such as drug products manufacturing or food manufacturing, which are permitted in the MR1, M1, MR2, M2 and M3 Zones. Accordingly, these zones are recommended as the eligible zones for Level 1 cannabis manufacturing.

Testing: A cannabis testing license (Type 8 under MAUCRSA) is intended to allow for the testing of cannabis or cannabis-derived products for quality assurance, health and safety purposes. The closest equivalent uses for this activity from the Zoning Code is "laboratory, experimental, film, motion picture, research or testing," which is permitted in the CM, MR1, M1, MR2, M2 and M3 Zones. The Department recommends that cannabis testing be allowed in these zones.

Some of the comments received from stakeholders expressed a desire for cannabis testing to be allowed in commercial zones, similar to a medical or dental laboratory; however, the Department does not recommend this, as medical and dental laboratories typically do not engage in testing of medical or industrial products, and a testing laboratory is closer in nature to the types of activities that can be expected to take place in a cannabis testing facility.

Retail: The closest equivalent use in the Zoning Code to cannabis retail is "retail," permitted in the C1, C1.5, C2, C4, C5, CM, M1, M2 and M3 Zones. Accordingly, these zones are recommended as the eligible zones for cannabis retail under a Type 10 license.

Distribution: The closest equivalent use in the Zoning Code to cannabis distribution is a "distribution center, plant or warehouse," permitted in the MR1, M1, MR2, M2 and M3 Zones. Accordingly, these zones are recommended as the eligible zones for cannabis distribution under a Type 11 license.

Microbusiness: A cannabis microbusiness holding a Type 12 license may engage in retail, Level 1 manufacturing, distribution, and less than 10,000 square feet of cultivation activities on the same site. Because of the potential for all of these cannabis-related activities to be co-located, the Department recommends allowing microbusinesses only in zones where each of these activities is otherwise allowed. Thus, only the M1, M2 and M3 zones are recommended as the eligible zones for cannabis microbusiness activity.

Transport: Under MAUCRSA, licensed businesses may transport cannabis or cannabis products to other licensed businesses or – in the case of retail or dispensary businesses – to customers. No State license exists specifically for commercial cannabis transport. The draft ordinance does not address commercial cannabis transport, since transport is an activity that takes place in the public right-of-way between one location and another, and is largely addressed in State statutes and regulations.

On-site consumption: State law does not prohibit local jurisdictions from allowing on-site consumption of cannabis on the premises of a retailer or microbusiness. The draft ordinance does not state whether on-site consumption is allowed, and instead leaves this topic to be addressed by the operating standards, which will be processed separately.

Distancing Requirement

The draft ordinance's 800-foot distancing requirement is intended to minimize the secondary negative impacts associated with cannabis retail, including crime and nuisance behavior. It applies only to cannabis retail and microbusiness locations that have on-site sales to the public. The types of sites from which the 800-foot distance must be maintained fall into two general groups: so-called sensitive sites that serve as gathering points for unsupervised minors or individuals susceptible to substance abuse, and other cannabis retail establishments.

Past legislation concerning commercial cannabis, most recently Proposition D, has sought to maintain separation from sensitive sites out of a recognition that cannabis businesses are potential targets for crime due to the large number of cash transactions, and that there are secondary impacts from this crime that can affect the surrounding community. An additional rationale is that some public consumption of cannabis is inevitable in proximity to cannabis retail businesses, despite prohibitions against this behavior; that this consumption may pose a health risk to individuals exposed to secondhand smoke; and that individuals under the influence of cannabis may engage in other nuisance behavior.

Additionally, previous legislation requiring separation between cannabis retail businesses has sought to avoid over-concentration of businesses in the same area, so that no one neighborhood or district becomes a destination for cannabis retail and the anticipated instances of crime and nuisance behavior remain relatively isolated from one another. Thus, the draft ordinance takes practical measures to separate cannabis sales from certain locations – especially but not limited to those where minors are frequently present – that are especially inappropriate for individuals to be under the influence of cannabis.

State law identifies 600 feet as the default radius for commercial cannabis activity to observe from schools, child care centers, and youth centers; however, the law states that a local jurisdiction may specify its own radius. Because of this flexibility afforded by State law, and because of the precedent set by Proposition D of requiring a radius of more than 600 feet in some cases (namely schools), the Department recommends that the City set an 800 foot radius from specified sensitive sites.

The key considerations in determining the radius distance are the anticipated visibility between cannabis retail businesses and sensitive sites, as well as avoiding situations in which two or more businesses with on-site sales locate on the same block. These criteria are intended to discourage the development of cannabis districts in which patrons linger for long periods of time, visiting multiple cannabis businesses in succession.

For these reasons, it was decided that the minimum distance should be approximately one city block, plus an additional distance to discourage two cannabis retail businesses with on-site sales from locating at opposite ends or corners of the same block. In this situation, a prospective patron would have to cross the street at least once in order to walk from one business to the next, or from the business to one of the categories of

sensitive sites. Since a typical Los Angeles block measures approximately 600 feet on its longest dimension, a radius of 800 feet would satisfy the criteria described above.

Staff evaluated the effect of this radius with the aid of GIS visualizations, and determined that, in concert with the specific combination of sensitive site categories identified below, it would result in in a reasonable range of locations eligible for cannabis retail in a variety of neighborhoods and in all Council Districts.

Sensitive Site Categories

As stated previously, State law affords the City some flexibility in specifying its own distancing requirements and sensitive use categories. The default categories in State law are schools, day care centers, and youth centers. The categories identified in Proposition D are schools, public parks, public libraries, child care facilities, religious institutions, youth centers, alcoholism and drug abuse recovery or treatment facilities, and other medical marijuana businesses.

The categories of sensitive sites recommended for inclusion in the ordinance are based on those specified under the City's current regulations for medical cannabis; i.e., Proposition D, with some specific categories omitted. Schools, public parks and public libraries are included because they are gathering points for significant numbers of minors, particularly minors who may be unsupervised, and because they can be readily identified and their locations verified through publicly available sources of data and information. Alcoholism and drug abuse recovery and treatment facilities are included because they contain concentrations of individuals who may be susceptible to addiction and substance abuse, and thus potentially would be harmed by ready access to a controlled substance.

One Proposition D category, licensed child care facilities, is omitted because any minors at licensed child care facilities can be expected to be supervised while in the facility and must be checked in and checked out by an adult when entering and leaving the facility. Supervised minors would not be as likely to come into contact with cannabis as they would in the course of visiting a school, park or library unsupervised. Thus, the distancing requirement from child care centers is not recommended for inclusion.

Two additional Proposition D categories, religious institutions and youth centers, are not recommend for inclusion, as the recommended sensitive use distancing requirements effectively limit locations adjacent to publicly operated youth amenities, and also due to the exceptional legal difficulty of identifying these sites and verifying their locations in a consistent, systematic manner. All of the other Proposition D categories are either public facilities or licensed facilities that can be identified reliably through public data and information. No such information is available, on a comprehensive basis, for religious institutions or youth centers, which are often very informal in nature and can be operated without any attachment to a particular space or location. Thus, child care centers, religious institutions, and youth centers are not included as sensitive site categories.

Similarly, the MAUCRSA category of “day care centers,” the term used in State law to identify child care facilities that are not located in the provider’s own home, are not recommended for inclusion because the recommended sensitive use distancing requirements effectively limit locations adjacent to publicly operated youth amenities, and because minors at day care centers can be expected to be supervised while in the facility and checked in and checked out by an adult. Thus, day care centers are not included in the draft ordinance as sensitive site categories.

Public Outreach & Participation

A public review draft of the ordinance was released on June 8, 2017. Notice of the availability of the draft, as well as of the staff hearing, was posted on the Department of City Planning website, and emailed to a list of persons and organizations who had previously expressed an interest in the update process or who were deemed likely to have an interest based on involvement in past discussions of commercial cannabis and Zoning Code regulations. Additionally, on the same day the office of the City Council President distributed to local media outlets a variety of materials relating to the City’s overall package of proposed commercial cannabis regulations, including the draft location restriction ordinance as well as the application/approval process, operating standards, enforcement, and other topics.

The Department conducted a staff-level hearing to gather input on the proposed ordinance on June 29, 2017. Department staff estimated that more than 200 people were in attendance. The Department received spoken testimony from 61 individuals at the hearing.

The Department received a total of 40 pieces of written correspondence on the proposed ordinance, inclusive of both letters and emails. Organizations submitting correspondence or making in-person comments included but were not limited to the following:

- Americans for Safe Access
- Behavioral Health Services, Inc.
- Brentwood Community Council
- California Minority Alliance
- City of Rancho Palos Verdes
- IndoGrow Properties
- Melrose Hill Neighborhood Association
- LA Cannabis Task Force
- LA City Council Rules, Elections, and Intergovernmental Relations Committee
- Offices of Council President Wesson and Councilmembers Huizar and Koretz
- San Pedro Neighborhood Council
- Southern California Coalition
- South Robertson Neighborhood Council
- Studio City Neighborhood Council
- United Cannabis Business Association
- United Food and Commercial Workers Local 770

- Weedmaps
- Woodland Hills-Warner Center Neighborhood Council

Comments touched on a broad range of topics. The most frequent comment made in both written correspondence and spoken testimony was that businesses should be granted licenses (or otherwise affirmatively regulated) rather than being given limited immunity. Other frequently made comments were that cannabis uses should be allowed in zones that would otherwise support the use, and that the distancing requirement from sensitive uses was too large.

A smaller number of comments said that the distancing requirement should be increased, either by adding to the number of sensitive site categories or by increasing the radius beyond 800 feet. Additional comments identified issues with “grandfathering” of existing medical marijuana businesses; asked that outdoor and/or mixed-light cultivation be allowed in the City; asked that the method of measuring distance to sensitive sites be changed in favor of a more lenient method (for example, measuring from building to building rather than from lot line to lot line); and asked that manufacturing with volatile solvents be allowed in the City.

The comment regarding limited immunity was addressed by removing all reference to limited immunity from the ordinance and providing an affirmative authorization structure; the matter of licensing will be addressed separately in regulations being processed by other City agencies. The Department made all efforts to align the eligible zones for cannabis activities with the zones that expressly allow similar uses, with some deviations as explained earlier in this report. Staff continues to recommend a buffer distance of 800 feet and the range of sensitive site categories specified in the draft ordinance, for reasons explained earlier in this report. Other comments incorporated into the draft ordinance include allowing mixed-light cultivation in the A1 and A2 zones, and allowing Level 2 manufacturing in the MR2, M2 and M3 zones, with the understanding that the Fire Department will ensure that appropriate safety measures are taken.

Conclusion

The Commercial Cannabis Location Restriction Ordinance responds to the challenges posed by recent State legislation and the passage of Proposition M for municipal governments to properly regulate commercial cannabis activity. It has been developed with significant input from a large number of individuals and organizations and seeks to achieve a balance between the interests of patients and caregivers; the growing cannabis industry; potential customers of nonmedical cannabis businesses; and neighbors concerned about the quality of life in the City’s communities. The Department recommends that the Commission approve and recommend that the City Council adopt the ordinance, the findings, and the associated environmental document.

Appendices

Appendix A – Proposed Ordinance
Appendix B – Ordinance Supplement
Appendix C – Findings
Appendix D – Environmental (ENV-2017-2261-ND; ENV-2017-3361-SE)
Appendix E – Maps