



Staff Report

File #: REPORT 22-0485, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of August 9, 2022

**CONSIDERATION AND POSSIBLE INTRODUCTION ON
FIRST READING OF AN ORDINANCE OF THE
CITY OF HERMOSA BEACH, CALIFORNIA, ADDING
CHAPTER 5.80 OF THE HERMOSA BEACH MUNICIPAL
RELATING TO CANNABIS DELIVERY IN THE CITY AND
AMENDING SECTION 1.10.040 TO ADD THAT VIOLATIONS
ARE SUBJECT TO ADMINISTRATIVE PENALTY PROCEDURES**
(City Manager Suja Lowenthal)

Recommended Action:

Staff recommends City Council:

1. Receive a report regarding cannabis delivery into the City;
2. Consider waiving full reading and introduce by title only an Ordinance of the City of Hermosa Beach, California, adding Chapter 5.80 of the Hermosa Beach Municipal Code relating to cannabis delivery into the City and amending Section 1.10.040 to add that violations of Chapter 5.80 are subject to administrative penalty procedures (**Attachment 1**); and
3. Provide staff with alternate or additional direction, if so desired.

Executive Summary:

Cannabis businesses are currently prohibited in Hermosa Beach. An initiative has qualified for the November 8, 2022 ballot that would allow retail cannabis in the City. The Council voted to place a measure on the ballot to add Chapter 3.48 to Title 3 (Revenue and Finance) of the Hermosa Beach Municipal Code, establishing a tax on cannabis businesses operating within the City of Hermosa Beach should they be allowed to do so. As directed, staff presents this item to allow Council to consider an amendment to the Hermosa Beach Municipal Code (HBMC) to allow delivery of cannabis into the City from businesses located outside the City.

Background:

State and City Law Governing Medical Cannabis

In 1996, the voters of the State of California approved Proposition 215, entitled the Compassionate Use Act, the intent of which was to enable persons who are in need of medical marijuana to use it without fear of prosecution under limited, specified circumstances.

In 2004, the Legislature enacted Senate Bill 420 (referred to as the Medical Marijuana Program) to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who cultivate marijuana with a limited defense to certain specified State criminal statutes. Assembly Bills 2650 (2010) and 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

In 2013, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, the California Supreme Court held that “[n]othing in the [Compassionate Use Act] or the [Medical Marijuana Program] expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land....” Additionally, in *Maral v. City of Live Oak*, the Court of Appeal affirmed the ability of local government entities to prohibit the cultivation of marijuana under its land-use authority, holding that “there is no right - and certainly no constitutional right - to cultivate medical marijuana....”

On October 9, 2015, Governor Brown signed three bills into law - Assembly Bills 266 and 243, and Senate Bill 643 - collectively referred to as the Medical Marijuana Regulation and Safety Act (“MMRSA”). Prior to the passage of the MMRSA, State law provided no legal mechanism for commercial cultivation of marijuana for medicinal purposes and Federal law prohibited all cultivation of marijuana. Until the MMRSA was passed, cultivation of marijuana for medicinal purposes in California was restricted to individual qualified patients or their primary care givers for non-commercial purposes and limited to personal quantities. The MMRSA became effective on January 1, 2016 and contained provisions to govern the cultivating, processing, transporting, testing, and distributing of medical marijuana to qualified patients. The MMRSA also contained statutory provisions that:

- Set up a “dual licensing” scheme which requires dispensaries and cultivators to obtain a local license prior to requesting and obtaining a license from the State; no dispensary or cultivation activity may lawfully operate without both a State and local license;
- Allow the City to completely prohibit the delivery of marijuana by requiring a local government that wishes to prevent marijuana delivery activity from operating within the local government’s boundaries to enact an ordinance affirmatively banning such delivery activity (see Business & Professions Code § 19340(a));
- Preserves the ability of a qualified patient and/or primary caregiver to cultivate for personal, non-commercial purposes, sets new limits on such cultivation, and excepts such personal cultivation from State cultivation licensing requirements. Furthermore, the MMRSA allows local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program for the cultivation of marijuana

(see Health & Safety Code § 11362.777(c)(4));

- Expressly provide that the MMRSA does not supersede or limit local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (see Bus. & Prof. Code § 19315(a)); and
- Expressly provide that the MMRSA does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to local governments' right to make and enforce within its limits all police regulations not in conflict with general laws (see Bus. & Prof. Code § 19316(c)).

The MMRSA, however, also stated that if a city or county had not adopted land use regulations by March 1, 2016, to either regulate or ban cultivation of marijuana for medicinal purposes, the State would become the sole authority to issue cultivation licenses in that jurisdiction, meaning no local license would be required.

At its March 8, 2016 meeting, City Council adopted Ordinance 16-1362 amending sections 17.42.110 and 17.26.030 of the Hermosa Beach Municipal Code (HBMC) to expressly prohibit all commercial medical marijuana uses in the City, cannabis deliveries to any location within the city, and prohibit cultivation for medical use by a qualified patient or primary caregiver. This ordinance codified the long-standing rule that since cannabis uses were not listed as a permitted use in the HBMC, medical marijuana uses were not permitted in the City.

State and City Law Governing Recreational Cannabis

On November 8, 2016, Proposition 64 was adopted for adult use of marijuana act (AUMA). In addition to other items, AUMA regulated the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age. Ultimately, AUMA expanded the permissions under MMRSA. Proposition 64 retains the local control that was clarified by the courts whereby cities can determine whether to allow or prohibit commercial cannabis activity in its jurisdiction and under what terms those uses would be permitted. Cities throughout California rushed to adopt local ordinances by January 1, 2018. Without a local ordinance specifying what activities were permitted or prohibited, a valid State license would be the only requirement to open and operate any commercial marijuana business in any commercial zone in the City.

At its November 28, 2017 meeting, the City Council adopted Ordinance 17-1380 amending Title 17 of the HBMC to expressly prohibit all commercial cannabis activities in the City and prohibit outdoor cannabis cultivation for personal use. A person may cultivate no more than six living cannabis plants inside a private residence in accordance with Health and Safety Code Section 11362.2.

Current State law allows qualified patients and their caregivers to cultivate and possess cannabis for personal use in order to treat certain medical conditions. It also allows the personal possession and

use of recreational cannabis. However, cities retain their authority to reasonably regulate the business of cultivating, processing, and selling cannabis and related products. The sale of cannabis for any purpose is currently prohibited in the City of Hermosa Beach.

State and City Law Governing Cannabis Delivery

The Bureau of Cannabis Control (now the Department of Cannabis Control) adopted California Code of Regulations, title 16, section 5416, subdivision (d), allowing delivery statewide. Regulation 5416 (d) can arguably be interpreted to mean that delivery of cannabis goods is authorized in any city within California, regardless of whether the city regulates or bans deliveries within its borders. Most recently, the litigation challenging this regulation as violative of AUMA was dismissed as not ripe for adjudication because the court found the Bureau's regulation did not conflict with a city's right to control or ban delivery. Delivery and transport of commercial cannabis remains an open issue yet to be fully resolved by the legislature or the courts.

A local jurisdiction cannot ban transport of cannabis on public roads. However, delivery of cannabis must comply with local law. Accordingly, the most consensus position on this issue among cities (and that put out by the League of California Cities City Attorney's Department Cannabis Regulation Committee) is that cities may ban or regulate deliveries within their borders. However, cities cannot prevent a delivery service from using public roads to pass through its jurisdiction.

Recent Local Cannabis Discussions and Decisions

On November 17, 2021, the Hermosa Beach City Clerk received a petition from the cannabis industry for the purposes of adopting an initiative that would repeal Hermosa Beach's existing ban on all commercial cannabis business operations and allow commercial cannabis operations in the City. The initiative measure does not include a tax on cannabis. At City Council's regular meeting on November 23, 2021, Mayor Detoy requested, and a unanimous vote of the City Council supported, directing staff to place on the next regular session agenda an item addressing the City's options.

At its December 14, 2021 meeting, City Council directed the City Manager to form an Advisory Group to explore policy issues and provide City Council with input on whether the City's current ban on cannabis business operations should be modified. The group held a total of six public meetings and at its sixth and final meeting on March 29, 2022, the Cannabis Advisory Group participated in a final voting process regarding its support of key policy issues and options of the City Council.

A majority of the group indicated that they felt there is currently adequate access to legal cannabis. When asked if Hermosa Beach should lift the ban on cannabis delivery, a majority of the group indicated yes, but did not support that delivery being based within the City. The group's final report and recommendations were presented to the City Council at its April 12, 2022 meeting.

At its March 22, 2022 meeting, the City Clerk reported to the Council that the initiative petition had acquired sufficient signatures to qualify for the ballot. The City Council opted not to adopt the initiative by ordinance but as required by law, to instead submit the ordinance, without alteration, to the voters in the November 8, 2022 Municipal Election.

At its May 24, 2022 meeting, City Council voted to oppose the industry-sponsored initiative. Council also directed staff to bring to Council for its consideration an ordinance allowing delivery of cannabis from outside the City and a measure that would impose a tax on cannabis businesses, should they be permitted in the City. State law requires any new local taxes to be approved by the voters (Proposition 218).

At its July 26, 2022 meeting, City Council adopted a resolution calling for the placement of a measure on the ballot for the November 8, 2022 General Municipal Election for the submission to the qualified voters of an ordinance adding Chapter 3.44 to Title 3 (Revenue and Finance) of the Hermosa Beach Municipal Code, establishing a tax on cannabis businesses operating within the City of Hermosa Beach should the initiative pass or the Council allow delivery at any time in the future.

Past Council Actions

Meeting Date	Description
March 8, 2016 (Regular Meeting)	City Council adopted Ordinance 16 -1362 amending sections 17.42.110 and 17.26.030 of the Hermosa Beach Municipal Code (HBMC) to expressly prohibit all commercial medical marijuana uses in the City and prohibiting cultivation for medical use by a qualified patient or primary caregiver.
November 28, 2017 (Regular Meeting)	City Council adopted Ordinance 17 -1380 amending Title 17 of the HBMC to expressly prohibit all commercial cannabis activities in the City and prohibit outdoor cannabis cultivation for personal use.
November 23, 2021 (Regular Meeting)	Under Future Agenda Items, Mayor Detoy requested City Council consider directing staff to place on the December 14, 2021 agenda an item addressing the City's options in light of the cannabis industry initiative filed with the City Clerk. The request was supported by a unanimous vote of the City Council.
December 14, 2021 (Regular Meeting)	City Council directed the City Manager to form an Advisory Group, subject to the Brown Act, to explore policy issues and provide City Council with input on whether the City's current ban on cannabis business operations should be modified.
March 22, 2022 (Regular Meeting)	City Council opted not to adopt the cannabis industry initiative by ordinance and instead submit the ordinance, without alteration, to the voters in the November 8, 2022 Municipal Election.
April 12, 2022 (Regular Meeting)	City Council received and discussed the final report and recommendations of the Cannabis Advisory Group.
May 24, 2022 (Regular Meeting)	City Council action to oppose the cannabis industry sponsored initiative filed with the City Clerk on November 17, 2021. Council also directed staff to bring to Council for its consideration an ordinance allowing delivery of cannabis from outside the City and a measure that would impose a tax on cannabis businesses, should they be permitted in the City.
July 26, 2022 (Regular Meeting)	City Council adopted a resolution calling for the placement of a measure on the ballot for the November 8, 2022 General Municipal Election for the submission to the qualified voters of an ordinance adding Chapter 3.44 to Title 3 (Revenue and Finance) of the Hermosa Beach Municipal Code, establishing a tax on cannabis businesses operating within the City of

Discussion:

The City of Hermosa Beach currently prohibits all commercial cannabis activity in the City, including the delivery of cannabis from outside the City. As directed, staff presents this item to allow Council to consider an amendment to the Hermosa Beach Municipal Code (HBMC) to allow delivery of cannabis into the City. The draft ordinance (**Attachment 1**) would add Chapter 5.80 of the Hermosa Beach Municipal Code relating to cannabis delivery in the City and amend Section 1.10.040 to add that violations of Chapter 5.80 would be subject to administrative penalty procedures. As drafted, the ordinance would allow cannabis delivery as generally described below:

- Delivery activities would be limited to operators with physical locations outside of the City and may take place only between the hours of 8:00 a.m. and 10:00 p.m.;
- Entities must be licensed and conform to all relevant legal standards and impose operational requirements to ensure health, safety, and welfare; and
- Entities must apply for, and be granted, a cannabis delivery use permit subject to standards that eliminate or minimize to the extent possible any associated impacts.

The City Manager would review any application for a cannabis delivery permit accompanied by the application fee adopted by City Council and only issue a permit if all the required findings are supported by substantial evidence as described in detail in the draft ordinance. Once issued, cannabis delivery permit holders would be required to comply with all applicable State and local laws and tax requirements and maintain detailed books and records.

Under the terms of the draft ordinance, the City Manager would be authorized to establish any additional rules, regulations, and standards governing the issuance, denial, or renewal of cannabis delivery permits, the ongoing operations of a cannabis delivery permit holder and the City's oversight, or concerning any other subject determined necessary. Any decision by the City Manager could be appealed to the City Council.

Staff recommends City Council consider and provide feedback regarding the draft ordinance (**Attachment 1**). Should Council choose to introduce the ordinance, staff would return to Council with an amendment to the City's Master Fee Schedule establishing an annual cannabis delivery permit fee and establishing a fine. Staff would also bring an item before the Planning Commission to make minor modifications to the Zoning Code for consistency.

Should City Council choose not to introduce the ordinance and the industry initiative be passed by the voters in the November 8, 2022 General Municipal Election, the delivery of cannabis products

would be permitted exclusively by the retail businesses located in the City unless otherwise required by State law.

General Plan Consistency:

This report and associated recommendation have been evaluated for their consistency with the City's General Plan. Relevant Policies are listed below:

Governance Element

Goal 1. A high degree of transparency and integrity in the decision-making process.

Policy:

- **1.1 Open Meetings.** Maintain the community's trust by holding meetings in which decisions are being made, that are open and available for all community members to attend, participate, or view remotely.

Goal 2. The Community is active and engaged in decision-making processes.

Policy:

- **2.3 Public participation guidelines.** Establish parameters and guidelines to ensure public participation is promoted through diverse methods

Fiscal Impact:

Fiscal impacts associated with lifting the ban on cannabis delivery in the City would include staff time for review and issuance of a cannabis delivery permit. If approved, staff would return to Council with a proposed amendment to the City's Master Fee Schedule to add an annual cannabis delivery permit fee, as well as to establish a fine for violation of the requirements. If passed by the voters in the November 8, 2022 General Municipal Election, the City would be allowed to tax the gross sales of cannabis delivery activities.

Attachments:

1. Draft Ordinance
2. Link to March 8, 2016 City Council Staff Report
3. Link to November 28, 2017 City Council Staff Report
4. Link to November 23, 2021 City Council Agenda
5. Link to December 14, 2021 City Council Staff Report
6. Link to March 22, 2022 City Council Staff Report
7. Link to April 12, 2022 City Council Staff Report
8. Link to May 24, 2022 City Council Staff Report
- 9.. Link to July 26, 2022 City Council Staff Report

Respectfully Submitted by: Angela Crespi, Deputy City Manager

Noted for Fiscal Impact: Viki Copeland, Finance Director

Legal Review: Mike Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager