



CONSENT CALENDAR

Agenda Item # 2

AGENDA REPORT SUMMARY

Meeting Date: March 26, 2019

Subject: Ordinance No. 2019-455: Amending Los Altos Municipal Code 14.82.030 - Cultivation of Cannabis for Personal Use

Prepared by: Eliana Hassan, Assistant Planner

Reviewed by: Jon Biggs, Community Development Director

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Ordinance No. 2019-455

Initiated by:

City Council

Previous Council Consideration:

October 9, 2018 and March 12, 2019

Fiscal Impact:

None

Environmental Review:

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (“CEQA”) Guidelines. The Ordinance is not a project within the meaning of Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical changes in the environment, directly or indirectly.

Policy Question(s) for Council Consideration:

- Does the City Council wish to impose stricter controls on indoor cultivation of cannabis for personal use in Los Altos?

Summary:

- The City Council is considering the adoption of an ordinance amendment that will provide for stricter controls on indoor cultivation of cannabis for personal use drafted in response to concerns about impacts on adjacent properties

Staff Recommendation:

Adopt Ordinance No. 2019-455, amending the City’s Medical and Adult-Use Cannabis Regulations

Reviewed By:

City Manager

CJ

City Attorney

CD

Finance Director

SE



Subject: Ordinance No. 2019-455: Amending Los Altos Municipal Code 14.82.030 - Cultivation of Cannabis for Personal Use

Purpose

This is a zoning ordinance amendment to establish stricter controls on indoor personal cannabis cultivation.

Background

On October 9, 2018, the City Council voted to adopt Ordinance No. 2018-451, which prohibited all categories of commercial cannabis activity, prohibited outdoor cultivation of cannabis for personal use and imposed basic regulations on indoor personal cannabis cultivation. At time of adoption, and in response to a member of the public expressing concerns that personal cannabis cultivation inside a greenhouse or other accessory structure could result in odor impacts to adjacent properties, the City Council directed staff to investigate stricter controls on indoor cultivation of cannabis to ensure that properties adjacent to such activities were not unduly impacted. Staff worked with the City Attorney's office to draft amendments consistent and compatible with all applicable State legislation to address the concerns.

On January 17, 2019, the Planning Commission held a duly noticed public hearing to consider the proposed Code amendments to the City's Medical and Adult-Use Cannabis Regulations. Following public comment and Commissioner discussion, the Planning Commission voted unanimously to recommend to the City Council that no amendments be made to Los Altos Municipal Code Chapter 14.82 (Medical and Adult-Use Cannabis Regulations) due to insufficient data to support a need for the proposed changes. It was determined that there are current regulations in place to address listed concerns.

At its meeting of March 12, 2019, the City Council held a duly noticed public hearing to consider the adoption of amendments to the Los Altos Municipal Code Chapter 14.82.030 - Cultivation of Cannabis for Personal Use. The City Council voted to introduce the ordinance and waive further reading, subject to the modifications of Subsection 8, as shown below:

8. Any structure used for the cultivation of cannabis must have proper ventilation and air filtration to protect the health and safety of occupants and the neighborhood, prevent mold damage, and to prevent cannabis plant odors or particles from becoming a public nuisance. ~~A public nuisance may be deemed to exist if the cultivation produces odors which are disturbing to two (2) or more people of normal sensitivity residing on adjacent or nearby property, and both complaints are reported to the city within a 30-day period.~~

Discussion/Analysis

Ordinance No. 2019-455 will go into effect 31 days after adoption.



Subject: Ordinance No. 2019-455: Amending Los Altos Municipal Code 14.82.030 - Cultivation of Cannabis for Personal Use

Options

- 1) Amend the City's Medical and Adult-Use Cannabis Regulations to establish stricter controls on indoor cannabis cultivation

Advantages: Adds stricter controls to avoid potential odor impacts from the indoor cultivation of cannabis

Disadvantages: Potentially higher costs to persons wishing to cultivate cannabis indoors for personal use

- 2) Maintain the City's existing Medical and Adult-Use Cannabis Regulations

Advantages: Avoids additional costs and restrictions on persons wishing to cultivate cannabis indoors for personal use

Disadvantages: There may be potential enforcement challenges due to intermittent and subjective nature of odor violations

Recommendation

Staff recommends option 1.

ORDINANCE NO. 2019- 455

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS,
CALIFORNIA, AMENDING LOS ALTOS MUNICIPAL CODE, SECTION 14.82.030
RELATED TO CULTIVATION OF CANNABIS FOR PERSONAL USE**

WHEREAS, the City of Los Altos, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the City of Los Altos initiated an application (18-CA-07) to amend Title 14 of the Los Altos Municipal Code pertaining to the cultivation of cannabis for personal use, referred herein as the “CA”; and

WHEREAS, California Proposition 64 (2016) legalized cultivation of not more than six living cannabis plants by persons 21 years of age or older for personal use; and

WHEREAS, Health and Safety Code Section 11362.2 provides that a city shall not completely prohibit, but that a city may enact and enforce reasonable regulations to regulate, personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure; and

WHEREAS, the CA is in the best interest for the protection or promotion of the public health, safety, comfort, convenience, prosperity, or welfare and is in conformance with the Los Altos General Plan; and

WHEREAS, the CA was processed in accordance with the applicable provisions of the California Government Code and Chapter 14.86 of the Los Altos Municipal Code; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the CA on January 17, 2019 and the City Council held a duly noticed public hearing on the CA on March 12, 2019; and

WHEREAS, the Los Altos City Council has reviewed all written evidence and oral testimony presented to date on this matter.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT TO LOS ALTOS MUNICIPAL CODE. Los Altos Municipal Code, Section 14.82.030, entitled “Cultivation of Cannabis for Personal Use” is hereby amended as set forth below.

14.82.030 - Cultivation of Cannabis for Personal Use.

- A. Indoor Cultivation. The indoor cultivation of cannabis for personal use, including cannabis cultivation for personal medical use by a qualified patient or primary caregiver, is prohibited except in compliance with the following:
1. Cannabis cultivation shall only occur indoors at a private residence, or inside a legal accessory structure located upon the grounds of a private residence.
 2. Cannabis cultivation shall be limited to six plants total per residence, whether immature or mature, regardless of how many residents reside at the private residence.
 3. Persons engaging in indoor cultivation must comply with all state and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor cultivation, including without limitation, Health and Safety Code Sections 11362.1 and 11362.2.
 4. The use of gas products (CO₂, butane, propane, natural gas, etc.) or generators for cultivation of cannabis is prohibited. Use of gas products shall be limited to those allowed by the California Building, Electrical, and Fire Codes as adopted and amended by the City of Los Altos.
 5. The residence shall maintain fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident(s), and the premises shall not be used primarily or exclusively for cannabis cultivation.
 6. All areas used for cannabis cultivation shall be located within a fully enclosed and secure structure. "Fully enclosed and secure structure" means a space within a building, greenhouse, or other legal structure which has a complete roof enclosure supported by connecting, enclosed walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.
 7. A fully enclosed and secure structure used for the cultivation of cannabis that is separate from the main residential structure on a premises must maintain a minimum setback of ten (10) feet from any property line.
 8. Any structure used for the cultivation of cannabis must have proper ventilation and air filtration to protect the health and safety of occupants and the neighborhood, prevent mold damage, and to prevent cannabis plant odors or particles from becoming a public nuisance. A public nuisance may be deemed to exist if the cultivation produces odors which are disturbing to two (2) or more people of normal sensitivity residing on adjacent or nearby property, and both complaints are reported to the city within a 30-day period.
- B. Outdoor Cultivation Prohibited. Outdoor cultivation of cannabis, including cannabis cultivation for personal medical use by a qualified patient or primary caregiver, personal adult- use, or commercial purposes, is prohibited in all zoning districts in the City of Los Altos.

SECTION 3. CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under CEQA Guidelines, Section 15061(b)(3), that this Ordinance is exempt from environmental review under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Ordinance would create additional regulations for indoor cultivation of cannabis to prevent odors, mold and impacts to the public. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Clara in accordance with CEQA Guidelines.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall

not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

SECTION 5. CUSTODIAN OF RECORDS. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at Los Altos City Hall, 1 North San Antonio Road, Los Altos, CA 94022. The custodian of these records is the City Clerk.

SECTION 6. RESTATEMENT OF EXISTING LAW. Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter or relating to the enumeration of permitted uses under the City's zoning code, shall be construed as restatements and continuations, and not as new enactments.

SECTION 7. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 8. EFFECTIVE DATE. This ordinance shall be in full force and effect 31 days after adoption.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on March 12, 2019 and was thereafter, at a regular meeting held on March 26, 2019 passed and adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Lynette Lee Eng, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK