



CITY COUNCIL AGENDA ITEM NO. E.12
10/24/2023

SUBJECT: Second Readings of Amendments to the Brentwood Municipal Code in response to SB 1186 (Weiner) – Medicinal Cannabis Patients’ Rights Access Act

DEPARTMENT: City Manager

STAFF: Darin Gale, Assistant City Manager
Abraham Salinas, Senior Analyst

TITLE/RECOMMENDATION

Waive second reading of and adopt ordinances to repeal Chapter 17.780 (Marijuana Facilities and Cultivation) and Chapter 9.50 (Marijuana Facilities and Cultivation) of the Brentwood Municipal Code and replace them in their entirety by adopting new Chapter 17.780 (Cannabis Facilities and Cultivation) and Chapter 9.50 (Cannabis Facilities and Cultivation) to leave in place existing prohibitions on cannabis cultivation, cannabis dispensaries, and non-medicinal cannabis deliveries within the City of Brentwood, while allowing for and regulating medicinal cannabis deliveries, as required by SB 1186.

These ordinances to replace Chapter 17.780 and Chapter 9.50 of the Brentwood Municipal Code in their entirety are exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) because the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of the ordinances may have a significant effect on the environment, and the ordinances are exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(1), 15061(b)(2), and 15061(b)(3).

FISCAL IMPACT

There is no fiscal impact associated with this action.

BACKGROUND

While the City has been regulating cannabis since 2006, there have been significant changes in state-level medicinal cannabis regulation over the past decade. The following offers a concise summary of key California legislative milestones since 2015, setting the context for the actions under consideration by the City Council.



**CITY COUNCIL AGENDA ITEM NO. E.12
10/24/2023**

THE MEDICINAL CANNABIS REGULATION AND SAFETY ACT AND CURRENT CITY ORDINANCES

On October 9, 2015, Governor Brown signed into law three related bills pertaining to the regulation of cannabis: [AB 243](#), [AB 266](#), and [SB 643](#), collectively known as the Medical Cannabis Regulation and Safety Act ("MCRSA"). The MCRSA was intended to govern all commercial cannabis activities, which are defined as "cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medicinal cannabis or a medicinal cannabis product." (Former Bus. & Prof. Code § 19320(a).)

As required by the MCRSA, in order to maintain some degree of local control over medicinal cannabis regulation, the City adopted two ordinances on January 26, 2016. (See BMC Chapters 9.50 and 17.780.) These ordinances prohibit "commercial cannabis activities," which are defined under State law as medicinal cannabis businesses that require a state licenses under MCRSA, including medical cannabis manufacturers, distributors, transporters, and testing laboratories. In addition to commercial cannabis activities, the ordinances prohibit cannabis cultivation, dispensaries and deliveries (except for those deliveries made by a primary caregiver to his or her qualified patients) within city limits.

BMC Chapters 9.50 and 17.780 contain virtually identical provisions. The difference is that the Zoning Ordinance under Title 17 regulates the use of land and will generally be enforced by Code Enforcement, while the Title 9 Ordinance regulates personal behavior and will generally be enforced by the Police Department.

PROPOSITION 64: THE "CONTROL, REGULATE AND TAX ADULT USE OF MARIJUANA ACT"

On November 8, 2016, California voters approved the [Control, Regulate and Tax Adult Use of Marijuana Act](#) ("AUMA"), which allows individuals to possess, use, and cultivate recreational marijuana in certain amounts. In addition, AUMA provided that private indoor cultivation of marijuana plants is lawful under both state and local law and is only subject to "reasonable" local regulations, provided that no more than six plants are being cultivated on the property at one time. Under the AUMA, recreational marijuana cultivators, manufacturers, distributors, retailers, and testing laboratories may operate lawfully if they obtain a state license and comply with local ordinances.



**CITY COUNCIL AGENDA ITEM NO. E.12
10/24/2023**

In the wake of the passage of AUMA, BMC Chapters 9.50 and 17.780 were both amended to maintain the City's prohibitions on commercial marijuana activities and personal cultivation of marijuana to the extent allowable.

SENATE BILL 1186 – MEDICINAL CANNABIS PATIENTS' RIGHT OF ACCESS ACT

In February of 2022, State Senator Scott Wiener introduced Senate Bill 1186 ("SB 1186"), the Medicinal Cannabis Patients' Right of Access Act (Attachment 2). This bill prohibits local governments, beginning January 1, 2024, from adopting or enforcing any regulation that prohibits or effectively prohibits, the delivery of medicinal cannabis to patients or primary caregivers within their jurisdictions. This bill passed through both state legislative houses and was signed by Governor Newsom on September 18, 2022.

As provided in SB 1186, the state Legislature has determined that:

Access to medicinal cannabis is an integral aspect of access to health care, and eliminating barriers to medicinal cannabis access is essential to promoting and preserving the health of Californians for whom physicians have recommended the use of cannabis or cannabis products.

It is the policy of the state and the intent of the Legislature to ensure that Californians throughout the state have timely and convenient access to safe, effective, and affordable medicinal cannabis.

A decision not to modify the Brentwood Municipal Code to allow for the delivery of medicinal cannabis to qualified patients would expose the City to legal challenge by any of a host of individuals who have been authorized to seek legal recourse by SB 1186, including the Attorney General, medicinal cannabis patients within the city desiring delivery of medicinal cannabis, medicinal cannabis businesses seeking to offer medicinal cannabis for sale in the city, as well as any other party otherwise authorized by law.

ANALYSIS

In accordance with SB 1186, staff recommends amending Chapters 9.50 and 17.780 of the Brentwood Municipal Code (BMC) to permit the retail sale of medicinal cannabis via delivery to medicinal cannabis patients (a category of individuals that includes such patients' primary caregivers).



CITY COUNCIL AGENDA ITEM NO. E.12
10/24/2023

The proposed changes to Chapters 9.50 and 17.780 will continue to uphold the existing prohibitions on facilities for both medicinal and non-medicinal cannabis, as well as on the cultivation of medicinal and non-medicinal cannabis. Furthermore, the delivery and transport of non-medicinal cannabis within the city's jurisdiction will remain restricted, in line with the provisions of the Adult Use of Marijuana Act (AUMA) and SB 1186.

Per the new ordinances, the delivery of medicinal cannabis to medicinal cannabis patients would be subject to the following regulations:

1. Deliveries of medicinal cannabis to a medicinal cannabis patient would have to be made to fixed addresses and may not occur at locations such as schools, day care centers, youth centers, public parks and open spaces, public buildings, and establishments serving food or beverages.
2. A retailer with a physical address outside of the city that wished to deliver medicinal cannabis or medicinal cannabis products to a patient or customer within city limits would be required to obtain a City business license prior to commencing any delivery service within city limits.
3. All medicinal cannabis or medicinal cannabis products would have to be securely packaged and labeled according to State regulations, ensuring that they are not accessible to minors during transit.
4. Delivery vehicles would be required to adhere to safety and security standards, which include GPS tracking, alarms, and secure storage.
5. The delivery of cannabis accessories, branded merchandise of the licensee, or promotional materials is prohibited, except for any equipment, products or materials necessary to enable a qualified patient to ingest, inhale, or otherwise introduce cannabis or cannabis products into the human body.

SEPTEMBER 19, 2023 PLANNING COMMISSION MEETING

On September 19, 2023, staff presented these draft amendments to the Planning Commission. The Planning Commission suggested modifications to Chapter 17.780.060.C.5, specifically to permit any equipment, products, or materials essential for a qualified patient to administer cannabis or cannabis products (i.e, to



**CITY COUNCIL AGENDA ITEM NO. E.12
10/24/2023**

add the language underlined above). These revisions have been incorporated into and can be found in Attachments 3 and 4.

OCTOBER 10, 2023 CITY COUNCIL MEETING

On October 10, 2023, the City Council waived the first reading of and introduced these draft amendments without further revision.

CITY COUNCIL STRATEGIC INITIATIVE

Not Applicable.

PREVIOUS ACTION

Previous Action by the City Council is included as Attachment 1.

DATE OF NOTICE

Not Applicable.

ENVIRONMENTAL DETERMINATION

These ordinances to replace Chapter 17.780 and Chapter 9.50 of the Brentwood Municipal Code in their entirety are exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) because the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of the ordinances may have a significant effect on the environment, and the ordinances are exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(1), 15061(b)(2), and 15061(b)(3).

ATTACHMENT(S)

1. Previous Action
2. SB 1186
3. Ordinance 1062
4. Ordinance 1063