



*City of Arts & Innovation*

# City Council Memorandum

**TO: HONORABLE MAYOR AND CITY COUNCIL                      DATE: JULY 10, 2018**

**FROM: COMMUNITY & ECONOMIC DEVELOPMENT                      WARDS: ALL**  
**DEPARTMENT**

**SUBJECT: P18-0337 – AMENDMENT TO THE ZONING CODE TITLE 19 OF THE RIVERSIDE MUNICIPAL CODE TO PROHIBIT MARIJUANA USES, INCLUDING RETAIL SALES, CULTIVATION, MANUFACTURING, DISTRIBUTION, AND MICROBUSINESSES, BUT EXCLUDING CANNABIS TESTING LABORATORIES, AND AMENDMENT TO CHAPTER 5.77 – CANNABIS TESTING LABORATORIES TITLE 5 – BUSINESS TAXES, LICENSES AND REGULATIONS OF THE MUNICIPAL CODE – REFERRAL/APPEAL BY COUNCILMEMBER CHUCK CONDER, WITH CONCURRENCE BY COUNCILMEMBER STEVE ADAMS OF A DENIAL BY THE CITY PLANNING COMMISSION**

## **ISSUES:**

Approve amendments to Riverside Municipal Code Title 19 to prohibit marijuana uses, including retail sales, cultivation, manufacturing, distribution, and microbusinesses, but excluding Cannabis Testing Laboratories, and an amendment to Chapter 5.77 – Cannabis Testing Laboratories with regard to delivery, public nuisances, and penalties.

## **RECOMMENDATIONS:**

That the City Council:

1. Determine that Planning Case P18-0337 Zoning Code Text Amendment and Amendment to Chapter 5.77 of the Municipal Code is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and 15061, subdivision (b)(3) there is no possibility the activity in question may have a significant effect on the environment and additionally find that this action is categorically exempt from review under CEQA under the Class 8 Categorical Exemption regulatory activity to assure the protection of the environment, CEQA Guidelines section 15308;
2. Approve Planning Case P18-0337, Zoning Code Text Amendment and Amendment to Chapter 5.77 of the Municipal Code, based on the analysis outlined in the staff report;

3. Introduce and subsequently adopt the attached Ordinance amending Chapters 19.147 – Downtown Specific Plan, 19.150.020 – Permitted and Incidental Uses Table, 19.220 – Specific Plan Overlay Zone, 19.342 – Marijuana Uses and Activities, 19.485 – Home occupations, and 19.910 – Definitions of the Riverside Municipal Code; and
4. Introduce and subsequently adopt the attached Ordinance amending Chapter 5.77 – Cannabis Testing Laboratories of the Riverside Municipal Code.

### **BACKGROUND:**

The City Council held workshops on March 7, 2017, July 25, 2017, January 9, 2018, and March 27, 2018, regarding potential cannabis regulations in response to the adoption of Proposition 64 (the Adult Use of Marijuana Act or AUMA), Senate Bill 94 (Medicinal Adult-Use Cannabis Regulation and Safety Act or MAUCRSA), and subsequent State actions, such as Assembly Bill 133. Throughout these workshops, staff and consultants from HdL Companies presented information regarding state legislature, the state's cannabis licensing structure, and regulation and tax considerations, as well as responded to questions.

On July 25, 2017, the City Council directed staff to prepare a moratorium on commercial marijuana activity, while excluding marijuana testing laboratory facilities, which they directed staff to bring back a code amendment for consideration. Subsequently, City Council adopted an interim moratorium on September 12, 2017, followed by a ten-month fifteen-day moratorium extension on October 24, 2017. The moratorium is set to expire on September 11, 2018.

On November 7, 2017, the City Council adopted Ordinance No. 7398 to permit and regulate Cannabis Testing Laboratories in industrial zones, subject to State and City licensing requirements. The effective date of the ordinance was December 28, 2017.

At the third City Council workshop on January 9, 2018, City Council continued the cannabis regulation discussion for 45 days to provide an opportunity to include information from a planned City delegation trip to Colorado. This planned trip occurred on January 10 and 11, 2018 with the intent to gain a better understanding of the cannabis industry in an established regulatory environment. Recreational use and regulation of marijuana has been legal in Colorado since 2013.

A summary of the Colorado visit was provided to the City Council at the fourth workshop on March 27, 2018, along with a fiscal analysis of the anticipated costs and potential revenue related to commercial cannabis uses in Riverside. This workshop also included a presentation by representatives from the City of Denver Police Department who shared their experiences and lessons learned since the legalization of recreational marijuana use and sales in Colorado in 2013.

At the March 27, 2018 workshop, City Council, by a vote of 5 Ayes and 2 Noes, directed staff to immediately prepare an ordinance prohibiting within the City of Riverside (a) retail and commercial sale of marijuana; (b) commercial agricultural cultivation of marijuana; (c) the manufacturing and sale of marijuana extractable and consumable products; (d) distribution of all marijuana and cannabis associated products; (e) and establishment of microbusinesses such as boutique marijuana pot lounges; and (f) outdoor cultivation of all marijuana plants, including medical marijuana.

## **PLANNING COMMISSION RECOMMENDATION:**

Following the March 27, 2018, City Council direction, staff identified a number of Zoning Code Text Amendments that would be necessary to explicitly prohibit commercial marijuana uses and outdoor cultivation. Per Chapter 19.810 of the Riverside Municipal Code, Zoning Code Text Amendments require the affirmative vote of at least 4 Planning Commission members, or a majority, whichever is greater.

On May 31, 2018, the Zoning Code Text Amendment Planning Case P18-0337 was considered by the Planning Commission. At the hearing, staff provided a brief background on the legislative history, existing City regulations, and presented the proposed amendments to the Municipal Code. The Planning Commission also received copies of the staff reports and presentations from the four City Council workshops held to discuss marijuana regulations.

During deliberations, a number of Planning Commissioners expressed frustration that they had been asked to make a decision without the benefit of the extensive dialog afforded to the City Council throughout the focused workshops over the last year. Based on that discussion and contrary to staff's recommendations, the Planning Commission denied the Zoning Code Text Amendments by a vote of 2 ayes, 5 noes and 1 abstention.

The Planning Commission's denial of Zoning Code Text Amendments is typically final unless appealed, or referred by a Councilmember, to the City Council. On May 31, 2018, Councilmember Conder, with Councilmember Adams concurring, referred/appealed this item to City Council for further consideration.

## **DISCUSSION:**

Currently, the City specifically prohibits medical marijuana dispensaries and commercial marijuana cultivation per the Permitted Uses Table (19.150.020 (A)) of the Zoning Code. Other commercial marijuana land uses, particularly related to non-medical purposes, are not specifically listed within the Permitted Uses Table, and are therefore prohibited per Section 19.150.020 which states that "uses not listed in Tables are prohibited, unless the Community & Economic Development Director or his/her designee, pursuant to Chapter 19.060 (Interpretation of Code), determines that the use is similar and no more detrimental than a listed permitted or conditional use." With the passage of Prop 64, remaining silent on non-medical commercial marijuana land uses in the Municipal Code results in ambiguities that could be interpreted as being allowed. The proposed amendment is intended to remove ambiguities.

Also, as adopted by City Council on January 12, 2016, *Chapter 19.342 – Marijuana Cultivation* currently provides a limited exemption for the non-commercial medical marijuana cultivation of no more than eight (8) marijuana plants by primary caregivers and qualified patients for their own medical use, subject to site location, operational and development standards. This Chapter also established an annual license requirement for primary caregivers and qualified patients. Per City Council direction received on March 27, 2018, and as a result of Prop 64 which allows for the indoor personal cultivation of marijuana of up to 6 plants in residential units, *Chapter 19.342 – Marijuana Cultivation* is proposed to be eliminated and replaced in whole as described below.

## *Amendments to Title 19 – Zoning Code*

Most of the proposed amendments to Title 19 include minimal changes to add clarity and consistency, whereas the existing *Chapter 19.342 – Marijuana Cultivation* is being replaced in whole and renamed as *Chapter 19.342 – Marijuana Uses and Activities*. This new Chapter will be the primary regulating chapter for the prohibition of marijuana uses.

As part of the proposed amendments to the Zoning Code, staff has prepared the following exhibits in redline-strikeout format (except for the replacement Chapter 19.342) to easily identify the recommended changes:

- Amend *Chapter 19.147 – Downtown Specific Plan Zone (DSP)* (**Attachment 4**)
- Amend *Chapter 19.150.020 – Permitted and Incidental Uses Tables* (**Attachment 5**)
- Amend *Chapter 19.220 – Specific Plan Overlay Zone (SP)* (**Attachment 6**)
- Replace in whole *Chapter 19.342 – Marijuana Cultivation* with the new *Chapter 19.342 – Marijuana Uses and Activities* (**Attachment 7**)
- Amend *Chapter 19.485 – Home Occupations* (**Attachment 8**)

In addition to the above amendments, staff recommends the following revisions to the definitions within *Chapter 19.910 – Definitions* (redline text denotes added text):

- **Agricultural stand** - In the RA-5 Zone, a stand for the sale of agricultural products produced or raised on the same premises, excluding marijuana and hemp.
- **Agricultural use** - The use of land for the commercial or non-commercial purpose of planting, growing, raising, and harvesting of crops, livestock, or poultry; all of which shall be subject to any applicable state license, to a conditional use permit where required under this Code, and to the limitations and exclusions presented in this definition or as set forth for specific zones created under this Code. For the purpose of this definition, crops shall not include marijuana or hemp.
- **Cannabis** – See Marijuana
- **Home occupation** - Any use of a dwelling unit and related property for employment or occupational purposes that is incidental to the residential use of the dwelling unit. The cultivation, manufacturing, distribution, transport, or sale of marijuana or marijuana products is not a permitted home occupation.
- **Marijuana** - The term “marijuana” shall mean all items included in the Health and Safety Code sections 11018 and 11018.1.
- **Marijuana Cultivation Personal** - Marijuana Cultivation in a private residence for the exclusive personal use of a resident of the residence who is twenty-one (21) years of age or older, as permitted by Health and Safety Code sections 11362.1 and 11362.2.

## *Amendments to Title 5 - Business Taxes, Licenses and Regulations*

As stated in the Background above, on November 7, 2017, the City Council adopted an Ordinance amending *Title 5 - Business Taxes, Licenses and Regulations* of the Municipal Code to allow for Cannabis Testing Laboratories as licensed by the State of California. From a zoning and land use perspective, Cannabis Testing Laboratories are permitted anywhere other scientific

laboratories are allowed and are not called out specifically within the Zoning Code. However, *Chapter 5.77 – Cannabis Testing Laboratories* includes specific permitting processes and operational requirements that must be met. The City Council, at the March 27, 2018 workshop, excluded the prohibition of Cannabis Testing Labs in their direction to staff. As such, the proposed amendments do not include a prohibition of Cannabis Testing Labs. However, there are several minor clarifying revisions proposed to Chapter 5.77 related to Delivery, Public Nuisance and Penalties that are included in the attached Ordinance (Attachment 10).

### *Timeline*

As stated above, the existing moratorium is scheduled to expire on September 11, 2018. Regulations must be in place prior to the expiration of the moratorium to avoid any time of regulatory ambiguity as currently exists without the moratorium.

Ordinances to amend the Zoning Code are first introduced and then adopted at a subsequent meeting. The ordinance then becomes effective 30 days after its adoption. The table below illustrates the key dates of the Ordinance adoption process.

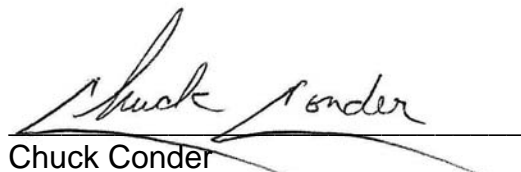
Ordinance Steps/Council Action	Key Dates
Ordinances Introduced	7/10
Ordinances Adopted (Second Reading)	7/24
<b>Effective Date of Amendments</b>	<b>8/24</b>
Moratorium Expiration	9/11

### **FISCAL IMPACT:**

Less than 10 cultivations permits have been issued or renewed to date. Therefore, the elimination of permitting for cultivation would have a fiscal impact of less than \$2,500 per year.

Prepared by: David Welch, Interim Community & Economic Development Director  
 Certified as to  
 availability of funds: Adam Raymond, Chief Financial Officer/City Treasurer  
 Approved by: Rafael Guzman, Assistant City Manager  
 Approved as to form: Gary G. Geuss, City Attorney

Concurs with:



Chuck Conder  
City Councilmember, Ward 4



Steven K. Adams  
City Councilmember, Ward 7

### Attachments:

1. City Council Staff Report – March 27, 2018 Workshop
2. City Planning Commission Report – May 31, 2017
3. City Planning Commission Minutes
4. Chapter 19.147 – Downtown Specific Plan Zone (DSP) Amendments
5. Chapter 19.150.020 – Permitted and Incidental Uses Table Amendments

6. Chapter 19.220 – Specific Plan Overlay Zone (SP) Amendments
7. Chapter 19.342 – Marijuana Uses and Activities (Replaces 19.342 – Marijuana Cultivation)
8. Chapter 19.485 – Home Occupations Amendments
9. Ordinance Amending Title 19 – Zoning Code
10. Ordinance Amending Title 5 – Business Taxes, Licenses, and Regulations
11. Presentation