



Legislation Text

File #: 19-0236, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

George Gabriel, Senior Management Analyst

SUBJECT:

Consider Authorizing: (1) Letter Opposing AB 1356, which will Require Cities to Issue a Minimum of One Retail Cannabis License if More than 50 Percent of the Voters of that City Voted in Favor of Proposition 64; (2) The Support of Litigation Challenging the State Pre-emption of Local Control Over Cannabis Delivery; and (3) Letter Opposing AB 1568, which will Prohibit Cities from Applying for State Grant Funds if that City is in Non-compliance with State Housing Mandates (City Manager Moe).

AUTHORIZE (1), (2) AND (3)

RECOMMENDATION:

Staff recommends that the City Council: (1): staff to prepare and send letters opposing Assembly Bill 1356 and Assembly Bill 1568; and (2) direct the City Attorney to support the litigation.

FISCAL IMPLICATIONS:

There are no fiscal implications associated with the recommended actions. There would be an impact if the City Council authorizes more than the recommended non-financial support in the litigation challenging state preemption of local control over cannabis deliveries.

BACKGROUND:

The Manhattan Beach City Council periodically reviews bills, initiatives, litigation or legislation pending in other governmental agencies. The purpose is to consider outlining the position of the City Council on priority issues and matters that impact the City's ability to operate effectively, promote City interests and protect local authority.

1. Assembly Bill 1356

Authored by Assembly Member Phil Ting (D-19-San Francisco), Assembly Bill 1356 will, if adopted, preempt local land use authority related to retail commercial cannabis activity.

The Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), an initiative measure approved as "Proposition 64" at the November 8, 2016, statewide general election, authorized a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. AUMA required that a State licensing authority shall not approve an application for a State license for commercial non-medical cannabis

activity if approval of the license will violate the provisions of any local ordinance. Current state regulations on adult-use cannabis activities, including retail commercial cannabis activities, did not supersede, limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate or prohibit commercial cannabis businesses within that local jurisdiction.

Proposition 64 (2016) needed a simple majority of over 50 percent to be approved and received 7,979,041 votes in favor of the measure or 57.1 percent of total votes recorded statewide on the measure.

Pursuant to regulations allowed by AUMA, the City Council adopted Ordinance No. 17-0024 and No. 17-0025 at the November 7, 2017, City Council meeting, prohibiting any commercial cannabis activity, including commercial cannabis facilities and deliveries, in all zones in the City.

2. City of Santa Cruz et al. v. Bureau of Cannabis Control, Fresno Superior Court

On April 3, 2019, a coalition of 25 California cities and counties filed a complaint against the state Bureau of Cannabis Control (“Bureau”) for declaratory and injunctive relief seeking a judicial declaration that Title 16, section 5416(d) of the California Code of Regulations, which allows cannabis deliveries throughout the state, is invalid. As you may recall, on January 16, 2019, the state Office of Administrative Law adopted the Bureau’s regulations pertaining to cannabis retailers, distributors, testing laboratories, and microbusinesses. Most significantly, Regulation 5416 provides that cannabis may be delivered to any jurisdiction regardless of local bans (such as the prohibition on delivery in Ordinance No. 17-0024) prohibiting delivery. The state regulation is also contrary to California Business and Professions Code Section 26200, which authorizes a local jurisdiction to completely prohibit, among other cannabis operations, delivery.

3. Assembly Bill 1568

Authored by Assembly Member Kevin McCarty (D-7-Sacramento), Assembly Bill 1568 restricts cities and counties from receiving state grant funds if the city or county has been found to violate state housing laws, such as an inadequate housing element.

State law requires that the City Council adopt an update to its Housing Element in the City’s General Plan to analyze community housing needs in terms of affordability, availability, adequacy, and accessibility. The Element describes the City’s strategy and programs to address those needs. After adoption, the City must submit the adopted Housing Element to the California Department of Housing and Community Development (HCD) for its review and certification.

The HCD has the authority to reject or impose conditions on a City’s Housing Element and refer a city who has violated the state housing law to the state Attorney General (AG). Violations to the state housing law include: failing to adopt a certified housing element; reducing the zone or density on a site in its housing inventory; failing to contain mandatory elements; or imposing barriers to affordable housing. The AG (or affected applicants or landowners) can file a lawsuit against a city.

Governor Gavin Newsom has proposed linking housing goals with state grant funding. The proposal has included withholding funds from local governments that do not have a compliant housing element and have not zoned or entitled for its annual goals based on the most recent Regional Housing Needs Allocation (RHNA).

DISCUSSION:

Assembly Bill 1356

Assembly Bill 1356 requires a local jurisdiction in which more than 50 percent of the electorate voted in favor of Proposition 64 (2016) to issue a minimum number of local licenses that authorize adult-use cannabis commercial activity.

According to the Los Angeles County Registrar-Recorder/County Clerk's office, the measure received approximately 61.6 percent of total votes recorded in Manhattan Beach, in favor of the measure.

Additionally, the bill sets the minimum number of local licenses for retail cannabis commercial activity that a local jurisdiction is required to issue at 25 percent of the number of on-sale general license types for alcoholic beverage sales that are currently active in the jurisdiction. These on sale general license types include restaurants, bars, breweries, clubs and hotels that sell alcoholic beverages. However, if the number of local licenses for retail commercial cannabis would result in a ratio greater than one local license for retail cannabis commercial activity for every 10,000 residents of the local jurisdiction, the minimum number of local licenses that the local jurisdiction is required to issue shall be determined by dividing the number of residents in the local jurisdiction by 10,000.

Based on the minimum requirement in this bill, the City would be required to issue a minimum of three retail commercial cannabis licenses. With that being said, this bill also includes a clause that allows a local jurisdiction the opportunity to establish a lower amount of local licenses for retail cannabis commercial activity through a vote of the local jurisdiction's electorate.

The bill requires the local jurisdiction to create a local ordinance that clearly specifies the level of participation in the retail commercial cannabis market the local jurisdiction will allow and then submit that ordinance to the electorate of that local jurisdiction at the next regularly scheduled local election. If the ordinance is approved by more than 50 percent of the electorate of that local jurisdiction voting on the issue, then the new ordinance shall become effective in that local jurisdiction.

In order to be enacted, AB 1356 requires a two-thirds vote of both houses of the Legislature, Assembly Bill 1356 fundamentally erodes the local regulatory authority of cities and counties, which is explicitly provided for in Proposition 64 (2016).

Assembly Bill 1356 was introduced on February 22, 2019, and passed the Assembly Committee on Business and Professions (12-7-1) on April 23, 2019. The bill was referred to the Assembly Committee on Appropriations and will be heard on May 16, 2019.

City of Santa Cruz et al. v. Bureau of Cannabis Control, Fresno Superior Court

On April 3, 2019, a coalition of 25 California cities and counties filed a complaint against the state Bureau of Cannabis Control ("Bureau") for declaratory and injunctive relief seeking a judicial declaration that Title 16, section 5416(d) of the California Code of Regulations, which allows cannabis deliveries throughout the State, is invalid. As you may recall, on January 16, 2019, the state Office of Administrative Law adopted the Bureau's regulations pertaining to cannabis retailers, distributors, testing laboratories, and microbusinesses. Regulation 5416 provides that "a delivery employee may deliver [cannabis] to any jurisdiction within the State of California provided that such delivery is conducted in compliance with all delivery provisions of this division."

The Coalition has the following website: <https://www.simplca.com/> This website includes information about how local jurisdictions can get involved in the litigation, either through adopting a resolution, sending a letter of support, or becoming a plaintiff in the action. At this time, staff is recommending only that the City provide a letter of support. However, the Council has the authority to direct staff to draft a resolution for the Mayor's signature, or join the action as a plaintiff.

Assembly Bill 1568

The state regularly provides various grant funds to cities. Last fiscal year, the state provided the City \$28,000 in grant funding. So far in fiscal year 2018-19, the City has received \$20,000. Should AB 1568 pass, this bill would prohibit cities and counties from applying for any state grant funds, if the city or county has been found by HCD to have violated the state housing law or if their housing element is out of compliance.

Currently, the City has a certified adopted housing element in compliance until 2021. However, given the state's housing crisis, housing element laws are rapidly changing. In the future, the City may not be in compliance with mandated RHNA numbers for low and very low income units due to high property costs in the City.

Furthermore, the current statute related to local violations of the state housing law does not include any due process. Therefore, if HCD finds that a jurisdiction is in violation of the state housing law or has a non-compliant housing element, this bill would restrict the jurisdiction from accessing any state grant funds, without an opportunity for due process.

It should be noted that the most recent revisions to the bill has exempted funds granted to cities from Senate Bill 1, the Road Repair and Accountability Act of 2017.

Assembly Bill 1568 was introduced on February 22, 2019 and passed the Assembly Committee on Housing and Community Development (6-1-1) on April 24, 2019 and was referred to the Assembly Committee on Appropriations. The bill was referred to the Assembly Committee on Appropriations and will be heard on May 16, 2019.

CONCLUSION:

Consistent with precedent, City Council may direct staff to provide a letter of support or opposition on legislation or litigation that affects Manhattan Beach residents. If the City Council provides direction, staff will finalize the draft letters (attached) with the Mayor, receive the Mayor's signature and send it to the Governor, the Assembly Committee on Appropriations, State Senator Ben Allen, State Assemblyman Al Muratsuchi, and the League of California Cities. In addition, staff will send a letter of support to the Coalition in the lawsuit.

Following analysis and impacts to Manhattan Beach residents, staff has determined that in seeking to remove a local government's ability to either approve retail cannabis shops at a different concentration level or prohibit them within its jurisdiction, AB 1356 subverts the intent of the voters who approved Proposition 64 that allowed local control. Likewise, state preemption of a city's ability to regulate cannabis deliveries is contrary to state law, Proposition 64 and the City's local ordinance. Additionally, while the City has adopted a certified housing element and is currently in compliance with state housing laws, there are significant concerns with its impact on the preemption of future state grant funding that may be contingent on RHNA.

For the reasons outlined in the report, Staff recommends that the City Council send letters opposing Assembly Bill 1356 and Assembly Bill 1568, and a letter in support of the cannabis delivery litigation.

LEGAL REVIEW:

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

ATTACHMENTS:

1. Assembly Bill 1356
2. Draft Letter of Opposition - AB 1356
3. Assembly Bill 1568
4. Draft Letter of Opposition - AB 1568