



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
May 28, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Wengraf, Hahn, Robinson, and Mayor Arreguin
Subject: Oppose AB-1356 Cannabis: local jurisdictions: retail commercial cannabis activity (Ting)

RECOMMENDATION

Adopt a resolution in opposition to AB 1356 to Assemblymember Philip Ting with copies to the Chair of the Assembly Appropriations Committee Assemblymember Lorena Gonzalez, Assemblymember Buffy Wicks, Senator Nancy Skinner and Governor Gavin Newsom.

FINANCIAL IMPLICATIONS

None

BACKGROUND

Under AB 1356, if more than 50 percent of the voters of a local jurisdiction voted in favor of Proposition 64, these local jurisdictions would be required to adopt a local licensing structure for retail commercial cannabis activity. More specifically, AB 1356 requires these cities to issue a minimum of one retail cannabis license for every four liquor licenses.

AB 1356 fundamentally erodes the local regulatory authority of cities and counties on commercial cannabis, and thereby completely subverts the intent of the voters who approved Proposition 64.

The City of Berkeley just completed a very lengthy and in-depth community process to determine the number, locations and regulations for cannabis related businesses.

If passed, AB 1356 would completely erode the local control of cities and counties to regulate brick and mortar retail cannabis shops in their communities.

ENVIRONMENTAL SUSTAINABILITY

No direct correlation

CONTACT PERSON

Councilmember Wengraf Council District 6 510-981-7160

Attachments:

- 1: Resolution 2: AB 1356

RESOLUTION NO. ##,###-N.S.

OPPOSE AB-1356 (Ting)

WHEREAS, California voters approved Proposition 64 in 2018 which legalized cannabis and gave local jurisdictions regulatory authority over retail commercial cannabis activity; and

WHEREAS, AB 1356 takes away local authority by requiring cities to issue a minimum of one retail cannabis license for every four liquor licenses, if Proposition 64 passed by greater than 50% of the jurisdiction's vote; and

WHEREAS, AB 1356 subverts the intent of the voters who approved Proposition 64; and

WHEREAS, AB 1356 would completely erode the local control of cities and counties to regulate brick and mortar retail cannabis shops in their communities; and

WHEREAS, the City of Berkeley just completed a very lengthy and in-depth community process to determine the number, locations and regulations of cannabis related businesses.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it stands firmly in opposition to AB-1356.

BE IT FURTHER RESOLVED that this resolution be sent to Assemblymember Philip Ting, Chair of the Assembly Appropriations Committee Assemblymember Lorena Gonzalez, Assemblymember Buffy Wicks, Senator Nancy Skinner, and Governor Gavin Newsom.

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL

No. 1356

Introduced by Assembly Member Ting

February 22, 2019

An act to amend Section 26200 of, and to add Section 26200.1 to, the Business and Professions Code, relating to cannabis.

LEGISLATIVE COUNSEL'S DIGEST

AB 1356, as amended, Ting. Cannabis: local jurisdictions: 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, authorizes 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. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities, including retail commercial cannabis activity. MAUCRSA gives the Bureau of Cannabis Control in the Department of Consumer Affairs the power, duty, purpose, responsibility, and jurisdiction to regulate commercial cannabis activity in the state as provided by the act. MAUCRSA does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate commercial cannabis businesses within that local jurisdiction.

This bill, if more than 50% of the electorate of a local jurisdiction voted in favor of AUMA, would require a local jurisdiction to issue a minimum number of local licenses authorizing ~~adult-use or medicinal~~ *specified* retail cannabis commercial activity within that jurisdiction that would be permitted by a retailer license issued under MAUCRSA. The bill would require the minimum number of those local licenses required to be issued in that jurisdiction to be 25% of the number of currently active on-sale

general licenses for alcoholic beverage sales in that jurisdiction, as specified, unless the minimum number would result in a ratio greater than one local license for retail cannabis commercial activity for every 10,000 residents of the local jurisdiction, in which case the bill would require the ~~minium~~ *minimum* number to be determined by dividing the number of residents in the local jurisdiction by 10,000 and rounding down to the nearest whole number. The bill would authorize a local jurisdiction to impose a fee on licensees to cover the regulatory costs of issuing those local licenses. *The bill would exempt from these provisions a local jurisdiction that, on or before January 1, 2017, and until January 1, 2020, submitted to the electorate of the local jurisdiction a specified local ordinance or resolution relating to retail cannabis commercial activity that received a specified vote of the electorate.*

This bill would allow any local jurisdiction subject to the requirements of this bill that wants to establish a lower amount of these local licenses to submit an ordinance or other law, that clearly specifies the level of participation in the retail commercial cannabis market it would allow, to the electorate of that local jurisdiction at the next regularly scheduled local election following the operative date of this bill. The bill would provide that the local ordinance or other local law becomes effective if approved by more than 50% of its electorate. The bill would require the local jurisdiction to issue those licenses as otherwise required by this bill within a specified period of time if a local jurisdiction subject to the requirements of this bill does not submit a local ordinance or other local law regarding the lower amount of licenses to the electorate, or that local ordinance or other local law fails to receive more than 50% of the approval of the electorate voting on the issue. *The bill would provide that these provisions are prohibited from being construed to require a local jurisdiction to authorize adult-use retail cannabis commercial activity.* By imposing additional requirements on local jurisdictions the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

AUMA authorizes the Legislature to amend its provisions with a $\frac{2}{3}$ vote of both houses to further its purposes and intent.

This bill would declare that its provisions further the purposes and intent of AUMA.

DIGEST KEY

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 26200 of the Business and Professions Code is amended to read:

26200.

(a) (1) This division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or

operation of one or more types of businesses licensed under this division within the local jurisdiction, except as provided in Section 26200.1.

(2) This division shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements.

(b) This division shall not be interpreted to require a licensing authority to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing, permitting, or other authorization requirements.

(c) A local jurisdiction shall notify the bureau upon revocation of any local license, permit, or authorization for a licensee to engage in commercial cannabis activity within the local jurisdiction. Within 10 days of notification, the bureau shall inform the relevant licensing authorities. Within 60 days of being so informed by the bureau, the relevant licensing authorities shall begin the process to determine whether a license issued to the licensee should be suspended or revoked pursuant to Chapter 3 (commencing with Section 26030).

(d) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this division and the regulations promulgated by the bureau or any licensing authority, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall assume complete responsibility for any regulatory function pursuant to this division within the city limits that would otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(e) (1) This division does not prohibit the issuance of a state temporary event license to a licensee authorizing onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding temporary events of this nature, provided that the activities, at a minimum, comply with all the following:

(A) The requirements of paragraphs (1) to (3), inclusive, of subdivision (g).

(B) All participants who are engaged in the onsite retail sale of cannabis or cannabis products at the event are licensed under this division to engage in that activity.

(C) The activities are otherwise consistent with regulations promulgated and adopted by the bureau governing state temporary event licenses.

(D) A state temporary event license shall only be issued in local jurisdictions that authorize such events.

(E) A licensee who submits an application for a state temporary event license shall, 60 days before the event, provide to the bureau a list of all licensees that will be providing onsite sales of cannabis or cannabis products at the event. If any changes occur in that list, the licensee shall provide the bureau with a final updated list to reflect those changes. A person shall not engage in the onsite retail sale of cannabis or cannabis products, or in any way participate in the event, who is not included in the list, including any updates, provided to the bureau.

(2) The bureau may impose a civil penalty on any person who violates this subdivision, or any regulations adopted by the bureau governing state temporary event licenses, in an amount up to three times the amount of the license fee for each violation, consistent with Sections 26018 and 26038.

(3) The bureau may require the event and all participants to cease operations without delay if in the opinion of the bureau or local law enforcement it is necessary to protect the immediate public health and safety of the people of the state. The bureau may also require the event organizer to immediately expel from the event any participant selling cannabis or cannabis products without a license from the bureau that authorizes the participant to sell cannabis or cannabis products. If the unlicensed participant does not leave the event, the bureau may require the event and all participants to cease operations immediately.

(4) The order by the bureau for the event to cease operations pursuant to paragraph (3) does not entitle the event organizer or any participant in the event to a hearing or an appeal of the decision. Chapter 3 (commencing with Section 490) of Division 1.5 and Chapter 4 (commencing with Section 26040) of this division shall not apply to the order by the bureau for the event to cease operations pursuant to paragraph (3).

(5) The smoking of cannabis or cannabis products at temporary events authorized pursuant to this subdivision is prohibited in locations where smoking is prohibited. For purposes of this section, “smoking” has the same meaning as defined in subdivision (c) of Section 22950.5.

(f) This division, or any regulations promulgated thereunder, shall not be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

(g) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a retailer or microbusiness licensed under this division if all of the following are met:

(1) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older.

(2) Cannabis consumption is not visible from any public place or nonage-restricted area.

(3) Sale or consumption of alcohol or tobacco is not allowed on the premises.

(h) This division shall not be interpreted to supersede Section 6404.5 of the Labor Code.

SEC. 2.

Section 26200.1 is added to the Business and Professions Code, to read:

26200.1.

(a) (1) ~~Every~~ *Except as provided in subdivision (d),* a local jurisdiction shall comply with the requirements of this subdivision if more than 50 percent of the electorate of that local jurisdiction, as determined using election data from the Secretary of State, voted in favor of the Control, Regulate and Tax Adult Use of Marijuana Act of 2016, an initiative measure enacted as Proposition 64 at the November 8, 2016, statewide general election.

(2) A local jurisdiction described in paragraph (1) shall issue a minimum number of local licenses that authorize ~~adult-use retail cannabis commercial activity~~ *or medicinal retail cannabis commercial activity, or a combination of medicinal retail cannabis commercial activity and adult-use retail cannabis commercial activity,* within the jurisdiction that would be permitted by a retailer license described in Section 26070, as determined by paragraph (3). A local jurisdiction may impose a fee on licensees to cover the regulatory costs of issuing those local licenses.

(3) (A) Except as provided in subparagraph (C), the minimum number of local licenses for retail cannabis commercial activity that a local jurisdiction is required to issue pursuant to paragraph (2) is 25 percent of the number of on-sale general license types for alcoholic beverage sales that are currently active in that jurisdiction, as determined pursuant to subparagraph (B).

(B) (i) (I) If the local jurisdiction is a city, the number of on-sale general licenses for alcoholic beverages shall be determined by adding all of the currently active licenses issued in the jurisdiction that are of a license type listed in subclause (II). If the local jurisdiction is a county, the number of on-sale general licenses for alcoholic beverages shall be determined by adding all of the currently active licenses issued in the unincorporated regions of the county that are of a license type listed in subclause (II).

(II) For purposes of subclause (I), the following on-sale general license types shall be counted: Types 47, 47D, 48, 48D, 57, 57D, 68, 70, 71, 71D, 75, ~~75D~~, *75D*, 78, and 78D.

(ii) The number determined in clause (i) shall be divided by four and rounded up to the nearest whole number using generally accepted mathematical rounding practices.

(iii) If the number of local licenses for retail commercial cannabis determined in clause (ii) would result in a ratio equal to, or fewer than, one local license for retail cannabis commercial activity for every

10,000 residents of the local jurisdiction, the number determined in clause (ii) shall be the minimum number of local licenses the jurisdiction is required to issue pursuant to paragraph (2).

(C) Notwithstanding subparagraphs (A) and (B), if the number of local licenses for retail commercial cannabis determined in clause (ii) of subparagraph (B) 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 pursuant to paragraph (2) shall be determined by dividing the number of residents in the local jurisdiction by 10,000 and rounding down to the nearest whole number.

(b) Notwithstanding subdivision (a), a local jurisdiction described in paragraph (1) of subdivision (a) that wants to establish a lower amount of local licenses for retail cannabis commercial activity than required by subdivision (a) shall do all of the following:

(1) Create a local ordinance or other local law that clearly specifies the level of participation in the retail commercial cannabis market the local jurisdiction will allow.

(2) Submit that ordinance or other local law to the electorate of that local jurisdiction at the next regularly scheduled local election following the operative date of this section.

(3) If the ordinance or other local law is approved by more than 50 percent of the electorate of that local jurisdiction voting on the issue, then the new ordinance or other local law shall become effective in that local jurisdiction.

(c) If a local jurisdiction described in paragraph (1) of subdivision (a) does not submit a local ordinance or other local law to the electorate as described in subdivision (b), or that local ordinance or other local law fails to receive more than 50 percent of the approval of the electorate of that local jurisdiction voting on the issue as described in subdivision (b), then the local jurisdiction shall have 120 days after the next regularly scheduled local election following the operative date of this section to issue local licenses in compliance with subdivision (a).

(d) A local jurisdiction is exempt from this section if either of the following applies:

(1) On or after January 1, 2017, and until January 1, 2020, the local jurisdiction submitted to the electorate of the local jurisdiction a local ordinance or resolution that authorizes retail cannabis commercial activity, and a majority of the electorate voted not to approve the local ordinance or resolution.

(2) On or after January 1, 2017, and until January 1, 2020, the local jurisdiction submitted to the electorate of the local jurisdiction a local ordinance or resolution that prohibits retail cannabis commercial activity, and a majority of the electorate voted to approve the local ordinance or resolution.

~~(d)~~

(e) For purposes of this section, all of the following shall apply:

(1) "Electorate of a county" means the electorate of the unincorporated area of the county.

(2) "Local jurisdiction" means a city, county, or a city and a county.

(3) "Local license" means any license, permit, or other authorization from the local jurisdiction.

(f) This section shall not be construed to require a local jurisdiction to authorize adult-use retail cannabis commercial activity.

SEC. 3.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 4.

The Legislature finds and declares that this act furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act as stated in subdivisions (u) and (x) of Section 3 of that act.

