

**REGULATION REGARDING THE IDENTIFICATION OF SENSITIVE USES,
SEPARATION REQUIREMENTS, ESTABLISHING A LIST OF KNOWN
SENSITIVE USES, AND PROVIDING FOR AN ASSOCIATED MAP AND
LIST OF POTENTIALLY AVAILABLE PARCELS**

A list of known sensitive uses in the City of Vista has been established for the purpose of determining the separation distances required between sensitive uses and the medical cannabis dispensaries authorized under Measure Z. Measure Z enacted Vista Municipal Code ("VMC") Chapter 5.94 in its entirety, and further references to Measure Z will be to the provisions of that Chapter.

For the convenience of the public, the City will also concurrently publish a map that plots the sensitive uses and the separation distance envelopes around those uses. The map will also plot those areas of the City where zoning permits the establishment of medical cannabis dispensaries. Finally, the map will plot those parcels where, based on the sensitive use separation distances and the zoning rules, medical cannabis dispensaries potentially would be permitted to operate. The map will also be accompanied by a list of the parcels shown on the map as potentially available for medical cannabis dispensaries.

The map and the list of potentially available parcels for medical cannabis dispensaries are based on the City's GIS mapping system which is known to contain minor boundary inaccuracies. Accordingly, the map and the list of potentially available parcels are informational only; all separation distances must be determined by the actual parcel boundaries and may be subject to verification by a licensed survey if required at the sole discretion of the City.

The effective date of the initial list is December 21, 2018. The list is subject to modification should other uses become known to the City or should the City determine that a use was listed in error. In that event a revised list will be published with a new effective date.

Authority

VMC §§ 5.94.010 and 5.94.160 require that Chapter 5.94 comply with and be interpreted consistent with state law and regulations. Further, VMC § 5.94.130 declares:

"All medical cannabis businesses in violation of Health and Safety Code Section 11362.7 et seq. and 11362.5 et seq., this chapter, or any other applicable State law are expressly prohibited."

Recognizing this direction found in Chapter 5.94, this list is based on the Compassionate Use Act of 1996 (Proposition 215) as modified by the Medicinal and Adult-Use Cannabis Regulation and Safety Act (SB 94) (Stats. 2017, Chap. 27) ("MAUCRSA"), and the Bureau of Cannabis Control Emergency Regulation as readopted in June 2018 (California Code of Regulation, Title 16, Division 42, Bureau of Cannabis Control) ("Regs") (collectively, "State Law").

Purpose

The purpose of this regulation is to identify sensitive uses and separation requirements between those uses and medical cannabis businesses. It further provides for tools to assist the public in determining the location of those uses as well as potential locations for medical cannabis businesses.

Definitions of Sensitive Uses

(Business & Professions Code ("B&PC") § 26054(b); Regs § 5026(a)):

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In creating the list of sensitive uses to implement Chapter 5.94, the City used legal definitions established by State Law, as follows.

“Day Care Center’ means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and schoolage child care centers, and includes child care centers licensed pursuant to Section 1596.951.”

(B&PC § 26001(o); Health & Safety Code (“H&SC”) § 1596.76 [Eff. 1/1/19])

“For the purposes of this section, “school” means any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.”

(“B&PC” § 26054(b); H&SC § 11362.768)

“Youth Center’ means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.”

(B&PC § 26001(au); H&SC § 11353.1(e)(2))

The City has determined that a Playground falls within the definition of a Youth Center as a public facility primarily used to host recreational or social activities for minors and is a Sensitive Use. As such, the separation requirements for Youth Centers are applicable to Playgrounds and all parks containing Playgrounds. The definition of a Playground used by the City is that found in H&SC § 11353.1(e)(1):

“Playground’ means any park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.”

Separation Requirements from Sensitive Uses

(B&PC § 26054(b); Regs § 5026(a); H&SC § 11362.768):

In creating lists and maps which recognize separation requirements and comply with State law as contemplated by Chapter 5.94, the City has used the separation requirements contained in State Law, as presented below:

Day Care Center, School, Youth Center (including Playgrounds):

“A premises licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius. The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code unless otherwise provided by law.”

(B&PC § 26054(b))

“A premises licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued.”

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(Regs § 5026(a))

“The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.” (H&SC § 11362.768)

VMC § 5.94.090.F specifies a separation distance measured from the property line of the use to the front door of the medical cannabis business, the City has determined that State Law is controlling.

VMC § 5.94.070 relating to application requirements provides that an application may be not be approved if the medical cannabis business is located within 1,000 feet of a school, while VMC § 5.94.090 prohibits operation of a medical cannabis business within 600 feet of a school. The City has determined that State Law is controlling.

While it is further noted that Regs § 5026(b) provide that if a local jurisdiction has issued a license with a lesser separation distance the Bureau may issue a license to that operator, the City interprets this regulation as intended to protect existing legal cannabis businesses that may have been locally licensed before the adoption of the state separation standards. As cannabis businesses have heretofore been illegal in the City, and the City has never issued a license to any cannabis business with a lesser separation distance, the City has determined that this regulation does not modify the separation distances required under State Law.

APPROVED PER VMC § 5.94.170.B:



PATRICK JOHNSON, City Manager
December 21, 2018