



# CITY OF POMONA COUNCIL REPORT

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July 2, 2018

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted: Arnold M. Alvarez-Glasman, City Attorney

By: Andrew L. Jared, Assistant City Attorney  
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**Subject: Consideration of Terms and Provisions For Incorporation Into A Draft Ordinance Regulating Commercial Cannabis Activities and Businesses**

## **OVERVIEW**

On June 18, 2018, the City Council heard public comment and provided direction as to various options regarding terms and provisions for incorporation into a draft ordinance regulating commercial cannabis activities in the City of Pomona ("City"). This staff report attempts to summarize the comments made and consensus observed as to various issues identified.

The discussion should continue regarding the remaining items on the list previously presented (updated here as Attachment 1).

Based on the outcome of such discussion on the checklist, the City Attorney will incorporate such terms and provisions into a draft ordinance to regulate cannabis-related commercial activities within the City for first reading and adoption at future council and planning commission meetings.

## **DISCUSSION**

### **A. June 18, 2018: Council Consensus on Various Issues Regulating Commercial Cannabis**

On June 18, 2018, the City Council provided a checklist or outline format of issues and areas for consideration in commercial cannabis regulation (updated here as Attachment 1). Such summarized statements are of a general direction that Councilmembers may be considering at that time and are not yet the policy of the City of Pomona until adopted at the final reading of any applicable ordinance(s) and the passing of any referendum period.

Upon conclusion of the discussion of the remaining issues below, the Office of the City Attorney will draft such ordinances and schedule appropriate meeting before the Planning Commission and/or City Council upon final indication of policy direction from the City Council.

Specific questions for which direction is required in order to draft an ordinance include the following:

- Which commercial uses will be allowed?
- Where will such commercial uses be allowed?

The following summarizes the positions stated to date:

**1. Type:**

☐ **Consensus:** allow both Medicinal and Adult-Use commercial cannabis uses.

☐ **NEXT ACTION:**

- Council: No further direction required
  - Staff: Draft amendment to Pomona Zoning Ordinance to allow uses: zones TBD
  - Staff: Draft amendment to City Code addressing commercial cannabis uses
  - Staff: Draft standards to mitigate impacts: PCC/PZO or Development Agreement

**2. Classifications Allowed:**

☐ **Comments:**

- Delivery Services: no consensus to allow
- Delivery only from licensed brick and mortar located within Pomona

☐ **Discussion with majority in favor but not consensus to allow:**

- Cultivation (indoor),
- Manufacturing,
- Distribution,
- Testing Laboratory,
- Retailer, and
- Microbusiness;
- All locations of above TBD
- Limit number of retail and microbusinesses; number TBD

☐ **Consensus:** to allow following:

- Prohibit outdoor cultivation

☐ **NEXT ACTION:**

- Council: Further clarification regarding
  - Prohibit delivery services
  - Which services to allow
- Staff: Draft amendment to PZO/PCC:
  - prohibiting outdoor cultivation,
  - allowing those use specified by Council

**3. Explicitly Prohibited Cannabis Activities and Businesses:**

☐ **Comments**

- Prohibit outdoor cultivation
- Table discussion of festivals and lounges

☐ **Consensus:** Prohibit following

- Prohibit outdoor cultivation
- Table discussion of festivals and lounges

☐ **NEXT ACTION:**

- Council: No further direction required
- Staff: Draft amendments to PZO/PCC accordingly

**4. Locations Where Businesses will be Allowed:**

☐ **Consensus:**

- Distance measured direct line (“as the crow flies”) from property line to property line
- Evaluate increase of 600’ distance to 1000’ distance

☐ **Comments (consensus not clear):**

- Testing to be allowed in Districts 1 and 5
- No commercial cannabis uses in District 3
- No commercial cannabis uses in Downtown Pomona Specific Plan Area
- Limited to Commercial and Industrial zoning districts
- Allow microbusiness/vertically integrated business model
- Extend/Evaluate distance to 1,000’ from state identified facilities
- Evaluate distances from: churches, residential zones, libraries, universities, homeless centers, rehabilitation facilities

Note: buffer zones will change as new sensitive uses are established or existing uses cease to exist.

☐ **LOCATION:**

- **WHERE TO LOCATE CERTAIN USES:** The City may allow businesses in
  - zones/specific plans (*e.g.*, M-1, M-2, C-4, DPSP, CSP, *etc.*);
  - establish an overlay zone (*e.g.*, similar to the S-overlay zone); or,
  - define an area by description: “south of Mission between 57 and 71 freeways”.
- **REQUIRED DIRECTION:**
  - Council: Provide direction on following use locations:
    - Cultivation (indoor): \_\_\_\_\_
    - Manufacturing: \_\_\_\_\_
    - Distribution: \_\_\_\_\_
    - Retailer: \_\_\_\_\_
    - Microbusiness (includes 4 uses above): \_\_\_\_\_
    - Testing Laboratory: \_\_\_\_\_

- **DISTANCES FROM STATE-IDENTIFIED SENSITIVE USES:**
  - Evaluate greater distance than the 600' requirement under state law from K-12 schools, child care facilities, and youth activity centers.
  - 800', 1000', other
  - See discussion at page 8 and Att. 3-9.
  - **REQUIRED DIRECTION:**
    - Council: Provide direction on distances from sensitive uses:
      - K-12 schools: \_\_\_\_\_
      - child care facilities: \_\_\_\_\_
      - youth activity centers: \_\_\_\_\_
- **DISTANCES FROM ADDITIONAL SENSITIVE USES:**
  - Evaluate greater distance than the 600' requirement under state law from K-12 schools, child care facilities, and youth activity centers.
  - See discussion at page 8 and Att. 3-9
  - **REQUIRED DIRECTION:**
    - Council: Provide direction re distances from additional sensitive uses:
      - rehabilitation facilities: \_\_\_\_\_
      - homeless centers: \_\_\_\_\_
      - residential zones: \_\_\_\_\_
      - universities: \_\_\_\_\_
      - churches: \_\_\_\_\_
      - libraries: \_\_\_\_\_
- **DISTANCES FROM OTHER CANNABIS USES:**
  - Arguments For and Against establishing clusters of cannabis uses exist, or preventing such clusters with separation requirements, as with other uses:
    - Current separation requirements for other uses:
      - Adult-Oriented Businesses: 1,000' between uses;
      - Tobacco Retailers (smoke shops): 1,500' from other smoke shops, residential areas, public/private schools, and parks
  - **REQUIRED DIRECTION:** Receive comment from City Council
    - Council: Provide direction re distances from other cannabis uses:
      - Cultivation (indoor): \_\_\_\_\_
      - Manufacturing: \_\_\_\_\_
      - Distribution: \_\_\_\_\_
      - Retailer: \_\_\_\_\_
      - Microbusiness (includes 4 uses above): \_\_\_\_\_
      - Testing Laboratory: \_\_\_\_\_

**□ NEXT ACTION:**

- Council: Further clarification regarding
  - Where to locate uses
  - Distances for State-Identified Uses
  - Distances from Additional Sensitive Uses
  - Distances from Other Cannabis Uses
- Staff: Draft amendment to PZO/PCC according to Council direction.

**5. Number of Approvals:**

☐ Comments:

- How to authorize permit
  - Merit based v. Merit based, then lottery
  - Majority not in favor of a Lottery system
- 2 Retail licenses; 2 Microbusinesses; Testing Laboratories
- Establish mechanism to limit number: ratio (i.e., 1 per 25,000 residents, etc.)
- Lottery not preferred; discretionary approval preferred:
  - CUP,
  - Development Agreement,
  - Discretionary Permit

☐ Consensus:

- Limit number of approvals via code and discretionary approval process

☐ **NEXT ACTION:**

- Council: Further clarification regarding:
  - Number of permits for
    - Retail: \_\_\_\_\_
    - Cultivation: \_\_\_\_\_
    - Manufacturing: \_\_\_\_\_
    - Distribution: \_\_\_\_\_
    - Microbusiness (includes 4 uses above): \_\_\_\_\_
    - Testing Laboratory: \_\_\_\_\_

Staff: Draft amendment to PZO/PCC according to Council direction

**6. Minimum Application Requirements:**

☐ Comments:

- Fee for application
- Background check
  - 10 year history
  - Need clarification of what to check....
- Establish mechanism to limit number: ratio (i.e., 1 per 25,000 residents, etc.)
- Discretionary approval preferred (CUP, Development Agreement, Discretionary Permit)
- Concern re CUP “running with the land”; preferred individualized permit
- Security plan:
  - Guards: need clarification whether armed or not
  - include facial recognition
  - include surrounding neighborhood
- Consultant conflict of interest (needs clarification)
- Community Benefits Plan
  - Some in favor of including as part of application package
  - Some not in favor of Community Benefits Plan
- Minimum of five employees

- No requirement for ownership of land/building for retail establishments
- Prohibit service of alcohol at retail establishments
- ☐ **Consensus:**
  - Limit number of approvals via code and discretionary approval process
  - Merit based process
  - Background check requirements
    - No history of illegal dispensary operation in Pomona by any applicant or employee of applicant; such history disqualifies entire applicant
    - Fingerprinting all on application
  - Operation plan
  - Security plan: guards, security
  - Labor Peace Agreement
    - (no consensus if state required 20 employee level or lower number)
  - No stated objections to following:
    - sales of tobacco/alcohol prohibited, must secure state seller's permit, must secure state license, must provide bond to cover cost of destruction of cannabis upon violation, must provide diagram of proposed premise, must list of persons with financial interest in business as part of application, must abide by all other state requirements
- General Comment: In addition to the state application requirements, the City may impose additional minimum application requirements, which may be considered as an initial screening process, or as part of a merit-based, scoring system.

☐ **NEXT ACTION:**

- Council: Further clarification on minimum application requirements.

**7. Type of Approval(s), License(s), Permit(s), and/or Land Use Entitlement(s) Required to Establish a Commercial Cannabis Business:**

- ☐ Discussion was minimal on this item and done in connection with above items.
- ☐ **General Comment:** Authorization to establish a business may come in the form of a ministerial license, where it is issued by right; a regulatory permit or license, where the City is allowed to impose terms; and/or through land use approvals that may be negotiated and/or approved by the Planning Commission and/or City Council. This does not affect the requirement to obtain state-issued license which will also be required.
- ☐ **Comments:**
  - Methods of Regulation
    - Ministerial License Method: granted by right
    - Regulatory License/Permit Method (with Conditions Imposed)
    - Land Use Approval Method (with Conditions Imposed)
      - Development Agreement: certain elements can required by code; terms can be negotiated
      - Conditional Use Permit: certain elements can required by code; mitigate impacts with conditions

- Approval Process (comments made in discussion of Number of Approvals):
  - Merit based v. Merit based with lottery was discussed
  - Little support for “by right” process
  - Majority not in favor of a Lottery system
- Consensus:
  - Limit number of approvals via code and discretionary approval process
  - No consensus noted re DA/CUP
- **NEXT ACTION:**
  - Council: Further clarification regarding:
    - Method of Regulation:
      - CUP
      - Development Agreement
      - Discretionary Permit
      - Hybrid
    - Approval process:
      - Merit based application, with final determination by Lottery
      - Merit based application with final determination by Council
      - Merit based application, Short List determined by Council, with final determination by Lottery

#### **8. Review and Approval Process:**

- Discussion was minimal on this item and done in connection with above items.
- General Comment: Matters to consider include types of review and approval processes (allowed “by-right”, approved by body, or negotiated); single or multiple stages of review and approvals (*i.e.*, initial screening, if meet minimum requirements move to next phase, *etc.*); individual(s) or bodies reviewing and approving applications, making recommendations to other bodies, and/or issuing final approvals. Also, there was discussion from Councilmembers whether applicants should be allowed access to elected officials during the process. Environmental review under CEQA required for CUP and DA.
- **NEXT ACTION:**
  - Council: Further clarification regarding:
    - Who reviews/screens applications?
    - Who makes recommendations to approving body?
    - Who is the approving body?
    - Method of Regulation:
      - CUP
      - Development Agreement
      - Discretionary Permit
      - Hybrid

**9. Tax and Revenue Structures:**

- **General Comment:** The City may impose fee or tax structures (tax requires a ballot measure), or a combination of both; a specific fee or tax may be designated based on a percentage of gross revenue or square footage of a facility, or a fee may be negotiated; and a designation of City fund(s) where revenue will be allocated, including whether the City wants to establish community based program(s), and require applicants to fund same.

☐ **Comments:**

- Direct funds to police and fire services
- Accountability for funding

☐ **NEXT ACTION:**

- Council:
  - Should Staff place local cannabis tax/fee measure on November 2018 ballot?  
**(Deadline for action by Council is August 6, 2018)**
  - Should fee be negotiated under development agreement?
  - Should application fee be established? What amount?

**10. Compliance and Enforcement Provisions:**

Further research into methods of enforcement in place in City of Santa Ana (immediate closure, turning off utilities, *etc.*) passed by voters were not being enforced due to liability and litigation concerns.

- **General Comment:** Provisions to serve as a deterrent for those businesses operating unlawfully without City approvals, and to ensure compliance is continuous for those approved businesses, as well as the implementation of enforcement tools to allow the Police Department, Code Enforcement, and other City staff to effectively monitor approved businesses, and terminate illegal operations.

☐ **RECOMMENDED ACTION:**

- Table discussion until enforcement strategies can be tailored around location, number, type, and approval methods.

**11. Any Additional Operational Provisions Important to the City:**

- **General Comment:** additional standards the Council desires to impose as a term in an ordinance under any topic, including those listed hereinabove.

- ☐ Consensus: incorporate loitering, consumption, customer waiting area, and advertising issues in operational standards.

**B. Discussion of Buffer Zones and Proximity Distances**

A list of all sites currently included in buffer zone analysis is provided as Attachment 2.



Buffer zones will change as new sensitive uses are established or existing uses cease to exist. The list in Attachment 2 will change over time. Whether a business will be allowed at a certain location will be determined at the time of application. The attached maps should not be relied on for final determination of whether a use is allowed at a specific location.

On all maps, areas where cannabis uses would be excluded are indicated in yellow bubbles. Certain maps show residential and open space areas, where cannabis uses also would be excluded. Residential and open space areas are not shown on all maps.

Council asked for additional analysis regarding increased buffer zone from state-identified sites (*i.e.*, increasing 600' requirement to 1000' distance from K-12 schools, youth oriented sites, and child care facilities). Those sites have been identified as follows:

- A. Schools
- B. Day Care Centers
- C. Recreation Centers (primarily serving youth)
- D. Youth Centers (youth focused activities)

Council also asked for analysis regarding buffer zones around the following additional sites in Pomona:

- E. Substance Abuse Treatment Centers,
- F. Homeless Shelters,
- G. Social Service Offices, and
- H. Churches.

The combined effect of all sensitive use site Types A-H at 1000' is shown in Attachment 3.

The combined effect of all sensitive use site Types A-H at 600' is shown in Attachment 4.

The combined effect of all sensitive use site Types A-D at 1000' is shown in Attachment 5.

The combined effect of all sensitive use site Types A-D at 600' is shown in Attachment 6.

A map with a 600' buffer zone from all residential and open space zones is shown in attachment 7.

The combined effect of all sensitive use site Types A-G at 1000' is shown in Attachment 8.

The combined effect of sensitive use site Types A-H at 1000' from schools, substance abuse centers, and homeless shelters; 600' from youth sites, social service offices, and churches is shown in Attachment 9.

## **CONCLUSION**

After City Council has had an opportunity to provide additional direction, the Office of the City Attorney will prepare a draft ordinance based on City Council directives of the policy considerations discussed. Alternatively, City Council may provide any other directive to the City Attorney's office and/or City staff.

**Attachments:**

1. Consideration of Terms and Provisions for Incorporation into a Draft Ordinance Regulating Commercial Cannabis Activities (with notes from June 18, 2018 meeting)
2. Sensitive Use Site List
3. Sensitive use site Types A-H at 1000'
4. Sensitive use site Types A-H at 600'
5. Sensitive use site Types A-D at 1000'
6. Sensitive use site Types A-D at 600'
7. 600' buffer zone from all residential and open space zones
8. Sensitive use site Types A-G at 1000'
9. Sensitive use site Types A-G at various distances: 1000' from schools, substance abuse centers, and homeless shelters; 600' from youth sites, social service offices, and churches.