



CITY OF POMONA COUNCIL REPORT

September 10, 2018

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted by: Arnold Alvarez-Glasman, City Attorney

Prepared by: Norma Camacho, Deputy City Attorney

Subject: **Consideration of Draft Ordinance Regulating Commercial Cannabis Businesses and Further Council Direction on Finalizing the Draft Ordinance and Related Policies**

SUMMARY

Recommendation – That the City Council:

- 1. Introduce for First Reading and Refer to Planning Commission:** a) Conclude discussions on unresolved policy considerations; and b) Introduce the ordinance for first reading with any amendments incorporating City Council's direction on policy considerations; and refer the Zoning Code amendments to the Planning Commission for review; or
- 2. Bring Back at Later Date:** a) Conclude discussions on unresolved policy considerations; and b) direct the City Attorney's Office to revise the ordinance accordingly and bring it back to the City Council on a later date; and/or
- 3. Direct Staff:** Provide the City Attorney's Office and/or staff with direction regarding policy considerations related to regulating cannabis businesses.

Previous Council Action –

June 4, 2018 - The City Council received a presentation from the City Attorney's Office and staff on State law and most current State developments and regulations concerning medicinal and adult-use commercial cannabis activities.

June 18, 2018 - The Council received a report and a checklist to provide guidance on establishing what provisions and policies the Council wished to include in commercial cannabis regulations.

July 2, 2018 – The Council continued their discussion on establishing provisions and policies for a commercial cannabis regulation ordinance.

July 16, 2018 – After receiving a presentation from City staff and a representative from HdL, David McPherson, on a potential cannabis tax measure, the Council made a motion for staff to present a resolution to the City Council authorizing the submittal of a cannabis business tax on the ballot.

August 6, 2018 – The City Council adopted a resolution by a 6-1 vote to submit a cannabis business tax on the ballot for the November 6, 2018 General Municipal Election.

EXECUTIVE SUMMARY

The City Council has discussed policy considerations to incorporate into a commercial cannabis regulation ordinance. The draft ordinance presents a recommended regulatory framework and structure, and incorporates policy directives that have the City Council's support. Pending issues require further Council discussion and direction.

DISCUSSION

Staff and the City Council have been using a checklist to track the Council's opinions and level of consensus on facets of the draft ordinance. Outlined below are those topics that have not yet obtained consensus and, therefore, need further discussion. (The checklist is provided as **Attachment 1**.) In the draft ordinance, Staff has used bold formatting and brackets around terms, provisions, and/or policies that lack Council consensus and warrant further discussion.

Draft Ordinance and Policy Considerations

The Council has discussed eleven (11) major policy considerations, which have been incorporated into the draft ordinance regulating commercial cannabis activities. The policy considerations are color-coded in the ordinance as follows (to the extent possible), and are briefly described below.

- Clear consensus, and/or majority agreement (in green) – These provisions have Council consensus or majority support and have been incorporated into the draft ordinance;
- No clear consensus yet (in blue) – The Councilmembers have provided varying opinions on these provisions. These provisions need further Council discussion and are identified in the draft ordinance with brackets to present provisions that are either recommended by the City Attorney's office and/or submitted to the City Council for direction and modification;
- Legal authority (in red) – The City Council expressed an interest in including specific ordinance provisions, but the City Attorney's Office has information or recommendations based on applicable legal authority.

1. **Type:** The Council reached a consensus to allow both Medicinal and Adult-Use commercial cannabis businesses.
2. **Classifications Allowed:** A majority was in favor of allowing all classifications, but the Council has not reached a clear consensus. Accordingly, the draft ordinance includes all classifications, which may be revised as Council directs.
 - a. Cultivation, outdoor only (outdoor only by consensus);
 - b. Manufacturer, (expressed preference by CM Ontiveros-Cole);
 - c. Distributor;
 - d. Testing Laboratory;
 - e. Retailer (expressed preference by Mayor Sandoval and CM Robledo);
 - f. Microbusiness (expressed preference by Mayor Sandoval).

The Council posed questions about delivery service, which is not a stand-alone business classification, but ancillary to classifications allowed. Delivery service is addressed in the draft ordinance. (Note: State regulations of commercial cannabis delivery service are the most amended facet [for clarification or expansion] of cannabis regulation thus far.)

3. **Explicitly Prohibited Cannabis Activities and Businesses:** The Council reached a consensus to prohibit outdoor cultivation, and expressly authorize only indoor cultivation. The Council agreed to table discussions about other explicitly prohibited cannabis activity.
4. **Locations Where Businesses will be Allowed:** **This is the area that requires the most specific direction from City Council on the following issues:**
 - a. Where to locate allowed uses;
 - b. Distances from State-identified “sensitive sites;”
 - c. Identification of additional sensitive sites, if any;
 - d. Distances from additional sensitive sites;
 - e. Any other preferred provisions, if any, such as distances from other cannabis uses.

Staff prepared maps reflecting the Council’s direction to increase the State minimum buffer zone from 600’ to 1000’. These maps will assist the City Council with providing further direction to Staff regarding regulation of commercial cannabis businesses in:

- specified zones; **or**
- establish a special overlay zone; **or**
- define an area by description.

Staff can then prepare Zoning Ordinance amendments to reflect the Council’s direction.

Comments from Councilmembers were as follows, but the Council did not reach consensus:

- Uses to be allowed in Districts 1 and 5
- Uses to be allowed in commercial and industrial districts

- Establishment of a special overlay zone
- Sensitive sites to include State-identified sensitive sites of K-12 schools, day care centers and youth centers, but evaluate distances from other potential designated sites, including churches, residences, parks, libraries, universities, homeless shelters, and rehabilitation facilities.

Sensitive Sites identified as of June 27, 2018 (also provided as **Attachment 2**):

- A. Schools (*State req.*)
- B. Day Care Centers (*State req.*)
- C. Recreation Centers (primarily serving youth) (*State req.*)
- D. Youth Centers (youth focused activities) (*State req.*)
- E. Substance Abuse Treatment Centers (*Optional*)
- F. Homeless Shelters (*Optional*)
- G. Social Service Offices (*Optional*)
- H. Churches (*Optional*)

Staff prepared maps (**Attachments 3 – 9**) presenting variations of sensitive site and buffer zones. Specifically:

- The combined effect of all sensitive use site Types A-H at 1000' (**Att. 3**)
- The combined effect of all sensitive use site Types A-H at 600' (**Att. 4**)
- The combined effect of all sensitive use site Types A-D at 1000' (**Att. 5**)
- The combined effect of all sensitive use site Types A-D at 600' (**Att. 6**)
- A map with a 600' buffer zone from all residential and open space zones (**Att. 7**)
- The combined effect of all sensitive use site Types A-G at 1000' (**Att. 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 (**Att. 9**)

The draft ordinance currently incorporates distance requirements that are consistent with State law, which explicitly prohibits commercial cannabis businesses within 600 feet from the State-designated sensitive sites (schools, day care centers, recreation centers, and youth centers, as indicated in A, B, C and D above).

5. **Maximum Number of Approvals:** This provision needs further Council direction. With the exception of Mayor Sandoval who prefers to limit approvals to four (4) establishments (2 retailers and 2 microbusiness), there was general discussion that the sensitive use site and buffer zone maps may dictate where and how many uses may be allowed.

Other general comments from Council:

- general agreement that the City will not use a lottery system
- general agreement to use a merit-based/scoring point system to assist with dictating number of approvals

6. **Minimum Application Requirements:** 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. The Council did not reach a clear consensus on the City's application requirements, but generally agreed to include all of the items listed on the checklist, as well as items addressing the following additional comments from Council:

- 10 year criminal background check
- Any illegal cannabis operations – or ANY individual associated with illegal operations – is automatic basis for disqualification
- No loitering 100 feet surrounding location
- Strong security plan
- A dissent on a community benefits program, but if a program is in place, funds should be earmarked for street maintenance and senior citizen programs and NOT to general fund
- Labor Agreement based on number of employees – varied preferences from 5, to 10, to 20 or more employees
- Funds generated by businesses should go to enforcement of illegal operations, public safety, and infrastructure
- Varied opinions about imposing a property ownership requirement

The draft ordinance includes comprehensive minimum application requirements as listed in the checklist, including State minimum requirements, along with the Council's considerations summarized above. The ordinance also includes a list of grounds for denying an application.

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

Staff needs further Council direction on this provision.

The Council reached a general consensus that approvals will be discretionary, not ministerial. The Council discussed requiring a Conditional Use Permit and the ability to impose conditions to mitigate impacts. The City Council also discussed requiring a Development Agreement and the ability to negotiate contractually binding terms with the applicant.

The draft ordinance requires a prospective cannabis business to obtain all necessary approvals, permits and licenses required to occupy the business premises and operate the business. Specifically, the business shall obtain a regulatory Commercial Cannabis Permit and a Conditional Use Permit. The business shall also enter into a Development Agreement, which would allow the City to impose development standards, require operational and security plans, impose a fee structure payable to the City based on the business's revenue, and obligate applicants to fund a Community Benefits Program that supports specialized City programs and/or services.

Assuming the City's voters did not approve the Cannabis Business Tax for whatever reason, a "fee" of the same percentage of gross revenues as contemplated by the ballot measure could be negotiated with a successful applicant. This is an avenue for the City to secure revenues without it being a "tax." Another specific program that may be established through a Development Agreement is a Community Benefits Program wherein applicants are required to fund specific City programs and/or services. On the other side, a Conditional Use Permit allows the City to impose strict development standards specific to a cannabis business and/or in addition to those development standards applicable to a specific zone, should the City go that route.

8. Review and Approval Process:

There again appears to be a consensus to not having a lottery system and instead having a merit-based system with different phases of review and approval processes.

Accordingly, the draft ordinance proposes three (3) review, scoring and selection phases: (1) an initial application screening process to ensure that minimum, albeit rigorous, requirements are met; (2) those applications are then reviewed by a "Review Committee" using scoring criteria to rank the applicants to ultimately present to City Council; and (3) finally, City Council making a final approval of the high-ranking qualified applicants.

9. Tax and Revenue Structures:

As discussed hereinabove, on August 6, 2018, City Council passed a motion by a 6-1 vote to adopt a resolution to submit a cannabis business tax to the City's qualified voters for ballot placement on the Tuesday, November 6, 2018 general municipal election.

As also discussed hereinabove, should a tax not pass, the City can impose fees based on a percentage of gross revenue and/or square footage of a facility, which will be negotiated pursuant to a Development Agreement. The City will be able to designate City fund(s) where revenue will be allocated, including specialized programs or services identified by the City and/or the applicant by establishing a Community Benefits Program(s).

Successful applicants will also be required to pay fees for all other permits, licenses, inspections, etc. that are required pursuant to the ordinance in order to defray the costs associated with the time and resources spent by City staff, representatives, and agents, in processing the applications, and thereafter monitoring the program in the future to ensure on-going compliance. The ordinance provides for the authority for City Council to pass a fee resolution to impose said fees.

10. Compliance and Enforcement Provisions:

There was a consensus to include all the compliance and enforcement provisions from the checklist into an ordinance, which have been incorporated into the draft ordinance. Accordingly, penalty provisions are in place 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 law enforcement, Code Enforcement, and other City staff to effectively monitor approved businesses, and terminate illegal operations.

11. Any Additional Operational Provisions Important to the City:

There was a consensus to include the additional operational provisions listed in the checklist. Additionally, based on comments, additional provisions were incorporated to reflect restrictions on advertisements, operational requirements, and other provisions to mitigate any public nuisances.

CONCLUSION

The City Attorney's office is prepared to facilitate a discussion to ensure a consensus is reached on those policy considerations that require further clarification; to discuss the draft ordinance, and answer any questions City Council members have; and to take direction to amend the draft ordinance as a result of any discussions resulting from today's meeting. If Council reaches a consensus on the desired regulations, the Zoning Ordinance amendments will be referred to the Planning Commission for its review recommendation and then brought back to Council for adoption.

Attachments:

- 1) City of Pomona: "Checklist" - Consideration of Terms and Provisions for Incorporation into a Draft Ordinance Regulating Commercial Cannabis Activities
- 2) List of Sensitive Sites as of June 27, 2018
- 3 – 9) City maps generated by City staff
 - Att. 3 - The combined effect of all sensitive use site Types A-H at 1000'
 - Att. 4 - The combined effect of all sensitive use site Types A-H at 600'
 - Att. 5 - The combined effect of all sensitive use site Types A-D at 1000'
 - Att. 6 - The combined effect of all sensitive use site Types A-D at 600'
 - Att. 7 - A map with a 600' buffer zone from all residential and open space zones
 - Att. 8 - The combined effect of all sensitive use site Types A-G at 1000'
 - Att. 9 - 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
- 10) Draft Ordinance Regulating Commercial Cannabis Businesses