



CITY OF POMONA COUNCIL REPORT

October 22, 2018

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted by: Arnold Alvarez-Glasman, City Attorney

Prepared by: Andrew Jared, Assistant City Attorney
Norma Copado, Deputy City Attorney

Subject: **CONTINUED DISCUSSION ITEM: Proposed Application, Screening, Scoring and Selection Process - Continuation of City Council's Discussion on Consideration of Draft Ordinance Regulating Commercial Cannabis Businesses and Further Council Direction on Finalizing the Draft Ordinance and Related Policies**

Attached is the report provided to the Council as part of the October 15, 2018 agenda packet. Additional information will be provided to Council for discussion.



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EXECUTIVE SUMMARY

Throughout various city council meetings, City Council has discussed policy considerations to incorporate into a commercial cannabis regulation ordinance. The goal is to discuss and reach consensus on major policy considerations in order to incorporate said policy directives that have the City Council's support into an ordinance. Pending issues require further Council discussion and direction.

DISCUSSION

At the October 1, 2018 City Council meeting, there was a directive to synthesize the terms and provisions of the application and selection process of the Draft Ordinance Regulating Commercial Cannabis Businesses in a format that summarizes the major points, so that said information is easier to follow for any reader. Accordingly, below is a summary of the application process, as well as a road map to the proposed screening, scoring and selection process. Further, an enumerated list of grounds for disqualification are also provided herein to ascertain whether City Council approves same, and/or desires to revise or amend said list.

The information below, in addition to all topics that City Council has thus far reached a consensus on (i.e., more than four (4) Council Members voicing a preference), will be discussed and presented to City Council.

ANALYSIS

THREE (3) PHASE REVIEW, SCORING AND SELECTION PROCESS.

The proposed review, scoring and selection of timely and complete submitted applications is anticipated to comprise of three (3) phases:

1. **Phase I:** Initial Application Screening and Preliminary Determination of Eligibility.
2. **Phase II:** Investigation, Scoring, and Ranking.
3. **Phase III:** Final Ranking and City Council Consideration.

Review Committee: Generally speaking, a Review Committee will review the applications in Phase I; evaluate, score and rank the applications, and make recommendations to City Council in Phase II. In Phase III, the City Council, at a city council meeting, will consider the Review Committee's recommendations and select the finalists / potential cannabis operators.

The proposed Review Committee is established to process the applications to ensure compliance with any or all of the three (3) phases of the application review, scoring and selection process. A Review Committee means a group member, as designated and assigned by the City Manager, or his or her designee, which may include City employees, agents, and/or representatives, to undertake the task(s) of reviewing and processing applications, as this may further relate to the application review, scoring, and/or selection process.

There was a desire from Mayor Tim Sandoval for staff to explore options of a third-party, independent agency, company and/or organization to serve the role of the "Review Committee."

PHASE I: Initial Application Screening and Preliminary Determination of Eligibility

Phase I contemplates an initial application screening, and preliminary determination of eligibility. After the initial application review and background check, the Review Committee shall present those applicants who met the initial application review criteria to the next review and selection phase, Phase II. The City, alternatively, can also allocate a scoring system for Phase I. However, if the applicant meets the minimum eligibility requirements by a complete submittal, then said application is moved to Phase II.

INITIAL APPLICATION: The following minimum, and complete information shall be included in each and every application for a City of Pomona Commercial Cannabis Permit:

- **Name of Applicant**
- **Business Trade Name** (if applicable)

- **Identification of Primary Owner:** The full name (first, middle, last), primary phone number, social security number or individual taxpayer identification number, date and place of birth, email address, and mailing address for the primary owner submitting the Application.

- **For each person that is an “owner” of the applicant, same information as the primary owner, as well as:**

1. Percentage of interest held in the applicant entity by the owner whether the owner has an ownership or financial interest in any other commercial cannabis business licensed under the AUMA or MAUCRSA;

2. a copy of the owner’s government-issued identification;

3. a detailed description of the owner’s criminal convictions, if applicable. For each conviction, provide: (a) the date of conviction; (b) dates of incarceration, if applicable; (c) dates of probation, if applicable; (d) dates of parole, if applicable; (e) a detailed description of the offense for which the owner was convicted; and (f) a statement of rehabilitation for each conviction written by the owner that demonstrates the owner’s fitness for consideration;

4. If applicable, a detailed description of a commercial cannabis license, revocation of a commercial cannabis license, or sanctions for unlicensed commercial cannabis activity by a licensing authority or local agency against the applicant or a business entity in which the applicant was an owner or officer within the three (3) years immediately preceding the date of the application;

5. If applicable, a detailed description if the City issued the applicant a notice or citation for unlicensed commercial cannabis activity, or if the applicant was a defendant in a civil or criminal proceeding filed by the City or the People of the State of California, for allowing, causing, or permitting unlicensed commercial cannabis activities within the City’s jurisdiction;

6. An attestation of each owner as follows: “Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true, and accurate. I understand that a misrepresentation of fact or omission may be cause for rejection or denial of this application, or revocation of any Commercial Cannabis Permit or Conditional Use Permit, or non-approval of a Development Agreement, or any permit, license or approval issued in reliance thereon.”

- **Primary Contact**

- **Nature of Operations:** Identification of whether the applicant seeks to operate a cannabis cultivation site, manufacturing site, testing laboratory, distribution site, microbusiness facility, or retailer; the specific State license category under which the applicant will seek to operate; and the number of employees anticipated.

- **Qualifications and Experience of Applicants and Owners:** The application shall include information concerning any special business or professional qualifications or licenses of

the applicants and owners, and the years of relevant and related experience, that would add to the number or quality of services that facility would provide, or otherwise demonstrates the applicants' and owners' capacity to operate a successful commercial cannabis facility in compliance with applicable laws and regulations.

- **If Premises Known:**

1. The physical address of the proposed location, as well as the Los Angeles County Assessor Parcel Number.

2. Evidence of the applicant's right to use and occupy the property. If owned by applicant, a grant deed or a copy of title for the property. If not owned by applicant, a document from the landowner or the landowner's agent stating the applicant has the right to occupy the property and acknowledges that the applicant may use the property to potentially conduct a commercial cannabis business for which the applicant is applying, plus any lease agreement. In the event the proposed location will be leased from another person, the applicant shall be required to provide a signed and notarized statement from the owner of the property, acknowledging that the property owner has read the ordinance and consents to the potential operation of the commercial cannabis business on the owner's property.

3. A complete and detailed diagram, such as a site plan, of the premises, as well as a map showing the premises' location within the City, which comply with the following:

- a. Shows the boundaries of the property and the proposed premises to be utilized, showing all boundaries, dimensions, entrances and exits, interior partitions, walls, rooms, bathrooms, windows, doorways, and common or common shared entryways, and a brief statement of the principal activity to be conducted therein;

- b. Map identifying any "sensitive sites" located within the City Council designated distance requirements of the proposed location. If the proposed location is not within the designated feet of any sensitive site, identify on the map the closest sensitive site, and the distance in feet between said sensitive site(s) and the proposed location

- c. Identifies all commercial cannabis activities that will take place in each area of the premises, and identification of limited access areas;

- d. The location of all proposed cameras with a number assigned to each for identification purposes;

- e. The diagram shall be clear, legible, and to scale, and shall not include any highlighting, and the markings on the diagram shall be in blue-and-white print; and

f. If the proposed premises include only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remainder will be used for.

- **If Premises Unknown:** Applicants that have not secured a location or property at the time of application submittal shall provide certain information, including but not limited to,

1. a description of the efforts made to-date to secure a premises;
2. a description of the mechanisms the applicant intends to pursue to identify and secure an acceptable location;
3. a detailed description of the size, improvements, buildings, structures, features, qualities, characteristics, and/or amenities of real property which applicant reasonably anticipates will be needed to house the proposed scope of commercial cannabis activities covered in the application;
4. a description of the financing and financing resources available to applicant to secure a property within the next calendar year.

- **Description of Operating Procedures:** Applications shall include a detailed description of the applicant's proposed operating procedures for each of the following areas, as applicable, as well as copies of any applicable policies or manuals of the applicant (*detailed description for each in the ordinance*):

1. Transportation Procedures
2. Inventory Procedures
3. Non-Laboratory Quality Control Procedures
4. Security Procedures
5. Testing Laboratories (only): For applicants seeking to operate a testing laboratory, describe operating procedures as required by the applicable state law and regulations, with references to the applicable state law or regulation requiring same.
6. Operating Procedures for Retailers
7. Operating Requirements for Cultivation Facilities
8. Operating Requirements for Cannabis Manufacturing Businesses
9. Operating Requirements for Cannabis Distribution.

- **Business Plan:** Applications shall include a Business Plan with as much detail as

possible, describing the day-to-day operations of the proposed facility if not otherwise provided in response to the "Description of Operating Procedures." The Business Plan shall include, in addition to other information deemed relevant by the applicant, the following:

1. Description of day-to-day operations, which meet industry best practices for the type of facility the applicant seeks to operate;
2. Proposed hours of operation;
3. Mechanisms for ensuring the facility operates in compliance with applicable state and local laws and regulations;
4. A schedule for commencing operations, including a narrative outlining any proposed construction and improvements, property acquisition, and other start up activities, and a timeline for completion;
5. A budget for construction, operation, site acquisition, compensation of employees, equipment costs, utility costs, and other operational costs. The budget should demonstrate sufficient capital in place to pay startup costs and at least three months of operating costs, as well as a description of the sources and uses of funds;
6. Proof of capitalization in a form of documentation of cash or other liquid assets on hand, letters of credit, or other equivalent assets; and
7. A pro forma for at least three (3) years of operation.

- **Disclosure of Financial Interests**

- **Labor Peace Agreement:** For applicants with five (5) or more employees, the applicant shall attest that the applicant will enter into a labor peace agreement and will abide by the terms of the agreement, and the applicant shall provide a copy thereof to the City. For applicants that have not yet entered into a labor peace agreement, the applicant shall provide a notarized statement indicating that the applicant will enter into and abide by the terms of a labor peace agreement. Labor Peace Agreement shall include the following components:

1. Commitment for 20% of employees to be local hires
2. Commitment to offer apprenticeships / compensation for continuing education
3. Offer living wage

- **Seller's Permit**

- **Limited Waiver of Sovereign Immunity:** Any applicant that may fall within the scope of sovereign immunity that may be asserted by a federally recognized tribe or other

sovereign entity must waive any sovereign immunity defense that the applicant may have, may be asserted on its behalf, or may otherwise be asserted in any state administrative or judicial enforcement actions against the applicant, regardless of the form of relief sought, whether monetary or otherwise, under the state laws and regulations governing commercial cannabis activity

- **Development Agreement Proposal:** Identify at least five (5) areas or topics in the draft Development Agreement provided as part of the application process (and/or five (5) areas or topics in the application requirements as enumerated herein in this Chapter), that the applicant proposes will distinguish its Development Agreement from other applicants, and submit a plan explaining and supporting how a commitment to these areas may be executed.

- **Indemnification Agreement:** to the fullest extent permitted by local, state and/or federal law, the City of Pomona shall not assume any liability whatsoever with respect to having issued a Commercial Cannabis Permit or executed a Development Agreement, or otherwise approving the operation of any commercial cannabis business. As a condition to the approval of any Commercial Cannabis Permit and to the execution and approval of a Development Agreement, the Owner to execute a separate Indemnification Agreement prepared by the City that fully indemnifies the City for all liabilities associated with the Commercial Cannabis Permit, the Commercial Cannabis Permittee's Commercial Cannabis Activities, and any action taken by the Cannabis Permittee. The Indemnification Agreement shall include the defense of the City and reimbursement of all fees, costs and expenses incurred by the City related to any action arising from the Agreement. *(See proposed ordinance for full details).*

- **Background Check.** Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), which authorizes City authorities to access state and local summary criminal history information for employment, licensing, or certification purposes; and authorizes access to federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation, every applicant and responsible person of the commercial cannabis business must submit fingerprints and other information deemed necessary by the Pomona Police Department, or the City's law enforcement agency, for a background check.

- **Additional Information:** the City may require additional information and documents of the applicant, and all applicants shall provide the information and documents requested by the City within the time specified.

- **Payment of Applicant Fee.**

After the initial application review and background check, the Review Committee shall present those applicants who met the initial application review criteria to the next review and selection phase, Phase II.

PHASE II:

Investigation, Scoring, Ranking and Making Recommendations to City Council

During Phase II, the Review Committee will review the applications and evaluate and score them, using the following proposed general review criteria:

No.	Criteria	Weight
1	Compliance with Application Submittal Requirements and Presentation	%
2	Premises Diagram/Site Plan or Proposed Premises Diagram Site Plan, with Premises on Map Showing its [Location is a Minimum City-Council designated feet distance from Sensitive Sites]	%
3	Operating Procedures	%
4	Business and Financial Plan	%
5	Applicant's and Owner(s) Qualifications and Experience	%
6	Development Agreement Proposal	%

1. The Review Committee will review and score qualifying applications based on the above criteria, and at the discretion of the Review Committee, applicants may be required to provide presentations and/or participate in interviews before the Committee. If a premise is identified in the application, the Review Committee may direct an inspection thereof by qualified City personnel to ascertain current conditions of the premises.

2. During Phase II, the Review Committee shall have the authority to ask questions of any applicant, including requests for applicants to provide information and documentation not included in the original application, to review and discuss terms proposed in a Development Agreement, and any such pertinent or relevant information or materials as may be considered relevant by the Review Committee.

3. After applications have been reviewed and scored, the Review Committee will tabulate its final scores and rank the top scoring applications, as judged by the Review Committee. The qualified applicants who are qualified to operate a commercial cannabis business in the City during this Phase II will be presented to the City Council for a final determination at a public City Council meeting, and at a date and time set by the City Manager, or his or her designee. At least ten (10) calendar days prior to the public meeting when City Council will consider the Review Committee's recommendations, irrespective of whether those qualified applicants to be considered by the City Council will be invited to make a presentation or not at said meeting, each qualified applicant shall provide notice of the public meeting by sending written notice to all property owners and occupants located within 500 feet of the proposed business location(s). Said applicant shall provide proof of mailing to the Review Committee as a pre-condition to be considered at said meeting.

4. An applicant who is deemed qualified during this Phase II is not guaranteed any particular result in the application process.

5. Notice of the results of Phase II will be provided in writing to each applicant.

**PHASE III:
Final Ranking and City Council Consideration.**

Phase III will consist of the City Council's consideration of the Review Committee's recommendations. Applicants progressing to Phase III may be invited to attend a City Council meeting to make a public presentation introducing their team and providing an overview of their proposal, or to answer questions from City Council or staff, and therefore should be prepared to attend a public meeting of the City Council for said purpose. In order to provide adequate time for all applicants, presentations may be divided over more than one meeting over multiple days, as determined to be necessary.

The City Council reserves the right to amend, revise, and/or reject the Review Committee's scoring, ranking, or recommendations of the applications, and may take such action on any application which the City Council finds will further the best interests of the City.

At the conclusion of the public meeting, the City Council may select the highest qualified applicants to negotiate final Development Agreement terms and conditions with the City. The City Council's selection will be memorialized in a written "Notice of Selection," and shall specify a reasonable period of time in which the parties will negotiate and finalize site of operations, if necessary, as well as operating and development terms and conditions to be memorialized in a Development Agreement, to be subsequently considered by the Planning Commission and City Council, as applicable. Compliance with the California Environmental Quality Act will also be required. Notice of the results of Phase III will be provided in writing to each applicant.

The City Council's decision as to the selection of the prevailing candidates shall be final.

Grounds for Rejection and/or Disqualification During Any Phase

The City reserves the right to reject any or all applications, at any time within, or in between, the three (3) phases, if it determines it would be in the best interest of the City, taking into account the health, safety and welfare of the community. Furthermore, applications may also be rejected at any time for the following inclusive, but not limited, reasons:

1. The application is received after the designated submittal deadline.
2. The applicant has failed to submit a complete application, or the application is not organized in the required format.
3. The applicant has failed to pay the application fee as required by this Chapter and by City Council resolution, and any other related or applicable fees due before, up to, and/or through, the three (3) phase application process.

4. The applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process, including, but not limited to, during any interviews, during meetings held to negotiate any terms of a Development Agreement, during any presentation(s) made to City Council, if applicable, or by submitting any documentation or supplemental information as part of the application process, that is false, misleading or fraudulent, or that is incomplete so as to omit pertinent information called for by the application process.

5. Application contains excess or extraneous material not relevant, responsive, or called for in the application package.

6. The applicant, its owner(s), manager(s) or a responsible person has, within the past three (3) years immediately preceding the date of the application, been sentenced or had a judgment issued in a criminal or civil court proceeding, and/or has been sanctioned or fined for, enjoined from, or found guilty of or plead guilty or no contest to a charge for engaging in a commercial cannabis activity in the state without the necessary permits and approvals from the applicable state and/or local jurisdiction(s); or has had a commercial cannabis license revoked or suspended by the applicable state and/or local jurisdiction(s).

7. The applicant, its owner(s), manager(s) or a responsible person, within the past three (3) years immediately preceding the date of the application, has been issued a notice or citation by the City for unlicensed commercial cannabis activity, or if the applicant, its owner(s), manager(s) or a responsible person, was a defendant in a civil or criminal proceeding filed by the City or the People of the State of California, for allowing, causing, or permitting unlicensed commercial cannabis activities within the City's jurisdiction.

8. The applicant, an owner, manager or a responsible person has been convicted within the past ten (10) years of any of the enumerated serious and felony offenses listed in the ordinance.

9. The applicant, an owner, manager or a responsible person is under twenty-one years of age.

10. The proposed location of the commercial cannabis business is not located outside the designated foot radius from designated sensitive sites that are in lawful and/or City-approved existence at the time an application is submitted to the City.

CONCLUSION

The City Attorney's Office and Staff is prepared to make any necessary revisions, adjustments and/or amendments to the proposed application, screening, scoring, and selection process as discussed hereinabove. Further, the City Attorney's Office is prepared to review all policy directives the City Council has thus far reached a consensus on, and facilitate finalizing any discussions that remain pending.