



CITY OF POMONA COUNCIL REPORT

January 28, 2019

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Prepared by: Christi Hogin, Interim City Attorney

Subject: **DISCUSSION ON REGULATING COMMERCIAL CANNABIS
BUSINESSES AND DIRECTION REGARDING DRAFT ORDINANCE AND
RELATED POLICIES**

RECOMMENDATION:

It is recommended that the City Council discuss major policy considerations regarding regulation of various cannabis businesses and develop objectives, and also direct the City Manager and City Attorney to prepare an ordinance that achieves Council's objectives.

EXECUTIVE SUMMARY:

On December 5, 2018, the City Council certified election results which included the passage of Measure PC, which imposes a tax on cannabis (marijuana) businesses. Such businesses are currently not permitted in the City. At a December 12, 2018, study session, the City Council was presented with information that had been gathered in connection with a potential ordinance regulating various aspects of cannabis businesses. The next step in the Council's consideration is to determine whether to allow cannabis businesses and, if so, under what circumstances. This is a matter of policy and the Council has complete discretion as to the direction it would like to proceed.

DISCUSSION:

Types of businesses:

Commercial Cannabis Activities include the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis or cannabis products as regulated by state law.

Cannabis businesses can be any business or operation engaged in any of these activities involving medicinal or recreational adult-use cannabis.

In addition to any required state permits or licenses, the City may regulate cannabis businesses by requiring a permit or business license, imposing operational standards on the businesses, and determining which zones and locations will allow the different types of businesses. A City regulatory permit may be required to be reviewed annually in order to provide additional monitoring for compliance.

Application Review, Scoring and Selection Process for business permit:

No one needs to be reminded that cannabis businesses are new to California. Cities that have allowed medical marijuana dispensaries provide some indication of the kinds of business and land use impacts that can be anticipated from retail operations; but these businesses are still new and the medical marijuana dispensaries were heavily regulated. These new businesses do not have long track records on which the City can rely in determining appropriate regulations to avoid negative impacts. Some cities, notably Santa Barbara and West Hollywood, have developed merit-based selection processes for a limited number of licenses. This process is a lot of work to implement but it is designed to license high quality operators. The City does not have to add the layer of regulation to select operators and can rely solely on limiting the use through traditional land use tools (like distance requirements to prevent overconcentration). The city can also adopt stringent operating requirements without having to go through a complex selection process. However, imposing a comprehensive review process provides a greatest likelihood of licensing the most responsible businesses.

A copy of the Santa Barbara application procedure is attached to this report because it provides a clear description of a vetting and selection process that is geared toward awarding permits to the most responsible businesses (Attachment No. 1). Here is a summary of the process:

Phase 1: A comprehensive application is prepared and submitted by an applicant.

- The applicant must show that the proposed location complies with the zoning code
- submit to and pay for a background check (LiveScan)
- provide notarized consent from property owner
- execute indemnification agreement in favor of city
- pay a processing fee

Phase 2: Initial ranking by staff review team (1000 points)

- i. Business Plan (400 Points)
 - a. Operations, Best Practices & Financial Pro Forma (200 Points)
 - b. Qualifications of Principals (100 Points)
 - c. Community Benefits (50 Points)
 - d. Environmental Benefits (25 Points)
 - e. Local Enterprise (25 Points)

- ii. Safety and Security Plan (300 Points)
- iii. Neighborhood Integration Plan (200 Points)
- iv. Labor & Employment Plan (25 Points)
- v. Air Quality Plan (75 Points)

Phase 3: Public interview

Applicants that receive at least 800 of possible 1000 points from initial ranking (Phase 2) are invited to a public interview where they present their plan. The interview is conducted by a staff evaluator and is open to the public. The evaluator also conducts a site visit. To be eligible to proceed to Phase 4, the application must obtain the evaluator's recommendation.

Phase 4: Final ranking (1000 points)

The evaluator uses the same criteria as Phase 2 and assigns a point total. An applicant will receive a permit if it received 900 or more points in Phase 4 and there are permits available.

Only limited number of permits is available.

The City may use other categories to assign points. For example, in addition to a community integration plan, points may be awarded for businesses that include community or neighborhood improvement plans.

Santa Barbara prohibits ex parte communications from cannabis business applicants. That means that cannabis business permit applicants cannot speak privately and outside the public process to decisionmakers (staff or council). This rule is intended to create an arm's length process between decisionmakers and applicants and, obviously, avoid lobbying and any appearance of influence outside the merit-based process.

Zoning and operational conditions

As set out in the materials, including several maps, submitted to the Council at the December 12, 2018 workshop, extensive analysis has been done with respect to the zones where cannabis businesses may be allowed and the locational requirements (distance from sensitive uses) which may be imposed. In addition, extensive operational conditions have been identified, which may be included in a zoning regulation. The City avoids contradictory or duplicative review by multiple bodies by making the business permit the only discretionary permit but imposing mandatory requirements in zoning code (such as a minimum number of feet from a school).

Tax

Under Measure PC, cannabis (marijuana) cultivation businesses are taxed at annual rates up to

\$10.00 per canopy square foot. All other cannabis businesses are taxed at a rate up to 6% of gross receipts. At the time the Measure was submitted to the voters, the City estimated that the tax was likely to generate an estimated \$400,000 to \$500,000 annually, until repealed by the voters. This estimate was based on an assumption of two cultivator permits and up to four retail cannabis businesses allowed and operating in the City.

ALTERNATIVES:

The comprehensive regulations may include changes to the zoning code, which require a hearing before the Planning Commission before the Council considers them for adoption. These regulations may also include a business license component that does not require Planning Commission review. If the City Council provides direction on the desired regulations, the zoning ordinance amendments will be prepared and referred to the Planning Commission for its review and recommendation. Thereafter, the ordinance will be set for hearing before the Council. Alternatively, a draft ordinance can be set for review by the Council prior to being referred to the Planning Commission. In summary, the alternatives are these:

1. Direct staff to prepare a draft ordinance consistent with Council objectives and place the draft ordinance on a future agenda for preliminary review by the Council;
2. Direct staff to prepare a draft ordinance consistent with Council objectives and cause the Planning Commission to hold a hearing and make recommendation on the zoning ordinance amendment portion of the regulations; then schedule a City Council hearing on the proposed ordinance;
3. Provide direction on additional process for developing Council objectives;
4. Take no action (maintain status quo)

ATTACHMENT:

Attachment No. 1 – City of Santa Barbara Application Procedure to Operate a Commercial Cannabis Business