



CITY OF POMONA COUNCIL REPORT

February 25, 2019

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Christi Hogin, Interim City Attorney

SUBJECT: COMMERCIAL CANNABIS REGULATION ORDINANCE

RECOMMENDATION:

It is recommended that the City Council take the following actions:

- 1) Introduce and give first reading of the following ordinance:

ORDINANCE NO. XXXX– AN ORDINANCE OF THE CITY OF POMONA, CALIFORNIA, AMENDING THE POMONA CITY CODE BY ADDING CHAPTER 68, “COMMERCIAL CANNABIS BUSINESSES”

- 2) Direct staff to draft zoning ordinance amendments to allow certain commercial cannabis businesses in specified zones to be heard by the Planning Commission and direct that the Commission conduct a public hearing and make recommendations regarding the amendments; and
- 3) Direct staff to present the Planning Commission’s recommendations on amendments to the Zoning Code to address Commercial Cannabis Uses, in the form of an ordinance, to the City Council at a duly noticed public hearing, and also present for Council consideration a resolution establishing the maximum number and types of commercial cannabis businesses to be allowed in specified zones.

EXECUTIVE SUMMARY: Following the City Council’s previous discussions regulating commercial cannabis businesses, three steps remain to implement the Council’s direction.

- **One**, the City Council needs to adopt an ordinance creating a review and permit procedure. That ordinance is before the Council tonight for consideration and introduction and first reading should the Council so desire. If introduced, the ordinance would be placed on a future agenda for second reading and adoption.

- **Two**, under the proposed ordinance, the City Council would set by resolution the number and types of commercial cannabis businesses allowed in various zoning districts. Staff seeks Council direction on that topic tonight and a resolution would be presented to the Council at the time of adoption of the proposed ordinance or when the amendments to the Zoning Ordinance are presented to Council for adoption.
- **Three**, certain zoning amendments are required to allow commercial cannabis businesses (currently prohibited). Staff seeks the Council's direction with respect to the ordinance to be referred to the Planning Commission for recommendation prior to the City Council's action.

FISCAL IMPACT: If enacted, the proposed ordinances (Cannabis Business Permit and zoning amendment) are anticipated to have a positive fiscal impact. Under Measure PC, cannabis 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. The costs of licensing will be recovered through licensing fees, which can be set in an amount to recoup the actual cost of implementing the licensing review provisions. Staff anticipates continued enforcement costs, which are currently less than \$100,000 per year. It is difficult to estimate what the enforcement demand will be once the cannabis related uses are permitted, but it is reasonably expected that the cost would be substantially less than the amount of tax collected, resulting in an anticipated positive fiscal impact which could allow investment in drug/substance abuse education or other City needs as determined by the City Council

PREVIOUS RELATED ACTION: 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, including information developed after the City Council's October 1, 2018 meeting at which the City Council discussed various approaches to regulating cannabis businesses. At the January 23, 2019, City Council meeting, the City Council directed that an ordinance be prepared to allow commercial cannabis businesses pursuant to a merit-based selection process.

ENVIRONMENTAL IMPACT: The proposed ordinance regulating commercial cannabis businesses is not subject to environmental review pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State Guidelines for Implementations of the California Environmental Quality Act. Sections 15060(c) (2) and 15060(c) (3) pertain to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a project under Section 15378. The business permitting regulations will not have a physical effect on the environment. The zoning regulations are being considered independently.

DISCUSSION: The attached ordinance is based on the Santa Barbara model and designed to create a merit-based, professional review process that is transparent and includes the public. This could include review by Police, Fire, Planning, Building & Safety, Finance, and Economic Development.

One important and distinguishing feature of the proposed ordinance requires Council attention. As proposed, the City Council does not play a role in the evaluation and scoring of applications for Commercial Cannabis Permits and does not play a role in the selection or permit issuance. The parameters and criteria for the businesses are set out in great detail in the ordinance that the City Council enacts; however, the implementation of the process is wholly administrative.

Once a permit is issued, under the proposed ordinance, the City Council could hear appeals on denial of Permits, such as nonrenewal, suspension, or revocation.

Commercial Cannabis Permits would cover any type of commercial cannabis activities (cultivation, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis or cannabis products) except that outdoor cultivation is prohibited. Cannabis businesses include both medicinal and recreational adult-use cannabis. It is proposed that the maximum number of commercial cannabis businesses per classification citywide are as follows: 1 - Testing laboratory, 1 – Manufacturing, 1 – Distribution, 1 - Cultivation (Indoor), 2 - Retailer-Storefront and 2 – Microbusiness. However, the proposed ordinance requires the numbers and types be set by City Council resolution.

Here a summary of the process:

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

1. Business Plan (400 points)
 - a. Operations and financial pro forma (100 points)
 - b. Qualifications of principles (100 points)
 - c. Environmental mitigation plan and benefits (100 points)
 - d. Local enterprise (25 points)
 - e. Public benefits (75 points)
2. Safety and Security Plan (200 points)
3. Neighborhood Integration Plan (200 points)
Community contributions and involvement
4. Labor and employment plan (100 points)

5. Air Quality Plan (100 points)

Phase Three: 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. This is a noticed hearing and the public is afforded an opportunity to comment on the application. The evaluator also conducts a site visit.

Phase Four: Final ranking (1000 points)

The evaluator uses the same criteria as Phase Two and assigns a point total after taking into account public comment, the applicants' responses to questions, all the application materials, and information gathered from the site visit. An applicant will be eligible to receive a permit if it received 900 or more points in Phase Four and there are permits available.

Only limited number of permits would be available. The Council sets that number. For discussion purposes, it is proposed that the maximum number of commercial cannabis businesses per classification citywide are as follows: 1 - Testing laboratory, 1 – Manufacturing, 1 – Distribution, 1 - Cultivation (Indoor), 2 - Retailer-Storefront and 2 – Microbusiness. It is not necessary for the City Council to make that determination tonight. An ordinance and resolution would be brought back to the Council after the Planning Commission held a public hearing and made a recommendation.

The ordinance does require a labor peace agreement in order to assure that this new (and impactful) industry creates good jobs in the City and develops a stable workforce, which will help combat some of the potential negative impacts of these businesses.

The proposed ordinance requires cannabis businesses to be located at least 1000 feet from schools, day care centers, youth centers (including parks with regular youth-centered programs), and from another cannabis business.

Adult-use recreational cannabis is subject to tax, but medical marijuana is not. That is one of the reasons that there are a number of provisions in the proposed ordinance aimed at verifying and documenting sales of medical marijuana to qualified patients.

With respect to the creation of a Business Improvement District for cannabis businesses, that is a possibility but it cannot be mandated by ordinance. So exploration of creating a BID is deferred to a later time when the City can address it with permittees.

Zoning

In order to implement the proposed ordinance, the City Council will have to repeal the previous ordinances that have been adopted to prohibit cannabis uses in the City:

Adopted	Ordinance
4/4/08	No. 4096 -prohibits medical marijuana
1/11/16	No. 4215- prohibits cannabis cultivation
2/22/16	No. 4217- prohibits cannabis deliveries
11/6/17	No. 4241- updates zoning to prohibit commercial cannabis citywide
11/6/17	No. 4242- indoor personal cultivation (permit and limits) and prohibits smoking cannabis in designated areas

In addition, the City Council will need to amend the zoning ordinance in order to designate zones in which cannabis businesses may operate and establish the permit type required. Zoning ordinances require a public hearing before the Planning Commission and a recommendation from the Planning Commission. The current draft proposal is to allow storefront retail in the commercial zones and limit all other cannabis businesses to the industrial zones. All cannabis businesses are proposed to be prohibited in District 3. The Planning Commission should also address whether to amend any specific plans to allow cannabis businesses. These items would be considered by the Planning Commission and draft ordinances reflecting the Commission's recommendations would come back to the City Council for consideration.

ALTERNATIVES: This is a matter completely within the City Council's discretion.

- 1) Take action consistent with Staff recommendation; or
- 2) Direct changes to the draft ordinance; or
- 3) Take no action on the proposed ordinance (keep *status quo*)

ATTACHMENT: Draft ordinance regulating commercial cannabis businesses