



CITY OF POMONA COUNCIL REPORT

March 18, 2019

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Christi Hogin, Interim City Attorney

SUBJECT: REGULATION OF COMMERCIAL CANNABIS BUSINESSES

RECOMMENDATION:

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

1) Waive further reading and introduce on first reading the following ordinance (Attachment No. 1):

ORDINANCE NO. 4257– 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 proposed 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;
- 3) Direct staff to present the Planning Commission’s recommendation 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,
- 4) Direct staff to prepare and present for Council consideration a resolution establishing the maximum number and types of commercial cannabis businesses to be allowed in specified zones and a resolution adopting a Process Integrity Standards.

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

- **One**, introduction and adoption of an ordinance creating a review and permit procedure and regulations for commercial cannabis businesses. That ordinance is before the Council tonight and ready for introduction should the Council so desire. If introduced, the ordinance would be placed on a future agenda for adoption.

- **Two**, zoning amendments are required to allow commercial cannabis businesses (currently prohibited). With Council's direction, staff will prepare a draft ordinance for Planning Commission hearing and recommendation prior to the City Council's consideration.
- **Three**, under the proposed ordinance, the City Council would set by resolution the number and type of commercial cannabis businesses allowed in various zones and would adopt by resolution Process Integrity Standards. Those items as well as establishing processing fees would be the subject of future agenda items.

FISCAL IMPACT: If enacted, the proposed ordinances (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

PUBLIC NOTICING REQUIREMENTS: The commercial cannabis business regulation ordinance has been properly noticed for action on this City Council agenda.

PREVIOUS RELATED ACTION: At its February 25 and March 4, 2019 meetings, the City Council considered and commented on a draft ordinance permitting and regulating commercial cannabis businesses. The draft ordinance incorporates the changes directed by the Council. 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: Prior staff reports have discussed in detail the attached ordinance, which 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 report will focus on the few items that were raised at the Council March 4, 2019, City Council meeting.

1. Councilmember participation. The City Council deliberated the benefits and detriments of a permit award system that completely excludes councilmember involvement. Initially, the ordinance was drafted so that the City Council's involvement in the regulation was (1) adopting the detailed eligibility standards to qualify for a cannabis business permit and (2) as the final authority on the nonrenewal, suspension, or revocation of a permit. As a way of accommodating the role of the elected representative while still adhering to the merit-based system, the Council might consider including this provision in Section 68-9:

(f) The intent of this Chapter is to create a merit-based, competitive evaluation system. Consistent with that intent and with the adopted Process Integrity Standards, the Mayor and Councilmember representing the district in which the proposed business is located may submit written comments addressing the substance of an application relating to any of the criteria set forth in subparagraph (b) of this section 68-9.

This would allow a councilmember from the district where a permit was under evaluation to address the criteria relevant to the evaluation (as determined by the City Council in adopting the ordinance). In this way, the integrity of the process is preserved because the scope of the permitted councilmember comments addresses the concern of introducing political influences unrelated to the merits of an application. Any comments would be focused on the relevant considerations (business plan, safety and security plan, neighborhood integration plan, labor and employment plan, and air quality plan). Also, the proposed ordinance provision makes any councilmember comments subject to the later adopted Process Integrity Standards, which creates a mechanism for the Council to monitor the effectiveness of the limitations and introduce additional safeguards, if ever needed.

2. Local hire and workforce plans. The City Council directed that the local hire requirements be increased, defined, and separated from the labor peace agreement. Sections 68-8(a)(11) and (12) are proposed as follows:

(11) For applicants with five 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 within 30-days of licensure the applicant will enter into and abide by the labor peace agreement.

(12) All applicants shall submit a workforce plan that includes at least the following provisions: (1) commitment for 30% of employees to be local hires; this local hires requirement is satisfied when a business shows that it has either hired or made a good faith effort to hire bona fide residents of Pomona who have not established residency after application for employment with the permittee; (2) commitment to offer apprenticeships and/or compensation for continuing education in the field; and (3) pay a living wage to its employees.

Because this is a competitive process, applicants will be required to develop an employment strategy that will result in the recruitment and hiring of at least 30% of its workforce from Pomona residents. In regulating in this area, the City must balance a number of competing interests, including constitutional protection of right to travel for work, a need for a failsafe in the unlikely event that Pomona has an insufficient pool of potential employees, and the City's legitimate interest in promoting jobs for existing residents and preventing businesses from gaming the system by creating residents out of employees (rather than creating employees from City residents). The proposed language is drafted with these competing interests in mind and designed to advance the Council's stated goal within confines of the law. More specific regulations and definitions may be adopted as needed in the administrative regulations implementing this ordinance.

3. Contracting out evaluation. Clarifying language has been added to allow the City to determine at any time whether it wants to assign the Commercial Cannabis Business Permit Application Evaluator duties to an independent firm. Section 68-9(d) is proposed to read as follows:

(d) Phase Three is a public meeting and interview. The City Manager shall designate a Commercial Cannabis Permit Application Evaluator, who shall not have participated in the initial review and scoring in Phase Two. **The Commercial Cannabis Permit Application Evaluator may be an independent contractor or a designated employee.** The Commercial Cannabis Permit Application Evaluator must file a Fair Political Practices Commission Form 700, commonly known as a Statement of Economic Interests, upon assuming the role, exiting the role, and as otherwise required by law for designated filers. The Commercial Cannabis Permit Application Evaluator shall convene a public meeting to receive public comment on each qualified application. The applicant shall be provided a reasonable opportunity to present its application at the public meeting and the public shall be provided a reasonable opportunity to comment on the application. At least 10 days in advance of the meeting, written notice of the public meeting shall be sent to all property owners and occupants located within 1000 feet of the proposed business location(s).

4. Scoring criteria. At the City Council's direction, the scoring criteria in the proposed ordinance are adjusted as follows:

(b) The initial review and scoring is done by the professionals assigned by the City Manager. The applications will be evaluated on the following criteria:

1. Business Plan (350 points)
 - a. Operations and financial pro forma (100 points)
 - b. Qualifications of principals (100 points)
 - c. Environmental mitigation plan and benefits (100 points)
 - d. Public benefits (50 points)
2. Safety and Security Plan (200 points)
3. Neighborhood Integration Plan (200 points)
Community contributions and involvement

4. Labor and employment plan (150 points)
 - a. Labor peace plan (100 points)
 - b. Collective bargaining agreement (25 points)
 - c. Living wage and benefits (25 points)

5. Air Quality Plan (100 points)

5. Proof of Right to Occupy. Currently, the proposed ordinance requires an applicant to establish a legal entitlement to occupy the premises where the applicant proposes to conduct its commercial cannabis business. That requirement is in Phase One and a prerequisite to initiating an application. Section 68-8(a)(9)a reads as follows:

(a) The City Manager may establish additional submittal requirements for an application for a Commercial Cannabis Permit. The following information shall be included in any application for a Commercial Cannabis Permit:

* * *

(9) The physical address of the proposed location, as well as the Los Angeles County Assessor Parcel Number and property owner's consent.

- a. 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.

The City Council left open at its last meeting whether to limit a property owner to making a commitment to one potential permittee and prohibiting the same location from being proposed by multiple applicants.

In addition to these discussion items, the proposed ordinance includes a number of language improvements and corrections. All amendments approved at prior Council meetings are also incorporated.

Zoning

In order to implement the proposed ordinance, the City Council will have to repeal the several 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

The City Council would also need to amend the zoning ordinance in order to designate zones in which cannabis businesses may operate. Zoning ordinances require a public hearing before the Planning Commission and a recommendation from the Planning Commission. The proposal considered by the Planning Commission will include allowing storefront retail in the commercial zones, except in District 3, downtown, and at Fairplex, and limiting all other cannabis businesses to the industrial zones. The Planning Commission should also address whether to amend any specific plans to all cannabis businesses.

The zoning component of the cannabis business regulations will be the subject of a future agenda item.

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

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

ATTACHMENTS:

Attachment No. 1 – draft ordinance regulating commercial cannabis businesses