



CITY OF POMONA COUNCIL REPORT

November 4, 2019

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Anita D. Gutierrez, AICP, Development Services Director

**SUBJECT: INTRODUCTION AND FIRST READING OF A COMMERCIAL
CANNABIS PERMIT PROGRAM OVERLAY DISTRICT
(CODE 12664-2019)**

RECOMMENDATION:

It is recommended that the City Council open the public hearing and after receiving testimony and public comment close the public hearing and take the following action:

Introduce for first reading an Ordinance approving a Commercial Cannabis Permit Overlay District, which includes interpretations that establish commercial cannabis as similar to existing land uses, as defined in the Ordinance and Exhibits A-C (Attachment 1).

**ORDINANCE NO. 4273 - AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF POMONA, CALIFORNIA APPROVING A COMMERCIAL CANNABIS
PERMIT PROGRAM OVERLAY DISTRICT AS DEFINED IN EXHIBITS A-C**

EXECUTIVE SUMMARY:

The Cannabis Permit Overlay District would designate specific parcels within the City where Cannabis businesses could operate in compliance with Ordinance No. 4254 ("Tax Ordinance"), which established a tax on commercial cannabis activity within the city (Attachment 2) and Ordinance No. 4257 ("Business Ordinance"), which established a formal application process to obtain a license to operate a commercial cannabis business within the City (Attachment 3).

FISCAL IMPACT:

There are no anticipated short-term or long-term fiscal impacts associated with this action. However, the City will be implementing cost recovery based permit application fees and receiving tax revenues from sales tax and business license generated from the Commercial Cannabis Permit Program "CCPP" in the City of Pomona.

PUBLIC NOTICING REQUIREMENTS:

Public noticing was completed as required by Government Code 65091. A hearing for public notice was published on Friday, October 25, 2019 in the Inland Valley Daily Bulletin. In addition, Staff noticed property owners within 400 feet of each individual parcel proposed within the CCPP overlay district. A copy of the published public hearing notice and individual radius maps identifying parcels within 400 feet have been provided for reference (Attachment 4).

PREVIOUS COUNCIL ACTION:

On November 6, 2018, City Council, by ballot measure, adopted Ordinance No. 4254, which established a tax on commercial cannabis activity within the city. On April 1, 2019, the City Council adopted Ordinance No. 4257, which established a formal application process to obtain a license to operate a commercial cannabis business within the City.

PREVIOUS RELATED ACTION:

On October 9, 2019, at a public hearing, the Planning Commission considered a recommendation to City Council to approve the Commercial Cannabis Permit Overlay District. The Planning Commission by a vote of two in favor and five opposed (2-5) could not reach a consensus and did not recommend approval of the ordinance.

ENVIRONMENTAL IMPACT:

The City of Pomona, as lead agency, has conducted an environmental review on the proposed project per the California Environmental Quality Act (CEQA). The City Council will consider adopting a Findings of Consistency, which states that the proposed project meets requirements for CEQA Section 15183, Projects Consistent with a Community Plan or Zoning, and that no additional environmental review or documentation is required (Attachment 5).

This Finding of Consistency evaluates the proposed CCPP overlay district's consistency with the Final Environmental Impact Report for the City of Pomona General Plan Update. The 2014 Final EIR, which was certified in March 2014, establishes the City's vision for development of the City through the year 2035. The evaluation determined whether the overlay would have new or increased severity significant environmental effects beyond those identified in the 2014 Final EIR. The review determined that impacts associated with the overlay are similar to those anticipated for the overlay area in the 2014 Final EIR and the implementation of the CCPP Overlay District would not result in any new or increased environmental impacts. Therefore, as consistent with Section 15183 of State CEQA Guidelines, no additional environmental review is required.

PROJECT DESCRIPTION & BACKGROUND:

The proposed CCPP overlay district will establish locations throughout the City that allow various types of commercial cannabis land uses. Each parcel is still subject to the underlying zoning district. For example, a parcel zoned "M-1" within the CCPP overlay district may allow a cannabis manufacturing use, but must also comply with the development standards of the M-1 zoning district in the PZO.

To establish an overlay district for commercial cannabis land use activity, Staff conducted a multi-step analysis that included studying the scientific basis of cannabis as it relates to potential land use impacts, understanding existing State and industry regulations, identifying and verifying sensitive uses, conducting a parcel-level analysis, considering community feedback, and studying potential environmental impacts. This methodology is explained in more detail in the Staff Report provided to the Planning Commission on October 9, 2019 (Attachment 13).

Commercial Cannabis Land Use Types

The following is a summary of various commercial cannabis permit types and their typical land use activity, based on research, interviews, and field visits conducted:

- Storefront Retail. This is a commercial cannabis permit type issued by the Bureau of Cannabis Control. Storefront retail operations are brick-and-mortar retail establishments that sell packaged cannabis products. They may include ancillary delivery services. Customers must be over 21 years old. This permit type is similar in land use activity to other convenience retail uses, such as drug stores.
- Manufacturing. This is a commercial cannabis permit type issued by the California Department of Public Health's Manufactured Safety Branch. Manufacturing refers to the extraction of cannabinoids and terpenes from the cannabis plant for use in the production of various cannabis products, including creams, oils, and vapes. This permit type is similar in land use activity to other manufacturing uses, such as the extraction of essential oils or food and beverage production.
- Cultivation. This is a commercial cannabis permit type issued by the California Department of Food and Agriculture's CalCannabis Division. The Business Ordinance does not permit outdoor cultivation of any type. This permit type is similar in land use activity to other crop raising uses, such as large nurseries.
- Testing. This is a commercial cannabis permit type issued by the Bureau of Cannabis Control. All cannabis products for sale in the State of California must pass laboratory testing conducted by a permitted cannabis testing facility. This permit type is similar in land use activity to other processing uses, such as medical imaging and testing labs or scientific research facilities.
- Distribution. This is a commercial cannabis permit type issued by the Bureau of Cannabis Control. Cannabis products cannot be transported from one facility to another in the State of California without a license. Distribution licenses include General Distribution, for brick-and-mortar facilities that stock cannabis product, and Distributor—Transport, for transportation between licensed facilities. Ancillary distribution activities are permitted under the Business Ordinance in association with another commercial cannabis permit type.
- Microbusiness. This is a commercial cannabis permit type issued by the Bureau of Cannabis Control. To qualify, an operator must conduct three of the following four activities: storefront retail, distribution, indoor cultivation up to 10,000 square feet, or non-volatile manufacturing.

Such operations are known in the industry as vertically integrated businesses, as product sold in microbusiness storefronts are grown or manufactured on site.

Determinations of Similarity

Based on the entirety of its research into commercial cannabis permit types and their associated land use activities, Staff has determined that the proposed land uses related to commercial cannabis are similar enough to existing, permitted land uses within the Pomona Zoning Ordinance (PZO) and Pomona Corridors Specific Plan (PCSP).

For commercial cannabis uses that may locate in zoning districts under the PZO, such determinations require a “Determination of Similarity,” or DOS, as outlined in Section .501-A of the PZO. The Determination of Similarity process is used for any land use establishing in the City that is not specifically listed in the PZO. Multiple DOS findings for various cannabis land uses proposed in the PZO have been provided for consideration (Attachment 8).

For commercial cannabis uses that may locate on zoning districts under the PCSP, such determinations require a “Director’s Interpretation,” as outlined in Section .2.2.1 of the PCSP. The Director’s Interpretation for cannabis storefront-retail as similar to “convenience uses” has been provided for consideration (Attachment 9).

Taken together, these determinations form the basis of the CCPP overlay district and map.

8/28/19 Draft CCPP Overlay District & Map

On August 28, 2019, Staff released a Draft CCPP Overlay District Map, which was presented at a public Open House in City Council Chambers, followed by a discussion at the regularly scheduled Planning Commission meeting.

As illustrated in Figure 3, the proposed CCPP overlay district is divided into “sub areas.” These subareas are grouped by zoning designations and cannabis land use permissions. Per the Business Ordinance, outdoor cultivation is prohibited in the City; and all cannabis permits are prohibited in Downtown Pomona. Additionally, per Council direction storefront retail is prohibited in District 3.

Figure 3. Draft CCPP Overlay District, Released 8/28/19



The proposed overlay district represents approximately 1% of the total number of parcels in the City. Table 1 provided a parcel count breakdown of the CCPP Overlay District by sub area.

Table 1. Number of Parcels in CCPP Overlay District by Sub Area

Sub Area	Number of Parcels
1	206
2	10
3	173
4	25
Total	414

The intent and purpose of the overlay is “to solely establish locations in the City of Pomona that permit land uses related to commercial cannabis.” Table 2 provides a breakdown of permitted uses by sub area and commercial cannabis permit type. Each commercial cannabis permit type is further identified by its related Land Use Classification, which represents an existing land use in either the PZO and PCSP that has been adopted under a Determination of Similarity or Director’s Interpretation.

Table 2. Draft CCP Overlay District Permitted Uses

Commercial Cannabis Permit Type	Land Use Classification(s) ¹	Sub Area			
		1	2	3	4
Manufacturing	Manufacturing	X	X	P	P
Indoor Cultivation ²	Raise Crops	X	X	P	P
Outdoor Cultivation	N/A	X	X	X	X
Distribution ³	Manufacturing	X	X	P	P
Testing	Processing	X	X	P	P
Microbusiness ⁴	Manufacturing, Commercial, Raise Crops	X	X	P	X
Retailer-Storefront ⁵	Convenience Use, Retail Store	P	P	P ⁶	X

¹ Land Use Classifications are existing, defined land uses in the Pomona Zoning Ordinance, Pomona Corridors Specific Plan, or defined through a Determination of Similarity or Director’s Interpretation.

² Up to 22,000 square feet of indoor cultivation when not in conjunction with a Microbusiness. Up to 10,000 square feet of indoor cultivation when in conjunction with a Microbusiness.

³ Ancillary distribution (transport only) activities permitted in conjunction with any commercial cannabis use. Parking of ancillary distribution vehicles may not occupy spaces allocated for primary commercial cannabis use.

⁴ To be considered a “microbusiness,” must engage in at least three (3) of the following activities: indoor cultivation up to 10,000 square feet, non-volatile manufacturing, storefront retail, and distribution.

⁵ Ancillary delivery activities permitted in conjunction with any retailer-storefront. Storefront retailers also providing delivery shall comply with the requirements pertaining to deliveries in Section 68-29 of City’s Municipal Code. Parking of ancillary delivery vehicles may not occupy spaces allocated for primary commercial cannabis use.

⁶ Only permitted as part of a microbusiness.

Revisions Made to 8/28/19 Draft CCPP Overlay District

Based on comments received, the following revisions were made to the Draft 8/28/19 CCPP Overlay District & Map:

1. Staff conducted a field visit to “Options for Youth,” a sensitive use identified at 695 East Foothill Boulevard. Staff confirmed that the use has permanently closed and been replaced with a new use. Therefore, it has been eliminated from the sensitive use list. This opened 29 parcels for consideration. Following the methodology outlined in Section B, Staff has proposed all eligible parcels for consideration.
2. Staff conducted a field visit to “Vovinam Martial Arts,” a sensitive use identified at 1313 West Holt Boulevard. Staff was unable to find any evidence that this site is actively and primarily serving youth or meets the definition of a youth and recreation center as defined in the Business Ordinance. The use does have an active business license but repeated attempts at contacting ownership, along with field visits to observe

- any activity, have led Staff to eliminate it from the sensitive use list. This opened 15 parcels for consideration. Following the methodology outlined in Section B, three parcels contained legal non-conforming residential units or were otherwise impractical to use due to site access; therefore, 12 parcels are proposed for consideration. This was a matter that staff requested Planning Commission direction on, however no specific direction was provided.
3. Staff conducted a field visit to “Pomona Premier Youth Soccer League,” a sensitive use identified at 1225 West Mission Boulevard. Staff confirmed that this facility does not actively serve youth, but is instead used primarily as an office for administrative purposes. Therefore, it has been eliminated from the sensitive use list. This opened 38 parcels for consideration. Following the methodology outlined in Section B, a majority of parcels contain legal non-conforming residential units, and therefore none of the parcels are proposed for consideration.
 4. Staff conducted a field visit to “Quest Academy,” a sensitive use identified at 1024 East Phillips Boulevard. Staff confirmed that the day care is now closed. Therefore, it has been eliminated from these sensitive use list. This did not open any new parcels for consideration.
 5. Staff identified two parcels belonging to the Los Angeles County Flood Control District located at Bonita Avenue and Fulton, at the border of the City of Pomona and the City of La Verne. Following the methodology outlined in Section B, these parcels cannot reasonably be developed. Therefore, they have been eliminated from consideration.

Proposed revisions to the sensitive use list are reflected in the Revised Sensitive Use Buffer Map (Attachment 10).

Summary of Public Comments Received

Staff received 93 public comments prior to the posting of the Planning Commission agenda (Thursday, October 3). A staff analysis of these comments can be found in the Planning Commission Staff Report (Attachment 13). Additionally, staff compiled the questions asked at each of the community meetings held (Attachment 7).

After the time of posting of the Planning Commission agenda on Thursday, October 3, Staff received 35 additional public comments, which include comments received at the public hearing held on October 9, 2019 and comments received to date. These have been included in the full record (Attachment 11). For ease of reference, Staff has reviewed these new comments and organized them thematically with responses below. Individual comment letters are referenced as “CL #.” References may overlap across themes as some letters identified multiple issues.

1. Sensitive Uses (CL# 98, 100, 102, 125)

The City of Walnut (CL# 98) expressed concern about the siting of CCPP parcels along their shared boundary with the City. Staff is not recommending removal of any parcels based on the

content of this letter. A comment letter (CL#100) questioned the classification of Elite Boxing, located at 185 West Arrow Highway, as a sensitive use/youth and recreation center. Staff research shows that this location does serve youth, and therefore was not recommended for exclusion. The letter also referenced Palomares Park, located at 499 East Arrow Highway, for consideration to exclude. Staff has not excluded any City operated parks and recreation facilities as a sensitive use. Attachment 6 includes the map of current sensitive uses.

2. Environmental Impacts (CL# 94, 101, 103, 124)

Several comment letters cited concerns about potential environmental impacts from cannabis-related land uses. These concerns included traffic generated by retail operators, odor, noise, hazardous waste, energy consumption, and water usage. An environmental review has been conducted on the proposed CCPP Overlay District to determine any significant environmental impacts. As aforementioned, a Findings of Consistency (Attachment 5) was prepared to determine whether the proposed overlay would result in any new or increased severity of environmental effects beyond those previously studied and identified in the 2014 Final EIR. This analysis addresses environmental concerns raised in various comment letters. The review determined that impacts associated with the overlay are similar to those anticipated for the overlay area in the 2014 Final EIR and the implementation of the CCPP Overlay District would not result in any new or increased environmental impacts. Therefore, as consistent with Section 15183 of State CEQA Guidelines, no additional environmental review is required.

3. Parcel Methodology (95, 96,97, 99, 104, 105-123, 126, 127)

Multiple letters cited concerns regarding specific parcels in the City that either have been proposed for the CCPP Overlay District, or have been excluded. The City of Chino (CL#97) expressed concern over parcels with shared boundaries with the County of San Bernardino, as they are exploring annexation of this area, which is generally east of Reservoir Street. In response, Staff is recommending removal of three parcels with such shared boundaries. Multiple property owners at 4000-4030 Valley Boulevard expressed concern over CCPP uses locating in the existing business park. Staff is not recommending removal of these parcels, as the proposed uses that may locate here are similar to existing industrial-related land uses, and have been reviewed for compliance with CEQA.

Planning Commission Recommendation

On October 9, 2019, the Planning Commission conducted a public hearing to consider Staff recommendation of the CCPP Overlay District. The full record of the Planning Commission discussion, including public comment, can be found in the attached draft minutes (Attachment 12).

At the conclusion of the public hearing, the Planning Commission asked questions and deliberated on the ordinance. A motion to recommend approval of the ordinance to the City Council was considered by the Commission, but failed, as it became apparent that no single recommendation was met with a majority of support. The Commissioners provided the following comments as part of their deliberation:

1. Commissioners VanderMolen, Grajeda, and Bunce were generally in support of the draft ordinance as proposed by Staff.
2. Commissioners Camacho-Gonzalez and Kercheval were generally in support of the draft ordinance as proposed by staff subject to removing Foothill Boulevard and Holt Boulevard from consideration.
3. Commissioner Urey was not in support of the draft ordinance as proposed by staff and expressed concerns of indoor cultivation and manufacturing, generally.
4. Chair Brown was not in support of the Draft Ordinance as proposed by staff and suggested that the structure of the Business Ordinance and sensitive use definitions allowed for the establishment of a new land use in asset-poor areas of the City that lack parks, day cares, and youth and recreation facilities, which in his opinion creates an inequitable distribution.

Upon deliberation, a motion to recommend approval of the ordinance with the removal of Holt, Foothill, and Mission Boulevards was considered. The Planning Commission, by a vote of two in favor and five opposed (2-5), could not reach a consensus and did not recommend approval of the ordinance.

CONCLUSION

The land use activity associated with the CCPP is similar to land use classifications that already exist in either the Pomona Zoning Ordinance or Pomona Corridors Specific Plan. Therefore, adoption of Determinations of Similarity and a Director's Interpretation is appropriate. The CCPP Overlay District complies with CEQA, the Business and Tax Ordinances, and the Pomona General Plan, and reflects community feedback and consideration of environmental and social justice.

ALTERNATIVE(S):

The City Council has the following alternatives:

1. Make changes to the proposed overlay ordinance, or;
2. Refer the matter back to the Planning Commission for additional deliberations and revisions.

Prepared By:

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ATTACHMENTS

1. Draft Ordinance with Exhibits A-C
2. Ordinance No. 4254 ("Tax Ordinance")
3. Ordinance No. 4257 ("Business Ordinance")
4. Proof of Publication of Public Hearing Notice
5. Environmental Findings of Consistency
6. Sensitive Use Buffer Map Dated June 2018
7. Questions from Community Meetings
8. Determinations of Similarity (DOS)

9. Director's Interpretation (for PCSP)
10. Revised Sensitive Use Buffer Map
11. Full Record of Public Comments Received
12. Draft Minutes of 10/9/19 Planning Commission Meeting
13. Staff Report & Attachments of 10/9/19 Planning Commission Public Hearing