



Agenda Report

File #: 20-0147

**AGENDA REPORT
REQUEST FOR CITY COUNCIL ACTION**

DATE: 02/19/2020

TO: Honorable Mayor and City Council Members

FROM: Cannabis Ad Hoc Committee (Mayor Steiner & Council Member Scott)

SUBJECT:

Discussion and Direction Regarding Council Ad Hoc Committee's Recommendations for a Draft Ordinance and Related Policy Documents for Possible Permitting and Regulation of Commercial Cannabis Businesses in Manufacturing Zones.

RECOMMENDED ACTION:

Review and provide direction.

ANALYSIS:

PRIOR COUNCIL DIRECTION

On June 26, 2019, the City Council held its last study session on the possible regulation of commercial cannabis businesses. At that meeting, the City Council directed staff to begin work on a proposed ordinance and related policy documents to regulate commercial cannabis businesses, gave direction on certain "big picture" issues to incorporate into the regulatory program, and authorized the formation of a Cannabis Ad Hoc Committee, consisting of Mayor Steiner and Council Member Scott, to work with staff on developing the regulatory documents.

With respect to the big picture issues to incorporate into the draft regulatory documents, the City Council directed the following:

- ✓ Allowed Businesses: Allow the following types of cannabis businesses:
 - Manufacturing
 - Distribution
 - Testing Labs
 - Retailers (Storefront)
 - Retailers (Non-Storefront)

- ✓ Disallowed Businesses: Disallow Cultivation (indoor and outdoor).
- ✓ Allowed Zones: Allow businesses to operate in all manufacturing zones (M-1, M-2, M-3 & M-4 on the City's zoning map).
- ✓ Limiting Number of Permits: Have the Ad Hoc Committee explore whether to limit the number of retail permits, based upon how many might be possible depending upon the zoning and separation requirements to be imposed.
- ✓ Lottery vs. Merit-Based Qualifications: Use a merit-based evaluation process for retailers.
- ✓ Administrative or Legislative Approval Process: Pursue an administrative approval process.
- ✓ Cannabis Taxation Ballot Measure: Proceed with contractual agreement to collect revenue, but leave open the possibility for a tax ballot measure in the future.

AD HOC COMMITTEE WORK - RECOMMENDED ORDINANCE & RESOLUTION

City staff formed a cannabis regulatory team consisting of representatives from the following departments: Management Services; Community Development (planning, building & code enforcement); Police; Fire; Administrative Services (Finance); DWP; and Legal & Risk Management (City Attorney's Office) ("Cannabis Team").

The Ad Hoc Committee met regularly with members of the Cannabis Team from July through January to discuss and develop the proposed regulatory framework. As part of this effort, the Ad Hoc Committee directed the creation of a "commercial cannabis portal" on the City's website, in order to communicate and disseminate information to the public. As part of this portal, an FAQ document was developed and posted, and an email was set up for the public to ask questions (CannabisInfo@CoronaCA.gov).

Out of this effort, the Committee is also pleased to present the following attached two regulatory documents for the City Council's consideration:

Ordinance
CMC 5.36 (Commercial Cannabis)

Resolution
Rules & Regulations for Permitting Commercial Cannabis Businesses

With the approval of these 2 documents, there will be a need for other documents to be approved and implemented, as discussed or referenced in the above Ordinance and Resolution, including the following:

Zoning Ordinance
Limiting Cannabis Businesses to Manufacturing Zones

Fee Resolution
Application Fee
Merit-Based Evaluation Fee

Administrative Policy
Implement City Manager Delegated Authority

Application Forms & Related Documents

The major issues addressed in the Ordinance and Resolution are as follows:

CMC 5.36 (COMMERCIAL CANNABIS)

Separation Requirements

State Minimum for All Businesses - 600 Feet: The state requires - for all commercial cannabis businesses - a separation requirement equal to a 600-foot radius from any of the following that are in existence at the time the commercial cannabis permit is issued:

- Public or private school (K through 12);
- Youth center; or
- Day care center

The Committee is recommending the following (*excess of state minimums in italics*):

- ✓ Storefront Retailers & Storefront Retail Microbusinesses - 1,000 Feet: Include more than is required by state law - a separation requirement equal to a *1,000-foot radius* (rather than 600 feet), measured from the public entrance of the retailer to the perimeter of any of the following that are in existence at the time the commercial cannabis permit is issued:

- Public or private school (K through 12);
- Youth center;
- Day care center;
- *Public or private park*;
- *Residential zone*; or
- *Any other Storefront Retailer or Storefront Retail Microbusiness*

- ✓ Manufacturers, Distributors & Testing Labs - 600 Feet (State Requirement): Include the same as required by state law - a separation requirement equal to a 600-foot radius, measured from the primary entrance of such commercial cannabis business to the perimeter of any of the following that are in existence at the time the commercial cannabis permit is issued:

- Public or private school (K through 12);

- Youth center;
 - Day care center;
 - *Public or private park; or*
 - *Residential zone*
- ✓ Freeways: Measurements to stop at the freeway, except when it comes to measuring from schools, youth centers or day care centers, since the state minimum of 600 feet will still need to be met.

Cap - Storefront Retail & Storefront Retail Microbusinesses

Theoretically Possible - Up to 35: Using the proposed 1,000 radius discussed above, the Cannabis Team determined that up to 35 retail establishments were theoretically possible in the City's manufacturing zones. This was determined by beginning at the far edge of a manufacturing zone and placing a retail establishment at that location, and then drawing a 1,000 foot radius to determine the next closest possible retail location. This process continued, while also taking into consideration the required 1,000 distance from the schools, youth centers, day care centers, parks and residential zones, until all manufacturing zones had been covered.

Of course, this is only a theoretical number, since it does not take into account the availability and suitability of property, among other practical constraints. However, it gave the Ad Hoc Committee a sense of whether a cap might be needed.

The Committee is recommending the following:

- ✓ Cap - 17: Using what is commonly referred to as a reasonable range for retail establishments (1 for every 10K - 15K population), the Committee is recommending a cap of 17 Storefront Retailers or Storefront Retail Microbusinesses. The Committee believes that the City can always consider more in the future, if ever necessary, but that more is not likely necessary.

No cap is being recommended for Manufacturing, Distribution, Testing Labs and Non-Storefront Retailers

Operational Requirements

The Committee is recommending numerous operational requirements, including the following (see references to applicable CMC 5.36 Sections in the attached Ordinance):

- ✓ All Commercial Cannabis Businesses
CMC Section 5.36.170
- ✓ Additional for Retailers & Storefront Retail Microbusinesses
CMC Section 5.36.180

- ✓ Additional for Manufacturers, Distributors and Testing Laboratories

CMC Section 5.36.190

Permit Restrictions on Transfers, Changes & Alterations

The Committee wanted to provide some flexibility for businesses without losing - for the storefront retail businesses - the core reasons why a business “scored” high enough on the City’s Retail Merit-Based Evaluation Process to obtain a permit.

The Committee is recommending the following:

- ✓ City Permit and Permittee: Transfers of commercial cannabis permits are limited as follows:
 - May Transfer Less Than Majority Ownership With City Review & Approval
 - May Change Name or Form of Business Entity With Notice & Amendment
 - No Transfer for First 12 Months
 - No Operation With Name Not On Permit
 - No Transfer If Permit is Suspended
 - No Transfer of Certificate of Occupancy
- ✓ Business Premises: A commercial cannabis permit is nontransferable to other locations, except as follows:
 - City Manager Approval (new location must meet all CMC and other applicable requirements, and must be reviewed and evaluated using same criteria as other cannabis businesses)

RULES & REGULATIONS FOR PERMITTING COMMERCIAL CANNABIS BUSINESSES

Merit-Based Selection

The Committee is recommending the following:

- ✓ Storefront Retailers: The merit-based evaluation process would apply to Storefront Retailers only, including Storefront Retail Microbusinesses. Permit applications for all other commercial cannabis businesses would be considered on a first-come first-served

basis.

- ✓ Storefront Retail Merit-Based Evaluation Criteria - Attachment "A" of Rules & Regs: The proposed point system is included as Attachment "A" to the Rules and Regulations. The point system is broken down in major categories as follows:

Qualifications of Owners/Operators	150 Points
Business Plan/Financial Investment	150 Points
Operations Plan	130 Points
Security Plan	130 Points
Community Benefit	120 Points

Each of these major categories is further broken down by various components, each of which is worth a maximum number of points and the sum of which adds up to the above points.

Application

The Committee is recommending the following:

- ✓ Application Packet: In order for an application packet to be deemed complete, all items listed below must be submitted. Application packets shall be no longer than 75 pages of text (single-sided) and 25 pages of images for a total of 100 pages.
 - Application Form
 - Premises Information
 - Business Plan
 - Operations Plan
 - Security Plan
 - Site/Floor Plan
 - Merit-Based Information (If Applicable)
 - Live Scan/Background Checks
 - Additional Information
 - Application Fees
- ✓ Application Form: The completed application must include at least the following:
 - Applicant Information
 - Owner, Officer and Manager Information
 - Contact Information
 - Business Entity Status
 - Cannabis Activity (Desired Permit)
 - Cannabis Activity Experience
 - Cannabis Activity Denials, Suspensions or Revocations (5 years)
 - Criminal Convictions (Various Years)
 - State Law Compliance

- Insurance Compliance
- Labor Peace Agreement
- Required State Financial Information
- Defense and Indemnification

Application Process

The Committee is recommending the following:

- ✓ Merit-Based Process: The merit-based process is broken down into 3 phases as follows:

PHASE I PRELIMINARY APPROVAL

- A. Application Clearance
 - ✓ Complete & Compliant

City must deem the application to be complete and in compliance with all requirements.

- B. Merit-Based Evaluation Process
 - ✓ Reviewed, Evaluated & Ranked

The application must be reviewed, evaluated and ranked in accordance with the following:

Review Panel - Make-Up: The City Manager will choose 3-5 people; no City official, officer, director or employee shall be a member; all shall be free from financial conflicts of interest; at least 1 member with experience as a planner for a public agency; at least 1 member with police or public safety experience; at least 1 member from the City's business community.

Review Panel - Confidentiality. As long as necessary to maintain objectivity and integrity in the evaluation process, the City Manager shall withhold disclosure of the identity of the members.

Review Panel - Independent Facilitator. The review panel's evaluation of the applications and any meetings of the review panel to discuss the applications shall be coordinated and facilitated by an independent consultant selected by the City Manager pursuant to the City's purchasing ordinance and regulations.

Merit-Based Evaluation Criteria. The review panel shall use the criteria and point system described in the Storefront Retail Merit-Based Evaluation Criteria attached as Attachment "A" to the Rules & Regs.

Evaluation Period. The review panel will endeavor to complete its

evaluation of the applications within forty-five (45) calendar days. The 45 calendar day evaluation period may be extended by the review panel for up to an additional fifteen (15) calendar days, if necessary, to complete the evaluation process.

Written Ranking. Upon completion of the evaluation process, the review panel shall produce a written ranking of the applications signed or initialed by the facilitator. The ranking shall be from highest to lowest, based upon the combined total points allocated to each application by the members of the review panel using the Storefront Retail Merit-Based Evaluation Criteria.

Notice of Ranking. The written ranking shall be posted on the City's website and served on each applicant.

No Appeal. The final ranking of the review panel shall be final and shall not be subject to appeal.

Expiration of Ranking. The final ranking of the review panel shall expire twelve (12) months from the date it is posted on the City's website; provided that the City Manager, in his/her sole discretion, may extend the expiration date for an additional twelve (12) month period.

PHASE II **CONDITIONAL APPROVAL**

A. Preferred Premises

✓ Deemed Compliant (Separation Requirements)

Beginning with the applicant that is ranked number 1, the City will review that applicant's preferred premises location and determine whether the location complies with the separation requirements set forth in the CMC. If it does, the applicant will move on to the next step - Premises Control. If not, the City will similarly review that applicant's next preferred premises location (if they have one), which also must have been included in their application).

This process will continue until the applicant's preferred premises location is approved or until the applicant runs out of potential locations, at which point the City will move on to the next highest ranked applicant.

The separation requirements also take into account the required distance from other retailers or storefront retail microbusinesses. This is the principal benefit to scoring high in the merit-based evaluation process - fewer locations from which to distance your preferred location.

B. Premises Control

✓ Lease or Deed

The applicant must show documentary evidence, such as a lease agreement or deed, demonstrating to the satisfaction of the City that the applicant has the legal right to occupy and use the premises to operate the commercial cannabis business described in the applicant's application.

C. Operational Agreement

✓ Duly Executed

The operational agreement will include at least the following provisions:

- Insurance Requirements
- Indemnification of City
- Operating Fee Obligation & Audits: See further discussion below.
- Community Benefit. A commitment to implement any community benefit actions or measures described in the applicant's application packet.
- Local Hiring Practices. A commitment to promote local hiring or implement incentives for local residents to work with the commercial cannabis business, if such practices are described in the applicant's application packet.
- Local Sourcing Practices. A commitment to secure supplies and equipment from local sources, if such practices are described in the applicant's application packet.

PHASE III FINAL APPROVAL

A. State Licenses

✓ Obtained

Will have 12 months (extendable by the City for up to 180 calendar days) to obtain all state licenses required by the state cannabis laws to authorize the applicant to operate the commercial cannabis business.

B. City Business License

✓ Obtained

Must obtain within 5 business days of obtaining all state licenses.

C. Building Permits & Occupancy

✓ Obtained

Will have 180 calendar days (extendable by the City for up to 60 calendar days) to take all necessary actions to open its commercial cannabis business, including, but not limited to, completing all construction and tenant improvements and obtaining all building, fire and occupancy permits that will permit the applicant to open the commercial cannabis business to the public.

- ✓ Non Merit-Based Process: The non merit-based process is broken down into 3 phases as follows:

PHASE I PRELIMINARY APPROVAL

- A. Application Clearance
 - ✓ Complete & Compliant

City must deem the application to be complete and in compliance with all requirements.

PHASE II CONDITIONAL APPROVAL

- A. Premises Control
 - ✓ Lease or Deed

Must show documentary evidence, such as a lease agreement or deed, demonstrating to the satisfaction of the City that the applicant has the legal right to occupy and use the premises to operate the commercial cannabis business described in the applicant's application.

- B. Operational Agreement
 - ✓ Duly Executed

The operational agreement will include at least the following provisions:

- Insurance Requirements
- Indemnification of City
- Operating Fee Obligation & Audits (see further discussion below)

PHASE III FINAL APPROVAL

- A. State Licenses
 - ✓ Obtained

Will have 12 months (extendable by the City for up to 180 calendar days) to obtain all state licenses required by the state cannabis laws to authorize the applicant to operate the commercial cannabis business.

- B. City Business License
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Must obtain within 5 business days of obtaining all state licenses.

- C. Building Permits & Occupancy
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Will have 180 calendar days (extendable by the City for up to 60 calendar days) to take all necessary actions to open its commercial cannabis business, including, but not limited to, completing all construction and tenant improvements and obtaining all building, fire and occupancy permits that will permit the applicant to open the commercial cannabis business to the public.

Operating Fee

The Committee is recommending the following:

- ✓ Gross Receipts %: The Committee considered fee ranges based upon square footage of the premises and a percentage of gross receipts, and is recommending the following percentage ranges based upon gross receipts:
- Storefront Retailer: Up to 9%
 - Non-storefront Retailer: Up to 9%
 - Manufacturing: Up to 7%
 - Distribution: Up to 7%
 - Testing Laboratory: Up to 3%
 - Microbusiness: Up to 9% (retail portion) and up to 7% (manufacturing and distribution portions)

Set In Agreement: The operating fee for each type of commercial cannabis activity would be set consistent with council direction and within these ranges, taking into account any additional consideration to the public to be included in the agreements. The City Council could also agree to adjust them over time if desired.

Audits. The City can inspect and conduct an audit of the books and records of each commercial cannabis business upon request. If such audit discloses an underpayment of the operating fee in excess of five percent (5%), the permittee would pay the underpayment plus 10% interest to the City, and shall further reimburse the City for the entirety of its audit costs. If such audit discloses an underpayment of the operating fee

of less than five percent (5%), the permittee would pay the underpayment plus 10% interest to the City.

COMMITTEE ACTION:

As noted, the attached documents are being recommended for consideration by the Cannabis Ad Hoc Committee.

STRATEGIC PLAN:

Not applicable.

FISCAL IMPACT:

There is no direct fiscal impact associated with the recommended action.

ENVIRONMENTAL ANALYSIS:

No environmental review is required because the proposed discussion is preliminary and is not a project under the California Environmental Quality Act.

PREPARED BY: DEAN DERLETH, CITY ATTORNEY/LRM DIRECTOR

REVIEWED BY: JIM STEINER, MAYOR

REVIEWED BY: JASON SCOTT, COUNCIL MEMBER

REVIEWED BY: JOANNE COLETTA, COMMUNITY DEVELOPMENT DIRECTOR

REVIEWED BY: GEORGE JOHNSTONE, CHIEF OF POLICE

SUBMITTED BY: JACOB ELLIS, CITY MANAGER

Attachments:

1. DRAFT ORDINANCE (CMC 5.36)
2. DRAFT RESOLUTION (RULES & REGS)