



Agenda Report

File #: 20-0832

**AGENDA REPORT
REQUEST FOR CITY COUNCIL ACTION**

DATE: 10/07/2020

TO: Honorable Mayor and City Council Members

FROM: Management Services, Community Development and
Legal and Risk Management

SUBJECT:

City Council consideration of Ordinance No. 3321, first reading of an ordinance of the City of Corona, California adopting a Negative Declaration and amending Chapters 5.36 and 9.19 of the Corona Municipal Code to permit and regulate commercial cannabis businesses in manufacturing zones, and Resolution No. 2020-126 establishing rules and regulations for permitting commercial cannabis businesses.

RECOMMENDED ACTION:

That the:

- a. City Council introduce by title only and waive full reading for consideration of Ordinance No. 3321, first reading of an ordinance adopting a Negative Declaration and amending Chapters 5.36 and 9.19 of the Corona Municipal Code to permit and regulate commercial cannabis businesses in manufacturing zones.
- b. City Council adopt Resolution No. 2020-126 establishing rules and regulations for permitting commercial cannabis businesses.
- c. City Council delegate authority to the City Manager to enter into operational agreements with permitted commercial cannabis operators, in a form approved by the City Attorney, and to negotiate the inclusion of the following operational fees or a combination of additional consideration or benefits provided by the permittee and a proportional operating fee:

Storefront Retailers - 7% of gross receipts

Non-storefront Retailers - 7% of gross receipts

Manufacturing - 5% of gross receipts

Distribution - 5% of gross receipts

Testing Laboratories - 2% of gross receipts

Microbusinesses - 7% of gross receipts for retail portion and 5% of gross receipts for manufacturing/distribution portion

ANALYSIS:

PRIOR COUNCIL DIRECTION

June 26, 2019 Study Session: On June 26, 2019, the City Council held a study session on the possible regulation of commercial cannabis businesses and directed staff to begin work on a proposed ordinance and related policy documents to regulate commercial cannabis businesses. In addition to authorizing 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, the Council gave direction on certain "big picture" issues to incorporate into the regulatory program.

February 19, 2020 Study Session: On February 19, 2020, the City Council held another study session at which the Cannabis Ad Hoc Committee and staff presented a proposed Ordinance and Resolution which addressed the "big picture" issues requested by the City Council. While the City Council largely supported the proposed documents, the City Council and members of the public provided comments for consideration by the Ad Hoc Committee.

June 24, 2020 Study Session: On June 24, 2020, the City Council held another study session at which the Cannabis Ad Hoc Committee and staff presented revised versions of a proposed Ordinance and Resolution, in response to the comments raised during the February 19th Study Session. The City Council and the public provided additional comments and suggested revisions for the Ad Hoc Committee's consideration.

Cannabis Ad Hoc Committee: As discussed further below, the Cannabis Ad Hoc Committee met and considered a few final revisions to the proposed Ordinance and Resolution to address the comments received during the June 24th Study Session, as well as other issues identified during the final review process.

TONIGHT'S DISCUSSION

Staff has prepared proposed final versions of the Ordinance and Resolution, including the changes discussed above and a few final clean-up and administrative clarifications, and is presenting them for the City Council's consideration this evening.

All final proposed revisions to the Ordinance and Resolution are included in redline format in Exhibits "1" and "3" attached hereto.

AD HOC COMMITTEE RECOMMENDATIONS

Storefront Retail Merit-Based Point System

Point System

- ✓ Issue Raised: Consider awarding points for applicants that have entered into a collective bargaining agreement with its employees.

Recommendation: Award up to 15 points if the applicant has entered into a collective bargaining agreement with its employees. Overall points to increase by 15.

Disclosure of Scores

- ✓ Issue Raised: Whether the individual applicant scores given by each member of the review panel should be publicly disclosed.

Recommendation: Require disclosure of the individual scores awarded by each panel member without identifying the panel member that gave each score.

Separation Requirements

- ✓ Issue Raised: Consider eliminating the 1,000 ft distance requirement between retailers.

Recommendation: Eliminate the 1,000 ft distance requirement between retailers. Retailers will continue to be prohibited within 1,000 feet of public/private schools, youth centers, day care centers, public/private parks and residential zones.

- ✓ Issue Raised: Whether to apply the separation requirements only to *sensitive uses* that are located within the City.

Recommendation: Limit application of the separation requirements for public/private parks and residential zones to those that are located within the City's jurisdictional boundaries (i.e. don't count such uses located within the County). Continue to apply the separation requirement to *sensitive uses* that are mandated by the state (i.e., public/private schools, youth centers, day care centers) even if they are located outside the City's jurisdictional boundaries.

Restriction on Number of Retail Locations by each Applicant

- ✓ Issue Raised: Whether to relax the restriction on operating more than one retail cannabis business in the City if at some point in the future the City does not issue the

maximum number of retail cannabis permits authorized by the Ordinance (currently 12).

Recommendation: Allow applicants to operate more than one retail cannabis business in the City if the maximum number of retail cannabis permits have not been issued by January 1, 2023. Based upon the City's tentative schedule for completion of the application process, it is anticipated that applicants will have completed the state license process by the end of December 2022. The January 1, 2023 deadline is intended to ensure that all applicants have a reasonable chance to secure their first permit before any applicants can pursue a second permit.

Definition of Residential Zone

- ✓ Issue Raised: The definition of "residential zone," which is one of the criteria for the separation requirement, does not expressly address mixed-use zones where residential uses may be permitted.

Recommendation: Revise the definition of "residential zone" in § 5.36.020 to clarify that it does not include mixed-use zones that permit residential uses. The only mixed-use zones within the City, which are established by a specific plan, permits mixed-uses comprised of commercial and residential uses. The intent of this revision is to ensure that the separation requirements do not apply to the mixed-use zones. Since commercial cannabis businesses are not permitted in commercial zones, this means that while a commercial cannabis business would not be permitted in a mixed-use zone, a commercial cannabis business could be located within 600 to 1,000 feet of a mixed-use zone.

Review Process for Retailers

- ✓ Issue Raised: With the elimination of the 1,000 foot separation requirement between commercial cannabis retailers, as recommended by the City Council at the June 24th Study Session, some of the procedures set forth in the Rules and Regulations concerning a retail applicant's identification of their preferred premises location can be simplified since much of the uncertainty concerning whether a retail applicant's preferred premises location will work in light of the separation requirement will no longer exist.

Recommendation: Revise the Rules and Regulations such that the proposed premises identified in each applicant's application will be reviewed by the City for compliance with the City's zoning and separation requirements as part of the initial application clearance process. Applicants for a storefront retail business will still need to submit their preferred premises location for review and approval by City staff after the merit-review evaluation process, though, to confirm

whether the designated location is still available or whether it has already been selected by a higher ranked applicant.

City Manager Authority to Extend Deadlines

- ✓ **Issue Raised:** The Rules and Regulations contain several deadlines for applicants to respond or provide documentation to the City. An applicant's failure to respond or provide the documentation by the deadline results in the application being deemed forfeited.

Recommendation: Give the City Manager the authority to extend the deadline by a period of time equal to the original deadline, up to a maximum of 15 days. For example, if the applicant is required to respond or provide documentation to the City within a 5-business day period, the City Manager would have the authority to extend that deadline for an additional 5 business day period.

Identification of Preferred Premises

- ✓ **Issue Raised:** The Rules and Regulations require that applicants for a storefront retail business identify on their application all potential premises locations where they may operate. This is necessary because the location of the premises and the applicant's site plan for the premises is reviewed as part of the merit-review evaluation process. However, if all of the premises identified on an applicant's application are no longer available, which, depending upon the applicant's ranking, is a real possibility, the applicant would be required to start the application process all over again.

Recommendation: Allow applicants to identify a new premises location that was not identified on the application, provided that the applicant will forfeit its ranking and the applicant's new premises location will be reviewed as if the applicant is the last ranked applicant.

CLEAN-UP REVISIONS SINCE 06-24-20 STUDY SESSION

In addition to the Ad Hoc Committee's recommended changes noted above, staff has also included some minor clarifying changes (also noted in redline in the attachments), the more substantive of which are summarized below.

Formula for Maximum Number of Storefront Retail The proposed ordinance provides that the maximum number of permits issued for storefront retailers and/or storefront retail microbusinesses is calculated using a formula of 1 storefront retailer / storefront retail microbusiness per 15,000 City residents, as determined by the California Department of Finance. City staff has recently discovered that the Department of Finance issues many different population reports and that it would be helpful if the ordinance specified which report is to be used. The report that the City has used for other purposes in terms of calculating the City's population is known as the E-1 report.

As such, § 5.36.060(A)(1) has been revised to clarify that the Department of Finance's E-1 report will be used to calculate the number of City residents.

Operating Requirements - Cannabis Waste: The proposed ordinance that was presented at the June 24th Study Session included a provision that required commercial cannabis manufacturers, distributors and testing laboratories to dispose of cannabis waste in such a manner that the cannabis is rendered unrecognizable and unusable prior to disposal. However, pursuant to state law, this requirement should apply to all commercial cannabis businesses. As such, § 5.36.170 has been revised to include this requirement for all commercial cannabis businesses.

Parking Requirement: Language has been added to § 5.36.170 to implement a parking standard of 1 space/500 square feet of building area for commercial cannabis businesses. Commercial cannabis will be limited to the City's manufacturing zones, which are parked at a 1:500 ratio for manufacturing and 1:250 for office (if constructed after 1994). There is also a warehouse component for some buildings and some buildings may have been built with a 1:1,000 parking ratio. The current standard for retail uses is 1:250. City staff is recommending a 1:500 parking standard, considering that commercial cannabis storefront retail businesses will most likely be located in existing buildings in the manufacturing zones where parking standards have already been established.

Operating Requirements - Non-storefront Retailer: The operating requirements for manufacturers, distributors and testing laboratories in the proposed ordinance provide that there should be no exterior evidence that the premises are used as a commercial cannabis business and the general public should not be permitted to enter the premises. City staff believes these requirements should also apply to non-storefront retailers, which provide cannabis exclusively by delivery. Language has been added to § 5.36.180 to make these requirements applicable to non-storefront retailers.

Chapter 9.19 (Marijuana Businesses): Chapter 9.19 of the Corona Municipal Code currently prohibits marijuana dispensaries, delivery, cultivation, and any other type of marijuana businesses and makes the operation of any such business a public nuisance. Revisions are proposed to Chapter 9.19 to make it consistent with the proposed revisions to Chapter 5.36. As revised, Chapter 9.19 would prohibit, and make it a nuisance to operate, any commercial cannabis businesses and activities that are not expressly authorized by Chapter 5.36, including cultivation.

Retailer / Storefront Retail Microbusiness Application Submittal Period. Section III(A) (1) of the Rules and Regulations have been updated to reflect a 30-day submittal period for permit applications for retailers and storefront retail microbusinesses to be consistent with the tentative schedule presented to the City Council at the June 24th Study Session.

Labor Peace Agreement: Section III(E)(1)(k) of the Rules and Regulations has been

revised so that the language requiring a labor peace agreement mirrors the language in state law.

OPERATING FEE

All applicants that are issued a commercial cannabis permit would be required to enter into an operational agreement with the City in a form that is deemed acceptable by the City Manager and the City Attorney. The operational agreement will include provisions pertaining to insurance, indemnification, audits, operating fees and any other consideration or public benefit offered by the applicant as part of their application. The Rules and Regulations provide that the operating fee shall be consistent with City Council direction within the following established ranges:

<u>Cannabis Business</u>	<u>Maximum Fee</u>
Storefront Retailer	Up to 9% of gross receipts
Non-storefront Retailer	Up to 9% of gross receipts
Manufacturing	Up to 7% of gross receipts
Distribution	Up to 7% of gross receipts
Testing Laboratory	Up to 3% of gross receipts
Microbusiness	Up to 9% of gross receipts for retail portion, plus 7% for manufacturing/distribution portion

In preparation for the anticipated implementation of the application process in January 2021, City staff is seeking direction on establishing negotiating authority for the City Manager to include the following operational fees or a combination of additional consideration or benefits provided by the permittee and a proportional operating fee:

<u>Cannabis Business</u>	<u>Fee</u>
Storefront Retailer	7% of gross receipts
Non-storefront Retailer	7% of gross receipts
Manufacturing	5% of gross receipts
Distribution	5% of gross receipts
Testing Laboratory	2% of gross receipts
Microbusiness	7% of gross receipts for retail portion, plus 5% for manufacturing/distribution portion

The above percentages have been recommended by the Ad Hoc Committee, as we believe it is sufficient to allow negotiating authority in either direction, given that the City's goal is to allow each permittee the opportunity to be successful while also helping to ensure that the secondary impacts to the City, its resources and to the health, safety and welfare of businesses and residents within the City, as discussed in the recitals to Ordinance 3321, are also addressed to the greatest extent possible. That is, the City is aware that both community benefits and potential adverse impacts may result from the operation of commercial cannabis businesses in the City, and therefore desires to: (1) help ensure that all such impacts are adequately mitigated and offset by the potential community benefits those businesses can provide to the City and its residents; and (2) help provide sufficient

code enforcement and law enforcement resources to address such adverse impacts and to ensure compliance with all applicable laws and regulations.

City staff is recommending that the City Manager be authorized to negotiate with each permittee and institute an operating fee proportional to the fee noted above based upon the quality of the application, any additional consideration or other public benefits offered by the permittee, as well as the verified projected revenue from the permittee's business or activity, the industry standard, and the impacts the permittee's business or activity will have on the City, its resources and to the health, safety and welfare of businesses and residents within the City.

COMMITTEE ACTION:

Since June 2019, the Cannabis Ad Hoc Committee has had several meetings on the City's proposed commercial cannabis ordinance and proposed resolution to establish rules and regulations for commercial cannabis businesses. The attached documents are a result of those discussions with the Committee.

STRATEGIC PLAN:

Not applicable.

FISCAL IMPACT:

Approval of the recommended actions is not expected to impact General Fund revenues or expenditures in Fiscal Year 2021, in part because staff will be returning shortly to have the City Council consider application and related fees for the Cannabis Program. Staff is unable at this time to determine the revenue to be generated in future years from the operational fees. The revenue will be contingent upon the number of businesses within each category and the gross receipts of those businesses. In addition, timing of when the businesses will complete the multiple phases of the review/approval process including obtaining a State License, will be a key component to when revenues will be received. Expenditures for three positions (Police and Community Development) were approved in July 2020 to work on the implementation of the Cannabis Program, but again some portion of those positions will be addressed by the application and related fees. As discussed at the FY 2021 budget workshops, there are additional staffing and operational program costs that will need to be budgeted in the future as the program develops. As applicants move through the process, staff will have additional information to provide updates on revenue and expenditure estimates for the FY 2022 budget process.

ENVIRONMENTAL ANALYSIS:

In accordance with Section 15063 of the State CEQA Guidelines, an Initial Study was prepared to determine if the adoption of the Ordinance and Resolution to permit commercial cannabis businesses within the City may have a significant effect on the environment. The initial study shows that there is no substantial evidence, in light of the whole record, that the adoption of the Ordinance and Resolution will have a significant effect on the environment. Therefore, a Negative Declaration was prepared and will be considered for adoption as part of this action..

PREPARED BY: JAMIE RAYMOND, CHIEF DEPUTY CITY ATTORNEY

File #: 20-0832

REVIEWED BY: DEAN DERLETH, CITY ATTORNEY/LRM DIRECTOR

REVIEWED BY: JOANNE COLETTA, COMMUNITY DEVELOPMENT DIRECTOR

REVIEWED BY: GEORGE JOHNSTONE, CHIEF OF POLICE

REVIEWED BY: ROGER BRADLEY, ASSISTANT CITY MANAGER

SUBMITTED BY: JACOB ELLIS, CITY MANAGER

Attachments:

1. Exhibit 1 - Ordinance No. 3321 (Redline from 06-24-20 Study Session)
2. Exhibit 2 - Ordinance No. 3321 (Final)
3. Exhibit 3 - Resolution No. 2020-126 (Redline from 06-24-20 Study Session)
4. Exhibit 4 - Resolution No. 2020-126 (Final)