



Agenda Report

Fullerton City Council

MEETING DATE: JULY 7, 2020

TO: CITY COUNCIL / SUCCESSOR AGENCY

SUBMITTED BY: KENNETH A. DOMER, CITY MANAGER

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SUBJECT: SUMMARY OF COMMERCIAL CANNABIS COMMUNITY OUTREACH EFFORTS AND RECOMMENDATIONS REGARDING DRAFT COMMERCIAL CANNABIS ORDINANCE

SUMMARY

City Council consideration and recommendations regarding Municipal Code amendments pertaining to commercial cannabis activities within the City.

RECOMMENDATION

Provide direction to City Staff and Planning Commission on proposed Ordinance to regulate commercial cannabis activity in the City.

PRIORITY POLICY STATEMENT

This item matches the following Priority Policy Statement:

- Fiscal and Organizational Stability.

FISCAL IMPACT

Expense estimates for legal review by the City Attorney's Office are unknown until such time as the scope of potential cannabis activities and proposed method of regulation is determined. The City Council approved an agreement with HdL on October 15, 2019 for up to \$43,500 for consulting services related to the drafting of a commercial cannabis ordinance and participation in the review and selection process. The cost of HdL cannabis consulting services was appropriated in the Fiscal Year 2019-20 budget and any unused funds will be encumbered for use in Fiscal Year 2020-21 to complete agreed upon services.

DISCUSSION

Current Status of Cannabis Related Activities in Fullerton

On June 21, 2016, the City Council considered an ordinance and ballot measure for the November 2016 ballot which would permit, tax and regulate medical and, if approved by the voters, recreational cannabis uses in the City. Following public testimony and discussion, the City Council voted unanimously to continue the item until the results of the State Proposition regarding the legalization or recreational cannabis (Prop 64) were known.

In November 2016, California voters approved Proposition 64 which enacted the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA). Locally, Proposition 64 passed in Fullerton as well as at the County level 52 percent in favor, 48 percent opposed. This new law provided a similar licensing framework for non-medical commercial cannabis activity as the previously approved legislation for medical cannabis. The AUMA preserved local jurisdictions ability to prohibit marijuana-related land uses.

On November 21, 2017 the City Council adopted an Ordinance to specifically prohibit all cannabis related uses and/or activities citywide (except as permitted through the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) for personal use). Those amendments, which are still in place, became effective on December 21, 2017. While cannabis related uses and/or activities are currently prohibited in Fullerton, State Law no longer allows the City to prohibit commercial cannabis deliveries, which originate outside of Fullerton, from delivering to destinations within the City's boundaries.

In fall of 2019, Mayor Silva requested that a City Council agenda item be brought forward regarding cannabis regulation. Informational briefings were then provided individually with each Council Member by City Staff and David McPherson from HdL, an expert in the cannabis regulation industry who works exclusively with cities and counties throughout the state on cannabis related regulations and their implementation. The purpose of the briefings were to provide the City Council with an opportunity to learn about what the City's current regulatory options are and what other cities are doing as a basis for comprehensively considering the pros and cons of moving forward with new cannabis regulations that would either enable or limit various cannabis activities.

On October 15, 2019, the City Council received a presentation by City Staff and HdL on options regarding the regulation of commercial cannabis activities and considered a Resolution of Intention to amend the Municipal Code (Title 15). Following public testimony and City Council discussion, the City Council approved the Resolution of Intention and directed Staff to conduct a series of community outreach meetings to provide information and receive feedback on options regarding commercial cannabis. At that time, the direction was to bring this item back to the City Council in March 2020 to review the results of those meetings and receive formal direction from the City Council on how they would like to move forward on this issue.

The first of three outreach meetings was held on February 13, 2020. This meeting was held in the Osborne Room at the Fullerton Library. This initial meeting was an "open house" style meeting which included an initial presentation from City Staff on the current state of cannabis regulations at both the state and local level and the purpose and goals

for the public outreach process. Stations were set up around the room with information provided specific to the various aspects of a potential cannabis regulatory approach. The topics included:

- Zoning, Separation and Maximums
- Types of Cannabis Businesses
- Operational Standards for Retail (dispensary)
- Public Safety / Health Concerns.

Each station was staffed by a City Staff member and written comments and questions were accepted pertaining to the display board topic. This meeting was attended by approximately 80 people, primarily from the cannabis industry or parties interested in operating a cannabis business in Fullerton.

The second outreach meeting was on March 4, 2020 and was held at the Fullerton Community Center (Grand Hall). This meeting was a panel discussion which included representatives from the cannabis industry, City of La Habra, Orange County Environmental Health Department and Dave McPherson from HdL. The panel was moderated by City Staff and posed many of the questions that were provided at the community meeting in February to the various panel members. The panelist from the City of La Habra also shared that cities experience working with the cannabis industry to allow cannabis distribution / transportation activity to occur. The panel discussion was attended by approximately 75 people in-person and was streamed live on the City's Facebook page.

The third and final outreach meeting was held on May 14, 2020. As a result of limitations on in-person meetings from the COVID-19 pandemic, this meeting was held virtually through Webex and streamed live on the City's Facebook page. The final outreach meeting was focused on public safety and was a moderated discussion with the Fullerton Police Chief and Community and Economic Development Director.

Illegal commercial cannabis activities are known to be occurring within the City, primarily in the form of retail storefronts (also referred to as dispensaries). The City's Code Enforcement Division immediately pursues enforcement action against these illegal locations, however, the closure of the dispensary is often slowed by the required legal process afforded to these operators including appeals and hearings that must occur before abatement can take place. This time-consuming procedure, combined with competing demands for limited City Staff resources and the general transitory nature of illegal cannabis activities, has made closing illegal dispensaries a challenge for the City.

Draft Ordinance

Based on the feedback received from the additional community outreach, and further research into how other cities have regulated commercial cannabis activities, Attachment 2 to this report contains the recommended ordinance language to allow and regulate commercial cannabis activities in the City should the City Council direct Staff to move forward with this approach. The attached draft ordinance is based on the best practice ordinance provided by HdL as part of its professional services agreement with the City and then further customized for Fullerton. Key components of the draft ordinance include:

1. Allows retail (storefront and non-storefront), manufacturing (non-volatile solvents), cultivation (indoor), transportation/distribution and testing facilities in certain zones pursuant to specified development and operational standards.
2. Retail cannabis (storefront and non-storefront) would be permitted to operate within General Commercial (G-C), Commercial Manufacturing (C-M), Manufacturing Park (M-P), Manufacturing, General (M-G) zones.
3. Cannabis Manufacturing, Distribution / Transportation, cultivation (indoor) and testing would be permitted in the Manufacturing Park (M-P) and Manufacturing, General (M-G) zones.
4. Separation (buffer) requirements of 600-feet from a parcel containing any of the following:
 - a. A school whether public, private, or charter, including pre-school, transitional kindergarten and K-12; or
 - b. A commercial daycare center licensed by the State, County or City that is in existence at the time the Commercial Cannabis Business Permit is issued; or
 - c. A Youth Center which includes:
 - i. Private youth membership organizations or clubs facilities (e.g. Boys and Girls Club, Boy Scouts, Girls Scouts, after-school organizations).
 - ii. Social service teenage club facilities for minors (under 18 years of age).
 - iii. Parks, playgrounds or recreational areas specifically designed to be used by children / teens which has play equipment installed, including grounds designed for athletic activities on either public or private property.
 - iv. Tutoring center for minors (under 18 years of age).
 - v. City Community Centers or Libraries.
 - d. 1,000 foot separation between retail cannabis locations.
 - e. For cannabis manufacturing (non-volatile solvents), distribution / transportation, cultivation (indoor) and testing shall also be required to be 300-feet from residentially zoned properties including Specific Plan Development (SPD) which are primarily residential in nature.
5. Limit the number of Commercial Cannabis Business Permits by category type as follows:
 - a. Maximum of five (5) retail cannabis facilities (storefront and non-storefront)
 - b. Maximum of five (5) manufacturing facilities (non-volatile solvents)
 - c. Maximum of five (5) distribution/transportation facilities
 - d. Maximum of five (5) cultivation facilities (indoor only)

- e. Unlimited number of cannabis testing facilities.
- 6. Applicant selection methodology through a merit-based point system tied to a set of objective standards in order to determine the most desirable cannabis business applications received.
- 7. Applications will be initially screened by the City Manager, or their designee, then reviewed and scored by up to a five-person independent panel with experience in the cannabis industry, government, law, public safety or health. The independent scores of the review panel will be averaged and the top scoring applicants in each license type will be selected. The City Council will hold a public meeting to certify the selection process and the top candidates list. The top candidates will then have up to 12-months to secure a location which complies with zone, setback and buffer requirements specified in the ordinance, obtain a permit from the State based on their license type and submit plans for any permits (Building, OC Health, etc.) that may be required.
- 8. Commercial Cannabis Business Permits must be renewed annually.
- 9. Community benefit component required as part of selection process. Community benefits include, but are not limited to: In-kind donations; Sponsorship of community events; Support, financial or otherwise, for special community events such as fairs, afterschool programs, youth centers, Boys and Girls Clubs, local schools whether public or private; School athletic programs; School clubs; Community centers, senior centers and senior living facilities and parks and recreation.
- 10. Local hiring, social equity and labor peace agreement provisions are also part of the Review Criteria for selection of the top applicants.
- 11. Development Agreement requirement regarding charges and fees.
- 12. Operational Standards including (but not limited to):
 - a. Hours of operation from 9:00am – 9:00pm
 - b. Odor control measures
 - c. Limited exterior signage
 - d. Minors prohibited (except pursuant to a medical recommendation)
 - e. Community relations liaison for ongoing outreach and education.
- 13. Security standards including (but not limited to):
 - a. 24-hour on-site security
 - b. Interior and exterior security cameras
 - c. Approved Security Plans
 - d. Alarm Systems and Security Lighting
 - e. Designated security representative.

Next Steps

Should the City Council direct Staff and the Planning Commission to move forward with the draft ordinance (or with recommended amendments by the City Council) this amendment will be agendaized for a noticed public hearing with the Planning Commission to consider amendments to Titles 3 and 15 of the Municipal Code and make a recommendation to the City Council. The City Council would then consider the item at a noticed public hearing as a first reading. The ordinance would go into effect 30 days after a second reading by the City Council.

Attachments:

- Attachment 1 – PowerPoint Presentation
- Attachment 2 – Draft Ordinance
- Attachment 3 – Draft Application Review Criteria