



Agenda Report

Fullerton City Council

MEETING DATE: OCTOBER 6, 2020

TO: CITY COUNCIL / SUCCESSOR AGENCY

SUBMITTED BY: KENNETH A. DOMER, CITY MANAGER

PREPARED BY: MATT FOULKES, COMMUNITY AND ECONOMIC DEVELOPMENT DIRECTOR

SUBJECT: FULLERTON MUNICIPAL CODE AMENDMENTS
PERTAINING TO REGULATION OF COMMERCIAL
CANNABIS ACTIVITIES CITYWIDE

SUMMARY

Proposed amendments to Fullerton Municipal Code Titles 3 and 15 to regulate commercial cannabis activities including retail (store front and non-store front), cultivation (indoor), manufacturing (non-volatile solvents), distribution/transportation and testing facilities citywide.

RECOMMENDATION

1. Make finding that project is exempt from CEQA review pursuant to CEQA Guidelines Section 15061(B)(3).
2. Introduce Ordinance No. XXXX for first reading by title only and waive further reading of the Ordinance.

ORDINANCE NO. XXXX – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, AMENDING TITLES 3 AND 15 OF THE FULLERTON MUNICIPAL CODE REGULATING COMMERCIAL CANNABIS BUSINESSES CITYWIDE

3. Adopt Resolution No. 2020-XX.

RESOLUTION NO. 2020-XX - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO SOLICIT COMMUNITY MEMBERS TO FORM THE CANNABIS YOUTH EDUCATION, PREVENTION AND OUTREACH COMMITTEE AND ESTABLISH THE GOALS AND OBJECTIVES OF THIS COMMITTEE AS IT RELATES TO PUBLIC HEALTH, EDUCATION, YOUTH DRUG PREVENTION AND PUBLIC SAFETY

PRIORITY POLICY STATEMENT

This item matches the following Priority Policy Statements:

- Fiscal and Organizational Stability
- Public Safety.

FISCAL IMPACT

All costs associated with the development, review, selection, permitting, inspections and renewals for Commercial Cannabis Permits are anticipated to be fully recovered through fees charged to the cannabis business applicants. Additionally, prior to commencing operations, all cannabis activities will be required to enter into a Development Agreement with the City of Fullerton which, among other components, will specify the fees and charges that will be paid by the cannabis business to the City. The revenue the City will receive from these establishments is dependent on the number and type of cannabis businesses that ultimately open and the revenue that those businesses generate. Based on revenue projections from other cities which have allowed similar cannabis businesses, the projected annual revenue is \$150,000-\$250,000 per retail cannabis business, between \$200,000-\$300,000 per manufacturing and transportation / distribution business and \$100,000-\$200,000 per cultivation business for a total annual revenue of \$2.25 to \$3.75 million once fully implemented and if all permits are issued. In addition to the revenue received from these businesses via their Development Agreement, the City will also become eligible to apply for cannabis related grant opportunities from the State through the Marijuana Tax Fund.

DISCUSSION

Recent History 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 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 cities to prohibit commercial cannabis deliveries which originate outside of Fullerton, from delivering to destinations within the City's boundaries.

In September, 2019, Mayor Silva requested that a City Council agenda item be brought forward regarding cannabis regulation. Informational briefings were 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 regulations.

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. 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 regulations. 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 to proceed 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 current cannabis regulations at both the state and local level and the purpose and goals for the public outreach process. Stations were set up 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) and 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 city’s 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 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. This meeting was focused on public safety and was a moderated discussion with the Fullerton Police Chief and Community and Economic Development Director.

City Council Meeting – July 7, 2020

At the City Council meeting on July 7, 2020, City Staff presented a summary of the community outreach events that had occurred over the past five-months and provided a

draft ordinance to regulate commercial cannabis. The recommended action was for the City Council to provide direction/feedback to Staff on the various components of the proposed ordinance. At this meeting the City Council directed Staff to continue to move forward in drafting ordinance amendments to allow and regulate commercial cannabis activities and requested Staff to conduct two additional outreach meetings focused toward Fullerton residents, specifically Spanish speaking residents in south Fullerton.

The first additional outreach meeting was held on July 30, 2020 at the Fullerton Library (Community Room). To accommodate social distancing requirements for indoor gatherings, this meeting was by reservation only and was limited to 20 participants per session. The City held three consecutive one-hour sessions from 5:00pm to 8:00pm to different groups. Each one-hour session provided the same information and allowed participants to ask questions about the proposed ordinance to City Staff which included Community and Economic Development, City Manager's Office and the Police Department. The presentation provided at this session was made available in both English and Spanish on the City's website. The majority of attendees at these sessions were opposed to the City allowing any type of cannabis businesses or activities to be allowed in Fullerton. Strong concerns were raised about the potential for these businesses to increase access to cannabis by children, increased crime around retail cannabis locations and the public health impacts of increased cannabis use, specifically, the effects of second hand smoke. Additional concerns were raised about the location of the retail cannabis businesses should the City Council vote to allow them.

The second outreach meeting was held on August 13, 2020 at Richman Park. This event was conducted outdoors to allow for greater attendance and accommodate social distancing. The City utilized professional translation services to provide information in both English and Spanish. The meeting was attended by staff from Community and Economic Development, City Manager's Office and Police Department. The City also invited Jazmin Aguiar from the Minority Cannabis Business Association to provide additional information about the cannabis industry in Spanish. Similar to the meeting on July 30th, the majority of attendees were strongly opposed to the City allowing any type of cannabis businesses to operate in the City. Similar concerns were raised related to increased access to cannabis by youth, increased crime and the negative health impacts associated with cannabis use. Attendees also expressed concerns that if the City Council were to allow cannabis businesses in the City, they were going to be located primarily in south Fullerton which would further worsen existing crime and public health challenges faced in this area of the City.

State Legislation Regarding Cannabis

Several pieces of legislation were being considered by the State pertaining to the regulation of cannabis activities. The most impactful to cities like Fullerton was Assembly Bill 1356, introduced by Assembly Member Ting in 2019. This bill would have required jurisdictions where more than 50% of the electorate voted in favor of Proposition 64 (AUMA), which Fullerton did, to issue a minimum number of local licenses for retail cannabis businesses within that jurisdiction. The bill would have required the minimum number of those local licenses to be issued to be 1/6 of the number of currently active on-sale general licenses for alcoholic beverage sales in that jurisdiction, as specified, unless the minimum number would result in a ratio greater than one local license for retail

cannabis commercial activity for every 15,000 residents of the local jurisdiction, in which case the bill would require the minimum number to be determined by dividing the number of residents in the local jurisdiction by 15,000 and rounding down to the nearest whole number. If this bill had passed, it would have resulted in the requirement for Fullerton to allow nine retail licenses in the City, substantially more than the amount proposed in the draft ordinance. While this bill will not be moving forward as written, it is possible that an amended version will come back before the legislature in the future as various legislators have expressed concerns over the continued pervasiveness of the illicit cannabis market as most cities in the State continue to prohibit retail cannabis businesses.

Proposed Ordinance

Based on the feedback received from the community outreach events, 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. The attached 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.

Some of the key provisions are:

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 (non-volatile solvents), Distribution / Transportation, cultivation (indoor) and testing would be permitted in the Commercial Manufacturing (C-M), Manufacturing Park (M-P) and Manufacturing, General (M-G) zones.
4. Separation (buffer) requirements from the following sensitive uses:
 - 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. City Community Centers or Libraries
 - d. Separation requirements between retail cannabis locations

- e. 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 Developments (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 retail cannabis facilities
 - b. Maximum of five manufacturing facilities (non-volatile solvents)
 - c. Maximum of five distribution/transportation facilities
 - d. Maximum of five cultivation facilities (indoor only)
 - e. Maximum of two Microbusinesses
 - f. Unlimited number of cannabis testing facilities.
 6. Cannabis operator selection through a merit-based point system consisting of specific criteria in order to determine the most desirable cannabis business based on the information contained in the applications received during a specified period.
 7. A Cannabis Business Permit applicant is required to have a physical location secured, either through deed, lease or property owner authorization as a prerequisite for application submittal.
 8. Applications will be reviewed and scored by an independent panel with experience in the cannabis industry, government, law, public safety or health. The scores of the independent panel review panel will be averaged and the top scoring applicants in each license type will be selected to move forward in the process. The City Council will hold a public meeting to certify the selection process and the top candidates list.
 9. The top scoring candidates in each category will have up to 12-months to 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.
 10. Commercial Cannabis Business Permits issued to these businesses must be renewed annually.
 11. Community benefits component included as part of application review 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.
 12. Local hiring and social equity provisions are also part of the review criteria for selection of the top applicants.
 13. Development Agreement requirement specifying revenue to the City.
 14. Operational Standards include (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.

15. 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.

Planning Commission Action and Recommendations

The Planning Commission held a noticed (virtual) public hearing to review the proposed cannabis ordinance on September 2, 2020. While the Planning Commission is technically only tasked with review over Title 15 (Zoning) of the Municipal Code, because of the interrelated nature of the ordinance provisions recommended in Title 3 (Regulation of Activities) as it relates to cannabis, both Titles were presented to the Commission for review and recommendations to the City Council. Following a presentation by Staff, and deliberation by the Planning Commission, the Commission voted 3 - 2 (No: Cox, Carvalho) to move the Ordinance forward with the following recommended changes:

1. **Section 3.88.090.A** – Fixed a grammatical error.
2. **Section 3.88.090.B.3** and **3.88.090.B.4** – Separated retail cannabis licenses for storefront and non-storefront into separate categories and reduced storefront licenses to a maximum of 2 and non-storefront licenses to a maximum of 3.
3. **Section 3.88.110.B** – Added clarification that no member of the application evaluation committee may be part of any application before the City.
4. **Section 3.88.180** – Change the appellate body from the City Council to the Appeals Board.
5. **Section 3.88.200.E** – Clarification of which sections are applicable related to a change in the form of business entity for transfer of a Cannabis Business Permit.
6. **Section 3.88.250.A.1.c** – Added a 100-foot separation requirement from residentially zoned property, or Specific Plan Development which is predominately residential in nature.
7. **Section 3.88.250.A.1.d** – Clarified that the measurement method for separation is from the property line of the sensitive use to the nearest point on the building or tenant space (if within a multi-tenant building) of the cannabis business.
8. **Section 3.88.250.A.2.a** – Allowed non-storefront retail to be permitted within 600-feet of sensitive uses.

9. **Section 3.88.250.A.2.b** – Removed 300-foot separation requirement from residentially zoned properties for industrial cannabis uses (non-storefront retail, manufacturing, cultivation).
10. **Section 3.88.340.C** – Increased the amount of supply that a non-storefront retailer could maintain on its premises from one-week to two-weeks.
11. **Section 15.30.030.4.A** – Corresponding changes in Title 15 to reflect industrial cannabis uses are permitted in the Commercial Manufacturing (C-M) zone.
12. **Section 15.40.020.A** – Corresponding changes in Title 15 to reflect non-storefront retail as permitted in the Manufacturing, General (M-G) and Manufacturing, Park (M-P) zones.

Grammatical and clarification recommendations (items 1, 3, 5, 7, 10 and 11 above) were incorporated into the proposed Ordinance (Attachment 2). Should the City Council wish to also incorporate the other Planning Commission recommendations (items 2, 4, 6, 8, 9 and 12 above), those amendments will need to be part of any motion by the City Council. The Planning Commission agenda materials from the September 2, 2020 meeting are provided as Attachment 5.

Committee on Cannabis Youth Education, Prevention and Outreach

Should the City Council approve the ordinance to allow commercial cannabis activities to occur, the City will become eligible to apply for state grants through the Marijuana Tax Fund. These funds, generated by cannabis businesses throughout the state via excise taxes, are allocated to cities, health departments and qualified community-based non-profit organizations as grants to provide financial support for development of programs related to substance abuse prevention, public safety, youth education and economic development. Cities which allow commercial cannabis activities are eligible to receive these funds. This Committee, which will consist of community members, non-profit groups, City staff and others, will make recommendations to the City Council regarding allocation of grant funds received or other cannabis revenues dedicated to these programs by the City.

Attachments:

- Attachment 1 – PowerPoint Presentation
- Attachment 2 – Ordinance No. XXXX
- Attachment 3 – Resolution No. 2020-XX
- Attachment 4 – Cannabis Application Review Criteria
- Attachment 5 – September 2, 2020 Planning Commission Agenda Documents
- Attachment 6 – Buffer Maps (600, 800, 1,000 feet and 100-foot residential)