



Administrative Report

N.2., File # 23-7346

Meeting Date: 12/19/2023

To: MAYOR AND CITY COUNCIL
From: ELIZABETH HAUSE, ASSISTANT TO THE CITY MANAGER

TITLE

DISCUSSION AND POSSIBLE ACTION ON THE PROPOSED CANNABIS LICENSING APPLICATION PROCESS AND ASSOCIATED SALES TAX RATES

EXECUTIVE SUMMARY

On September 6, 2022, the City Council adopted cannabis regulatory Ordinances for both inland and coastal areas of the City allowing for no more than two storefront commercial cannabis retailers. The inland Ordinance became effective 30 days after adoption, and the coastal ordinance became effective when it was certified by the California Coastal Commission on March 9, 2023.

On November 8, 2022, the City Council adopted a resolution submitting to the City voters a ballot measure to establish a business tax on cannabis businesses and during the March 7, 2023 municipal election, voters passed Measure CT allowing the City to collect annual taxes from marijuana and hemp business operators. A resolution to codify the tax rates by type must be returned for City Council consideration.

The City Council approved an agreement with HdL Companies (HdL) to review the City's draft cannabis regulatory ordinances and other cannabis-related procedural tasks, including assistance with the development of an application process for future cannabis permits. After extensive research and consideration of the regulations set forth by the City's Ordinances, Commercial Cannabis Business (CCB) licensing application guidelines (Guidelines) were drafted for City Council consideration. On May 16 and September 5, 2023, the City Council discussed the draft Guidelines and provided direction to staff on proposed revisions and requested further research be conducted.

The revisions proposed by the City Council at the May 16, 2023 meeting have been incorporated in the attached draft Guidelines. As part of this report, and per Council's direction at the September 5, 2023 meeting, staff has included an update regarding staff review of the City's regulatory ordinance and drafted Guidelines; a comparative matrix on cannabis application processes in other cities; a review of AB 195 and its implications on taxing the delivery of cannabis; and a recap on the development of the cannabis buffer areas.

Given information provided in this report, staff is requesting direction on the following items: 1) an agreement between the City and Tierra West Consulting (Tierra West) for application processing assistance and possible review of the City's final cannabis regulatory ordinance and application guidelines, 2) development of a permit application process specifically for cannabis delivery businesses, 3) the amount(s) to put in the draft resolution needed to establish a sales tax rate for

cannabis business, including retail sales and delivery, 4) preparation of a resolution to implement process integrity guidelines as discussed in previous meetings, and 5) any particular CCB application process criteria the Council wishes to add, affirm, remove, or have further researched.

BACKGROUND

The analysis and identification of cannabis regulations most appropriate for Redondo Beach began in 2018 with the appointment of a Cannabis Steering Committee. Since that time, the City Council has provided direction, with review and recommendations from the Planning Commission, on regulatory measures for cannabis business within Redondo Beach. The City Council adopted the Cannabis Regulatory Ordinances on September 6, 2022, which allowed for no more than two storefront commercial cannabis retailers.

On November 8, 2022, the City Council adopted a resolution submitting to the City voters a ballot measure to establish a business tax on cannabis businesses. During the March 7, 2023 municipal election, voters passed Measure CT allowing the City to collect annual taxes from marijuana and hemp business operators at rates ranging from 3% to 9% of gross retail sales and from 1% to 3% of gross sales on cultivation, distribution, manufacturing, and testing. A resolution to codify the tax rates by type must be returned to City Council for approval before implementation of the tax.

Additionally, the City Council approved an agreement with HdL to review the City's draft cannabis regulatory ordinances and other cannabis-related procedural tasks, including assistance with the development of an application process for future cannabis permits. This effort included extensive research into processes other cities have established, and consideration of the regulations set forth by the City's Ordinances.

On May 16, 2023, the City Council discussed the draft Guidelines prepared by HDL and provided direction to staff on proposed revisions. That direction from City Council included the following:

1. If the City is able to receive indemnification from successful applicants, include that language as a requirement
2. Change weighting/scoring system - shift some points away from Proposed Site Plan and Community Benefits ("provide options" when it comes to scoring system)
3. Add language that will help screen Community Benefits (e.g. ensure the license holder isn't "donating" to their own non-profit)
4. Ensure it is clear that the License can be revoked if the business is not up and running within a certain period of time
5. Information received from applicants should include whether or not they have cannabis business licenses elsewhere in CA and, if so, what is the status of those businesses
6. Include a revocable bond, so if the Licensee does not pay their taxes the City has some mechanism by which to recuperate those funds

Per City Council direction, items 2-5 above have been reviewed and incorporated into the draft documents. Items 1 and 6 can either be addressed through the Financial Responsibility and Indemnity Agreement or otherwise incorporated into the Application Guidelines.

On September 5, 2023, the City Council considered the above revisions, discussed various elements of the drafted Guidelines, and requested the following:

1. Staff review of the CCB Guidelines to ensure they are objective and that they prescreen applicants as much as possible
2. City Attorney review of cannabis business selection processes in other cities
3. Review of AB 195 with a report back to Council

The below summarizes the responding work in the three requested areas and highlights other items of interest identified during additional staff research:

Guidelines and Regulatory Ordinance Review

In an effort to identify potential inconsistencies within the City's CCB program, and with the intent of mitigating litigation risk to the City, staff began a deep dive into the City's regulatory Ordinances and drafted Guidelines. Staff also conducted extensive outreach to other cities to determine industry practice and to discover any challenges municipalities have encountered in their application processing. One cause for appeal and litigation within other cities' processes was ambiguity in the regulatory ordinances, and inconsistencies between the ordinances, existing code, and the application guidelines.

As a result of this review, staff uncovered several discrepancies that must be addressed prior to approval of the CCB Guidelines. To ensure that revisions to the Ordinances and Guidelines are comprehensive, staff is recommending that Council consider entering into an agreement with Tierra West, which is a consultant group that works exclusively with municipalities and that has been used by numerous other cities in their development of cannabis regulations and processes. Attached to this report, for Council's consideration, are cost proposals from Tierra West. Staff is requesting direction on the Scope of Work for Tierra West; if it should include both Ordinance/Guidelines Review and CCB Application Process Assistance, or only CCB Application Process Assistance. At minimum it is staff's recommendation that Tierra West be hired to assist with the processing of license applications.

Ambiguities and inconsistencies staff would have Tierra West review include, but are not limited to, the following:

- Fees outlined in the Ordinance are inconsistent with those in the Guidelines. Tierra West will consult the City on updating the Guidelines to mirror the Ordinance and brief staff and City Council on fee collection procedures in other cities
- Review and provide recommendations on select sentences within the Ordinance that are unclear or inserted in the incorrect section
- Consult the City on how to update the Ordinance to ensure clarity and distinction between the Developer Agreement and the Commercial Cannabis Permit
- Provide staff and Council options on how to best manage Appeals. In particular, correct the discrepancy within the Guidelines related to appeals processing
- Finalize the fee schedule to ensure the City recovers all application processing and review costs in a transparent and fair manner
- Consult staff and City Council on Guideline criteria still under discussion (e.g. site selection) and provide insight into processes used in other cities

If Council chooses not to engage the Ordinance/Guidelines Review services of Tierra West, staff

would undertake this effort.

City Attorney Review

The City Attorney's Office continues to conduct research on cannabis application processes in other cities and will provide a verbal report to the City Council at the December 19, 2023 meeting.

Assembly Bill 195, Cannabis Delivery and Senate Bill 1186

On June 30, 2022, Governor Newsom approved Assembly Bill 195 (AB195) which amended several components of existing cannabis regulations related to the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). Prior to AB195, existing law required the Department of Cannabis Control (DCC) to establish a track and trace program for reporting the movement of cannabis and cannabis products throughout the primary distribution chain with only certain information collected by the program.

AB195 required the DCC to also incorporate cannabis delivery services into the Track and Trace Program by January 1, 2023, and authorized the DCC to adopt and readopt emergency regulations to implement that requirement. The DCC adopted emergency regulations to implement track-and-trace requirements imposed by AB195 requiring retail sales made via delivery to be recorded in the California Cannabis Track and Trace system (CCTT). To allow for the development and implementation of technical changes to meet these requirements (e.g. third-party software development), the emergency regulations required that delivery-specific information be entered into CCTT beginning no later than April 1, 2023. Though the emergency regulations accounted for tracking deliveries by county, it fell short in tracking deliveries into specific cities. This made it incredibly difficult for local municipalities to collect tax revenues on cannabis delivery.

On November 17, 2023, the Office of Administrative Law approved the DCC's regulatory action to permanently adopt the emergency regulations, and as part of the action the CCTT capabilities were updated to include not just county, but also city and zip code in which deliveries are completed. Staff awaits further information on when these updates will be made to the CCTT and how/when the City may gain access to the data for permitting and tax collection purposes.

Also for Council's consideration is Senate Bill 1186 (SB1186), signed into law on September 18, 2022 and known as the Medicinal Cannabis Patients' Right of Access Act (MCPRA). Beginning January 1, 2024, MCPRA bars a city from adopting or enforcing any regulation that directly or indirectly prohibits retail delivery of medicinal cannabis to patients or caregivers within the city. Prohibited regulations include:

- Limit the number of businesses authorized to deliver medicinal cannabis in the city
- Limit the operating hours of medicinal cannabis businesses
- Limit the number or frequency of medicinal cannabis sales by delivery
- Limit the types or quantities of medicinal cannabis
- Require or regulate the establishment of physical non-storefront premises within the city

In order to ensure the City's existing cannabis regulations are in compliance with SB1186, a request for review has been submitted to the City Attorney's Office.

Given these developments in the cannabis delivery sector, Council may consider directing staff to

begin developing a permit application process for permitting cannabis delivery businesses. If desired, staff recommends including this application development process in Tierra West's scope of work.

Resolution Establishing Sales Tax Rates

A resolution to establish tax rates may be adopted at any time prior to opening the CCB Permit process for applications. It is recommended that City Council establish tax rates for cannabis businesses, including delivery, and direct staff to begin drafting the corresponding resolutions for City Attorney review. As a reminder Measure CT adopted in March 2023 allowed the City to set tax rates for marijuana and hemp business operators at rates ranging from 3% to 9% of gross retail sales and from 1% to 3% of gross sales on cultivation, distribution, manufacturing, and testing.

Resolution for Process Integrity Guidelines

As discussed in previous meetings, passing a resolution to establish process integrity guidelines would help promote fairness, transparency, and accountability to build trust and confidence in the CCB application process. This Resolution would expressly forbid collusive activities among applicants, prohibit promotional outreach, hospitality, or gifts to City staff or elected officials and reiterate communication parameters set by the CCB Guidelines. The CCB Guidelines, as written, already include a section on process integrity (see page 3), though City Council may wish to take this additional, separate action to emphasize the importance of process integrity. Resolution No. CC-1003-294, adopted in 2010 during the procurement process for the City's solid waste handling services contract, is attached for reference. It is recommended that the Council provide input on what, if anything, to include in the Resolution and direct staff to begin document preparation.

CCB Application Criteria for Further Council Consideration and Discussion

Buffer Map Development

Attached to this report is a timeline of the development of the buffer maps for cannabis businesses.

Site Requirement

The basic site requirement in the current draft of the Guidelines informs many of the other criteria for consideration, including:

- Security plan
- Pro forma
- Number of employees/point of sales terminals available and other operational issues
- Neighborhood compatibility
- Number of Proposals Per Site

The City Council could choose to remove the site requirement, and, by extension, these additional criteria, and still have a process. However, this would reduce the number of items in the proposals to differentiate between applicants.

There are pros and cons to both options. Cities that elected to exclude the site requirement confirmed that the number of applications received was incredibly high, but that it was the intent of the Council to allow for as many applicants as possible (i.e. lower the barrier to entry for smaller companies). Cities also believed it would temper the monopolization of the real estate market in the

City by postponing the site requirement until the CUP phase. This said, the absence of a site requirement for the application process did not necessarily mitigate the issue of applicants vying and bidding for prime properties. The City of Pasadena, for example, encountered issues in accepting CUP applications on a first come, first served basis for the same property by different successful applicants. Litigation ensued when there were different interpretations of allowable uses (e.g. library, specifically) as well as litigation related to what was deemed a complete CUP application. Outside of the City's scope of influence, there were real estate bidding wars, resulting in an incredibly high lease payment for the winning bidder, who eventually had to shut down their cannabis business and forfeit their permit due to ballooning overhead costs.

If City Council elects to maintain the basic site requirements in the current draft of the Guidelines, the City's Cannabis Ordinance regulations will need to be slightly modified. If Council chooses to make these amendments, it would be advisable to make a policy decision on how to proceed if the applicant after receiving a license discovers issues with the property and requests a change of location. Staff has begun research into what other cities have implemented and can return to Council with policy recommendations.

At the September 5, 2023 Council meeting, Council requested that staff return with a revised version of O-2022-3240-22, showing what amendments would be necessary if the section regarding property requirements was updated to allow for site attainment as part of the CCB Application (RBMC 6-6.05 (c)(17)). This revised Ordinance was submitted to the City Attorney's Office for assessment and is attached here for Council's review. Staff, upon conferring with other municipalities, was made aware of appeals and litigation spurred by inconsistencies and ambiguity within ordinances and guidelines. As such, staff has also requested that the City Attorney's Office ensure that language within the Ordinance is consistent throughout all sections. As stated above, staff also recommends including Ordinance and Guidelines review in the Scope of Work for Tierra West to help ensure consistency.

Appeals Process

Upon review, staff noted a discrepancy in the appeals methodology outlined in the Guidelines and those outlined in the cited RBMC section. The Guidelines state that an appeal must be filed with the City Manager's Office within 10 days of receiving the notice that an applicant was not moved forward in the application process or not selected for permit issuance. The Guidelines note that appeals "shall comply" with RBMC Section 1-4. However, RBMC Section 1-4 states that an appeal "must be filed with the City Clerk within 14 days after receipt of written notice of such action appealed from...."

In order to ensure process integrity and consistency, staff recommends that Council review the Appeal process in the Guidelines and provide direction on how to best manage appellants. Council may wish to have the City Manager's Office manage appeals, and staff believes the regulatory Ordinance provides for this in Section 6-6.03(b) where it states that "the manner of accepting applications, the manner of application review, shall be determined by the City Manager or designee." To ensure this is, in fact, the case, the question has been submitted to the City Attorney's Office for review.

Community Benefit Narrative

While conducting outreach, staff was informed of the different ways in which other cities manage the Community Benefit section of the application process. It has been stated by cannabis applicants and business owners, and confirmed by staff from other cities, that the narratives typically included in this section are incredibly similar across the board. It becomes a section difficult to score in a manner

that is impactful to the rating process, i.e. the scores generally are similar if not the same as the narratives bear equal effectiveness. Though this may not be of any issue, and though the Council may wish to see some effort on behalf of an applicant to contribute back to the community, most narratives outline actions that are unenforceable by most accounts. During interviews with other cities, it was also confirmed that - although the Council or City Manager may have the right to revoke a permit for lack of compliance with the Community Benefit section - the cities are unwilling to do so after the applicant and city have both invested time and effort into all the other components of the process.

One alternative Council may wish to consider is requiring the CCB permit holders to contribute to a community benefit account managed by the City, similar to the John Parsons Art Fund. The City of Montebello implemented this method and collected \$50,000 per issued permit (cultivation & manufacturing) and 1% of projected gross sales for retail operators. Oxnard required that \$250,000 be paid into a designated community benefit account over the course of three years, and also required that 1% of gross sales be contributed to the same account annually.

Another alternative is to cite within the Guidelines a specific investment amount required to be contributed to local non-profits annually, a commitment that will be memorialized in the CCB Permit. This may be one way in which the Community Benefit Plan section of the Guidelines helps generate comprehensive and Redondo Beach-tailored responses.

In summary, this agenda item seeks Council's discussion and possible action on the following items: 1) an agreement between the City and Tierra West Consulting for application processing and final cannabis regulatory ordinance and Guideline review, 2) development of a permit application process specifically for cannabis delivery businesses, 3) the amounts to include in the draft resolution needed to set the sales tax rate for cannabis business, including retail sales and delivery, 4) direction on a resolution to implement process integrity guidelines as discussed in previous meetings, and 5) any particular CCB application process criteria the Council wishes to add, affirm, remove, or have further researched.

COORDINATION

The development of the CCB Application Guidelines was completed in coordination with the Community Development Department and HdL. The preparation of previous Ordinances and Resolutions were done in coordination with the Community Development Department, the City Attorney's Office, and HdL. Additionally, the City Attorney's Office completed a review and analysis of the application process and draft guidelines as written and will provide a verbal report at the City Council meeting on the legal implications.

FISCAL IMPACT

The fiscal impact to the City for CCB application processing and management is unknown at this point, though a fee study in this area will be completed soon. The application fees are expected to provide full City cost recovery for the processing of all license applications, including any related consulting services costs. Preliminary estimates indicate an application fee between \$12,000 and \$16,000 per applicant, and an annual regulatory fee within the same range for each CCB permittee. These estimates are expected to change depending on final staff resource allocation. Staff will have proposed fee amounts for Council's consideration in the next several weeks, following direction on the Tiera West agreement.

Notwithstanding the above, staff's initial estimate is that each licensed site in Redondo Beach could provide \$250,000 to \$500,000 in additional annual General Fund cannabis business tax revenue, provided the City moves forward with the adoption of a regulatory ordinance and the recommended tax rate of 5%. It is difficult to determine at this time what impact taxing cannabis delivery will have on General Fund revenue.

The preparation of the Ordinances, staff report and community input survey are within the workplan and annual budgets of the Community Development Department, City Manager's Office, and the City Attorney's Office.

APPROVED BY:

Mike Witzansky, City Manager

ATTACHMENTS

- Draft CCB Application Guidelines - Revised June 30, 2023
- Draft CCB Permit Application Required Forms - Revised June 30, 2023
- Resolution No. CC-1003-294 Establishing a City Council Policy on Process Integrity for the City's Solid Waste Handling Services Vendor Selection, dated March 16, 2010
- Brief on Cannabis Buffer Maps
- Comparative Matrix
- Revised O-2022-3240-22
- City Council Administrative Report, September 5, 2023
- Tierra West Cost Proposal