

City of Hesperia

STAFF REPORT



DATE: March 6, 2018

TO: Mayor and City Council members

FROM: Nils Bentsen, City Manager

BY: Michael Blay, Assistant City Manager
Tina Bulgarelli, Administrative Analyst

SUBJECT: Amendment to Ordinance 2017-15 and Ordinance 2017-16 related to Regulation of Commercial Cannabis Activity

RECOMMENDED ACTION

It is recommended that the City Council 1) consider Ordinance No. 2018-01 which will rescind ordinance 2017-22 and amend Ordinance No. 2017-16, amending Chapter 5.50 of the Hesperia Municipal Code related to Commercial Cannabis activities; and consideration of Ordinance No. 2018-03, amending Ordinance No. 2017-15, amending Chapter 16.16 of the Hesperia Municipal Code related to Commercial Cannabis activities; and 2) consideration of the Planning Commission's recommendation to deny Ordinance No 2018-02, related to the removal of a distance requirement from residences within the cannabis zone identified as the General Industrial (G-I) zone district or the Limited Manufacturing (I-1) or General Manufacturing (I-2) General Plan designation and including portions of the Commercial Industrial Business Park (CIBP) zone district within the area bounded by Smoke Tree Street, "I" Avenue, Juniper Street and Santa Fe Avenue East.

BACKGROUND

On September 19, 2017, the City Council adopted Ordinance No. 2017-16, allowing for certain cannabis activities to occur within the City. At that time, the available State license types included Type-M-10 Retailer, with the option to limit activities related to this license to non-storefront delivery only services. The City Council directed staff to prohibit all license types within the City other than Type-M-10 Retailer limited to non-storefront delivery only services.

On November 21, 2017, the City Council adopted Ordinance No. 2017-15 creating land use regulations relating to Commercial Cannabis Activities, and prohibiting certain license types. The City Council also adopted a map detailing the areas where cannabis businesses would be able to operate within the City.

On December 7, 2017, the State of California issued emergency regulations related to licensing of commercial cannabis activities in the State, and created several new license types, including M-Type 9 Non-Storefront Retailer, a retail license that by legal definition does not allow store front activities, and is limited to delivery services only.

On December 19, 2017, the City Council amended Ordinance No. 2017-16 with Ordinance No. 2017-22, prohibiting Type-M 10 Retailer, and allowing Type M-Type 9-Non-Storefront Retailer licenses within the City.

ISSUES/ANALYSIS

Since the adoption of the Commercial Cannabis regulations, staff has concluded there are several recommended items to facilitate administration of the cannabis regulations, which to be properly addressed will require amendments. Each major item is discussed individually below, along with minor administrative clean-up items.

Allowable License Types

On December 7, 2017, the State of California released emergency regulations related to cannabis activity in the state, and included in these regulations were several new license types, including: Distributor Transport Only (Type 13 M and A), Cannabis Event Organizer (Type 14 M and A), "Processor Only" cultivation (M and A), Type N manufacturing (M and A), Type P manufacturing (M and A), and Type S manufacturing (M and A). Staff is recommending the inclusion of these license types as prohibited activities within the City consistent with the existing broad prohibition on commercial cannabis activities. Staff recommends rescinding Ordinance No. 2017-22, which added M Type-9 Non-Storefront Retailer, as this change is included in the recommended changes in Exhibit "A" and Exhibit "C".

Adopting these changes will continue to allow License Type M- Type 9 Non-Storefront Retailer, and continue to prohibit all other commercial cannabis activities within the City.

License Per Location

The City's general policy is to issue one license, regulatory permit, land use entitlement, etc. to one location. Staff recommends formally extending this general policy to cannabis business permits, by expressly allowing only one cannabis business permit per location. This change will allow for the continued administration of cannabis businesses that seek to be next to one another, as there is no distance requirement from cannabis business to cannabis business, while simultaneously ensuring that each business remains responsible for the payment of fees, security, business regulations, etc. that are required of a cannabis business permit.

Commercial Cannabis Insurance Requirements

Staff received direction from Public Entities Risk Management Authority (PERMA), the City's insurance pool, when originally creating the cannabis regulations. PERMA provided the City with suggested insurance requirements that would provide liability protection to the City as it relates to the operation of cannabis businesses. Staff has since received input from several applicants during the application process that these insurance requirements are at levels that are not reasonably attainable in the insurance market for cannabis businesses. Staff researched this issue and requested direction from PERMA. PERMA provided the City with several recommended changes to the insurance requirements that will still protect the City, but will be attainable by commercial cannabis applicants. These recommended changes are included in Exhibit "A".

Security and Lighting

The Hesperia Municipal Code requires security lighting for cannabis businesses. The City requires that lighting plans include a photometric plan to show the proposed security lighting at the cannabis operation. Staff is recommending a change to the existing regulation to include the requirement

that the photometric plan is stamped by an electrical engineer. This change will ensure that each plan meets the lighting security requirement of at least one foot-candle intensity of lighting, that there are no security “holes” within the property’s lighting plan and that the plan is professionally prepared and will meet electrical code requirements. These recommended changes are included in Exhibit “A”.

Loading and Unloading of Cannabis Products

Currently, cannabis businesses must load and unload cannabis product at the rear of a building. Staff is recommending an addition to this regulation to allow for the loading and unloading of cannabis product at the front of the building, as long as the loading and unloading is inside the building, by use of a roll-up door, which must be closed during loading and unloading, and locked at all other times. Several applicants approached the City at the time of their application submittal and requested that product be able to be loaded and unloaded inside the building using a roll-up door. This accommodation meets the intent of the code to conceal cannabis product during the loading and unloading process. Staff recommends accommodating this request as there are many properties, which are otherwise eligible, that have no access in the rear, either because they back up to an existing building and rear access is not provided and cannot be accommodated, or because they are land-locked and paved vehicular access is not available. Potential applicants who would receive this accommodation must have a roll-up door in the front and show on their plans the ability to pull a vehicle completely into the building and close the door. This recommended change is included in Exhibit “A”.

Fingerprint Requirements

The Municipal Code requires that as part of the cannabis business application, the applicant furnish to the City the results of Live Scan (fingerprinting) for each of their employees. Staff was advised by the City Attorney’s office that this requirement for applicants to provide completed and processed Live Scan results on their own is not permissible, as that generally will violate the California Penal Code. Instead, the City - if authorized by the State - may process Live Scans. Staff has not requested, or received, any Live Scan results for any of the applicants’ employees. Staff is recommending removing this requirement.

Staff is also recommending a change to the time limitation to file the fingerprint result of the business owner and applicant. The current regulations state that fingerprint results must be dated within 90 days when the application is submitted. Staff is recommending changing this time frame to seven (7) days. The reason for this change is administrative. Currently, staff has received over thirty fingerprint results, yet only 5 individuals have submitted applications. It is likely that by the time the other individuals who have been fingerprinted submit applications, their fingerprint results may not be dated within the last ninety days. Additionally, should these individuals choose not to apply for a cannabis license, the City must alert the Department of Justice that the City is no longer interested in receiving their results. Revising the time frame to seven days will more closely align the fingerprint process with the actual submittal of an application. This recommended change is included in Exhibit “A”.

Denial or Revocation of Delivery Dispensary Permit

Currently, the Municipal Code allows the City to deny a cannabis business application if the applicant applying for the permit was in violation of the previous prohibition of marijuana dispensaries. An applicant can pay all fines and be eligible to submit an application. This applies

also to employing an individual who was in violation of the City's prohibition of marijuana activities in the past.

Staff is recommending adding additional language to allow the City to deny or revoke an application or license should the business owner be found to be in violation of the items listed in the Business and Professions Code, for which the State would likely also deny a license. These offenses mainly include felony convictions related to drug sale, manufacture, transport, or cultivation. The other suggested additions include the failure to maintain a Seller's Permit and failure to comply with State Law pertaining to cannabis activity.

Staff believes that by including some of the violations that the State would likely deny a license for, the City can continue to include business operators whom meet the spirit and intent of the commercial cannabis market, and exclude those who would likely not be granted a State licenses.

Staff has also included a new section, pertaining to an appeal process for permits that the City denies or revokes. This process will be administrative in nature and will allow for applicants to receive due process should their permit be denied or revoked. These recommended changes are included in Exhibit "A".

Commercial Cannabis Delivery Business Zone

The City Council adopted a cannabis zoning map in November 2017. This map includes areas of the GI, I-1, I-2 and CIPB zones identified as areas where commercial cannabis businesses could locate. Within the GI, I-1, I-2 and CIPB zone there are residences that were built before the area was zoned as industrial or manufacturing. These homes predate the 1980's and some have since been converted to commercial uses. The map and the adopted ordinance are restrictive in that cannabis businesses have to be located more than 600 feet from identified sensitive uses, including residences. Since November, staff has identified several legal non-conforming residences, which, when the 600 foot buffer is applied, exclude large portions of the permissible zone.

There are approximately 28 residences and one mobile-home park located within the cannabis area. Staff estimates that there are 13 additional legal non-conforming residences in the study area that were not included on the map. Removing the distance limitation from residences would allow for additional eligible properties to be available for cannabis businesses.

The City Council could also direct staff to reduce the distance limitation from residences from 600 feet to a lesser distance, such as 300 feet for example.

Removal of the distance requirement from residences would not affect the protection afforded to the other identified sensitive uses, such as schools, parks, daycares, churches, or residential or agricultural zones.

On February 8, 2018 the Planning Commission held a duly noticed public hearing pertaining to Resolution No. PC-2018-01, which recommended the removal of the 600 foot requirement for residences located within the zones where cannabis businesses are allowed. The Planning Commission voted to deny the Resolution. These recommended changes are included in Exhibit "B".

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Ordinance No. 2018-01
2. Exhibit "A" (Amendment to Title 5)
3. Ordinance No, 2018-02
4. Exhibit "B" (Amendment to Title 16-Distance Requirements)
5. Ordinance No. 2018-03
6. Exhibit "C" (Amendment to Title 16-License Types)
7. Ordinance No. 2017-22 (Recommended to be rescinded)