

# City of Hesperia STAFF REPORT



**DATE:** December 17, 2019

**TO:** Mayor and City Council members

**FROM:** Nils Bentsen, City Manager **SECOND READING AND ADOPTION**

**BY:** Mike Blay, Assistant City Manager  
Tina Bulgarelli, Administrative Analyst

**SUBJECT:** Amendments to Title 5 of Hesperia Municipal Code – Cannabis Regulations

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## RECOMMENDED ACTION

It is recommended that the City Council introduce and place on first reading Ordinance No. 2019-19 amending Title 5 of the Hesperia Municipal Code.

## BACKGROUND

In November 2017, the City Council adopted regulations to allow for Commercial Cannabis activity specific to Medicinal Non-Storefront Retailer Delivery Only Dispensaries.

In February 2019, the City Council ratified a tax on Commercial Cannabis businesses and set the rate at 4%.

On October 1, 2019 the City Council considered changes to the cannabis regulations, including an audit for businesses.

## ISSUES/ANALYSIS

The City's cannabis program has been in place for two years. During that time 12 cannabis businesses opened and are operating. Staff continues to fine-tune the cannabis regulations to ensure that not only are the operators complying with City and State law but the regulations reflect the best practices for the administration of the program. Staff has several recommendations for updates to the regulations to ensure that the program continues to run efficiently and effectively. The individual recommendations are discussed below:

### **5.50.020 – Definitions**

Staff is recommending a modification to the definition of Location within Title 5 which will clarify that dispensary permits may only be applied for when there is a physical location i.e. a building or suite of buildings which could be occupied by the applicant. While this change may not affect the program immediately as currently no new applications are allowed, it may become a concern again in the future and the update to the code will ensure that applicants understand that they may not apply for a delivery dispensary permit when there is no building built for them to occupy.

### **5.50.050 – Application for Delivery Dispensary Permit**

Currently the code requires a ventilation plan to be submitted during the application process to ensure that all cannabis odors are kept within the suite or unit where the business resides. Staff has

met with the business owners, and been inside several of the open businesses and the odor is negligible outside the locked cannabis room, and not extremely odorous within the cannabis room. This is due to the fact that all cannabis product is packaged and sealed in containers. Staff is recommending that this language be removed. There is another section of the code that requires odor control and can be implemented if there is a concern or complaint. Additionally, most of the applicants provide room ionizers to mitigate any odor.

#### **5.50.060 – Review of Delivery Dispensary Application**

Staff is proposing codifying the milestone timeframes included in the current stay as part of the Cannabis Program. The reason for this recommendation is to keep the application process moving and to eliminate any potential for an applicant to create a “place holder” in the program with no real intentions of opening and operating a business in Hesperia.

#### **5.50.070 - Denial or Revocation of Delivery Dispensary Permit**

Staff is proposing adding language that specifically allows for the denial or revocation of a license if the applicant does not completely cease unlicensed activity during their application process. The reason for this change is that 90% of the cannabis applicants are operating without a license under Proposition 215 which is not recognized by the State since the adoption of the permanent cannabis regulations and Senate Bill 94. When an application is submitted the applicant is advised to completely cease operations until they are properly licensed by the City and the State. Most cease operations, however, there have been occasions where the applicant has not ceased operations and enforcement is required.

#### **5.50.075 - Appeals**

Staff is recommending adding the term “or designee” to this section so that the City Manager may delegate a person to hear any appeal from a revoked licensee.

#### **5.50.100 - General Operating Standards and Restrictions**

Staff is recommending that the City hours of operation mirror the State. The State limits cannabis businesses to 7 am to 10 pm. Current City regulations require operators to stop taking orders at 7 pm. Staff is recommending extending this to 10 pm to mirror the State. Allowing additional operating hours will continue to allow the cannabis operators to remain competitive in their market which still includes a rather aggressive black market.

#### **5.50.130 - Suspension or Revocation**

Staff is recommending adding language to clarify that if a state license is suspended, revoked or denied, then the City license shall also become revoked. The exception to this is recommended to be if a license is suspended by the state for cause but the applicant is providing a remedy to the state and the license is then reinstated. Staff is recommending allowing for a ninety-day period for a suspended state license to be remedied before considering revocation.

There is a condition in the code that states that the City may suspend or revoke a license if operations cease for more than 180 days including during change of ownership. Staff is recommending two changes to this language. The first to remove the language related to ownership change as this conflicts with the requirement that operations cease during ownership change while the new applicant is vetted by the State and City for eligibility to participate in the Cannabis program. Second, staff is recommending that 180 days be reduced to 90 days. The reason for this recommended change is that if a cannabis business is supposedly operating and paying their taxes but there is no apparent activity at their place of business it calls into question where the applicant may be operating. There is reason to believe it could be enticing to a cannabis operator to move their operations to a more populous area where deliveries are more frequent instead of keeping operations in Hesperia.

This fact checking will occur at business license renewal or if there is cause to believe the business may not be operating any longer or operating at an unapproved location. Additionally, having a business cease operations while holding a valid business license could be used to “hold a spot” that could otherwise be occupied by another cannabis business if the City were to limit the number of allowed licenses.

**ALTERNATIVE(S)**

1. Provide alternative direction to staff.

**ATTACHMENT(S)**

1. Ordinance No. 2019-19
2. Exhibit “A” (Title 5, Chapter 5.50-Cannabis Regulations)