



CITY COUNCIL AGENDA REPORT

City of Anaheim CITY MANAGER'S OFFICE

DATE: JUNE 9, 2020
FROM: OFFICE OF THE CITY MANAGER
SUBJECT: INTRODUCE AN ORDINANCE REGULATING CANNABIS DISTRIBUTION, MANUFACTURING, CULTIVATION, RETAIL SALE, DELIVERIES, AND TESTING LABORATORIES

ATTACHMENT (Y/N): YES **ITEM # 28**

REQUESTED ACTION:

That the City Council, by Ordinance:

1. Add Chapter 4.110 to Title 4 of the Anaheim Municipal Code regulating cannabis distribution, manufacturing, cultivation, retail sale, deliveries, and testing laboratories, and repeal Chapters 4.20, 4.21 and 4.100 of the Anaheim Municipal Code, with both changes to take effect only upon passage of a cannabis tax measure at the November 2020 Election; and
2. Determine that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to sections 15004, 15060(c)(2), 15060(c)(3), 15061(b)(3), 15301, 15303 and 15332 of Title 14 of the California Code of Regulations, because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, because there is no possibility that it may have a significant effect on the environment, because it is not a project, as defined in section 15378, and because it is also the subject of categorical exemptions from CEQA.

BACKGROUND:

At the January 14, 2020 and April 21, 2020 Council meeting, staff was directed to begin working on a proposal that would regulate retail cannabis in Anaheim and to prepare an ordinance for City Council consideration. The item was continued from the May 12, 2020 Council meeting.

In November 2016, California voters passed Proposition 64 or the Adult Use of Marijuana Act (AUMA), which established state licensing requirements for adult use (i.e. non-medicinal) marijuana facilities. Thereafter, the Legislature adopted and the Governor signed into law SB 94, which is known as the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA). SB 94 effectively consolidates the regulatory scheme provided for by the Medical Marijuana Regulation and Safety Act (MMRSA) relating to medical marijuana, with the regulatory scheme provided for by the

AUMA (relating to non-medicinal marijuana), to provide for one licensing structure for cannabis related uses. The State developed the Bureau of Cannabis Control under the Department of Consumer Affairs and have developed regulators for all the various license types identified in SB 94. Under SB 94, cities retain their ability to regulate medicinal and adult use commercial cannabis related uses.

Statewide, Proposition 64 was approved by over 57% of California voters in 2016. The proposition was also approved by 52% of Orange County voters and was approved by a majority of voters in Anaheim as well (51.4%). Nonetheless, Proposition 64 provided cities with the ability to decide whether or not to allow commercial cannabis in their cities. On April 25, 2017, the City Council adopted Ordinance 6409 to prohibit commercial marijuana activities and outdoor cultivation of marijuana.

DISCUSSION:

To promote diverse economic and employment opportunities, Council Member Kring recently directed staff to bring back an Ordinance to regulate cannabis distribution, manufacturing, cultivation, retail sales, deliveries and testing laboratories. In order to regulate commercial cannabis in Anaheim there are several steps that must occur: 1) the adoption of an ordinance and subsequent detailed regulations, 2) approval of a city council ballot initiative authorizing the implementation of a tax on commercial cannabis, and 3) the development of a permitting application process to issue the permits to applicants.

This proposed Ordinance shall only take effect upon passage of a commercial cannabis tax measure at the November 2020 election. If the voters pass such a ballot measure, Chapters 4.20, 4.21, and 4.100 of the Anaheim Municipal Code will be repealed and replaced with the proposed Ordinance (attached). Further, upon the passage of a ballot measure, staff would then develop a merit-based application process to issue permits for commercial cannabis facilities.

While commercial cannabis is regulated at the local level, State law does provide minimum requirements that staff has built upon. All commercial cannabis businesses will be required to obtain a Commercial Cannabis Facility Permit from the city, in addition to a State license, and comply with applicable State licensing requirements, such as operational standards.

As directed by Council Member Kring, the proposed Ordinance includes key provisions for consideration. Under the proposed local ordinance Cannabis businesses would be permitted to operate only in industrial zones, and no cannabis businesses could be located within 600 feet of any schools, day care centers, youth centers, public libraries or public parks, including compliance with State law.

The Ordinance permits the operation of Commercial Cannabis Facilities in each of the five main categories of State-issued license types, as follows:

- Retail- a business where cannabis, cannabis products, or devices for the use of cannabis products are offered, this includes businesses that deliver cannabis as part of a retail sale.
- Indoor Cultivation- a business that provides cultivation of cannabis inside a permanent enclosed building or structure.
- Manufacturing- a business that provides production, preparation, propagation, or compounding of cannabis or cannabis products.
- Distribution- a business that provides procurement, sale, and transport of cannabis and cannabis products.
- Testing Laboratories- a business that is a laboratory facility that offers or performs tests of cannabis or cannabis products, the laboratory must be both, accredited by an accrediting body, and licensed by the Bureau of Cannabis Control.

Further, the Ordinance proposes a maximum number of Commercial Cannabis Facility Permits for each category, excluding testing laboratories, as follows.

- Retail- Twenty (20) total permits
- Indoor Cultivation- Twenty (20) total permits
- Manufacturing- Twenty (20) total permits
- Distribution- Twenty (20) total permits
- Testing Laboratories – No limit on the number of permits

Based on the experience of other cities with cannabis ordinances, it is anticipated that retail permits will be the most competitive permits and that the 20 licenses cap will be reached. The ordinance also proposes a limit on indoor cultivation, manufacturing, and distribution permits as a precaution, though research indicates that these categories are generally small in scale and the caps may not be necessary. No cap on the number of testing facilities are proposed, as these facilities have little to no potential impact on surrounding land uses.

The proposed ordinance allows for retail cannabis businesses, indoor cultivation, manufacturers, testing laboratories and distributors to co-locate on one site. Co-location is only allowed if authorized by State law and the Anaheim Municipal Code.

Prior to commencing operations, an applicant for a Commercial Cannabis Facility Permit will be required to enter into an operating agreement, which will include local hiring and sourcing provisions, a community benefits plan, public safety services, and public outreach and education requirements to ensure the safety of our residents. As part of the permit, applicants will be required to ensure they provide on-site security at retail locations during hours of operation, which are proposed to be between the hours of 8:00 a.m. and 10:00 p.m. In addition, all Commercial Cannabis Facilities will be required to follow operational requirements including, but not limited to:

- Be constructed in a manner that minimizes odors to the surrounding properties and promotes quality design, construction, and consistency with the surrounding properties.

- Maintain sufficient security measures to deter and prevent unauthorized entrance into areas containing cannabis, or cannabis products, and to deter and prevent the theft of products.
- Ensure the facility is monitored at all times by web-based closed circuit television for security purposes
- Prohibit the consumption or sampling of cannabis by a visitor, employee, customer, and/or vendor.
- Refrain from displaying cannabis products or graphics depicting cannabis, which are visible from the exterior of the property, or on any of the vehicles owned or used as part of the Commercial Cannabis Facility.
- Refrain from displaying any signage, packaging, or other display that is “attractive” to minors as defined by State Law, as well as from any outdoor storage or display of cannabis.
- Prohibit any person under the age of 21 years old from entering the Commercial Cannabis Facility or being employed by the business.
- Prohibit the sale, dispensing, or consumption of alcoholic beverages or tobacco products.

The ordinance outlines additional operational requirements for the specific uses- retail, retail deliveries, manufacturers, distributors, cultivators and testing laboratories.

The proposed Ordinance also grants the city the authority to pursue various administrative, civil, and criminal remedies for noncompliance with the additional chapter of the Anaheim Municipal Code. Specifically, these remedies include declaration of a public nuisance, permit suspension and revocation, administrative citations, civil penalties, criminal penalties, and injunctive relief. The broad range of enforcement measures available in the Ordinance will allow the city to tailor enforcement actions to the nature and seriousness of each individual violation.

Next Steps

The regulation of commercial cannabis is a multi-step process including: a) a ballot measure to approve a tax on cannabis sales; b) an ordinance regulating commercial cannabis; and c) a Commercial Cannabis Facility Permit application process. Following the passage of a tax ballot measure, an application for a Commercial Cannabis Facility Permit will be developed. At minimum, the merit-based ranking system will take into account whether an operator has prior successful experience operating a commercial cannabis facility, ownership or control of the location which the business is proposed to operate, the applicant’s operational and security plan, and the proposed community, charitable and local hire programs. The previously listed minimum qualifications is not an exhaustive list, but a starting point and will be further explored once the application criteria is fully developed. In order to score applicants as part of the merit-based system, the City Manager may develop a panel to score the applications and award permits to the top applicants for each commercial cannabis activity category. Given the steps outlined above, staff anticipates Commercial Cannabis Facility Permits to be issued in Spring 2021 or later.

Finally, it is important to reiterate that this Ordinance, if passed, shall only take effect and become operative if the Anaheim voters approve a city council sponsored tax measure for commercial cannabis at the November 2020 election. Should a tax measure fail, this ordinance would not go into effect.

Environmental Impact Analysis:

This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to sections 15004, 15060(c)(2), and 15060(c)(3), of Title 14 of the California Code of Regulations (“CEQA Guidelines”), because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, because there is no possibility that it may have a significant effect on the environment, and because it is not a project, as defined in section 15378 of the CEQA guidelines.

Furthermore, pursuant to Section 15061(b)(3) 15300.2(c), 15301, 15303, and 15332 of the CEQA Guidelines, and as further described in this staff report, there are no unusual circumstances in respect to the proposed Ordinance for which Staff would anticipate a significant effect on the environment and, therefore, the proposed Ordinance is categorically exempt from the provisions of CEQA.

Fiscal Impact

City staff intends to establish regulatory fees that will cover all administrative costs associated with instituting regulations, managing the application process and all other activities related to overseeing the permit and compliance process. There are a number of factors that impact potential revenues for commercial cannabis including the tax rate that is established and the number of cannabis retail and other type of uses that ultimately open in the city. In the early phases of implementation it is anticipated that revenues will could be in the \$1 to \$4 million range as retail operations ramp up. After a couple of years, these revenues could significantly increase as the maximum number of retail permits and other uses begin operating in Anaheim.

IMPACT ON BUDGET:

Currently there is no budget impact, the city anticipates a positive increase to net revenue once the program is up and running.

Respectfully submitted,

Greg Garcia
Interim City Manager

Attachment:

1. Ordinance