



City Council Agenda Item

City Council Meeting Date: April 20, 2021

TO: Honorable Mayor and Members of the City Council

FROM: Jim Throop, City Manager
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Jeff M. Malawy, City Attorney
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SUBJECT: Discussion and Direction Regarding Various Possible Changes to the City's Cannabis Regulations

Recommendation:

Staff recommends the City Council:

1. **Conformity** – allow Planning staff to return to the City Council at a later date to discuss the process for allowing distribution uses, including for cannabis, to be allowed in the Planned Commercial Development (PCD) Zone;
2. **Cannabis Events** – adopt additional regulations on cannabis events, including, for example, the requirement to have a Lompoc license (rather than just a state license to operate in another city), and restrictions on the locations and size of cannabis events;
3. **Adequacy of Application Deposit** – adopt an updated resolution requiring that the minimum deposit not go below \$8,000. If the deposit falls below \$8,000, then all work will cease on the cannabis application, and other related work, until the licensee funds the deposit to a minimum level of \$8,000¹;
4. **Annual Renewals and Fees** – adopt an annual application renewal requirement with a fee to process that application, using the City's Cost Recovery Fee study, and that this fee be updated annually with all other City fees;
5. **Clarify Issues Regarding Pass-through of City Cannabis Tax to Consumers** – place on a ballot a measure that will allow the cannabis tax to be placed on the receipt of the customer, as a separate line item, and that the tax be updated so that it applies only to the purchase price of the actual product; and

¹ Resolution No. 6170(18) currently requires maintenance of a \$2,000 minimum.

6. **Cannabis Oversight Division** – approve, assuming funding is available, the new Cannabis Oversight Division, as described in this staff report, which includes an annual ongoing cost of approximately \$1,247,000, plus approximately \$78,000 in one-time equipment costs; or
7. Give direction to staff requesting additional information; or
8. Take no action.

Background:

At the January 5, 2021, City Council meeting, the City Council requested a future agenda item to review and discuss several matters related to the City's cannabis regulations. This report summarizes those matters and provides some initial staff input regarding them. The matters, in no order of preference, are:

1. Be sure the City's cannabis regulations are in alignment with current State regulations;
2. Amend the City's regulations to allow cannabis events in public parks or other locations;
3. Review the adequacy of the deposit currently required when an application for a commercial cannabis use license (license) is submitted;
4. Review whether the City should be charging an annual fee for renewals of licenses;
5. Clarify whether the City's cannabis tax should, or may, be passed through to consumers; and
6. Present any other changes staff recommends to the City's cannabis regulations or procedures to assist in implementation of the City's processing, review and enforcement of cannabis applications, businesses, and regulations, such as an internal commission to help, for example, the Finance Department, Public Safety Departments, Planning & Building Divisions and code enforcement, to effectively and efficiently carry out the City's responsibilities under the City and state regulations.

Each of those items are discussed below, in accordance with the above numbering.

Discussion:

Item 1: *Conformity with State Cannabis Regulations*

Other than the matter of where cannabis distribution operations are allowed, and whether cannabis events (discussed in Item 2, below) are allowed, staff is not aware of any restrictions in the City cannabis regulations that are more stringent than the state's

regulations. Also, Lompoc Municipal Code (LMC) subdivision 9.36.040 A. requires cannabis uses to comply with the terms, spirit and intent of state regulations. Based on that, if the City's regulations are less restrictive than the state regulations, then the state regulations take precedence.

As to locations for distribution operations of cannabis, at the November 17, 2020, City Council meeting, direction was given to commence the process for allowing distribution uses, including for cannabis, to be allowed in the Planned Commercial Development (PCD) Zone. Planning staff are proceeding with accomplishing that. Due to the current limited staffing available in the Planning Division, staff is unsure when this item will be brought to the Planning Commission for review and recommendations.

Item 2: *Cannabis Events*

Pursuant to Business & Professions Code, subdivision 26200(e), which became effective January 1, 2019, the City may permit temporary cannabis events, at locations designated by the City, where participants who are 21 years of age or older may sell and consume cannabis. An event would very likely take place outdoors and would likely take the form of a festival or expo where vendors would be selling cannabis, and other related items, and eventgoers could smoke or otherwise consume cannabis. State law places several restrictions on such events, which include the following:

- Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older;
- Cannabis consumption may not be visible from any public place or non-age-restricted area;
- Sale or consumption of alcohol or tobacco is not allowed on the premises where the event takes place;
- All participants who are engaged in the onsite retail sale of cannabis or cannabis products at the event must have a state cannabis license;
- The California Bureau of Cannabis Control may require the event and all participants to cease operations without delay if, in the opinion of the Bureau or local law enforcement, it is necessary to protect immediate public health and safety;
- The smoking of cannabis or cannabis products at temporary events is prohibited in locations where smoking is prohibited by state law.

Cities can adopt additional regulations on cannabis events, including, for example, the requirement to have a Lompoc license (rather than just a state license to operate in another city), and restrictions on the locations and size of cannabis events.

The City has broad prohibitions against smoking in both enclosed and unenclosed locations throughout the City, including in all parks and other City-owned recreational areas. (LMC Chapter 8.16.) Those prohibitions also apply to smoking cannabis. If the City Council wishes to allow smoking of cannabis at cannabis events in parks, then an exception to the prohibition could be adopted.

Based on staff's preliminary analysis, permitting cannabis events would require the following actions:

A. LMC Amendments

- i. Amend LMC Chapter 9.36 (Cannabis Uses) to allow and establish regulations for cannabis events, and establish an application process.
- ii. Amend LMC Chapter 17.544 (Temporary Use Permits) to allow cannabis events as a temporary use.
- iii. As appropriate, amend LMC Chapter 8.16 (Regulation of Smoking) and Chapter 9.36 (Cannabis Uses), as well as relevant parks policies, to allow smoking of cannabis at cannabis events.
- iv. As appropriate, amend LMC Title 17 (Zoning Code), Division 2, to specify zones or specific locations where cannabis events are permitted.
- v. Review LMC Title 17 (Zoning Code) Division 3 regarding odor control to determine whether additional regulations would be needed.
- vi. Consider adding provisions to Chapter 9.36 (Cannabis Uses) to limit or control odors and dealing with odor complaints and to ensure any activities, such as camping or set-up/takedown, restrooms, security, are properly addressed.
- vii. Consider amending the City cannabis fees and deposit for such events, perhaps based on hours or days of the event.

B. Guidance Regarding Permitted Locations for Cannabis Events.

State regulations only allow cannabis events in locations designated by the City. Therefore, if the City Council wishes to permit those events, then staff requests guidance as to where it would like those events to be permitted. Alternatively, the City Council can wait to receive a recommendation from the Planning Commission before giving input on proposed locations. As another option, the City could establish general requirements concerning the location of cannabis events and applications could be assessed on a case-by-case basis to determine if the proposed location meets City requirements. The Planning Commission could review the City Council's general requirements and make recommendations for sites or, on a case-by-case basis, could review event applications.

Item 3: *Adequacy of Application Deposit*

Pursuant to Resolution No. 6170(18), each applicant for a license must “pay all personnel and related direct and indirect costs, including payment to City’s third party consultants, for the review, processing and auditing of the application and ongoing operation of the subject commercial cannabis use.” That same resolution defines direct and indirect costs as follows:

“Direct costs include, but are not limited to, such things as staff payroll and outside consultant costs for (i) processing and review of the application for completeness and compliance with the LMC by all applicable City departments and divisions, (ii) telephone and written communications with the applicant/property owner and each of their representatives, (iii) noticing, (iv) outside consultants, (v) preparation of staff reports, (vi) attendance by staff at public hearings, (vii) ongoing review of those operations, and (viii) auditing of those operations. Indirect costs, include, but are not limited to, fully allocated overhead cost based on the then current Lompoc Cost Allocation Plan applied to those direct costs.”

To ensure those payments are made, before the City accepts any application for a license, the person submitting the application must deposit \$11,900 with the City. In addition, for each applicant named in that application an additional \$1,100 must be deposited. If, due to withdrawals the City makes from the deposit, the amount remaining on deposit falls below \$2,000, then the licensee must deposit an additional \$8,000. Any deposit the City retains must be returned to the person making the deposit within 60 days after the denial of a license, the revocation of a license, or the surrender of the license. Based on that, the City always has at least \$2,000 it can draw down on to cover its costs related to a license.

However, staff recommends that \$2,000 minimum be raised to \$8,000, with an additional deposit being required whenever that new minimum is not met. As currently is the case, until the additional deposit is made to maintain that minimum threshold, all work on any application, or other required cannabis related services (except of course what may be required to protect public safety and compliance with all laws and regulations), would be halted. This is primarily due to costs related to consultants whose charges have an immediate and negative impact on City finances if the deposit amount falls below the \$8,000 minimum that is proposed.

Item 4: *Annual Renewals and Fees*

When the City’s current regulations were adopted, the then City Council specifically decided not to require annual renewals of the licenses. Rather, within no less than 30 days and no more than 45 days before each annual anniversary of the final inspection of the operation’s location, the licensee must certify, in writing and under penalty of perjury, the operation is in full compliance with the City and state’s regulations. The City’s costs for reviewing those certifications and the operations of each licensee are covered by the above discussed deposit.

However, after working on numerous cannabis renewals, staff believes that there should be an annual license renewal with associated fees for each business to do the oversight that is required by the same departments that did the initial review of the application. Having an annual renewal and fee will ensure the business remains compliant with local and state laws, and the fee will help offset those costs to the City. After completing the first set of annual reviews, staff has seen that there is a need for an official license renewal with an annual fee given the amount of time required by staff for the reviews. It is recommended that that fee be part of the City's overall cost recovery fee study and be updated annually.

Staff recommends the City Council direct staff to prepare a ballot measure for the City Council to consider placing on an upcoming election to adopt an annual license renewal requirement with associated fees.

Item 5: Clarify Issues Regarding Pass-through of City's Cannabis Tax to Consumers

Currently, the Lompoc cannabis ordinance does not allow a cannabis dispensary to place a line on the customer's receipt showing the additional tax. The City Council had approved language on a ballot measure that stated the tax would be paid by the business, rather than the customer, as such it is not an allowable item on the receipt.

The other issue is that the tax was placed on the total receipt of each purchase such that a business owner was paying tax on the normal sales tax that is collected. As an example, if a customer purchased cannabis product for \$100, the sales tax would be \$7.75 (current sales tax in Lompoc is 0.0775%, or 7.75%), thus, their total bill would be \$107.75. However, the dispensary business would pay the 6.0% cannabis tax on the \$107.75 amount. This is somewhat confusing for businesses, as well as for customers.

However, other businesses that pay taxes in addition to the normal sales tax, such as the Transient Occupancy Tax (TOT – hotel tax), are allowed to show the separate line on a customer's receipt. In addition, the TOT tax is not calculated on the hotel bill that includes any other costs, rather it is just on "...the rent charged by the operator." (LMC 3.12.030.)

In order to make the cannabis tax comparable to other taxes, such as the TOT, staff recommends that the City Council place a ballot measure on an upcoming election to include a change in the manner that the cannabis tax is calculated, and that it be allowed to be shown on the customer receipt, as it is for the TOT.

The reason for the proposed ballot measure is that the cannabis tax was specifically adopted by the voters and cannot be changed without seeking voter approval. Without going to the voters, the City Council may only reduce the City cannabis tax percentage rate that is charged to licensees. (LMC 3.50.040 B.)

5.1 Current Tax on Cannabis

The following taxes are currently applied to cannabis uses and the footnotes for proceeds and microbusiness:

- Lompoc Cannabis taxes
- Cultivation (1% of proceeds²)
 - Retail dispensaries (6% of proceeds for non-medical transactions)
 - Manufacturing/Distribution (annual flat tax of \$15,000 if net income is less than \$2M, otherwise \$30,000)
 - Microbusiness³(based on the above categories with an aggregate limit of 6% of proceeds)
 - Testing (no separate tax)

To date, the amount of revenue the City has received from its cannabis taxes was \$126,251.64 in 2019, \$983,513 in 2020 and \$1,009,211 in 2021 year-to-date (YTD), with an estimated total of \$1,500,000 for 2021. Of those amounts, dispensary operations accounted for all the cannabis revenue in 2019 (there were no other types of businesses operating), \$923,513 in 2020 and \$934,211 YTD, and manufacturing and distribution accounted for \$60,000 in 2020 and \$75,000 YTD.

Item 6: *Request for Any Staff Recommendations to Assist With Implementation of the City's and State's Regulations*

Currently, all reviews, approvals, and oversight of the cannabis licensing process and annual reviews, as well as any calls for questions or advice, are all handled by the current staff. After processing more than 34 applications, out of a current 52, in the last year and half, it has become evident that a dedicated cannabis oversight division needs to be created to handle the large workload increase, and the needed oversight of the regulations on the cannabis industry. Current staff is not able to meet the needs of the applicants, or the business owners due to their normal workload. Each application takes a minimum of approximately 20 hours of staff time to review and approve, in addition, there is a large amount of time needed for the ongoing annual review of each cannabis business. In addition, large, multi-use cannabis developments require specialized review by the consultant who does the initial review before submitting it to the City. There is also the ongoing influx of calls from current and prospective cannabis business owners who are seeking advice, direction, application status or other questions. Those inquiries may seem trivial, but actually are very time-consuming for all the staff involved.

The City's cannabis regulations require the following actions before a cannabis business can be licensed:

² Proceeds means total revenue and moneys received by a commercial cannabis activity before any deductions or allowances, including, but not limited to, rent, depreciation, cost of goods sold, labor costs, losses, interest and taxes.

³ Cultivation on an area less than 10,000 square feet, in conjunction with a licensed distributor, Level 1 manufacturer, and retailer.

Commercial Cannabis Use License Application completed by applicant, which includes background information (with Live Scan fingerprints), financial information on all financially interested persons, site information (with a site plan, security plan, fire safety plan, property owner consent, detailed operations plan, odor abatement plan, disposal plan, inventory control plan, sources of cannabis product, supply chain, procedures to be used at the facility, standard operating procedures (including how local and state laws will be adhered to), recycling and waste disposal plan, youth access restriction procedures, etc. That review is done in four stages:

- a. Stage 1: City Clerk/Planning Division review to ensure the application is complete, appropriate fees paid and the proposed location meets the City's zoning requirements; Environmental review is also performed as a function of the Planning Division;
- b. Stage 2:
 - i. If those first two stages are positive, then review of the application is performed by a consultant with expertise in processing cannabis permit applications for an in-depth review of the application which will include verification the application meets all City and State legal requirements. The consultant then provides a summary report of the application when it has finished its review. The summary report and any other revised or updated information from applicant is delivered to the City Clerk for review.
- c. Stage 3:

The City Clerk then sends the consultant's summary report to various City Departments and Divisions for further in depth review:

 - i. Police Department review is conducted to ensure background checks are complete and accurate, and other law enforcement matters are in order;
 - ii. Fire Department review is conducted to ensure compliance with the Fire Code, as well as other safety considerations unique to each site;
 - iii. Building Division review is conducted and permits obtained for site-specific renovations.

If a department/division does not approve the application, then a memo from that department/division is provided to the City Clerk who then forwards it to consult who then works with the applicant to answer and satisfy any questions or concerns raised by the department or division. The City Clerk is the primary liaison between the consultant and the city departments.
- d. Stage 4:
 - i. Once approved, the application packet is delivered to the City Manager for his/her review and approval. Upon final approval by the City Manager, the City Clerk prepares the commercial cannabis use license and approval letter for the City Manager's signature and the license is then issued to the applicant.

During all stages there may be back-and-forth communications between the applicant, the consultant, and/or the City Clerk. The City Clerk retains control over the application

throughout the entire review process to ensure all steps are properly completed and each department sign off is obtained before issuance of a license.

In addition to managing and supervising the application review and license issuance processes, the City Clerk is responsible for the annual cannabis use business license review/ monitoring process of each commercial cannabis use business, the business tax certificate application process and receiving code compliance complaints for cannabis businesses.

The table below shows the number of applications received since March 2018.

Commercial Cannabis Use License Applications Received/Processed

Year	# of Applications	# of Licenses Issued	# of BTCs Issued
2018	26	10	0
2019	16	11	1
2020	7	13	13
2021	1	0	0

Staff has been suggesting for some time that a cannabis oversight division is needed in order to keep track of licensing, planning, environmental reviews and permitting, annual security onsite reviews, and financial audit needs. The following is a suggested staffing model for such an oversight division. These suggestions come after discussing or reviewing what other cities, with cannabis-related businesses, have done. Currently, Lompoc is one of the very few cities without a cannabis division. In addition, as the cannabis industry grows in Lompoc, this proposed division becomes even more critical for the success of the business community and the City.

Some additional input from City departments:

From Lompoc Fire Department:

- Require a technical report be submitted by a Fire Protection Engineer (FPE) for each location for all activities, except for retail dispensaries. Submittal of the FPE report would be required prior to issuance of a building permit for construction. The report would need to be updated annually and submitted to the Lompoc Fire Department and would need to state the licensed FPE had performed a site review to ensure current conditions and contents in the technical report.
- The report currently required from a Certified Industrial Hygienist needs to be updated annually for each location with all activities, except for retail dispensaries. That would provide operational on-site updates as to whether any changes in the chemicals present would have any adverse effects to employees while offering mitigations to ensure site safety.

- Make clearer in the application a fully functional fire alarm system is required for all cannabis businesses.
- Require any retail operation that includes a smoking lounge to provide fire sprinklers for the entire operation.
- Make clearer fire sprinklers are required throughout an entire building, even in existing warehouses that are to be reused for cannabis activity, including distribution and storage.

From Planning Division:

- Review Title 17 (Zoning Code) Division 3 to determine what new or revised development standards and/or environmental thresholds are needed to deal with odor complaints that are difficult to address under the current regulations/standards.

Environmental Review

Pursuant to Business and Professions Code section 26055(h), if any of the above discussed possible changes to the City's cannabis regulations would result in requirements for discretionary approval, before the City could issue a license for a cannabis use,, then the consideration and approval of those regulatory changes would be exempt from the analysis required by the California Environmental Quality Act (CEQA) and related State CEQA Guidelines (Guidelines). That exemption from CEQA and the Guidelines is effective until July 1, 2021, unless Senate Bill 59 is enacted, which, as currently written, would extend that exemption until July 1, 2028. In addition, depending on the precise nature of the possible changes, some CEQA and Guidelines analysis may still be required before adoption of those changes. In instances where discretionary review and approval are required by the City's existing or newly adopted cannabis regulations, whether for cannabis licenses, related construction or activities, CEQA compliance will be required.

Staff Suggestions for a Cannabis Oversight Division

Staff has found that the current staffing model and organizational design is not conducive to a safe and secure cannabis business licensing, permitting, and oversight system. The current cannabis committee met and discussed what was needed for a proper oversight of the new and burgeoning cannabis industry within the City.

Due to the demand of staff time focused on cannabis efforts, the addition of a position within the City Clerk's office solely dedicated to cannabis activity will provide the public, as well as current business owners and future applicants a higher level of customer service, and a more efficient and streamlined work model. The new position will be the touch point for all commercial cannabis businesses current and new as well as the base support for the City's commercial cannabis team. The position will work as a business concierge and coordinator for the Commercial Cannabis Use (CCU) licensing process

with all City Departments and Divisions involved in the application process. The proposed position will also be the primary contact person for the building and planning processes to assist applicants in operational compliance. Applications for Commercial Cannabis Events (CCE), if the Council approves a CCE process, will also be handled by this position. This position will oversee all compliance complaints for the CCU industry in the City, which would include odor and noise complaints, late tax payments, or any number of compliance issues that may arise and work closely with public safety to alleviate those complaints.

The Fiscal Impact section includes the needs of the departments currently responsible for a portion of the oversight:

Fiscal Impact:

Preparation of any proposed amendments to the LMC and General Plan will require costs for staff and City Attorney time.

The proposed cannabis oversight division staffing costs:

Fire

Fire Inspector I/II	\$101,000
Office Support Staff	\$90,000

Community Development

Plans Examiner/Building Inspector	\$105,000
Consultant (budget only)	\$50,000
Associate Planner	\$114,000
Consultant – Environmental Review	\$40,000
Equipment for cannabis enforcement	\$10,000
Neighborhood Preservation Officer (Cannabis)	\$110,000
Supplies, Training, Equipment	\$20,000

Police

Sergeant	\$178,000
Police Officers (2)	\$248,000
Police Records Technician	\$71,000
Police Equipment (2 plain vehicles)	\$60,000
Training	\$20,000
Office Space Costs	TBD

City Clerk's Office

One full-time Development Program Specialist I/II	\$100,000
Equipment	\$8,000

Total Estimated First Year Costs **\$1,325,000**

These estimated costs are to establish the initial cannabis oversight division. Once established, the division will evaluate what other potential changes may be necessary to ensure proper oversight of the growing cannabis industry in Lompoc.

Conclusion:

The cannabis industry is a fast growing industry in the City, and changes need to be made to ensure the health and safety of the community, as well as for businesses. The aforementioned recommendations should be reviewed and acted upon at the earliest opportunity, to ensure that proper oversight is maintained.

Respectfully submitted,

Jim Throop, City Manager

A handwritten signature in blue ink, appearing to read "Jim Throop", written over a horizontal line.

Jeff M. Malawy, City Attorney