



City Council Agenda Item

City Council Meeting Date: August 16, 2022

TO: Honorable Mayor and City Council Members

FROM: Jeff Malawy, City Attorney
jmalawy@awattorneys.com

SUBJECT: Review and Discussion of the Cannabis Use Ordinance and Regulations, and a Potential Moratorium or Cap on Issuance of Commercial Cannabis Use Licenses

Recommendation:

Staff recommends the City Council review and discuss the City's cannabis ordinance and regulations and provide any direction to staff that the City Council desires.

Background:

On July 19, 2022, the City Council requested a future agenda item to discuss a potential moratorium on the issuance of commercial cannabis licenses, and to discuss and review all of the City's cannabis ordinance and regulations.

This staff report provides copies of the City's cannabis ordinance and regulations and a brief overview, a description of the City's cannabis license application process, and a discussion of issues to consider regarding a potential moratorium or cap on licenses. This information is provided as a starting point for a City Council discussion. Staff will also be available at the City Council meeting to answer Council's questions and provide further information.

City's Ordinance and Regulations

Local governments have regulatory and land use authority over commercial cannabis operations within their boundaries. There are multiple types of commercial cannabis operations, including retail sales, cultivation, testing, manufacturing and distribution. Cities may completely prohibit these businesses, allow all types, or allow some types but not others. (Business & Professions Code § 26200(a).)

Lompoc allows for retail, cultivation, testing, manufacturing, and distribution cannabis uses. Lompoc Municipal Code (LMC) Chapter 9.36, entitled "Cannabis Uses," regulates commercial cannabis activities within the City (Attachment 1). A local commercial

cannabis use license (CCU License) is required to own and operate a commercial cannabis business in the City. (LMC sections 9.36.010(A), 9.36.080(A), see Attachment 1.) The City has also adopted operational regulations for commercial cannabis uses (Attachment 2).

Lompoc does not place a cap on the number of licenses issued, but does have restrictions on the locations where each type of cannabis use can operate. Current Lompoc zoning rules for cannabis uses are found on Attachment 3. State law buffers from sensitive uses are found on Attachment 4.¹

The City's cannabis tax ordinance is Attachment 5.

City's Licensing Process

The following steps are undertaken pursuant to the City's Cannabis Ordinance for processing and issuance of City CCU Licenses:

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 the first stage review is 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.

¹ The State's Department of Cannabis Control also maintains 207 pages of state regulations that apply to commercial cannabis businesses throughout California. They can be found here:
<https://cannabis.ca.gov/wp-content/uploads/sites/2/2022/07/DCC-Cannabis-Regulations-as-of-6.6.2022.pdf>

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 the consultant 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 department review is complete, 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.

Discussion:

Potential Moratorium or Cap on Licenses

Consistent with local government's broad authority, rather than allow all qualified applicants to be issued a license, a city may place a cap on the number of local licenses issued.

August 16, 2022

Review of Cannabis Ordinance and Potential License Moratorium

Page 4 of 6

The LMC does not provide for a cap on the number of licenses that may be issued to qualified applicants. On July 19, 2022, the City Council requested a future agenda item to discuss potentially placing a moratorium on approval of City cannabis licenses – essentially a cap on the number of licenses allowed in the City.

As starting points for the discussion, below are preliminary issues to consider for potentially adopting a cap on the number of City licenses.

1. **How Many Licenses?** At present there are 46 active licenses in the City, as well as 16 pending license applications that are being reviewed by the City (Attachment 6). Those licenses are broken down as 26 retail; 16 distribution; 10 manufacturing; 7 processing; 2 laboratory; and 2 microbusiness. A number of options present themselves for potentially limiting the number of licenses.
 - a. **Allow only currently active licenses.** The LMC could be amended to provide for no more approvals of new licenses. The issue of what to do with pending applications would need to be considered (the code could be amended to address those as well). And, when a business stops operating or its license becomes invalid, then would the City issue a new license to fill that spot, or keep the moratorium in place?
 - b. **Set number of future licenses to be issued (and no more).** This could be accomplished through a LMC amendment once a number is determined by the City Council.
 - c. **Set goals for reductions of current number of licenses.** The City Council could decide how many fewer licenses (from current number) are desired in the City, and then direct staff to come back with further analysis on possible elimination of current licenses. LMC section 9.36.010(C) expressly provides that issuance of a license does not confer a vested right. Any business subject to license elimination must be allowed an “amortization period” – a time period to continue operating to receive the benefit of its investment before it must cease operations. Issues include deciding which of the current businesses would be subject to license removal and amortization, as well as the length of time for amortization.
2. **Which Licenses?** At present the City allows all types of commercial cannabis operations (e.g., retail, cultivation, manufacturing, testing, distribution).
 - a. **Types.** The City could provide for license caps on just some types of operations, while allowing other types to remain unlimited. For example, cap the number of retail operations, while allowing other types, such as cultivation, to have no cap.
 - b. **Differentiation within the types.** The City could also *within* the types of licenses set certain limits. For example, the City could cap the number of licenses for large cultivation sites (e.g., over 10,000 sq. ft.), but place no cap on smaller cultivation sites (e.g., less than 10,000 sq. ft.) (Business & Professions Code § 26061). Or, the City could allow for unlimited licensing

for indoor cannabis cultivation, but limit the number of outdoor cultivation sites. Likewise, manufacturing can be differentiated between use of volatile solvents as opposed to non-volatile solvents [Business & Professions Code § 26130(a)(1-2)]. At request of the City Council, staff could bring back more details on differentiation between the types of licenses for consideration of certain caps.

- c. **Limited areas / separation requirements.** The City also could provide for more limited areas of the City where a lawful licensee can operate, and/or stricter separation requirements, and thereby provide for an effective limit on licenses. Current Lompoc zoning rules for cannabis uses are found on Attachment 3. State law buffers from sensitive uses are found on Attachment 4.
3. **Selecting Licensees.** If the City were to limit the number of licenses, then the City would need to provide for a procedure for selecting which applicants are issued the limited number of licenses (assuming more applicants apply than there are licenses available). There are three methods that are often considered by cities.
 - a. **Random.** The City could have a deadline for submission of applications, and then have a random method of selection, leaving the award of licenses to chance. While this method allows for a completely unbiased process, it also can result in substandard applicants receiving the limited licenses.
 - b. **First-In-Line.** The City could process the applications in the order received, and then issue licenses until the cap is realized. If there is substantially more interest in licenses than licenses available, this method can prove to be unworkable and burdensome, as it would be difficult to prioritize amongst applications turned in at the same time. If, however, open licenses are anticipated to be available, then this method can work. Again, while this method allows for a completely unbiased process, it also can result in substandard applicants receiving the limited licenses.
 - c. **Selection Criteria.** The City also could have a procedure whereby applications are ranked based on certain criteria, such as financial strength, viability of business plan, track record, community benefits, etc., and the highest ranked applicants are issued licenses. If this method is used then staff strongly recommends clear, articulate and objective written criteria be adopted. Possible graders include staff members, City directors, outside evaluators, Council, or some combination of these graders. This method is a common one used by cities when there are limited licenses, as it allows for the “best” (as reasonably defined by the City in articulated written criteria) applicants to receive the limited licenses. At request of Council, staff can bring back further analysis on details and options for this method.

Fiscal Impact:

There is no fiscal impact of the City Council reviewing and discussing the City's cannabis ordinance and regulations and potential license caps. Depending on City Council direction for ordinance amendments or process changes, fiscal impacts may result, which would be disclosed in future staff reports.

Conclusion:

The information in this staff report is intended to facilitate a City Council discussion. Staff will be available to answer questions and provide further information at the City Council meeting, and will receive any direction the City Council provides.

Respectfully submitted,



Jeff Malawy, City Attorney

- Attachments:
- 1) Lompoc Cannabis Ordinance – LMC Chapter 9.36
 - 2) Lompoc Cannabis Operating Regulations – Resolution No. 6147(17)
 - 3) Zoning Requirements for Cannabis Uses in Lompoc
 - 4) State law buffers for Permitted Cannabis Activity
 - 5) Lompoc Cannabis Tax Ordinance – LMC Chapter 3.50
 - 6) Report of Commercial Cannabis Use Business License Applications