



City Council Agenda Item

City Council Meeting Date: February 7, 2023

TO: Dean Albro, City Manager

FROM: Brian Halvorson, Planning Manager
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SUBJECT: Consideration of Whether to Prepare an Ordinance That Would Allow Cannabis Distribution in Planned Commercial Development (PCD) Development Zone

Recommendation:

Staff recommends the City Council receive input and provide direction to staff regarding whether to conduct environmental review and prepare a draft ordinance, for future consideration, that would allow cannabis distribution in the Planned Commercial Development (PCD) zone.

Background

At the February 18, 2020, City Council meeting, a majority of Council Members at that time approved a request to bring back an agenda item concerning an amendment to the City's Municipal Code in order to allow cannabis distribution in the Planned Commercial Development (PCD) zone and allow cannabis events. Earlier last year, the City Council acted on the cannabis event item (allowing events in certain designated parks), but the cannabis distribution item was postponed for further consideration. Therefore, staff has reviewed this request and consulted with the City Attorney's Office in order to outline options for completing this request.

Before bringing the request back to the City Council for consideration, the City Council requested that staff receive input first from the Planning Commission and provide that input at a future City Council meeting. Therefore, on December 14, 2022, the Planning Commission considered the request and recommended that Cannabis Distribution be prohibited in the PCD zone (no change to the existing Zoning Code).

Discussion

Currently, 269 parcels are zoned PCD. The majority of those parcels are located along H Street and Ocean Avenue (Attachment 1). Particularly along H Street the parcels often include retail centers, grocery stores, hotels/motels, general/medical offices, restaurants, gas service stations, etc., which are in close proximity to residential uses.

Currently, the only cannabis uses allowed by right (permitted) in the PCD zone are retail dispensaries and cannabis testing laboratories (Attachment 2). No other cannabis uses are currently permitted in commercial zones. The City's Industrial (I) and Business Park (BP) zones (Attachment 3) allow retail dispensaries (with a CUP) as well as cannabis testing laboratories, cannabis cultivation and cannabis manufacturing as a permitted use without the requirement for a CUP.

Cannabis distribution or wholesale is included in the definition of "*Cannabis Manufacturing*," and is therefore currently only allowed in the Industrial and Business Park zones. "*Distribution*" is a defined term in the City's cannabis ordinance and state law (LMC Chapter 9.36 and Business & Professions Code 26001(r)), which define it as "*the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to State Law.*" Rather than retail sale by a dispensary to a customer, distribution is the wholesale and transportation of cannabis or cannabis products in bulk, where the entity purchasing the cannabis or cannabis products is a retailer, not an end user. Distribution would also potentially include storage of large amounts of cannabis and cannabis products on site while awaiting transport or sale.

Options to Consider for Cannabis Distribution in the PCD Zone

Based on the City Council's request, and staff's preliminary analysis, permitting cannabis distribution in the PCD zone could be achieved under two options. Each option could provide the same outcome and should be considered in terms of the current business climate for cannabis and the City Council's Cannabis Ad Hoc Committee that was recently formed on September 20, 2022.

Option #1: Consider amending the 2030 General Plan Land Use Element and Zoning Code to explicitly allow Cannabis Distribution in the PCD zone. Under this option, staff would conduct environmental review and prepare a draft ordinance for consideration at public hearings by the Planning Commission and City Council, to allow cannabis distribution in the PCD zone.

If adopted after environmental review and public hearings, this option would amend the General Plan to call out this use in the General Commercial land use category description and definition (Attachment 4) and Zoning Code to explicitly allow distribution with a CUP. If an applicant wanted to pursue cannabis distribution in the PCD zone, the use would be allowed if the City could make the required findings to issue a CUP. If this option is preferred by the City Council, then staff recommends that the use require a CUP as large quantities of cannabis may be stored onsite and impacts (noise, traffic, odor, waste) to existing businesses in commercial centers and nearby residents are expected for a use that typically is located in the Business Park or Industrial zoning district.

In addition, an amendment to LMC Section 17.708.020 (Land Use Types) to add a definition for "*Cannabis Distribution*" would also be required. This option would provide the most certainty to the business community if a property owner and/or applicant wanted to introduce cannabis distribution in this zone. This option would require additional environmental review that has not been allocated in the current Planning Division budget.

At a minimum, staff anticipates a Mitigated Negative Declaration, which may cost an estimated \$35,000-\$45,000 to be completed using the City's environmental consultant.

It is important to note that this amendment could also be initiated anytime by a property owner or applicant that is interested in pursuing an amendment on their own (without the City paying the costs associated with such an amendment).

Option #2: Come back to this request at a future City Council meeting once the Council Ad Hoc Committee returns with their additional research, findings, and recommendations regarding potential amendments to the Cannabis Ordinance on March 21, 2023.

At the September 20, 2022, regular City Council meeting, the City Council discussed the potential for a moratorium on the issuance of commercial cannabis use licenses and an emergency ordinance suspending the issuance of such licenses and the formation of an Ad Hoc City Council Committee to assess and recommend revisions to the City's cannabis regulations. Following discussion and input from the public and the cannabis business community, the City Council decided not to approve a moratorium or issue an emergency ordinance but did establish an Ad Hoc Committee that will return to the City Council meeting on March 21, 2023, with additional research and information on recommended next steps regarding the potential to amend Chapter 9.36 (Cannabis Uses).

[It should be noted that as part of this report the Planning Commission was originally provided with a 3rd potential option (at the December 14, 2022, meeting) for the consideration of allowing cannabis distribution uses in the PCD zone without any General Plan or Zoning Code amendment, but rather simply with a CUP under the existing code. Upon further discussion and analysis of this option with the City Attorney's Office, this option was not possible (code findings related to General Plan consistency could not be made). Therefore, this option has been excluded from this report.]

Fiscal Impact:

Currently, there is no funding allocated in the Planning Division budget to process amendments and associated environmental review through a consultant to allow Cannabis Distribution in the PCD zone. Those costs are roughly estimated to range somewhere between \$35,000 to \$45,000. Any additional appropriations would come from the General Fund.

Conclusion:

Staff has provided input from the Planning Commission and outlined options for the City Council to consider regarding allowing Cannabis Distribution uses in the PCD zone. Based on the City Council's direction, staff will proceed accordingly.

Respectfully submitted,

Brian Halvorson, Planning Manager

APPROVED FOR SUBMITTAL TO THE CITY MANAGER:

Christie Alarcon, Community Development Director

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Dean Albro, City Manager

- Attachments: 1) Parcels Zoned PCD
2) Allowed Uses in PCD Zone
3) Allowed Uses in Industrial Zones
4) General Commercial (GC) Land Use Category & Definition