

COMMITTEE MEMBERS
Timothy A. McGallian, Chair
Dominic D. Aliano, Member

Civic Center
1950 Parkside Drive
Concord, CA 94519
www.cityofconcord.org



**Special Meeting of the
Policy Development &
Internal Operations
Committee**

Monday,
February 24, 2020

5:30 p.m.

Permit Center
Conference Room
Wing D
1950 Parkside Drive

AGENDIZED ITEMS – The public is entitled to address the Committee on items appearing on the agenda before or during the Committee’s consideration of that item. Each speaker will be limited to approximately three minutes.

1. ROLL CALL

2. PUBLIC COMMENT PERIOD

3. REPORTS

- a. Considering the process and criteria for reviewing and approving cannabis retailer license applications to form a recommendation to the City Council.
Report by Coleman Frick, Senior Planner, and Karan Reid, Director of Finance.

CEQA: Not a project under Public Resources Code 21065, Guidelines Sections 15060(c)(2), 15061(b)(3), or 15378; in the alternative, CEQA does not apply under Business and Professions Code Section 26055(h).

4. ADJOURNMENT

Next Meeting: Regular Meeting
Date: 3/11/2020 5:30 p.m.

In accordance with the Americans with Disabilities Act and California Law, it is the policy of the City of Concord to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. If you are disabled and require a copy of a public hearing notice, or an agenda and/or agenda packet in an appropriate alternative format; or if you require other accommodation, please contact the ADA Coordinator Tianjun Cao at (925) 671-3243, at least five days in advance of the hearing. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility.

Distribution: City Council
Valerie Barone, City Manager
Susanne Brown, City Attorney
Kathleen Tropa, Assistant City Manager
Joelle Fockler, City Clerk



Staff Report

Date: February 24, 2020

To: Committee on Policy Development & Internal Operations

From: Valerie J. Barone, City Manager

Reviewed by: Andrea Ouse, Director of Community and Economic Development
Mindy Gentry, Planning Manager

Prepared by: Coleman Frick, Senior Planner
Coleman.frick@cityofconcord.org
(925) 671-3281

Karan Reid, Director of Finance
Karan.reid@cityofconcord.org
(925) 671-3192

Subject: **Considering the process and criteria for reviewing and approving cannabis retailer license applications to form a recommendation to the City Council.**

CEQA: Not a project under Public Resources Code 21065, Guidelines Sections 15060(c)(2), 15061(b)(3), or 15378; in the alternative, CEQA does not apply under Business and Professions Code Section 26055(h).

Report in Brief

The City of Concord is considering a number of potential changes to Chapter 5.80 (Cannabis) of the Concord Municipal Code (CMC) regarding the permitting and regulation of commercial cannabis businesses within the City. These changes would allow up to five cannabis manufacturers, six retailers (three storefront and three non-storefront), two microbusinesses, and two Type 11 distributors. No numerical limit on the number of licenses would be placed on testing laboratories, and all license types would allow both medicinal and adult-use.

City staff is requesting that the Council Committee on Policy Development and Internal Operations (PD&IO) consider and recommend to the City Council the process and guidelines for reviewing and approving applications for commercial cannabis licenses for retailers, both storefront and non-storefront. Under the proposed guidelines, licenses for both storefront and non-storefront cannabis retailers would be subject to a competitive Request for Proposal (RFP) process, while licenses for all other cannabis business types would be non-competitive. Competitive licenses would be approved by the City Council. Non-competitive licenses would be approved by the Police Department.

Recommended Action

Consider and recommend to the City Council the process and criteria for reviewing and approving cannabis retailer licenses applications.

Background

The City's current effort to revise the existing regulations began with a Joint Study Session of the City Council and the Planning Commission on April 2, 2019, at which staff was directed to pursue regulations for additional commercial cannabis activities including adult-use and medicinal non-storefront retail. While both the Planning Commission and City Council were less supportive of storefront retail and microbusinesses, both bodies directed staff to address both business types in the proposed regulations so Council could provide additional direction. The Council expressed interest in developing a competitive application process for cannabis retailers and exploring the use of community benefit and/or development agreements to generate revenue for the City.

On August 13, 2019, following an earlier request for clarification from Vice Mayor McGallian, the Council provided further direction to staff to allow adult-use for cannabis manufacturing and distribution licenses and to increase the number of licenses for manufacturing, distribution and to remove the cap on testing laboratories.

The direction provided to staff at the April 2, 2019 and August 13, 2019 meetings formed the basis for the recommendations in staff's comprehensive report to the Council at the November 5, 2019 meeting.

At its November 5, 2019 meeting, the City Council considered the introduction of an ordinance amending Concord Municipal Code Chapter 5.80 (Cannabis) to:

- add adult-use commercial cannabis licenses for manufacturing and distribution;
- increase the maximum number of commercial cannabis licenses for manufacturing, distribution, and testing laboratories;

- allow commercial cannabis licenses for medicinal and adult-use retail (storefront and non-storefront); and
- allow commercial cannabis licenses for microbusinesses.

During the meeting, the Council provided consensus or unanimous support for a number of specific recommendations provided by staff including that all commercial cannabis businesses be required to enter into an agreement, such as a community benefits agreement and/or a development agreement, providing certain benefits to the community.

In addition, the Council unanimously supported the recommendation that applications for both storefront and non-storefront cannabis retailers would be subject to a competitive Request-for-Proposal (RFP) process. This requirement is not proposed to apply to microbusinesses, even if they have a non-storefront retail component (but not a storefront component).

Given the additional Council direction, the proposed Ordinance was not introduced during the November 5th meeting, but is rather being revised and will be brought back to the Council for consideration at its March 24th meeting.

In a parallel process, the Planning Commission met on February 5th to consider and recommend to the City Council amendments to the Development Code for commercial cannabis land uses. Those Development Code changes will also be brought to the City Council for consideration at its March 24, 2020 meeting.

The target date for Council consideration of the PDIO Committee recommendations for the RFP process is April 14, 2020 with RFP issuance sometime after May 7, 2020.

Analysis

Competitive Selection Process for Cannabis Retailers

The City Council has directed staff to develop a competitive Request for Proposal (RFP) selection process for both storefront and non-storefront cannabis retailers. The RFP would invite applications for up to three of each type of cannabis retailer (three storefront and three non-storefront). The RFP requirement will be included in the draft ordinance under Section 5.80.090 "*Conditions for specific cannabis licenses*".

The RFP process would require cannabis business applicants to submit an application for consideration by the City for one of the six available retail cannabis licenses (three storefront retail and three non-storefront retail). The process would entail a merit-based approach to rank applications.

To assist with development of the merit-based review and selection process, the City retained the services of HdL Companies. HdL's Cannabis Services team has worked

with over 150 California cities and counties to provide cannabis ordinance development and review, community outreach, merit-based application and permitting processes, cost recovery studies, fiscal analyses, regulatory/financial compliance reviews, and law enforcement training. HdL's team members have experience conducting over 16,000 cannabis compliance inspections and financial audits in Colorado, California, and Nevada. Most notably, HdL's team has reviewed, scored, and processed over 1,800 cannabis business applications in the last three years in California and has conducted over 2,500 background checks for applicants.

Development of the RFP would be guided by the Council Committee on Policy Development & Internal Operations. All of the requirements would be detailed in an Application Procedures & Guidelines document to be prepared by staff and HdL and approved by the City Council.

Application Submittal Requirements

The Application Procedures & Guidelines will be a Council-approved document that details all of the submittal requirements, scoring criteria, process, and timeline for reviewing, scoring, ranking, and final selection of applications. Applicants would be required to hand-deliver a complete application package in PDF format on a flash drive. Applicants must also provide paper hardcopies of the completed Commercial Cannabis Business Initial Application form, a signed and notarized Property Consent form, Lease Agreement or a "Letter of Intention" to lease, Limited Liability waiver, Indemnification form, Zoning Verification Letter, and signed Live Scan and/or background check forms for each owner. These documents have to be delivered hard copy because the City needs wet signatures on each form.

Other required documentation includes proof of general liability insurance and a fee deposit in an amount sufficient to cover all expected City costs for processing the application.

Four-Phase Application Process

The application process would consist of four phases.

Phase I is an initial review of the application to determine whether it is complete and meets all of the submittal requirements described above. This initial review will also check to see that the application includes all of the required sections listed as A through F below and provided in detail in Attachment 1.

Complete submissions will move forward to Phase II. Applications that fail to provide all of the submittal requirements will be deemed incomplete and will not move forward to Phase II. There will be no appeal rights at this stage, as scoring is based solely on objective criteria.

Phase II would include the evaluation and scoring of the criteria detailed in the Application Procedures and Guidelines. Applications would be reviewed and scored by a committee, staff, or consultant designated by the City Manager, using a merit-based system based on the following 1,200-point scale:

- A. Business Plan (400 Points)
- B. Labor and Local Enterprise Plan (100 Points)
- C. Neighborhood Compatibility Plan and Odor Control Plan (300 Points)
- D. Community Benefits and Investments Plan (400 Points)
- E. Safety Plan (pass/fail)
- F. Security Plan (pass/fail)

Attachment 1 provides detail on each of the above criteria. Phase II will also include a review of the Safety Plan and Security Plan to ensure they address minimum state requirements. This review will ensure that the Safety Plan was prepared by a professional fire prevention and suppression consultant and the Security Plan was prepared by a professional security consultant, and that the applicant has addressed all of the requirements described in the Application Procedures & Guidelines. These sections will be reviewed on a pass/fail basis only and will not be given a numerical score. There will be an appeal right at this stage, as not all the scoring is based solely on objective criteria.

In Phase III, all applicants that meet all submittal requirements and score a minimum of 80% or higher in Phase II will be ranked from highest to lowest in order to establish an eligibility list. This list will be forwarded to the City Manager, who will prepare a report for the City Council. Only the six highest scoring applications for each of the retail uses (storefront and non-storefront) shall proceed forward to Council for review.

In Phase IV, the six highest-scoring applications in each category (six storefront retail and six non-storefront retail) will be forwarded to the City Council for interviews and final selection to determine which applicants are to receive commercial cannabis permits. This final selection will occur at a public meeting where the top applicants or finalists may have an opportunity to address any additional questions the Council has before rendering a final decision. It is anticipated that these 12 interviews may need to be scheduled over the course of multiple City Council meetings in order to provide adequate time for the final selection.

The City reserves the right to request and obtain additional information from any candidate who advances to Phase IV. Should any of the top six applicants withdraw for any reason, or be subsequently disqualified due to results of the background investigation, the City Manager may invite the next highest-scoring applicant from the eligibility list to participate in the Phase IV interviews.

Financial Impact

All City costs for development of the application review and selection process would be apportioned among the cannabis business applicants. All applicants will be required to submit a fee deposit in an amount sufficient to cover all expected City costs for reviewing and processing the application through to final selection. Costs will be deducted from each applicant's deposit based on the number of phases that applicant completes (e.g.; an applicant who fails Phase II will not be charged for Phase III or Phase IV). Fees for each phase will be determined through a "fit gap" analysis to be conducted by staff and HdL once the City Council approves the final application and selection process.

The requirement for community benefit/development agreements in relation to new cannabis uses is expected to result in additional revenue for the City. The potential revenue for the three storefront retailers is estimated at between \$420,000 (4% benefit) and \$630,000 (6% benefit). The potential revenue for the three non-storefront retailers is estimated between \$64,000 (4% benefit) and \$96,000 (6% benefit). In addition, it is anticipated that the City would also receive the 1% portion of the regular sales tax from the transactions estimated at \$121,000 and 0.5% Measure Q transactions and use tax on those sales delivered with city limits estimated at \$60,000. Thus, the total projected revenue from the community benefit and sales tax would be between \$665,000 to \$907,000 after one year of full implementation for the six establishments.

Environmental Determination

Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, "CEQA"), the proposed amendments to the Municipal Code do not constitute a "project" within the meaning of Public Resources Code Section 21065 and CEQA Guidelines Sections 15060(c)(2), or 15378 because there is no potential that the activity will result in a direct or reasonably foreseeable indirect or direct physical change in the environment. Moreover, even if the proposed Municipal Code amendments did comprise a project for CEQA analysis, it falls within the "common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

In addition, Business and Professions Code Section 26055(h) provides that CEQA does not apply to the adoption of an ordinance, rule, or regulation that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity as long as each subsequent discretionary approval involves applicable CEQA review. Therefore, the proposed Municipal Code text amendments do not warrant further environmental review.

Public Contact

All appropriate public notices of this agenda item have been posted. Staff also e-notified interested parties and have posted the notification on the City's cannabis webpage: <http://www.cityofconcord.org/527/Cannabis-Regulations>.

Attachment

1. Rating criteria for each category of review

ATTACHMENT 1:
Description of Evaluation Criteria for
Storefront and Non-Storefront Retail
(Competitive Process)

SECTION A: BUSINESS PLAN (400 Points)

1. Owner qualifications. Resumes/Curriculum Vitae are not to exceed one (1) page per owner. (Please see CMC Section. 5.80.020 for definition of owner)
2. A budget for construction, operation, and maintenance, compensation of employees, equipment costs, utility cost, and other operation costs.
3. Proof of capitalization by a verifiable source.
4. Pro forma for at least three years of operation.
5. Fully describe hours of operation.
6. Fully describe the day-to-day operations for each license type being sought.
7. Fully describe cash handling procedures, including limiting the amount of cash on the premises and detailing a plan for the safe handling and transfer of cash.
8. Fully describe inventory control procedures to include, point-of-sale and track and trace software.
9. Business formation and all related documents filed with the California Secretary of State.

SECTION B: LABOR & LOCAL ENTERPRISE PLAN (100 Points)

1. Describe whether the Commercial Cannabis Business is committed to offering employees a Living Wage. ("Living Wage" shall mean 125% of the minimum wage mandated by California law)
2. Describe compensation to and opportunities for continuing education and employee training.
3. Describe the extent to which the Commercial Cannabis Business will be a locally managed enterprise whose owners and /or managers reside within Contra Costa County.
4. Describe the number of employees, title/position and their respected responsibilities.
5. Thoroughly describe employee policies and procedures (complete manuals are not required to be submitted).
6. If the Commercial Cannabis Business (CCB) has twenty (20) or more non-supervisory employees, the applicant must attest that they are committed to or have entered into a labor peace agreement and will abide by its terms.

SECTION C: NEIGHBORHOOD COMPATIBILITY AND ODOR CONTROL PLAN (300 points)

1. Describe how the CCB will proactively address and respond to complaints related to noise, light, odor, vehicle and pedestrian traffic.

2. Describe how the CCB will be managed so as to avoid becoming a nuisance or having impacts on its neighbors and the surrounding community.
3. Describe odor mitigation practices:
4. Identify potential sources of odor
 - a. Describe odor control devices and techniques employed to ensure that odors from cannabis are not detectable beyond the licensed premises.
 - b. Describe all proposed staff training, and system maintenance plans.
 - c. Describe the waste management plan. The plan shall include waste disposal locations, security measures, methods of rendering all waste unusable and unrecognizable, and the vendor in charge of disposal.

SECTION D: COMMUNITY BENEFITS AND INVESTMENTS PLAN (400 Points)

The application should describe all quantifiable benefits the Commercial Cannabis Business will provide to the local community. Benefits may be in the form of volunteer services, monetary donations to local non-profit organizations, financial support of City sponsored activities or organizations, in kind donations to the City or other charitable organizations and/or any other economic incentives to the City.

SECTION E: SAFETY PLAN (Pass/Fail)

*A thorough Safety Plan should consider all possible fire, medical and hazardous situations. **(Complete policy/procedures manuals are not required at this point of the application process. Please only provide a detailed description for each criteria).***

1. The Safety Plan shall be prepared by a professional fire prevention and suppression consultant.
2. Identify all gases and/or chemicals to be used and their storage locations.
3. Identify fire alarm and monitoring system including the name and contact information for the alarm company.
4. Describe accident and incident reporting procedures.
5. Describe evacuation routes.
6. Location of fire extinguishers and other fire suppression equipment.
7. Describe procedures and training for all fire and medical emergencies.

SECTION F: SECURITY PLAN (Pass/Fail)

*A thorough Security Plan should consider all access control, inventory control, cash handling procedures **(Complete policy/procedures manuals are not required at this point of the application process. Please only provide a detailed description for each criteria).***

1. The Security Plan shall be prepared by a professional security consultant. Security Plans will be treated as confidential and will not be made public.
2. Premises (Security) Diagram. In addition to diagrams submitted for other sections of the application, applicants are expected to submit a premises diagram which, focuses on proposed security measures and how they relate to the overall business. (Pursuant to Bureau of Cannabis Control regulations, Title 16, Division 42, §5006 and CCR Title 17, Division 1, Chapter 13, § 40105, Premises Diagram, as applicable).
3. The diagram shall be accurate, dimensioned and to scale (minimum scale ¼”) the scale

may be smaller if the proposed location exceeds more than a 1/2 acre parcel but must not be printed on larger than an 11" x 17" sheet of paper. **(Blueprints and engineering site plans are not required at this point of the application process).**

4. The diagram must be drawn to scale and clearly identify property boundaries, entrances, exits, interior partitions, walls, rooms, windows and doorways. The activity in each room and the location of all cameras must be identified on the diagram.
5. Description of cannabis activity that will be conducted in each area of the premises. Commercial cannabis activities that must be identified on the diagram may include but are not limited to the following if applicable to the business operations; secure storage of product in a locked room, safe or vault, in a manner preventing theft, diversion or other loss; batch sampling, loading/unloading of shipments, packaging and labeling, customer sales, extractions, infusions, processing and testing.
6. Limited-access areas, defined as areas in which cannabis goods are stored or held and only accessible to licensees, its employee or contractors, areas used for video surveillance monitoring and storage devices (Pursuant to Bureau of Cannabis Control regulations, Title 16, Division 42, §5000 (m) and §5042).
7. How the Applicant will secure the premises 24 hours a day, seven days a week, including
 - a) The number and location of all video surveillance cameras, and b) Identifying an intrusion alarm and monitoring system, including the name and contact information for the monitoring company.
8. Discuss whether the CCB will utilize the services of on-site security guards. Include in the discussion:
 - a. Number of guards.
 - b. Hours guards will be on-site.
 - c. Locations at which they will be positioned.
 - d. Their roles and responsibilities.
10. Plan for waste disposal ensuring that the waste material will not be used for an unlawful purpose. The waste disposal plan must be in a separate document.
11. Primary business contact for complaints or security-related matters.
12. Plan for measures to prevent loitering on the premises.
13. Plan for providing tamper-proof and tamper-evident packaging.