



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

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MEETING DATE: May 14, 2024

SUBJECT: Consideration of Amending the City of Banning Municipal Code Requirements for Cannabis Businesses

RECOMMENDATION:

Discuss and consider amendments to the City of Banning Municipal Code requirements for cannabis businesses, and provide direction to Community Development Department staff.

BACKGROUND:

The City Council and the Planning Commission each act in their individual capacities as a decision-making body and a recommending body, respectively, for approval of cannabis business related entitlements under Title 17 of the Banning Municipal Code (BMC), otherwise referred to as the "Zoning Code." Cannabis businesses are unique in the sense that they require adherence to State requirements through the California Department of Cannabis Control, as well as Banning Municipal Code (BMC) requirements set out in Title 3 - Revenue and Finance; Title 5 - Business Licenses and Regulations; and Title 17 - Zoning of the BMC. Pertinent Sections of the BMC concerning cannabis businesses are attached to this report.

Since adoption of the first cannabis ordinance which established a process allowing for cannabis businesses to operate in the City of Banning, three retail cannabis stores have opened, two indoor cultivation facilities were approved with one operating for approximately two (2) years, one manufacturing and distribution facility was approved and is open, and two requests for an indoor cultivation facilities were denied by the City Council. The City continues to receive inquiries regarding additional retail cannabis locations, indoor cultivation facilities, and for cannabis microbusinesses; however, no current applications are on file. The City currently has a limit on the number of retail cannabis establishments, which is set at 1 retailer per 10,000 residents. As the City's population continues to increase, the public and the City Council have expressed concern regarding the number of retail outlets in the City of Banning. Concerns regarding odor emanating from cultivation facilities continues to remain.

Discussion Items:

Staff is seeking discussion and guidance from the City Council regarding potential amendments to the Banning Municipal Code related to cannabis businesses in the following areas:

1. Number of Retail Cannabis Locations. Does the City Council wish to keep the existing ratio of 1:10,000; or set a finite cap on the number of retail establishments allowed? If placing a finite cap, by what metric(s) shall staff evaluate in setting the desired number of retail cannabis

establishments?

2. Potential increase in Number of Retail Cannabis Establishments. Should the City Council consider: a) Allowing retail establishments to locate into other commercial zones? Currently, retail cannabis establishments are only permitted in the Highway Serving Commercial (HSC) Zoning District; b) Continue with "Cannabis Lottery" format for consideration of new retail cannabis establishments?; c) Evaluate new applicants on a first-come, first-served basis?; d) Evaluate new applicants on a merit-based evaluation system?; e) Increase/decrease the 1,000 linear-foot minimum distance separating existing retail cannabis establishments and from newly proposed cannabis retail business?; f) Should any proposed distance separation be measured from property line to property line, door to door, "as the crow flies" (in a straight line, crossing physical barriers such as walls and streets), or along an accessible path of travel (going around physical barriers)?; g) Should the existing requirement for separation of 200 feet from residential uses be revisited?
3. Indoor Cultivation/Manufacturing Facilities. There is currently one indoor cultivation facility and one manufacturing/distribution facility operating in the City of Banning and another cultivation facility has been entitled but is not yet operational. An application for a cultivation facility was recently denied by the City Council based on its proximity to residential uses, concerns regarding building height and design, and concerns regarding odors potentially emanating from the facility. As a result of these actions, should the City Council consider: a) a distance separation (setback) from an industrial cannabis business to nearby residential uses, and if so, by what metric(s) will this distance be determined?; b) Limitations on building height in proximity of residential uses?; c) Physical barriers separating industrial cannabis businesses from residential uses such as fences, walls, berms, additional landscaping, etc.?; d) Require certified air handling/HVAC engineers to prepare an odor control plan for submittal and review as part of the Conditional Use Permit application process?
4. Cannabis Microbusiness Establishments. Cannabis microbusinesses are currently allowed in the Business Park (BP) and Industrial (I) zones only. Applications for Microbusinesses currently require at least 3 of the 4 types of activities to qualify as a microbusiness which include: retail establishments, manufacturing, cultivation, and distribution. The "cap" on retail does not apply to cannabis microbusinesses that contain a retail component. As standalone retail cannabis establishments are currently only permitted in the HSC Zone, should the City consider: a) Continue to authorize future microbusinesses to include a retail component?; b) Expanding opportunities for microbusinesses by allowing them in the HSC Zone or General Commercial (GC) Zone?; c) If expanding microbusinesses into the HSC and GC Zones, should there be a physical separation from other cannabis retail establishments or residential uses?
5. Design Guidelines. Should the City Council consider adopting **additional** design guidelines for cannabis businesses to reduce impacts on surrounding land uses, including: a) Increased physical separation from residential and other sensitive uses such as walls and fences, landscaping and berming? This would primarily apply to cultivation, but also retail, microbusiness, and manufacturing uses as well; b) Distance separations from other cannabis businesses and sensitive uses (e.g., daycares, schools, churches, parks/playgrounds, senior facilities)? NOTE: Small Family Daycares (SFD) can exist within residential neighborhoods without direct knowledge by City staff.; c) Building height and form when adjacent to residential development and other sensitive uses?; d) Air handling and odor control?

JUSTIFICATION:

It is the intent of this discussion to fully vet the types of cannabis businesses permitted by the City of Banning, identify how City staff will evaluate the merits of cannabis business applications, and enhance the City's community engagement regarding all cannabis related businesses. This will be achieved through public discussion at City-noticed public meetings and future public hearings serving to increase transparency and awareness of proposed BMC amendments, express to the citizens of Banning that their concerns have been heard, and that steps are being taken to address those concerns, and to provide additional opportunities for public input, discourse, and participation.

Per City Council discussion and direction to staff, City staff will prepare an ordinance amending

applicable provisions of the BMC that endeavors to strike a balance between the needs of the residents and citizens of the City of Banning, the needs of the business community, and the desire of the City Council.

FISCAL IMPACT:

The preparation of this Staff Report was prepared by the Community Development staff under the normal course of duties and responsibilities. No additional costs were incurred. If and when the City Council initiates a Zoning Text Amendment (ZTA) to modify and incorporate changes to the City's Cannabis Business program, an Ordinance will need to be drafted by the City Attorney's Office, reviewed by the Community Development Department and the City Manager and then scheduled before the Planning Commission at a public hearing for their review, input, and recommendation to the City Council.

At the time that an Ordinance is considered by the Council, another public hearing will occur during the introduction and first reading of the ordinance, and then a second reading is required. This process will require the support of City Staff (namely the Community Development Department, Deputy City Clerk, City Attorney, and City Manager). A specific dollar amount is unknown at this time, however, preliminary estimates for City Attorney are approximately \$5,000 to \$12,500 in legal costs, with an additional \$7,500 to \$15,000 in total staff support costs. The anticipated time frame for completion of amendments to the Banning Municipal Code for cannabis businesses is expected to take from six (6) to eight (8) months. Both the costs and time frame are widely subject to change, based upon the degree and complexity of input requested by the City Council.

ALTERNATIVES:

1. Provide direction to staff regarding additional research, but delay initiation of the amendment.
2. Continue this item off calendar and without discussion.

ATTACHMENTS:

1. [Chapter_3.15__CANNABIS_RETAILER_TAX.docx](#)
2. [Chapter_3.17__CANNABIS_INDUSTRIAL_TAX.docx](#)
3. [Chapter_5.33__CANNABIS_RETAILER_REGULATORY_PERMITS.docx](#)
4. [Chapter_5.34__MARIJUANA_CULTIVATION.docx](#)
5. [Chapter_5.35__CANNABIS_REGULATORY_PERMITS.docx](#)
6. [17.08.020 Residential Uses.docx](#)
7. [17.12.020 Commercial Uses.docx](#)
8. [17.53 CANNABIS_CONDITIONAL_USE_PERMITS.docx](#)
9. [17.54__CANNABIS_RETAILER_CONDITIONAL_USE_PERMITS.docx](#)