



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Emery Papp, Senior Planner

MEETING DATE: August 27, 2024

SUBJECT: Discussion of Proposed Amendments to Banning Municipal Code and Zoning Pertaining to Cannabis Businesses, Including the Possibility of Implementing an Urgency Ordinance/Moratorium

RECOMMENDATION:

Receive information and presentation from staff and public speakers; followed by discussion of the Council Members and direction to staff.

BACKGROUND:

In July 2018, the Banning City Council passed Ordinance Nos. 1523 and 1524, which created a conditional use permit process for cannabis cultivation, manufacturing, and testing lab facilities and a procedure for the issuance of cannabis regulatory permits for cannabis cultivation, manufacturing, and testing lab facilities, respectively. Ballot Measure N, on the November 2018 ballot, established a cannabis cultivation tax and provided that the City Council can amend the cultivation tax. Ballot Measure O, on the same 2018 ballot, provided that should the Banning City Council adopt an ordinance allowing for the issuance of conditional use permits to cannabis retailers and an ordinance to allow for the issuance of regulatory permits to cannabis retailers to operate in certain commercial zones, a commercial retail cannabis tax will go into effect. Both Measures N and O passed. In November 2018, after the election, the City Council enacted Ordinance No. 1531, which provided for a conditional use permit process to allow cannabis retailers within the City.

In July 2020, the City Council passed Ordinance No. 1564, which would allow cannabis distribution facilities in industrial zones contingent on the approval of Measure L, which was on the November ballot. Measure L was a measure that would impose a tax on cannabis distribution facilities. Measure L passed, and Ordinance No. 1564 went into effect. Finally, in 2021, the City Council passed Ordinance No. 1577, which allowed cannabis microbusinesses, established the regulatory scheme for such businesses, and established zoning standards for the microbusinesses.

The revenue generated by cannabis business taxes has not met the City's prior expectations. Tax revenue is dependent on the retail sales each cannabis retailer generates and the size and number of cannabis cultivation businesses that are operating in the City. This ranges from \$150,000 to \$330,000 per year, per license/Conditional Use Permit. In an effort to boost revenues from cannabis business taxes, the City has passed a number of additional cannabis Ordinances in recent years to amend zoning requirements and business licensing requirements for cannabis businesses, without having the desired effect of increasing tax revenues.

Cannabis business operations have also raised concerns about potential land use conflicts, such as odor and noise control, inadequate separations from sensitive uses, and other potential unintended

consequences and public safety, health, and welfare impacts. Councilmembers and Planning Commissioners alike have expressed dissatisfaction regarding the processing of some recent land use entitlement applications due to potential impacts on residents. Proposals to revise the City's current cannabis regulations have therefore been discussed.

One idea under discussion is a moratorium on cannabis businesses. Under Section 65858 of the California Government Code, cities may adopt interim ordinances prohibiting approval of new land uses that might conflict with an amendment to a general plan, specific plan, or zoning ordinance that the city plans to study within a reasonable time period. Therefore, a moratorium on cannabis uses in Banning would not eliminate existing businesses, but it would temporarily prohibit new businesses from applying for or receiving approvals from the City while the City studies possible changes to the its cannabis regulations.

A moratorium must be adopted by ordinance that requires a four-fifths vote of the city council and contains a finding that there is a current and immediate threat to the public health, safety, or welfare. The ordinance may be adopted either on an urgency basis or after a noticed public hearing. An urgency ordinance can be adopted without notice and a hearing, without prior Planning Commission review, and can be made to take effect immediately by the inclusion of urgency findings.

Once enacted, a moratorium has an initial duration of 45 days, and after can only be extended following a noticed public hearing. Up to two extensions are allowed for a maximum term of two years. Each extension is subject to the same requirements for four-fifths approval and legislative findings. Cities must also issue a written report describing the measures taken to alleviate the condition that led to the adoption of the ordinance at least ten days prior to any extension.

The City Council may consider further input on this subject from members of the public and provide direction to City staff. If the City Council wishes to consider a moratorium, staff will prepare an ordinance for its consideration at a future meeting based on the direction received from the City Council.

JUSTIFICATION:

Section 65858 of the California Government Code permits local jurisdictions to adopt an urgency measure as an interim zoning ordinance. Should the Council direct staff to prepare an urgency ordinance placing a moratorium on cannabis businesses, the procedures for same may be found in the attached citation from CGC 65858.

It is important to note that should the City adopt an Ordinance to place a moratorium on cannabis related businesses, that such a ban would not apply to any lawfully established cannabis businesses currently operating, nor does it "freeze" any regulatory permits, applications or use permit entitlement applications for cannabis businesses that are submitted prior the enactment of the urgency ordinance.

FISCAL IMPACT:

Potential loss of Cannabis Business Tax revenues, staff time, and City Attorney time to prepare Moratorium Ordinance(s)

ALTERNATIVES:

Direct staff to:

1. Make no amendments to the current BMC
2. Amend the current BMC provisions
3. Prepare an Urgency Ordinance, temporarily placing a hold on new cannabis businesses and prepare a Moratorium Ordinance

BUDGETED?:

No

CONTRACT/AGREEMENT:

No

ATTACHMENTS:

1. [05-14-2024 CC Staff Report.pdf](#)
2. [SR_Ordinance 1565_05-12-2020.pdf](#)
3. [Cannabis Ad Hoc Committee Meeting Minutes 6.18.2024 v2.docx](#)
4. [California Government Code Section 65858.docx](#)
5. [DCC Medicinal and Adult-Use Regulations.docx](#)