

NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Tracy City Council** is hereby called for:

Date/Time: **Tuesday, August 13, 2019, 6:00 p.m.**
(or as soon thereafter as possible)

Location: **Council Chambers, City Hall**
333 Civic Center Plaza, Tracy

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Tracy City Council on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

1. Call to Order
2. Roll Call
3. Items from the Audience - *In accordance with Procedures for Preparation, Posting and Distribution of Agendas and the Conduct of Public Meetings, adopted by Resolution 2015-052 any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. If staff is not able to resolve the matter satisfactorily, the member of the public may request a Council Member to sponsor the item for discussion at a future meeting.*
4. WORKSHOP TO DISCUSS POTENTIAL REGULATIONS FOR COMMERCIAL CANNABIS ACTIVITY AND PROVIDE DIRECTION TO STAFF
5. Adjournment



Mayor

Thursday, August 8, 2019

The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in public meetings. Persons requiring assistance or auxiliary aids in order to participate should call City Hall (209-831-6105), at least 24 hours prior to the meeting.

Any materials distributed to the majority of the Tracy City Council regarding any item on this agenda will be made available for public inspection in the City Clerk's office located at 333 Civic Center Plaza, Tracy, during normal business hours.

AGENDA ITEM 4

REQUEST

WORKSHOP TO DISCUSS POTENTIAL REGULATIONS FOR COMMERCIAL CANNABIS ACTIVITY AND PROVIDE DIRECTION TO STAFF

EXECUTIVE SUMMARY

Staff is returning to the City Council to conduct a workshop on regulating commercial cannabis activity in Tracy. This discussion will provide staff with direction needed in order to proceed with drafting a regulatory ordinance and a zoning ordinance. Staff expects to present the draft ordinances to the Planning Commission in September for their recommendation and return to the City Council in October to proceed with final adoption.

DISCUSSION

At the February 5, 2019 City Council meeting, staff was directed to draft a regulatory ordinance that 1) allows all cannabis businesses except cultivation; 2) allows the location of these businesses in industrial and possibly commercial and other areas of the City; and 3) restrict the number of dispensaries to two with the possibility of more. Council further directed staff to research best practices from other agencies and draft an ordinance with the highest regulatory standards with an emphasis on cost recovery.

Staff is committed to bringing back a draft ordinance in October and has begun drafting the regulatory and zoning ordinances. In order to proceed, staff requests Council direction on certain areas, particularly related to business types and zoning. Below describes the workshop format, primary areas of discussion and the policy questions for City Council. Because extensive research was conducted in preparing for this workshop, there are several additional questions for City Council to consider as the ordinances are drafted into their final form.

Workshop – Primary Areas of Discussion

Based on the direction to broaden the allowable business types and locations for cannabis businesses, and evaluate cost recovery models, the workshop has two primary areas of discussion: land use regulations and cost recovery models. City Council, of course, will not be limited to these areas of discussion, but they do represent to primary areas of staff research since February.

Area of Discussion 1: Land Use Regulations

The City has broad authority to regulate local land use. In the context of cannabis regulations, two primary themes emerge for consideration as regulations are drafted. The first relates to the overall scope of the cannabis business types, meaning, does the City Council desire to further broaden cannabis businesses (either types or locations), or prohibit them in certain locations for the purposes of meeting community expectations in terms of access, nuisance, or to address other community concerns or expectations?

The second theme relates to permitting, and the effect various permit types have on business competitiveness and effective enforcement.

In order to conclude on the first theme: scope of cannabis business types and locations, staff intends to present maps and further dialogue about the various cannabis types and possible desired locations/limitations. Following are several areas of discussion and questions City staff will present.

Cultivation as a Business Type (either stand alone or as part of a Microbusiness) –

Previous direction was to allow all cannabis business type except cultivation. Staff research resulted in two principal findings on cannabis cultivation:

- i. *Impacts to microbusinesses:* A state cannabis microbusiness permit requires that a permittee be engaged in three cannabis business activities in one location. This often is seen when a small business operation establishes a business supply chain model. A ban on cultivation would limit the third business component to only dispensaries; while the more common components found in a micro business are indoor cultivation, manufacturing, and distribution.
- ii. *Impacts to potential tax revenues:* As staff was evaluating the cost recovery aspects of cannabis businesses, staff learned that indoor cultivation often generates a higher tax base than other cannabis business operations. A ban on indoor cultivation could potentially create limitations on tax revenues.

Staff will share with City Council the results of our research and discuss whether or not indoor cultivation should be an allowed land use given these findings. Staff will also ask whether or not outdoor cultivation should be allowed.

Business Location – Past Council direction was to restrict cannabis businesses to only areas designated or zoned as industrial areas, and that discussion is now broadened to evaluate commercial areas given staff research. The primary discussion will relate to the following:

- i. Cannabis retailers prefer to be centered around “like for like” business types, meaning retail dispensaries in typical storefronts locations, in areas zoned for retail land uses, as opposed to broadening industrial zoning to accommodate cannabis retail businesses.
- ii. Distance buffers between cannabis businesses, and / or concern over cannabis businesses being located in any particular retail area of the City. State law creates a requirement that cannabis businesses be located 600 feet from certain land uses (youth centers and schools, for example). City Council will be asked if there are areas of the City that should be “off-limits” for certain business types, or where increased buffers beyond 600-feet, for example would be desired, if at all.
- iii. Distinctions between volatile verses non-volatile manufacturing. In the cannabis industry there are various methods of manufacturing cannabis products, some of these methods involve more volatile inputs (such as chemicals/gasses) in the production/manufacturing process. Normally, such issues are addressed through building/fire code compliance. In some instances, the distinction between manufacturing types is evaluated in a zoning context, for example distinguishing between “heavy” industry or “light” industry and possibly separating such uses through different zoning

districts. Because Prop 64 creates a distinction between volatile and non-volatile manufacturing types for the purposes of imposing State regulations, staff wanted to further discuss this distinction with City Council.

Limitations on Number of Storefront Retail (Dispensaries) – Past Council direction was to restrict the number of cannabis retail locations to two permits. Staff will share with City Council the results of the collective research on what other jurisdictions are doing, and discuss whether or not to allow more than two dispensaries, and/or whether phasing in more dispensaries is desirable. In addition, staff will discuss the potential benefits and drawbacks of restricting the number of storefront retailers.

Type of Permit to Address Business Locations – Cities vary in the method to address potential site-specific impacts associated with allowing cannabis businesses to operate. The principal permit that the City uses, and that many cities use to address similar sensitive land uses is the Conditional Use Permit. This permit type is required in Tracy for nightclubs, and a variety of businesses where individual characteristics of operation may be better suited to one location over another in the same zone district given its local context. Some cities have opted to couple the use of Conditional Use Permit with a development agreement (contract) in order to address site-specific considerations. However, the principal reason for using a development agreement would be to generate additional revenue that might not otherwise be obtainable from a fee structure, which is limited to covering costs associated with providing services. A development agreement can include conditions on businesses operation much the same as a Conditional Use Permit, but has the added ability to require public benefit payments. This is further discussed below. Staff is not pursuing requiring the use of a development agreement for purposes of land use permitting, even given the flexibility a development agreement provides, yet City Council discussion on this topic is necessary to round out options available for consideration.

Area of Discussion 2: Options for Mitigating Costs

Council asked staff to identify methods to mitigate costs associated with regulating cannabis business and addressing nuisance impacts (e.g. calls for service). Staff research has resulted in identifying three themes in addressing the costs associated with cannabis: cost to permit individuals/businesses, cost to address nuisance impacts, and a third theme of general public benefit payments/revenue.

The workshop will include a number of questions for City Council to arrive at the best method for Tracy to address these three areas. It should be further noted that, as opposed to the land use ordinance that will ultimately amend Title 10 Zoning Ordinance of the City, the provisions related to addressing cost will be embodied in various other Municipal Code amendments and stand-alone actions, relating to a potential tax.

Costs to Permit Individual Businesses – Permitting an individual to operate a cannabis business through a regulatory program has an associated cost with processing that application, conducting inspections, monitoring compliance, and producing reports or any necessary audits. A fee can be developed that covers the cost of administrative procedures implementing a regulatory program such that this new regulatory permit type in the City is cost neutral. The principal question related to this area is the degree to

which consultants or staff should be involved in various aspects of the application processing, inspection and monitoring/reporting functions associated with the regulatory permit program.

Costs to Address Nuisances - As a relatively new industry, it was originally thought that Police Departments would be significantly affected by nuisance impacts, resulting in a large number of calls for service. While there are still relatively few operational dispensaries and other business types (such as indoor cultivation and manufacturing), staff's research indicates that the impacts to police departments' call-for service has not materialized. It is possible that as the cannabis industry expands operations throughout California, better data will help hone in on more specific findings. Nonetheless, a tax measure is a viable method of providing additional revenue to the City in order to better plan for and pay for addressing the nuisance impacts of cannabis business operations in Tracy. Further discussion on a tax measure is needed with City Council.

Public Benefit Payments – Some cities, in addition to possible tax receipts, are using various methods to generate revenue. In staff's research, the two principal methods are the use of development agreements (mentioned above) and a voluntary offer (donation) as part of the regulatory permit application process. City staff desires to discuss this with City Council to better understand if either of the processes should be used in Tracy.

Summary of Key Policy Questions:

Area 1: Land Use

- 1) Should indoor or outdoor cultivation be allowed in the City? If outdoor, should it be only in areas zoned for agriculture? If indoor, should it only be allowed in industrial areas?
- 2) Should micro-businesses with cultivation be allowed to operate in the City?
- 3) Should micro-businesses, manufacturing, lab testing, and distribution be allowed in industrial areas?
- 4) Should any commercial area be "off-limits" to retail cannabis?
- 5) Should the city avoid concentration of cannabis businesses in any retail area?
- 6) Is the State law 600 – foot buffer adequate or does the City desire increased buffers to schools and youth centers?

Area 2: Cost Mitigation/Revenue Generation

- 1) Should the City place a tax measure on the ballot in 2020 to generate revenue to offset potential nuisance impacts?
- 2) Should the City pursue, whether through a DA or through the regulatory permit application process additional public benefit payments to the City?
- 3) To what degree should the regulatory permit scheme involve consultants versus staff?

FISCAL IMPACT

Staff will return to the City Council with potential fiscal impacts based upon City Council policy direction. The City Council may consider placing cannabis general tax measure on the November 2020 ballot.

RECOMMENDATION

Council's feedback will be used to further develop cannabis regulatory requirements for the Council's consideration.

Next steps:

- Present to Planning Commission September 25
- Present to City Council October 1

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