

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, September 3, 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 29, 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 October for their recommendation and return to the City Council in November to proceed with final adoption.

DISCUSSION

Summary of August 13, 2019 Workshop

At the August 13, 2019 City Council workshop, City Council provided direction to staff related to locational requirements for various cannabis business types. At that meeting, it was established that storefront retail cannabis businesses (dispensaries) would be permitted in commercial and industrial areas of the City, and that the more industrial-in-nature cannabis businesses (distribution, indoor cultivation, micro-businesses, testing laboratories, manufacturing) would be permitted in industrial areas. All businesses would be required to first obtain a Conditional Use Permit from the Planning Commission in order to operate.

In the context of arriving at appropriate distance buffers (either 600 feet or 1,000 feet) from State law-identified sensitive land uses (youth centers, schools (public/private), and day care centers, for example), City Council asked for additional information on an appropriate definition for "youth center." City Council also asked for maps to illustrate the possible limiting effects a 1,000 foot (as opposed to State-required 600 foot) buffer would have near major schools and several parks, such as Plasencia Fields/Sports Complex, and Legacy Fields.

Both of those items will be presented to City Council for final direction. The definition of youth center has been provided by the City's consultant, HdL, which has been used in many jurisdictions throughout California, in order to clearly define for cannabis applicants what is permissible in the beginning of the permitting process.

At the Council workshop staff indicated that another critical component, which would require policy direction in terms of the City regulatory permit requirements, raises policy questions are discussed below. The regulatory permit, referred to as a "Cannabis Business Permit" is intended to be issued to individuals or businesses by granting them the privilege or operating a commercial cannabis business and focuses on diligently and

objectively selecting operators based on a set of minimum standards, as established by state law and City Council.

In the intervening period since the August 13th workshop, upon further reflection, two City Council members separately approached the City Manager and asked that outdoor cultivation of cannabis be brought back for further discussion.

Workshop – Primary Areas of Discussion

This workshop is intended to further discuss land use considerations and begin the policy discussion on the regulatory permit. Given the breadth of policy considerations for the regulatory ordinance, a third workshop is scheduled for October 1st. That workshop will focus on the Cannabis Regulatory Business Permit and the application selection process.

Area of Discussion 1: Land Use Regulations

In order to implement the land use regulation as it pertains to cannabis business types and locations, additional direction is necessary to adopt appropriate distance buffers and to get policy direction related to outdoor cultivation as a business type. Staff has reviewed the City Consultant's definition of "youth center" and recommends that this definition be used in the City's zoning ordinance. The definition has been adopted by several agencies in California in order to clearly define the sensitive buffer issue. See Attachment A to the staff report for the proposed definition.

Distance Buffers

Staff will present maps identifying both 600 and 1,000 feet around the three high schools, and several of Tracy's larger parks in which the primary use is conducted by the youth in the community. The intent of showing these maps is to illustrate to the City Council the impact of adopting one of the proposed buffers, which will have in implanting them in the zoning ordinance and to demonstrate the limitations they create on available sites near these sensitive uses. Furthermore, it is within City Council's discretion to set sensitive buffers greater than State minimums, and thus it is staff's desire to be provided clear policy direction during the workshop in order to incorporate Council's policy in the zoning ordinance.

Outdoor Commercial Cannabis Cultivation

Based on information gathered by staff, outdoor cultivation tends to generate the most public opposition. Odor, along with energy, water and pesticide use are the concerns most cited. The reason for this is odor is the most common quality of life complaint for local jurisdictions. For this reason, we have not been able to identify any city, which permits outdoor cultivation unless they are located in rural communities such as the City of Greenfield and Firebaugh (pending permits in progress). Other key factors for this include whether sufficient water, electricity, odor control measures and security can be implemented for this type of activity.

However, additional questions were subsequently raised and two Council members asked to revisit the topic.

This workshop may be an opportunity to discuss not only if outdoor commercial cannabis cultivation should be permitted, but also to discuss the types of land use regulations should City Council decide to allow outdoor cultivation in the City. Following are several points that staff will touch on to help facilitate the discussion:

- 1) Where should outdoor commercial cannabis be grown in Tracy? The City's General Plan is mainly a plan to address urban development. While the City does have a designation for Agriculture, it is not clear if that is the appropriate designation for industrial-scaled cannabis cultivation; an Industrial designation may be more appropriate but should be evaluated in the context of potentially reducing areas set aside for job generation. Whereas retail dispensing and other industrial-scaled business types have been discussed in terms of "like for like" locations, outdoor cultivation may require additional scrutiny due to security concerns, community fit, "right to farm" considerations, adjacent business concerns, and odor.
- 2) While all of these can be addressed through both General Plan policy as well as the zoning ordinance, additional time may be needed to develop regulations. Staff will suggest at the workshop that should Council direct staff to develop policy and regulations for outdoor cannabis cultivation, that the balance of the cannabis regulations proceed, and that additional time be given to research specific regulations to address outdoor cultivation.

Area of Discussion 2: Policy Considerations in the Regulatory Ordinance

Proposition 64, SB 94, and its subsequently adopted implementing regulations established minimum regulations for cannabis business operators. The City has a threshold question of whether or not we should adopt enhanced regulations as an exercise of additional local control. To date staff has researched other cities, consulted with experts in the area of cannabis regulations, and has identified the following five areas for consideration. Of course, City Council can direct staff to simply comply with State regulations, and forego a new commercial cannabis activity ordinance.

The five areas of direction are needed to ascertain whether an ordinance is needed and if so, where additional local control is necessary. If the answer to any of the questions is "yes" then a commercial cannabis activity ordinance is necessary.

- 1) Volatile vs Non-Volatile Manufacturing. State law distinguishes between the methods of manufacturing and requires cannabis businesses to apply for a State license specific to the manufacturing process they will utilize. The City's role would be to require compliance with building and fire codes and use the Conditional Use Permit as a means to address any unique mitigations or requirements to the degree possible. Should the City permit both volatile and non-volatile manufacturing?

- 2) Number of permits by business type. Most agencies have elected to only limit the number of permits to retail, which may further be defined as store-front retailer or non-store-front retailer (delivery only). However, the City may choose to establish a permit limit on any of the cannabis business types.

During prior discussions with the City Council, the consensus was to limit the number of retail permits to two. This places the average number of retail to 1 per 45,000 population. Health & Welfare professionals have recommended a standard of 1 per 22,000 population (potentially 4 permits). The State average in local agencies is 1 per 15,000 population (potentially 6 permits). AB1356 which was the industry preference was initially based on staff's research 1 per 10,000 population (potentially 9 permits), although modified to meet the state average failed to get support in other amendments at the state capital. An option for the City Council to consider is phasing in retail store (dispensary) permits over two or more years.

Would the City Council like to limit retail cannabis businesses to two permits?
Would the City Council like to phase in the dispensary permits over time?
Does the City Council want to consider limiting the permit number on any other cannabis businesses?

- 3) Require Cannabis Employee Background Checks and Badge Requirement. As a measure of additional local control, should the City require Cannabis Employees to be background checked and be issued a City badge, meaning that employees and not solely owners of the cannabis businesses would be subject to the screening that is typical of the business owners. Many agencies have adopted this additional measure to identify security risks at the hiring phase. The State does not conduct background checks on employees. Please note that other states which have adopted cannabis regulations, such as Colorado, have found this to be a critical component of the regulatory process in order to ensure that cartel and other gang related activities do not have access to the legal market.
- 4) Expand Cannabis Business "Ownership": Under State law, "ownership" is defined as anyone having at least a 20% financial interest in the business. Only 1 owner is required to be identified. Agencies have expanded the definition of ownership to say "at least 5% financial interest". This expanded definition provides a broader more comprehensive view of the financials of a business and highlights the financial viability. Should the City expand the definition of ownership to "at least 5%" or keep the definition to State minimum of "at least 20%" or some alternative within these minimums?
- 5) Approval and Appeal of Cannabis Business Permit. Staff is proposing to follow the City's existing approval and appeal process that exists in Title 1.12 of the Tracy Municipal Code. This process allows the City Manager to designate a department to administer the approval, denial, and repeal of a Cannabis Business Permit. A cannabis business may appeal the department's decision to the City Manager through the Title 1.12 process. The City Manager's decision may be further appealed to the City Council.

Alternative 1: The City Council may choose an appeal process that mimics the Administrative Citation appeal process that ends the final decision at an appeal board (currently other City department staff).

Alternative 2: The City Council may choose to modify the appeal process as described above by ending the appeal at the City Manager level. This would insulate the City Council from hearing appeals from the cannabis businesses.

Summary of Key Policy Questions:

Area 1: Land Use

- 1) Is the State law 600-foot buffer adequate or does the City desire increased buffers around certain areas such as schools, day care centers, youth centers, and parks?
- 2) Should the City permit outdoor commercial cannabis cultivation?

Area 2: Regulatory Ordinance

- 1) Should the City permit volatile manufacturing, considering that building code, fire code, and Conditional Use Permit regulations/conditions would apply?
- 2) How many retail cannabis business permits should the City issue? Should the City restrict the number of permits for other cannabis business types? If yes, which types? Should the City phase in the permits over 2 or more years?
- 3) Should the City issue permits to all cannabis employees?
- 4) Should the City expand the definition of ownership to “at least 5% of financial interest” in the business?
- 5) Should the cannabis business approval and appeal process mimic Title 1.12 of the City’s appeal process?

FISCAL IMPACT

Staff will return to the City Council with potential fiscal impacts based upon City Council policy direction. The City Council may also consider placing a 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:

- City Council Workshop October 1

- Planning Commission Recommendation October
- First reading of Ordinance November

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Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Attachment A – Definition of “youth center” provided by the City’s consultant, HdL

Attachment A

Definition of “Youth Center” as provided by HdL consulting:

“Youth Center” means any public or private facility that is primarily used to host recreational or social activities for minors, including but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities. This definition shall have the same meaning as Section 11353.1 of the California Health and Safety Code.