



Staff Report

File #: 24-0654

REQUEST FOR CITY COUNCIL ACTION

DATE: 08/21/2024

TO: Honorable Mayor and City Council Members

FROM: Legal & Risk Management Department

SUBJECT:

DISCUSSION REGARDING STATUS OF COMMERCIAL CANNABIS REGULATIONS, INCLUDING: (1) CONSIDERING WHETHER TO ELIMINATE THE MERIT-BASED SELECTION PROCESS FOR STOREFRONT RETAIL PERMITS NOW THAT THE PRIOR RANKING LIST HAS EXPIRED; (2) CONSIDERING WHETHER TO DECREASE THE MAXIMUM NUMBER OF STOREFRONT RETAIL PERMITS; AND (3) PROVIDING DIRECTION ON WHETHER TO RESEARCH THE FOLLOWING: (A) COMMERCIAL CANNABIS TAX RATES; (B) CHANGES TO THE COMMUNITY BENEFITS REQUIREMENTS FOR STOREFRONT RETAIL BUSINESSES; AND (C) CHANGING THE PROHIBITION AGAINST TRANSFERING A PERMIT OR SELLING 50% OR MORE OWNERSHIP OR CONTROL OF THE PERMIT

EXECUTIVE SUMMARY:

This staff report asks the City Council to consider adopting attached Resolution No. 2024-092 to: (1) amend the City's commercial cannabis rules and regulations to eliminate the merit-based selection process for those storefront retailers and storefront retail microbusinesses allowed to apply for future commercial cannabis business permits; and (2) consider whether to decrease the number of commercial cannabis permits available for storefront retailers and storefront retail microbusinesses from twelve (12) to eight (8) or more. In addition, this staff report asks the City Council to provide direction to staff on whether to research the following: (1) a possible reduction in the commercial cannabis tax rates imposed by CMC Chapter 3.38; (2) a possible change to the community benefit actions or measures that applicants for storefront retailer and storefront retail microbusiness permits have been asked to commit to implement in order to help mitigate the potential adverse impacts to the community resulting from the applicant's business; (3) a possible change to the prohibition against transferring a commercial cannabis permit or selling 50% or more ownership or control of the permit.

**RECOMMENDED ACTION:
That the City Council:**

a. After considering and providing direction on whether to decrease the number of commercial cannabis permits available for storefront retailers and storefront retail microbusinesses from twelve (12) to eight (8) or more, adopt attached Resolution No. 2024-092 to: (1) amend the City's commercial cannabis rules and regulations to eliminate the merit-based selection process for those storefront retailers and storefront retail microbusinesses allowed to apply for commercial cannabis business permits; and (2) implement the City Council's direction regarding whether to decrease the number of commercial cannabis permits available for storefront retailers and storefront retail microbusinesses from twelve (12) to eight (8) or more.

b. Provide direction to staff regarding whether to research a possible reduction in the commercial cannabis tax rates imposed by CMC Chapter 3.38.

c. Direct staff not to change the community benefit actions or measures that prior permittees for storefront retailer and storefront retail microbusiness permits have committed to implement, but to extend this requirement to future applicants who are not part of the merit-based selection process, as provided for herein and in the new commercial cannabis rules and regulations adopted by Resolution No. 2024-092

d. Provide direction to staff regarding whether to research a possible change to the prohibition against transferring a commercial cannabis permit or selling 50% or more ownership or control of the permit.

BACKGROUND & HISTORY:

A. State Law

In 2016, voters approved Proposition 64, titled the Adult Use of Marijuana Act (the "AUMA") and enacted a state statutory scheme legalizing, controlling, and regulating the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical ("adult- use" or "recreational") cannabis, including cannabis, products, for use by adults twenty-one (21) years of age and older. In 2017, the Medical and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA") was signed into law, which provides a comprehensive regulatory framework for licensing, control, and taxation of medical and adult-use cannabis-related businesses in California.

B. City Rules and Regulations

In 2020, the City Council first adopted Ordinance 3321 to amend Chapter 5.36 of the Corona Municipal Code ("CMC") to permit and regulate commercial cannabis businesses in the City. The City Council has also established certain Rules and Regulations for Commercial Cannabis Businesses by its adoption of various resolutions since 2020 ("Cannabis Rules & Regs").

Through its adoption of CMC 5.36 and the Cannabis Rules & Regs, City Council has established a

strong and effective regulatory system with regard to cannabis businesses that, among other things as noted in those documents, seeks to: (1) protect the public health, safety and environmental resources; (2) provide a consistent regulatory pathway for the cannabis industry, consistent with state regulations; (3) foster a healthy, diverse and economically viable cannabis industry that contributes to the local economy; and (4) ensure that environmental, public health, safety and nuisance factors related to the cannabis industry are adequately addressed.

C. Storefront Businesses

1. Impacts and Community Benefits

We are all aware that both community benefits and potential adverse impacts may result from the operation of commercial cannabis businesses in the City. Thus, the Cannabis Rules & Regs have been specifically designed to help ensure that all such adverse impacts are adequately mitigated and offset by the potential community benefits those businesses can provide to the City and its residents. Moreover, since storefront retailers and storefront retail microbusinesses are particularly prone to result in potential adverse impacts to the community, such businesses have been asked to specifically commit to providing particular community benefits of their choosing to help ensure that their impacts are adequately mitigated and offset.

2. Merit-Based Selection Process

Because the City was aware that the interest in obtaining storefront retailer and storefront retail microbusiness permits would significantly exceed the maximum number of such permits allowed by the City (currently 12), the City Council established a merit-based selection process. Pursuant to this process, each application was scored and the 47 applicants were listed on a "final ranking" form in order of most points to least points (#1 had 653 points and #47 had 483 points). Those applications with higher scores were provided an opportunity to obtain their permits first, starting with #1 and proceeding one at a time until all allowed permits were issued or until the "final ranking" expired.

3. Expiration of Merit-Based Final Ranking & Current Next Steps

The "final ranking" of applicants pursuant the merit-based process was posted on or about March 17, 2022. Pursuant to Section IV(B)(4) of the adopted Cannabis Rules & Regs, the merit-based "final ranking" of the storefront retailers and storefront retail microbusinesses expired twenty-four (24) months from the date it was posted on the City's website. Accordingly, the "final ranking" expired on or about March 17, 2024 ("Final Ranking Expiration Date").

Following the Final Ranking Expiration Date, the Cannabis Rules & Regs provide as follows:

"If, prior to expiration of the final ranking, the maximum number of commercial cannabis permits that are available for issuance to retailers and storefront retail microbusinesses within the City pursuant to CMC § 5.36.060 have not yet been approved and issued pursuant to Section VI, the City Manager shall designate a new application period pursuant to Section III(A) and a new application submittal and

review process shall commence subject to the provisions set forth herein." (Emphasis added.)

4. Maximum Number of Permits & Permits Issued Prior to Expiration

CMC 5.36.060(A) set the maximum number of permits for storefront retailers and storefront retail microbusinesses at one (1) per 15,000 city residents, rounded-up to the next whole number. Accordingly, the maximum number of commercial cannabis permits for storefront retailers and storefront retail microbusiness is currently twelve (12).

Prior to the Final Ranking Expiration Date, the City had issued eight (8) commercial cannabis permits for storefront retailers and/or storefront retail microbusiness.

ANALYSIS:

A. Reso 2024-092 - Elimination of Merit-Based Selection Process

Since the maximum permitted number of commercial cannabis permits had not yet been issued before the Final Ranking Expiration Date, a new application period was to be set and a new merit-based selection process was to begin for storefront retailers and storefront retail microbusinesses.

However, staff is requesting the City Council to consider revising the Cannabis Rules & Regs to eliminate the merit-based selection process. That process was lengthy, complex and expensive for both the applicants and the City. Moreover, staff does not believe that such a process is necessary at this point, primarily because eight (8) permits have already been issued and - as we have heard from the storefront businesses - the economics of the market right now are challenging. Staff believes that a first-come first-served permitting process will be sufficient.

If the City Council agrees, adoption of the attached Resolution No. 2024-092 will accomplish this change.

B. Reso 2024-092 - Possible Decrease in the Number of Storefront Retail Permits

As discussed above, eight (8) of the twelve (12) commercial cannabis permits available for storefront retailers and storefront retail microbusinesses were issued before the Final Ranking Expiration Date. Thus, unless the City Council chooses to reduce the maximum number from twelve (12) to eight (8) or more, four (4) more can be issued if there is interest.

As you will recall, CMC 5.36.060 (D) & (E) give the City Council the authority to adopt a resolution to decrease the maximum number of storefront retail permits as follows:

"(D) Increase or decrease of maximum number. The City Council reserves the right at any time to consider whether the city should increase or decrease the maximum number of commercial cannabis permits available for issuance within the city for any or all types of commercial cannabis activities, or to impose a cap on previously uncapped

commercial cannabis activities. If the City Council proceeds with a decrease in the total number of commercial cannabis permits for any or all types of commercial cannabis activities within the city, any such action shall include provisions for determining which, if any, existing commercial cannabis permits shall be eliminated and when operations for eliminated commercial cannabis permits shall cease.”

As we have heard from the storefront retail businesses, the economics of the market right now are challenging and they believe there is too much competition to allow even the eight (8) current businesses to be successful. This is particularly true, they state, because there are also at least three (3) additional storefront retail businesses operating in county pockets very close to the City businesses and those County businesses allegedly pay less in sales tax (more discussion on that issue below).

If the City Council is inclined to reduce the number of storefront retail permits, staff respectfully requests Council not to reduce the number below nine (9). The reason for this is that the “next” applicant on the “final ranking” list (Johnnie Hernandez of Haven XXII, LLC) had been mistakenly notified by a former employee that they were next in line, before that employee realized that the Final Ranking Expiration Date had passed and thus the list was no longer valid. Unfortunately, before this information could be corrected, Haven XXII, LLC secured a preferred premises location for their business. Staff therefore believes it is reasonable to allow Haven XXII, LLC to continue their application process.

Adoption of the attached Resolution No. 2024-092 will allow the City Council to take either of the following actions (see Exhibit “A” to Reso 2024-092):

Maintain the Maximum Number Provided for in CMC 5.36.060(A) (Currently 12)

OR

Set the Maximum Number at [INSERT NUMBER]

C. Direction on Whether to Research Various Issues

Based upon information provided by various commercial cannabis businesses, staff has been asked to discuss with Council the following questions. While staff is generally familiar with these issue and thus will be present at the meeting to discuss each of them, our primary focus will be to ask for direction from City Council as to whether you wish for staff to spend time and resources to research these issues thoroughly enough for you to make a reasoned decision.

1. Cannabis Tax Rates. Provide direction to staff regarding whether to research a possible reduction in the commercial cannabis tax rates imposed by CMC Chapter 3.38.

2. Community Benefits. Provide direction to staff regarding whether to research a change to the community benefit actions or measures that prior permittees for storefront retailer and storefront retail microbusiness permits have committed to implement.

Staff Recommendation: As you will hear, this is the only issue about which staff will have a definitive recommendation. This issue has been raised because one permittee has informed us that they are having financial difficulty meeting all of its obligations. However, no other permittee has raised a similar issue, and in fact attached Resolution 2024-092 would continue this requirement for future storefront retailer and storefront retail microbusiness permittees. Instead of making the community benefit commitment part of the merit-based scoring process, the applicant will be asked to commit to implementing a sufficient amount of community benefit actions or measures to properly mitigate the potential adverse impacts to the community resulting from the applicant's business, as determined by the City in its sole but reasonable discretion.

3. Permit Transfer Prohibitions. Provide direction to staff regarding whether to research a possible change to the prohibition against transferring a commercial cannabis permit or selling 50% or more ownership or control of the permit.

FINANCIAL IMPACT:

It is unknown if any of the actions discussed herein will have any direct financial impact on the City. For instance, while reducing the number of storefront retail cannabis businesses could be seen as reducing possible sales tax collections, it is also possible that a larger number of businesses only spreads out the same amount of sales tax collections.

ENVIRONMENTAL ANALYSIS:

This action is exempt pursuant to Section 15061(b)(3) of the Guidelines for the California Environmental Quality Act (CEQA), which states that a project is exempt from CEQA if the activity is covered by the common sense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment. 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, the activity is not subject to CEQA. This action asks that the City Council provide direction on whether to make changes to the commercial cannabis program will not have a significant effect on the environment. Therefore, no environmental analysis is required.

PREPARED BY: DEAN DERLETH, CITY ATTORNEY/LRM DIRECTOR

REVIEWED BY: DEAN DERLETH, CITY ATTORNEY/LRM DIRECTOR

Attachment(s)

1. Exhibit 1 - Resolution No. 2024-092 (REDLINE)
2. Exhibit 2 - Resolution No. 2024-092 (CLEAN)