



**CITY OF SALINAS
COUNCIL STAFF REPORT**

DATE: APRIL 17, 2018
DEPARTMENT: OFFICE OF THE CITY MANAGER
FROM: ANDREW MYRICK, ECONOMIC DEVELOPMENT MANAGER
TITLE: ORDINANCE MODIFYING REGULATIONS AND TAXES FOR SPECIFIED COMMERCIAL CANNABIS BUSINESS TYPES

RECOMMENDED MOTION:

Introduce the Attached Ordinance updating the Commercial Cannabis Business Ordinance (Chapter 5, Article VII of the Municipal Code) and the Cannabis Business Tax (Chapter 19A of the Municipal Code).

RECOMMENDATION:

Staff recommends that the Council introduce the attached Ordinance for further consideration at a later Council Meeting.

EXECUTIVE SUMMARY:

These updates to the Ordinance will provide alternative review processes and tax rates for Nursery-type Cultivation businesses, will establish a permitting process for Research and Development businesses that are not involved in the wholesale or retail trade of cannabis or cannabis product, will establish standards for the disposal of cannabis waste, and will modify the requirements for employee identification cards.

BACKGROUND:

The City of Salinas first began regulating the commercial cannabis industry in January 2016, when regulations for medical cannabis were established. In November 2016, voters from Salinas created a tax on specific types of commercial cannabis businesses (Cultivation, Delivery, Dispensary, and Manufacturing). At this same time, the voters of California approved Proposition 64, which legalized the sale and use of adult-use (“recreational”) cannabis, effective January 1, 2018. The City amended its Ordinance in August 2017 to refine the permitting process for commercial cannabis businesses and allow for Distribution and Testing Laboratory businesses. In November of 2017, the State of California released Regulations for commercial cannabis businesses, and the City again amended its Ordinance to allow commercial cannabis businesses to engage in the adult-use market.

As the industry continues to develop, new information is continuously coming to the attention of City staff. While these can often be resolved administratively, some issues have arisen which cannot be resolved without modifications to the Ordinance. The primary changes to the Ordinance are described below:

- 1) Allow Stand-Alone Nurseries with an Administrative Permit, and Reduce the Tax Rate from \$15/square foot to \$2/square foot

Nurseries grow immature plants from seeds or cuttings to be used for cultivation. The plants are sold to either Cultivation businesses, which use them for production, or Dispensaries, which sell them directly to customers at retail for personal grows. Plants in a nursery may not be more than eight inches tall or wide, and may not have any buds or flowers. Because the psychoactive compounds typical in mature cannabis plants do not exist at any significant level in the immature plant, the plants do not produce the pungent odors generally associated with cannabis plants. Further, the plants themselves have a much lower value than mature cannabis plants, as additional effort in tending and growing the plant must be made before it can be utilized, which makes them less attractive targets for theft.

Our current Ordinance allows for the consideration and approval of Nurseries as a part of a Cultivation Permit. However, this structure creates two barriers to entry to the Nursery market. First, the number of Cultivation Permits is limited, and there is a significant cost to go through the competitive, score-based process required for a full Cultivation Permit. Second, Nurseries operate on much lower margins than a standard Cultivation Permit – most jurisdictions that allow both Cultivation and Nursery businesses have differentiated tax rates between the two. The County of Monterey, for example, taxes Nurseries at \$2 per square foot, rather than the \$15 per square foot that the County and City currently apply to Cultivation businesses. Industry representatives have indicated that a Nursery business cannot be viable at those rates.

The Ordinance under consideration would allow stand-alone Nurseries with an Administrative Permit, similar to those used for Testing Laboratories. This is because the issues facing Nurseries tend to be uniform, and thus the impacts should be able to be mitigated subject to “standard conditions.” Only immature plants, seedlings, and cuttings would be allowed, and the business must be fully indoors. Staff will develop regulations to ensure that the businesses are operated in a manner consistent with their surroundings, and the businesses will need to comply with underlying Zoning regulations. Nursery activities included as a part of a larger permitted Cultivation operation will still be permitted under a Cultivation Permit.

The Cannabis Business Tax Ordinance would also be amended, lowering the tax of any Nursery operations (including those that are a portion of a Cultivation Permit) to \$2.00 per square foot. City Council is allowed to make this change under Section 19A.10.330, because Nursery operations are currently taxed under the original Ordinance, and therefore this action would not increase the tax rate or result in taxing any business that was not previously subject to the tax. A study prepared by Hdl Consultants for the County of Monterey found that most jurisdictions tax Nurseries at the rate of \$1-\$2 per square foot, so the proposed rate is within industry norms.

2) Allow for Research and Development Businesses

As the cannabis industry develops, interest is also developed in researching new strains or plants or new equipment which can be used for growing. Currently, because these businesses must utilize cannabis in their research, they are required to operate in conjunction with another legally permitted operation. However, there is growing interest for “stand-alone” business that would conduct research and development on cannabis and cannabis products, would not be involved in the retail trade. These Research and Development businesses would differ from Testing Laboratories, in that Testing Laboratories are limited to analyzing samples of product destined for retail sale for contamination and/or potency.

The updated Ordinance proposes to allow Research and Development Facilities subject to an Administrative Permit. In general, like Testing Laboratories, the impacts of these types of business should be standard and predictable. Staff will develop additional regulations for these businesses as necessary, including additional requirements for businesses that have a significant amount of growing space for mature cannabis plants – even if these plants would not enter the retail market, the potential impacts of odor and security may necessitate additional measures.

3) Establish Standards for Disposal of Cannabis Waste

Due to its toxicity, cannabis waste must be handled as hazardous waste and cannot be simply disposed of in regular trash. Currently, waste must either be composted onsite and reused, or it must be picked up by an approved waste disposal company. The matter is further complicated by the required “track-and-trace” program utilized by the State, which requires that all waste be tracked in the system and its destruction verified by a third party. Furthermore, any person transporting the cannabis would be required under California law to possess a Distribution License. Currently, the City of Salinas has a franchise agreement with Republic Services to handle all solid waste disposal in the City of Salinas. However, Republic Services does not currently offer specialized waste disposal for cannabis waste, and is not a licensed Distributor. They do not, therefore, accept cannabis waste for disposal at this time. There is a single third-party waste disposal company operating out of Del Rey Oaks that does have the required Distribution and Manufacturing Licenses from the State necessary to pick up and transport the waste.

The proposed Ordinance would impose requirements similar to those mandated by the State. If Republic Services or a future franchisee of the City offers this type of service, the businesses would be required to utilize it. Absent that, businesses would have the option of composting, self-hauling, or utilizing a third-party business. Businesses that self-haul would be responsible for the reporting that would otherwise be the waste hauler’s responsibility, and will need to obtain verification from the facility accepting the waste. In the event a Waste Hauler wishes to locate in Salinas, they would need to obtain a Manufacturing and Distribution Permit. In all cases, the waste would need to be tracked and rendered unrecognizable and unusable prior to final disposal.

4) Modify Standards for Identification Badges

Our current Ordinance requires all employees of commercial cannabis businesses to undergo a background check and obtain a Work Permit from the Salinas Police Department. The Ordinance

also requires that the employees wear a City-issued identification card at all times while at the business. However, State Regulations issued in November 2017 also require identifications cards issued by the business to be worn, and specifies required information to be included on the card. This would result in a situation where each employee would be required to wear both City-issued and business-issued identification cards at all times. While this is not necessarily a major problem, it does represent a level of redundancy, and makes efforts to verify compliance more complicated.

The proposed Ordinance would eliminate the need for a City-issued identification card, requiring instead a business-issued identification card. The Ordinance also would specify the required information on the card. Employees would still need to obtain a Work Permit and background check, and the card would be required to include an identification number from that Work Permit so that City staff can easily verify Work Permit information. This would also eliminate the need to coordinate the creation of identification badges.

CEQA CONSIDERATION:

The City Council's approval of the proposed Ordinance and/or Resolutions is exempt from environmental review under the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. [CEQA Guidelines Section 15061(b)(3)]

STRATEGIC PLAN INITIATIVE:

The City Council's approval of the proposed Ordinance and/or Resolutions is not among the City Council's current goals and objectives as identified in the City Council's current Strategic Plan.

FISCAL AND SUSTAINABILITY IMPACT:

The proposed Ordinance would have an unknown, but minor, impact on City finances. Although the tax rate for Nurseries would be reduced, this may be offset by an increased number of businesses than would otherwise exist (the City currently does not have any Nursery businesses, although it is unknown whether any of the approved Cultivation businesses would ultimately include Nursery operations). If these modifications result in an increase in employment and business activity, there would likely be a positive impact on City finances; conversely, if these businesses require extensive City services as a result of their operations, that could result in a negative impact on City finances.

ATTACHMENTS:

Proposed Ordinance