



CITY COUNCIL AGENDA REPORT

MEETING DATE: APRIL 20, 2021

ITEM NUMBER: PH-1

SUBJECT: GIVE FIRST READING TO AN ORDINANCE TO ADOPT CODE AMENDMENT CO-2021-01 TO AMEND TITLE 13 (PLANNING, ZONING, AND DEVELOPMENT) AND AN ORDINANCE TO AMEND TITLE 9 (LICENSES AND BUSINESS REGULATIONS) OF THE COSTA MESA MUNICIPAL CODE REGARDING THE TAXATION, REGULATION, OPERATING REQUIREMENTS AND STANDARDS FOR CANNABIS USES INCLUDING RETAIL CANNABIS STOREFRONT AND NON-STOREFRONT USES TO IMPLEMENT THE CITY OF COSTA MESA RETAIL CANNABIS TAX AND REGULATION MEASURE (MEASURE Q)

DATE: APRIL 13, 2021

FROM: DEVELOPMENT SERVICES DEPARTMENT/ PLANNING DIVISION

PRESENTATION BY: NANCY HUYNH, ASSOCIATE PLANNER

**FOR FURTHER INFORMATION
CONTACT:**

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RECOMMENDATION:

Staff recommends that the City Council:

1. Find that the adoption of Ordinance Nos. 2021-X1 and 2021-X2 are exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3), General Rule, Section 15301 (Class 1), Existing Facilities, Section 15303 (Class 3), New Construction or Conversion of Small Structures, Section 15308 (Class 8), Actions by Regulatory Agencies, and Section 15332 (Class 32), In-fill Development Projects.
2. Introduce for first reading, by title only:
 - Ordinance No. 2021-X1 to adopt Zoning Code Amendment CO-2021-01 to amend Title 13, Chapter IX, Article 21 and Chapter IV, Table 13-30; and
 - Ordinance No. 2021-X2 to amend Title 9, Chapter I, Article 5, Chapter II, Article 1, and Chapter VI of the Municipal Code regarding the taxation and regulation for retail cannabis uses including storefronts and non-storefronts; and

BACKGROUND

On November 3, 2020, voters approved the “City of Costa Mesa Retail Cannabis Tax and Regulation” measure, also known as Measure Q. Measure Q authorizes the City Council to adopt an ordinance that allows and regulates cannabis retail uses including storefront retail (commonly referred to as a dispensary) and non-storefront retail (delivery). Measure Q imposes a four-percent (4%) to seven-percent (7%) gross retail tax on cannabis retail businesses. In addition, Measure Q requires cannabis retail businesses to meet specific operating requirements such as zoning, separation distance from certain sensitive uses, and security measures.

Measure Q only allows cannabis retail storefront and non-storefront uses. Non-retail cannabis uses including distribution, manufacturing, research and development laboratories, as well as testing laboratories are currently allowed uses (with a cannabis business permit and a conditional use permit) under Measure X (“City of Costa Mesa Medical Marijuana Measure”) which was approved by the voters on November 8, 2016. Commercial cultivation remains a prohibited land use in the City.

The proposed amendments to the Costa Mesa Municipal Code (CMMC) collectively implement Measure Q by establishing the minimum operating requirements and development standards to tax and regulate cannabis retail storefronts and non-storefronts. In addition, the amendments change all references to the term “marijuana” to “cannabis”.

City Council Cannabis Ad Hoc Committee

At the City Council meeting of May 19, 2020, a City Council Cannabis Ad Hoc Committee was created to advise on the development of the Measure Q ballot initiative. Following the approval of Measure Q by Costa Mesa voters, the Ad Hoc Committee provided feedback throughout staff’s preparation of the proposed ordinances. Ad Hoc Committee feedback was reflected in the proposed ordinances presented to the Planning Commission.

Outreach with Local Cannabis Industry

The City Council Cannabis Ad Hoc Committee and staff held outreach meetings with the local cannabis business industry (made up of manufacturers, distributors, and retail business owners/operators) to obtain feedback on the draft ordinances. Meetings were held on June 17, 2020, June 26, 2020, February 10, 2021, and April 12, 2021 with over 50 industry representatives attending the most recent outreach meeting. Cannabis industry feedback is discussed in greater detail below.

Planning Commission Hearings

On February 22, 2021, the Planning Commission held a public hearing, received staff’s presentation, received public comments, discussed the item, and continued the item by a 7-0 vote to the March 22, 2021 Planning Commission meeting so that staff could provide additional information regarding specific discussion items.

The staff report and presentation for the February 22 meeting are available at the following links:

February 22, 2021 Planning Commission staff report:

<http://ftp.costamesaca.gov/costamesaca/planningcommission/agenda/2021/2021-02-22/PH-1.pdf>

Video from February 22, 2021 Planning Commission meeting:

https://costamesa.granicus.com/player/clip/3658?view_id=10&redirect=true

On March 22, 2021, the Planning Commission held a public hearing, received public comments again, discussed the follow-up information and options staff presented on specific policy matters, and recommended City Council give first reading to the proposed ordinances by a 4-2-1 vote (Commissioners Colbert and Stephens voting no; Commissioner Tourje abstained).

The following is a summary of the main topics discussed by the Planning Commission:

- **Sensitive Uses Definition:** discussed the 1,000-foot separation requirement from sensitive uses listed in Measure Q (K-12 schools, child daycares, playgrounds, and homeless shelters) and definitions for those sensitive uses;
- **Youth Centers Definition:** discussed the definition of youth center and the State's 600-foot separation requirement from youth centers;
- **Separation Distance between Storefronts:** discussed establishing a cap on the total number of retail storefronts in Costa Mesa and/or adding a minimum separation distance between storefronts to avoid clustering or overconcentration in one particular area;
- **Required Planning Application:** discussed whether a Conditional Use Permit (CUP) reviewed by the Planning Commission or a Minor Conditional Use Permit (MCUP) reviewed by the Zoning Administrator was appropriate for storefronts and non-storefronts;
- **Prohibition on Properties with Past Illegal Cannabis Sales:** discussed reducing the time period from five years to 180 days that illegal cannabis use must cease prior to applying for a cannabis business permit; and
- **Social Equity:** discussed establishing a social equity component to the City's cannabis program to address the historic disproportionate impact of past cannabis related drug convictions in communities of color.

The March 22 Planning Commission staff report and video are available at the following links:

March 22, 2021 Planning Commission staff report:

<http://ftp.costamesaca.gov/costamesaca/planningcommission/agenda/2021/2021-03-22/PH-1.pdf>

Video from March 22, 2021 Planning Commission meeting:
https://costamesa.granicus.com/player/clip/3691?view_id=10&redirect=true

Finance & Pension Advisory Committee (FIPAC)

On December 9, 2020, FIPAC took a formal vote to recommend that City Council set the gross receipts tax rate for Measure Q approved retail cannabis businesses at seven-percent. Refer to the letter from FIPAC in Attachment 4.

FIPAC also previously deliberated on the Measure X tax rate for non-retail cannabis uses (excluding cultivation) which was at a tax rate of six-percent. At the March 3, 2020 City Council meeting, an ordinance was put forth recommending a 24-month temporary reduction of the cannabis business tax from six-percent to two-percent based on analyses that the City may not remain competitive if the tax rate was not reduced. As a result, City Council voted to amend the ordinance to permanently reduce the tax rate to one-percent for distribution, manufacturing, research and development laboratories, and no annual business tax for cannabis testing laboratories.

The original six-percent tax rate was generating an annual amount of \$763,673. In Fiscal Year (FY) 2020/21, the first full year of the one-percent tax rate, the City is expected to receive \$278,000; a reduction of almost \$500,000. As a result, FIPAC emphasized their vote for the seven-percent tax rate is to also compensate for the loss of revenue due to the permanent Measure X tax reduction and the funding needed for the approved staff positions related to cannabis implementation.

DESCRIPTION/ANALYSIS:

The following is a description of the proposed amendments to Title 9 and Title 13 of the CMMC. These amendments to the CMMC are reflected in the Draft Ordinances provided as Attachments 1 and 2 to this report.

Amendments to Title 13 (Planning, Zoning and Development)

With the proposed code amendment, a new section would be added to Article 21 to establish permitted zones, planning application requirements, separation distance requirements from sensitive uses, and specific development standards for cannabis storefront and non-storefront retail. An underline/~~strikethrough~~ version of Title 13 with the added text and revisions are provided in Exhibit A of Attachment 1.

Zoning Districts

Cannabis retail storefronts would be allowed in commercial zones, while non-storefronts would be allowed in both commercial zones and the Green Zone (industrial area zoned for Measure X uses). Measure Q allows cannabis retail uses in these zones only. Cannabis retail uses would remain prohibited in all other zoning districts including industrial (other than the Green Zone) and residential zones.

Planning Application Required

A conditional use permit (CUP) would be required for all cannabis retail businesses (storefronts and non-storefronts) operating in the City subject to a Planning Commission public hearing and decision. For existing licensed cannabis distributors or manufacturers within the Green Zone who desire to add a non-storefront use to their business, an amendment to their existing CUP would be required; the amendment would be processed as a Minor CUP (MCUP) subject to a Zoning Administrator decision.

Both application types are subject to the same public notice requirements, allow the City to place conditions of approval on a proposed use, and are subject to the same approval findings. The major difference is that there is no public hearing for an MCUP (unless the Zoning Administrator forwards the application to Planning Commission); rather, the Zoning Administrator decision is posted online.

The Planning Commission recommended this approach to allow the opportunity for public input at a Planning Commission public hearing for all new cannabis uses since cannabis retail storefronts will be allowed in commercial zones which may be in close proximity to residential areas in certain cases. By comparison, the City Council Ad Hoc Committee originally recommended that a CUP not be required, and instead an MCUP process apply to all cannabis retail uses as a means of streamlining the application process. A third alternative, initially recommended by staff, is to require a CUP for retail storefronts within 200-feet of a residential zone, an MCUP for retail storefronts beyond a 200-foot buffer of a residential zone, and an MCUP for all non-storefronts (delivery).

Location Requirements

Storefronts would be required to be located:

- **1,000 feet** from schools providing instruction in kindergarten or grades 1 through 12, playgrounds, child daycares, or homeless shelters consistent with Measure Q;
- **600 feet** from youth centers as defined in the State's Health and Safety Code and as required by the State's Bureau of Cannabis Control (BCC); and
- **500 feet** from another licensed storefront business as recommended by Planning Commission.

The above separation requirements are not applicable to standalone delivery non-storefronts (that are not operating as part of a storefront business). The separation requirements are applicable to storefront uses only.

The Planning Commission recommended that the Ordinance refer to State definitions for Measure Q sensitive uses. Those definitions are:

- **“School”** means any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes. (*Section 11362.768(h) of HSC*)

- **“Child day care facility”** means a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers, employer-sponsored child care centers, and family day care homes. *(Section 1596.750 of HSC)*
- **“Playground”** means any park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks. *(Section 11353.1(e)(1) of HSC)*
 - The definition of “playgrounds” is interpreted to refer to publicly-owned and operated playgrounds. Private playgrounds are not easily identifiable because they are not tracked as part of a State or local license database or other list. Therefore, mapping such private facilities introduces a practical challenge for implementation.
- **“Emergency shelter”** means a facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless that is not in existence after the declared shelter crisis. *(Section 8698.4(c)(1) of Government Code)*

Youth Centers

For youth centers, State law requires a 600-foot separation between youth centers and storefronts. The State does allow a local jurisdiction to specify a different separation distance, either less or more than the State requirement.

Regarding the definition of youth centers, the State’s definition is open-ended which leaves the City with the responsibility of determining what type of uses are or are not youth centers for mapping and separation purposes. The State’s definition is:

- **“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.

The Planning Commission recommended City Council defer to the State’s definition and implement the 600-foot separation distance for youth centers, noting that studio uses with recreational classes and programs for youth should be buffered from storefront uses. As such, under the Planning Commission’s recommendation, the State’s definition would be interpreted broadly to include any “public or private facility...primarily used to host recreational or social activities for minors...” For mapping purposes, these include youth clubs and theatres like Halecrest (a private membership recreational club), Millennium Barn, and Pacific Star Riding Club, arcades like Chuck E. Cheese, tutoring uses like Kumon or Mathnasium, martial arts studios, fitness studios like gymnastics classes and Aqua Tots, and dance, music, art, or similar studio uses. Private gyms, pizza parlors,

dentist or doctor's offices that serve children and other similar uses whose primary use is not social or recreational in nature are not included in the youth center definition. This approach results in a greater number of youth centers being mapped for separation distance purposes and a lesser number of properties eligible for cannabis storefront uses. The preliminary draft separation map (provided as Attachment 5 to this report) reflects these uses as youth centers.

The City Council Ad Hoc Committee originally recommended that youth centers be narrowly defined to include only those uses which were specifically referenced as examples in the State's definition (i.e. private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities). For mapping purposes, these uses would likely include only youth clubs and theatres like Halecrest (a private membership recreational club), Millennium Barn, and Pacific Star Riding Club and arcades like Chuck E. Cheese. As such, at the Council's discretion, a modified definition of youth centers could reflect a narrow definition of youth center and affirmatively exclude types of youth centers such as martial arts classes, yoga, dance classes, music classes, art classes, or similar studio uses. This approach would result in a lesser number of youth centers being mapped for separation distance purposes and a greater number of properties eligible for cannabis storefront uses.

Separation Between Retail Storefronts

For separation distance between storefronts, there is not a State requirement, overconcentration regulations, or a cap on number of licenses per city. Initial discussions with the City Council Cannabis Ad Hoc Committee focused on allowing zoning, location requirements, and market forces to limit the number of locations instead of a separation distance or cap. Most cities apply a separation distance between storefronts or a cap or a combination of the two to limit the total number of storefronts. For example, Santa Ana has a maximum cap of 30 licenses with 500-foot separation between storefronts; the City of Long Beach has a maximum cap of 32 licenses with 1,000-foot separation between storefronts. (The Planning Commission staff report describes best practices and several options for addressing the total number of storefronts.) Based on best practices and in consideration of a measured approach given a City of our size, staff recommended a phased in approach whereby a soft cap is established based on the City's capacity to process concurrent cannabis business permit applications in the first year and the cap could be adjusted annually (or more frequently).

Planning Commission recommended a minimum of 500 feet separation distance between storefronts to avoid clustering and overconcentration of storefronts in one particular area or property. For reference, 500 feet in most commercial areas of the City equates to approximately a half block.

Planning Commission did not recommend a cap on the number of licenses since the separation between stores would organically act as a cap by limiting the number of stores a property or area could accommodate given the other required separation distances. Notwithstanding, Section 9-486 would provide City Council with the authority to limit and/or

restrict the number of cannabis retail permits available for issuance and/or renewal at any time by adoption of a resolution.

Other Location Requirements

All of the required separation distances described above are proposed to be measured in a straight line from the closest property line of the lot where the cannabis retail storefront is proposed to the closest property line of the existing sensitive use(s) and without regard to intervening structures or barriers, except for properties separated by the Interstate 405 (I-405) Freeway. For properties that are separated by the I-405, the distance is measured as the most direct pedestrian route between properties. Freeways configured like the I-405 are impenetrable barriers which the straight-line measurement does not take into consideration.

In addition to the above location requirements, storefronts are not allowed to be located within any property that has been involved in unpermitted and/or illegal cannabis sales, delivery and/or dispensing at any time in the five years preceding a cannabis business permit application – unless certain specific findings are made as outlined in Section 13-200.93(e)(6) of the proposed Ordinance. Planning Commission recommended the time period be reduced from five years to 180 days, which has been reflected in the proposed ordinance.

Development Standards for Storefronts and Non-Storefronts

Storefronts would be subject to the following development standards:

- Opaque window coverings and permanent security bars on windows or doors are prohibited;
- Signage directing customers to a storefront business including but not limited to A-frame signs, flags, banners or a person holding a sign whether on the premise of the storefront or public-right-of-way is prohibited;
- Comply with landscaping requirements set forth in Chapter VII of Title 13 when feasible as determined by the Director;
- Drive-through or walk-up window services are prohibited;
- No outdoor seating or patio areas for the public are allowed;
- Special events with live entertainment is prohibited; and
- For storefronts located within two-hundred (200) feet of a residential zone, exterior lighting is required to be shielded/directed away from residential areas and trash facilities are required to be screened and located appropriately to minimize noise and odor impacts.

These development standards are to ensure storefronts would operate in a manner compatible with existing businesses and surrounding land uses. For storefronts operating in close proximity to residential zones, additional development standards would apply to ensure the use would not have negative impacts in terms of noise, lighting, and odor. Additional conditions of approval could also be included on a proposed storefront as part of the planning application review process.

Non-storefronts would be subject to the following development standards:

- Delivery services may operate independently or as a part of a storefront, distribution, or manufacturing facility;
- A business license is required to conduct deliveries into or within the City;
- The last delivery must be completed by 10:00 p.m.; and
- No general public are allowed inside a non-storefront retail business.

Non-storefronts could operate as standalone business or could also be a part of a licensed storefront. Additionally, deliveries could operate in conjunction with a licensed distribution or manufacturing business in the Green Zone. A business license would be required to conduct deliveries within the City regardless of whether the delivery service originates from a different jurisdiction or within the City.

Land Use Matrix (Table 13-30)

The amendment to Title 13 also includes updating Table 13-30 (Land Use Matrix) to revise cannabis retail storefronts from prohibited to conditionally permitted with a CUP as well as add the land use category for cannabis retail non-storefronts, also subject to a CUP.

Amendments to Title 9 (Licenses and Business Regulations)

The following is a description of the proposed amendments to Title 9. These amendments to the CMMC are reflected in underline/strikethrough format in Attachment X.

Chapter I, Article 5 (Business Tax)

Chapter I, Article 5 currently contains the tax rate for non-retail cannabis businesses. The proposed ordinance would establish different tax rates for different types of cannabis businesses allowed in the City – retail (storefront and non-storefront) versus non-retail (distributor, manufacturer, and research and development laboratory). Retail cannabis businesses would be subject to an annual business tax of seven-percent based on the gross receipts of that business. Non-retail cannabis operators that also engage in retail cannabis sales would only be subject to the retail sales tax and not required to pay the non-retail tax.

Chapter II, Article 1 (Regulation of Certain Businesses)

Chapter II, Article 1 currently includes regulations and processes for revocation or suspension of business permits. The textual revisions to this chapter would include expanding on the hearing process prior to revocation or suspension of a business permit and related revisions.

Chapter VI (Cannabis Business Permits)

Chapter VI pertains specifically to cannabis business permits. A cannabis business permit would be required for any cannabis retail use, the same as is applied to Measure X uses.

The proposed amendments to this chapter would include the following in addition to minor textual revisions:

- **Section 9-482.5:** Added section to expand on City Manager’s authority to make reasonable rules and procedures to administer and enforce any regulations relating to permitting commercial cannabis businesses;
- **Section 9-485:** Added definitions related to retail cannabis businesses such as “cannabis goods”, “edible cannabis product”, “Green Zone”, and “free samples” and defers to the State’s definition for sensitive uses including youth centers;
- **Section 9-486:** Includes retail cannabis storefront and non-storefront as additional types of authorized cannabis businesses permitted in the City;
- **Section 9-487.5:** Added section to specify that a cannabis business must only operate under the business name listed in the cannabis business permit, “doing business as” (DBA), or “fictitious business name” (FBN);
- **Section 9-488:** Specifies no more than one application for a cannabis business permit may be submitted per property at one time (i.e. no “stacking” applications); and
- **Section 9-495:** Additional operating requirements for storefront and non-storefront cannabis retail businesses including security measures, hours of operation, age restrictions, employees, delivery vehicles, and require owners/operators to keep and preserve tax records for a period no less than seven years. These operating requirements are in addition to the development standards proposed under Article 21 of Title 13.

For definitions of sensitive uses including youth centers, Planning Commission recommended City Council defer to the State’s definition by referencing the applicable State code section in Title 9. The applicable State definitions are provided earlier in this report.

Social Equity

Planning Commission discussed the ordinance and its relationship to social equity, noting that Title 9 includes language, which makes any person convicted of a felony within the past seven years ineligible for operating a cannabis business or for employment at a cannabis business. Although the Planning Commission’s recommendation did not include specific text revisions, in their comments the majority of Planning Commissioners supported a social equity program and requested staff present options to the City Council.

The goal of addressing social equity in a cannabis ordinance is to recognize and address the impact that federal and state enforcement policies have had on minority and low-income communities in terms of arrests and convictions for lower-level offenses such as cannabis use and possession. These communities have been the most harmed by cannabis prohibition, yet are benefiting the least from the legalization of cannabis in terms of ownership and employment opportunities. Historically disproportionate arrest and conviction rates make it particularly difficult for people of color to enter the legal cannabis marketplace.

One of the major barriers to entry into the legal cannabis marketplace is the felony conviction prohibition.

To remove barriers associated with the felony conviction prohibition clause, staff has included language in Section 9-495 and Section 9-496 of Title 9 that would exempt felony convictions involving cannabis where the underlying felony has been reduced to a misdemeanor or infraction pursuant to the provisions of the State of California's Control, Regulate and Tax Adult Use of Marijuana Act (Prop 64). In addition, this exemption would apply to federal cannabis related felonies, should those felonies be reduced or de-criminalized in the future. This approach would exempt the majority of cannabis-related convictions, but would not exempt other cannabis violations that were not downgraded by Proposition 64 like sale of cannabis to a minor. Staff believes it is important for the felony convictions currently downgraded by Prop 64 be removed from consideration for individuals seeking to operate or be employed in a retail storefront if there is a sincere desire to address the impact of past convictions on communities of color.

Future Social Equity Program

In addition to addressing the felony conviction prohibition clause described above, some States and municipalities have taken proactive steps to mitigate inequities in the legal cannabis marketplace and ensure equitable participation in the industry through a cannabis social equity program. The typical criteria to determine qualification for a social equity program include income limits and arrest records. Typical benefits provided through such programs include waived (or reduced) application fees, technical assistance in preparing a cannabis business application, expedited or priority cannabis business application and plan check review, or priority application processing. The program could also encourage a local hiring policy to create more job opportunities for residents of the City or hiring people from a disproportionately impacted community or area as a result of cannabis prohibition.

A more aggressive social equity program, for example from the City of Oakland, includes providing legal assistance and financial assistance through grant and loan programs. Oakland also partners with law firms, real estate companies, and other cannabis business owners to provide legal and technical assistance.

In addition to the benefits for prospective social equity applicants, such a program could provide for community benefits by dedicating a certain percentage, e.g. half-percent of the proposed seven-percent retail tax rate, towards a public art fund and/or a community reinvestment fund. A reinvestment fund could be used to reinvest in communities most harmed by past cannabis enforcement practices, including making efforts to create access to capital, job training programs, and seeking assistance to expunge criminal convictions.

Section 9-497 provides language which would authorize the City Manager to establish administrative procedures concerning cannabis business permits, which could include a social equity program. Staff is seeking feedback as to the City Council's interest in establishing a social equity program and to what extent. Depending on City Council

direction, the City Manager's Office could look into funding sources and pursue establishment of a robust cannabis social equity program.

State Resources

While the State does not have requirements or regulations regarding a cannabis social equity program, the Governor's Office of Business and Economic Development does provide funding through the Cannabis Equity Grant Program for Local Jurisdictions to aid local equity program efforts and to support equity applicants and licensees. This program seeks to advance economic justice for populations disproportionately affected by cannabis prohibition by providing funding to local jurisdictions that are committed to promoting equity in the legal cannabis marketplace and eliminating barriers to entering the regulated cannabis industry. The grant program provides funding assistance for jurisdictions to develop a social equity program as well as funding to directly assist their social equity applicants. In fiscal year 2020-2021, a total of \$15 million in grant funding was awarded to cities and counties. Grant awards to local jurisdictions this year ranged from a few millions dollars for larger jurisdictions to \$800,000 for smaller communities.

Cannabis Industry Feedback following Planning Commission's Recommendation

Below is a summary of the key points noted by the cannabis business industry regarding the proposed ordinances as recommended by the Planning Commission:

- **Youth Centers:** The industry suggested a narrow youth center definition which excludes certain types of youth-oriented private business uses. The industry also expressed concerns with measuring the separation distance for youth centers based on property lines. The industry suggested the separation distance from youth centers should be measured based on the entrance door of the youth center business instead of the property line. Staff recommends maintaining the measurement from property line to property line as is currently outlined in the Municipal Code.
- **Separation Between Storefronts:** The industry expressed concerns with the separation between storefronts because it reduces the number of eligible commercial properties. The industry suggested letting the market and sensitive uses buffers dictate the separation instead, noting that not all commercial property owners would be willing to sell or lease their property to a cannabis retail business.
- **Social Equity Program:** The industry noted a social equity program should also be for job and employment opportunities and not only for ownership.
- **Incremental Retail Tax Rate:** The industry suggested a gradual approach to implementing the retail tax rate i.e. start at four-percent and increase each year to seven-percent instead of establishing it at seven-percent initially. Staff does not recommend this approach.

Next Steps

If City Council gives first reading to the proposed Ordinances, the Ordinances would be scheduled for a "second reading" at the next available City Council meeting, May 4, 2021. If

approved at the second reading, the Ordinances would become effective 30 days after adoption.

Concurrently with the second reading, a Fee Resolution will be agendized to establish cannabis retail application fees including fees for the cannabis business permit, conditional use permit, and permit renewals. In addition, staff will bring amendments to professional services contracts necessary to secure sufficient expertise and resources to efficiently process cannabis retail applications.

Finally, following approval of the Ordinances, City staff will update the cannabis business permit application materials, administrative procedures, and update and publish the separation map showing sensitive uses, youth centers, and eligible commercially-zoned properties.

ENVIRONMENTAL DETERMINATION:

The Ordinances were reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures. The Ordinances are found to be exempt pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) and Section 15308 (Class 8, Actions by Regulatory Agencies for the Protection of the Environment) because a recommendation is not a final action and the recommended ordinance will not have a significant effect on the environment. The Zoning Code Amendment is also exempt pursuant to CEQA Guidelines Section 15301 (Class 1, Existing Facilities), Section 15303 (Class 3, New Construction or Conversion of Small Structures), and Section 15332 (Class 32, In-fill Development Projects) because future construction for retail cannabis businesses will largely be within existing buildings for interior tenant improvements or involve minor new construction projects that will also not have a significant effect on the environment.

ALTERNATIVES CONSIDERED:

The City Council may approve the Ordinances as proposed, modify the Ordinances, or not adopt the Ordinances.

FISCAL REVIEW:

Staff projects at least \$3.2 million annually in General Fund revenue at the seven-percent tax rate implementation. The Proposed Budget for FY 2021-22 which will be presented to the City Council in May for the fiscal year beginning July 1, 2021 currently includes revenue estimates aligned with a seven-percent tax rate. Given the loss of approximately \$500,000 from the permanent reduction of the Measure X tax rate of six- percent to one-percent for cannabis manufacturing and distribution, it is prudent to establish a retail cannabis tax rate that will generate sufficient revenue to recoup the \$500,000 in revenue losses; fund the full annual cost of the 7.0 FTEs added to the Table of Organization for implementation of the retail cannabis program; and, to diversify the City's General Fund which has been significantly impacted by the pandemic.

Moreover, unlike many other business sectors, such as hotel and leisure, retail, and restaurants, cannabis is considered an “essential business” and has been able to remain open during the entire duration of the pandemic thereby generating revenue at a time when most businesses have struggled to keep their doors open. Lastly, the seven percent tax rate is very competitive as Costa Mesa is one of only two cities in Orange County that have authorized retail storefront cannabis sales, and the closest competitor, the City of Santa Ana, has an eight percent retail cannabis tax rate.

Staff recommends implementation of the seven-percent tax rate for the time being to help stimulate the local economy, restore lost revenue and to have the resources to continue providing core services to the public, such as public safety. As the economic recovery continues and the City is able to replenish its General Fund coffers to pre-pandemic levels, a reduction in the tax rate can be considered at that time. According to staff at the cities of Santa Ana and Long Beach, it may take up to two to three years for revenue estimates to be fully realized for a new retail cannabis program. A higher tax rate allows the City to achieve its revenue goals and reinvest those gains back into our core services to the community and residents, sooner rather than later.

LEGAL REVIEW:

The Ordinances have been prepared by the City Attorney’s Office and the staff report has been reviewed and approved as to form.

PUBLIC NOTICE:

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, public notice was published once in the Daily Pilot newspaper 10 days prior to the date of the public hearing.

As of the date of this report, no public comments have been received. At the Planning Commission public hearing on February 22, 2021, eight written public comments were submitted and seven speakers commented at the hearing. On March 22, 2021, 28 written public comments were submitted and eleven speakers commented at the hearing. Written public comments received for the Planning Commission public hearings can be found at:

<http://ftp.costamesaca.gov/costamesaca/planningcommission/agenda/2021/2021-02-22/PH-1-pc.pdf>

<http://ftp.costamesaca.gov/costamesaca/planningcommission/agenda/2021/2021-03-22/PH-1-pc.pdf>

Any additional written comments received prior to the April 20, 2021 will be forwarded under separate cover.

CONCLUSION:

The adoption of the proposed Ordinances would establish a process for the City to regulate, review, and tax cannabis retail businesses pursuant to Measure Q.

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Associate Planner

JENNIFER LE
Director of Economic and Development
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Attachments:

1. [Draft Ordinance 2021-X1 \(Title 13\)](#)
 - [Exhibit A Title 13 Revisions in underline/strikethrough \(including Planning Commission recommended revisions\)](#)
2. [Draft Ordinance 2021-X2 \(Title 9\)](#)
 - [Exhibit A Title 9 Revisions in underline/strikethrough \(including Planning Commission recommended revisions\)](#)
3. [Signed Planning Commission Resolution](#)
4. [Finance and Pension Advisory Committee \(FIPAC\) Letter](#)
5. [Preliminary Draft Separation Distance Map](#)
6. [Map of the Measure X "Green Zone"](#)