



## CITY OF COMMERCE AGENDA REPORT

**TO:** Honorable City Council

**FROM:** City Administrator

**SUBJECT:** PUBLIC HEARING: Consideration of a Resolution Establishing New Fees Related to the implementation of the Commercial Cannabis Permit program, Pursuant to Ordinance No. 700, which added new Chapter 5.61 "Commercial Cannabis Activities", of Title 5, "Business Regulations and Licensing", of the Commerce Municipal Code

**MEETING DATE:** SEPTEMBER 18, 2018

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### **RECOMMENDATION**

That the City Council conduct a public hearing, and after considering relevant public testimony, adopt the attached Resolution establishing new fees related to Commercial Cannabis Businesses, adding new Chapter 5.61 "Commercial Cannabis Activities", of Title 5, "Business Regulations and Licensing", of the Commerce Municipal Code, by amending the existing development application fees (Community Development Department Fee Schedule, Resolution No. 09-4), to be conditionally effective on the effective date of Ordinance No. 700, October 4, 2018.

If adopted, the City Administrator recommends that the proposed amended fee schedule be posted in City Hall, as well as on the City's website.

### **BACKGROUND - State of California and City of Commerce Laws Concerning Cannabis**

In 1996, the California Legislature approved Proposition 215, also known as the Compassionate Use Act (the "CUA"), which was codified under Health and Safety Code Section 11262.5 et seq. and was intended to enable persons in need of medical cannabis for specified medical purposes, such as cancer, anorexia, AIDS, chronic pain, glaucoma and arthritis, to obtain and use marijuana under limited circumstances and where recommended by a physician. The CUA provides that "nothing in this section shall be construed or supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for nonmedical purposes."

In 2004, the California Legislature enacted the Medical Marijuana Program Act (Health & Saf. Code, § 11362.7 et seq.)(the "MMP"), which clarified the scope of the CUA, created a state-approved voluntary medical cannabis identification card program, and authorized

cities to adopt and enforce rules and regulations consistent with the MMP. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMP to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

In September 2015, the California State Legislature enacted, and Governor Brown signed into law three bills – Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 – which together comprise the Medical Marijuana Regulation and Safety Act (the “MMRSA”). The MMRSA created a comprehensive dual state licensing system for the cultivation, manufacture, retail, sale, transport, distribution, delivery, and testing of medical cannabis.

In 2016, the City Council adopted Ordinance No. 675, enacting Chapter 5.61, which among other things, prohibited the cultivation or distribution of medical cannabis within City limits.

The MMRSA was renamed the Medical Cannabis Regulation and Safety Act (the “MCRSA”) under Senate Bill 837 in June 2016, which also made substantive changes to the applicable state laws, which affect the various state agencies involved in regulating cannabis businesses as well as potential licensees.

On November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters as Proposition 64 and became effective on November 9, 2016, pursuant to the California Constitution (Cal. Const., art. II, § 10(a).). Proposition 64 legalized the nonmedical use of cannabis by persons 21 years of age and over, and the personal cultivation of up to six (6) cannabis plants.

AUMA also created a state regulatory and licensing system governing the commercial cultivation, testing, and distribution of nonmedical cannabis, and the manufacturing of nonmedical cannabis products.

On June 27, 2017, Governor Brown signed the Legislature-approved Senate Bill 94. SB 94 combined elements of the MCRSA and AUMA to establish a streamlined singular regulatory and licensing structure for both medical and nonmedical cannabis activities given that there were discrepancies between the MCRSA and AUMA. The new consolidated provisions under SB 94 is now known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). MAUCRSA refers to medical cannabis as “medicinal cannabis” and nonmedical/recreational cannabis as “adult-use cannabis.”

In preparation for the implementation of MAUCRSA, in November 2017, the three State licensing authorities charged with licensing and regulating commercial cannabis activities in California, the Bureau of Cannabis Control (“BCC”), the California Department of Food and Agriculture (“CDFA”), and the California Department of Public Health (“CDPH”), commenced releasing emergency regulations, outlining the standards and licensing procedures for both medicinal and adult-use commercial cannabis, and began issuing licenses for such activities on January 1, 2018.

In December 2017 the City Council of the City of Commerce adopted Urgency Ordinance No. 691 declaring and establishing a temporary moratorium on all commercial cannabis-related activities proposed to be legalized under MAUCRSA (“Moratorium”), which was

extended by the City Council on January 16, 2018 to another ten (10) months and fifteen (15) days.

In June 2018, the three State licensing authorities charged with licensing and regulating commercial cannabis activities in California readopted the emergency regulations, with minor amendments; and in July 2018 announced the publication of proposed regulations in the California Regulatory Notice Register, the first step toward adopting non-emergency regulations (i.e., permanent regulations).

Currently, in Los Angeles County eighteen (18) cities, which include some neighboring Commerce, allow and regulate at least one cannabis license classification through the adoption of ordinances that permit and regulate commercial cannabis activities.

### **DISCUSSION ON CITY COUNCIL ACTION CONCERNING ORDINANCE NO. 700**

The City Council of the City of Commerce is dedicated to regulating the operation of businesses and uses of land in the community in a manner that satisfies the needs and desires of the community, is flexible to changes in State laws, regulations and policies, and which identifies and takes advantage of new sources of revenue.

#### **July 17, 2018 City Council Meeting:**

On July 17, 2018, the City Attorney's Office made a presentation to the City Council on the State of California's laws and regulations concerning commercial cannabis businesses, and local jurisdictions' authority to regulate the industry, as well as policy considerations in doing so. At the conclusion of the presentation, City Council passed a motion with a 5-0 vote, with the following directives to be executed concurrently: Host community meetings throughout the City to disseminate information to the public on cannabis and get the community's input on the subject matter; and draft a proposed ordinance regulating commercial cannabis businesses in the City's jurisdiction, and to bring it back to City Council.

#### **August 21, 2018 City Council Meeting:**

On August 21, 2018, City Attorney's Office presented a proposed ordinance regulating commercial cannabis businesses for City Council's consideration. The proposed ordinance was approved for Introduction and First Reading on a 3-2 City Council vote, with 2 oral modifications, (1) that the ordinance be more explicit with respect to the ban on retailer storefronts in the City of Commerce, and (2) that the ordinance also prohibit residential deliveries in the City.

#### **August 28, 2018 Special City Council Meeting:**

A duly noticed Special City Council meeting was held on August 28, 2018 providing City Council with two options. By a 3-2 City Council vote, City Council approved the Introduction and First Reading, by reading by title only and waiving further reading, of Revised Proposed Ordinance, marked as "Option A," concerning commercial cannabis regulations, which were reflective of the August 21, 2018 City Council meeting, to include only the amendment to explicitly prohibit retailer storefronts, which are otherwise known as dispensaries that are open to the general public.

#### **September 4, 2018 City Council Meeting:**

By a 3-2 City Council vote, City Council approved for Second Reading and Adoption, by title only and waiving further reading, Ordinance No. 700, concerning commercial cannabis regulations, which added new Chapter 5.61 “Commercial Cannabis Activities”, of Title 5, “Business Regulations and Licensing”, of the Commerce Municipal Code.

## **ANALYSIS**

As noted above, on September 4, 2018, the City Council adopted Ordinance No. 700, adding new Chapter 5.61 “Commercial Cannabis Activities”, of Title 5, “Business Regulations and Licensing”, of the Commerce Municipal Code. The purpose and intent of Ordinance No. 700 is to regulate the cultivation, manufacturing, testing, distribution, non-storefront retailer-delivery only, and microbusinesses, of medicinal and adult-use cannabis and cannabis products, and the ancillary transportation and delivery of same, in a responsible manner to protect the health, safety, and welfare of the residents of City of Commerce and to enforce rules and regulations consistent with the California Medicinal and Adult-Use Cannabis Regulation and Safety Act, and related laws, regulations, and policies issued by the State of California.

Pursuant to Ordinance No. 700, and more specifically, Section 5.61.270 “Fees and Charges” of said ordinance, the City Council, by Resolution, may set and establish fees, which will serve to recover the City’s costs reasonably incurred in processing, administering, monitoring and enforcing the Commercial Cannabis Permit program.

In order to recover costs reasonably borne from fees and charges levied by regulations, products or services, the City Council previously adopted the Community Development Department Fee Schedule (City Council Resolution No. 09-04), which became effective on February 3, 2009. In November 2016, the City Council entered into a contract with Wildman Financial Services to review, analyze and modify the existing fee schedule to establish fees which recovery all direct costs, indirect costs, fixed assets, and general overhead, department overhead, and debt services, typically incurred by the City. While the Wildman User Fee Study has not been approved to date, staff has determined that the study’s full cost recovery model is appropriate for Commercial Cannabis Permits. As such, Ordinance No. 700 mandates selected applicants to cover the City’s costs of preparing the Development Agreement, and pay all other applicable fees associated with the process not recovered in the application review, scoring and selection process. Therefore, the current adopted Fee Schedule must be updated to incorporate the newly adopted Commercial Cannabis Permit applicant fees to ensure all costs reasonably associated with the preparation, processing, administration, and enforcement of Ordinance No. 700 are recovered by the City.

Accordingly, the City and its agents have determined the costs of establishing and maintaining a commercial cannabis-permitting program. As such, the City must impose a fee for each Commercial Cannabis Permit application, associated Development Agreement and all other related implementation, monitoring or enforcement costs. To determine the appropriate fee amount for each Commercial Cannabis Permit application, the City’s expenses - including expenses for public hearings, staffing, consulting services and legal fees - were calculated and equally divided between the projected minimum number of applications the City may receive.

Table 1-1 summarizes the expenditures of the City to-date and the projected expense anticipated throughout the application process.

**Table 1-1 – Commercial Cannabis Permit Cost Recovery Summary**

<b>Commercial Cannabis Application Fees</b>						
	Estimated Hours	Billable Rate	Total Estimated Cost	Estimated Cost/Fee Per Activity Type	Permit Application Projection (total)	Cost Recovery (100%)
<b>APPLICATION SCREENING FEES (PHASE I-II)</b>						
Project Coordination/Admin Costs	250	\$ 195.00	\$ 48,750.00	\$ 2,437.50	20	
Community Outreach+ Public Hearings	150	\$ 195.00	\$ 29,250.00	\$ 1,462.50	20	
Phase I Initial Screening and Preliminary Determination	50	\$ 195.00	\$ 9,750.00	\$ 487.50	20	
Phase II Investigation, Scoring and Ranking	50	\$ 195.00	\$ 9,750.00	\$ 487.50	20	
Record Management Fee			\$ 500.00	\$ 25.00	20	
Livescan/Background			\$ 200.00	\$ 200.00	20	
Legal Cost Recovery	100	\$ 450.00	\$ 45,000.00	\$ 2,250.00	20	
Zoning/Sensitive Use Verification			\$ 800.00	\$ 800.00		
Application Review and Processing	25	\$ 195.00	\$ 4,875.00	\$ 4,875.00	20	
<b>Non-Refundable Application Fee (per activity)</b>			\$ 51,375.00	\$ 13,025.00	20	\$ 260,500.00
<b>DEVELOPMENT AGREEMENT (DA) FEE</b>						
Development Agreement Coordination	25	\$ 195.00	\$ 4,875.00			
Development Agreement Preparation (legal)	25	\$ 450.00	\$ 11,250.00			
Recordation Fee			\$ 395.00			
<b>Development Agreement Deposit</b>			\$ 16,520.00			
<b>COMMERCIAL CANNABIS PERMIT FEES (Phase II)</b>						
Site/Building Evaluations	10	\$ 185.00	\$ 1,850.00			
Phase III Final Ranking and City Council Consideration (legal notices; staff report preparation; resolutions, etc. for PC and CC meetings.)	50	\$160	\$ 8,000.00			
Public Hearing Publication			\$ 800.00			
CEQA Document Preparation and Filing			\$ 395.00			
Determination Letter Preparation	5	\$160	\$ 800.00			
<b>Compliance Surety</b>			\$5,000			
<b>Commercial Cannabis Permit Deposit</b>			\$ 16,845.00			
<i>Estimated Total Operator Cost (initial permit)</i>			\$ 46,390.00	\$ 85,465.00		
			(min. 1 activity)	(max. 4 activities)		

To maintain a full cost recovery model (100% cost recovery), the City must charge Commercial Cannabis Permit applicants for the costs associated with development, review and processing of their application request. Because the City has no definitive model for projecting the number of potential applicants, staff reviewed the application process and applicant turnout of other municipalities. Staff determined that a minimum of twenty (20) applications would likely result from the allowed commercial cannabis activities within the City. The cost-recovery model uses twenty (20) as the cost denominator which results in a non-refundable Commercial Cannabis Permit Application Fee of \$13,025.00 per permit type. The computation as set forth in Table 1-1 takes into account the estimated time to complete specified program tasks, multiplied by the hourly burdened rate of City staff,

agents, and representatives. This permit fee will ensure 100% recovery of the City's current and future costs.

California law requires that the proposed fee information be made available to the public for at least ten (10) days prior to the City Council's consideration of the proposed Resolution. City Staff provided notice of this hearing as required by law, and the information set forth in Table 2-1 was made available. Specifically, City staff caused the notice with said information to be published by the Los Cerritos News on September 7, 2018.

Finally, resolutions are typically effective immediately upon adoption. Ordinance No. 700, authorizing the adoption of a fee resolution, comes into effect on October 4, 2018. While nothing precludes the City Council from adopting the fee resolution prior to the actual date of effect of the ordinance, it is important to note that the fee resolution – if adopted – will have an effective date run concurrent with the effective date of Ordinance No. 700, October 4, 2018. If Ordinance No. 700 does not take effect, the resolution automatically will be null and void.

## **CONCLUSION**

City Council approval of the imposition of new fees related to Ordinance No. 700, with the implementation of the City of Commerce's regulations concerning commercial cannabis businesses and activities, will allow the City to proceed with the application process for the purpose of accepting applications, processing applications, undergoing a review and selection process of applicants, and ultimately entering into Development Agreements for commercial cannabis operations within the City.

The proposed new fees, to be reflected and incorporated as amendments to the previously adopted Community Development Fee Schedule is presented below in Table 2-1.

**Table 2-1 – Amendments to Planning Entitlement Fee Schedule**

<b>Application</b>	<b>Fee</b>
<b>Commercial Cannabis Application Screening (Phase I &amp; II)</b>	\$13,025.00 Non-Refundable Flat Fee (per requested activity type)
<b>Commercial Cannabis Development Agreement</b>	\$16,520.00 Non-Refundable Deposit
<b>Commercial Cannabis Permit (Phase III)</b>	\$16,845.00 Non-Refundable Deposit
<b>Determination Appeals</b>	Same as original application fee
<b>Change of Location, Ownership or Transfer</b>	\$5,760.00 Non-Refundable Flat Fee
<b>Commercial Cannabis Permit or Development Agreement Modification</b>	\$6,210.00 Non-Refundable Deposit
<b>Commercial Cannabis Permit Renewal Fee (5-year expiration)</b>	\$13,735.00 Non-Refundable Deposit

## **FINANCIAL IMPACT**

The recommended action will have a positive fiscal impact by recovering all City costs relating to the implementation of the Commercial Cannabis Business Permitting Program. While total net revenue from applications is to be determined, by entering into Development Agreements with selected operators, the City will generate revenue from on-going operating fees imposed by the negotiated Development Agreements. Based on staff's estimate of twenty (20) permit applications in 2018, the fee revenue (gross) generated from the Commercial Cannabis Business Permitting Program is between \$427,325.00 (based on five multi-activity permits) and \$927,800 (based on 20 single-activity permits).

## **CEQA ANALYSIS**

The proposed fee schedule is exempt for the California Environmental Quality Act pursuant to State Guidelines Section 15378(b)(4), which states, in relevant part, "A project does not include...the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment."

## **ATTACHMENTS**

1. Resolution
2. Current Community Development Fee Schedule, dated February 3, 2009
3. Cannabis Permit Cost Recovery Summary

Respectfully submitted: Edgar P. Cisneros, City Administrator  
Fiscal Impact reviewed by: Vilko Domic, Finance Director  
Approved as to form by: Norma Copado, City Attorney