



Council Agenda Report

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SUBJECT: Approve Updated Project Description for Cannabis Businesses and Temporary Cannabis Events so that the Community Development Department Can Start Environmental Review under the California Environmental Quality Act (Not a Project under CEQA per Article 20, Section 15378 and under General Rule Article 5, Section 15061)

RECOMMENDATION:

That the City Council approve the project description for cannabis businesses and temporary cannabis events so that the Community Development Department can start environmental review under the California Environmental Quality Act (CEQA).

The scope of the environmental review will depend on the type of activity the City will be authorizing under the ordinance. The proposed project, as described in the attached draft ordinance, would allow four storefront cannabis retail businesses (adult use and/or medicinal), one non-storefront (requiring medicinal delivery), and an unlimited number of cannabis testing laboratories in the City. It also authorizes deliveries and distributors located outside of the City to deliver within the City. The proposed project would allow up to five temporary cannabis events to take place at the Monterey County Fairgrounds.

VALUE DRIVERS:

Serve as stewards of the City's financial resources through sound economic vitality efforts, streamlining operations, reasonable revenue enhancements, visionary long-term planning, fiscal transparency, and community partnerships.

POLICY IMPLICATIONS

The City's authority to regulate cannabis stems from the California Constitution's grant of police powers and the City's charter, and provisions of the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"). On December 21, 2021, the City Council directed staff to develop regulations allowing no more than three cannabis retail permits, one each in Downtown, Lighthouse, and Cannery Row. On November 8, 2022, Measure J, the City's Cannabis Business License Tax, passed with more than 65% of the voters voting in the election approving the measure.

Effective January 1, 2024, the City cannot prohibit retail sale by delivery of medical cannabis. (SB 1186).

The purpose of CEQA is to inform government decision-makers and the public about the potential significant environmental impacts of proposed activities, identify ways that environmental impacts may be avoided or significantly reduced, prevent significant avoidable damage to the environment by requiring changes in the project using alternatives and mitigation, and to disclose to the public the reason that an agency approved a project notwithstanding its environmental impacts.

FISCAL IMPLICATIONS:

The city estimates the Cannabis Business License Tax (City Code section 19-122 et seq.) may raise from about \$604,000 to about \$1.3 million per year. To date, direct costs are approximately \$30,000 in general consulting costs. The estimated cost for environmental review for the current scope of work in the draft ordinance could be up to \$200,000 depending on the type of environmental document required to be prepared, and additional consulting costs up to \$60,000.

ENVIRONMENTAL DETERMINATION:

The purpose of this agenda item is to establish the scope of work for the environmental document. Since no action is being taken on the agenda item other than general direction, the City of Monterey determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CCR, Title 14, Chapter 3 ("CEQA Guidelines), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which 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. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Subsequent environmental review will occur based on the approved scope of work/project description.

ALTERNATIVES CONSIDERED:

The City could revise the project description to:

1. Change the number and/or authorized locations for storefront cannabis retail sales.
2. Change the number of authorized non-storefront cannabis retail (delivery only) sales.
3. Change or add the locations where cannabis testing laboratories may operate.
4. Change the number and/or location of temporary cannabis events.
5. Add additional types of cannabis businesses, such as cultivation, manufacturing, microbusinesses, or consumption lounges as authorized uses.

DISCUSSION:

The Cannabis Roadmap: Progress to Date

In September 2020, the City Council launched a Cannabis Policy Framework, which kicked off an extensive public engagement, legal, fiscal, and regulatory review of the potential use of cannabis retail, manufacturing, cultivation, events, and testing in the City of Monterey. Following several months of public input, including community surveys and discussions during City Council meetings, the City Council provided initial input on elements of the Commercial Cannabis Roadmap in late 2021. In summer 2022, the City Council adopted a resolution placing a Cannabis Tax Measure for the November 2022 ballot. This tax measure, Measure J, passed by Monterey voters with 65.19% support.

Draft Project Description

A draft regulatory ordinance was presented to the City Council on May 2, 2023. Council provided direction for the project to include:

1. Four storefront retail cannabis businesses, one in each overlay zone as follows:
 - a. Lighthouse and Foam Street area, except that no cannabis business shall have a retail frontage on any cross street with Lighthouse Avenue or Foam Street;
 - b. Alvarado District, except that no cannabis business shall have a retail frontage on Alvarado Street;
 - c. Cannery Row area, except that no cannabis business shall have a retail frontage on Wave Street or allow public access from the Recreation Trail; and
 - d. North Fremont Street, between Airport Road and Palo Verde Avenue
2. Allow one non-storefront retail store (closed to the public/delivery only) requiring the delivery of medicinal cannabis in any cannabis overlay zone location.
3. Allow an unlimited number of cannabis testing laboratories in the city's I-R – Industrial, Administration and Research districts.
4. Authorize cannabis distributors to deliver cannabis to retailers and testing laboratories in the city with proof of a state license and a valid cannabis business license tax registration certificate issued by the city pursuant to Monterey City Code, Chapter 19, Article 6.
5. Authorize out-of-city delivery businesses to deliver in the city with proof of a state license and a valid cannabis business license tax registration certificate issued by the city pursuant to Monterey City Code, Chapter 19, Article 6.
6. No cannabis business may be located within a 600-foot (600') radius measured from property line to property line of a school, day care center, or youth center that is in existence at the time of submission of a completed initial application for a commercial cannabis permit. This prohibition shall not apply to any subsequent renewal of a commercial cannabis permit at the same location.

7. Up to five temporary cannabis events at the Monterey County Fairgrounds each year. The draft project description reserves two of the five permits for the California Roots Festival and the Rebels and Renegades Musical Festival. The remaining three permits shall not be for more than one day each.

Under state law:

- a. a cannabis event license may only be issued for a single day or up to four consecutive days.
- b. a designated person must always be reachable by telephone during the event.
- c. The event organizer must hire security personnel to provide security services at the event.
- d. Only persons 21 years of age or older may attend a temporary cannabis event.
- e. Only licensed retailers and microbusinesses may sell cannabis goods at a temporary cannabis event.
- f. Sales of cannabis goods at a temporary cannabis event must occur in an area designated for retail sales in the premises diagram. All sales activities must occur within that area. Mobile sales are prohibited.
- g. A retailer must confirm the identity and age of the customer prior to selling cannabis goods to that customer.
- h. The sales and consumption of alcohol and tobacco are prohibited inside the event area designated on the temporary event permit.

Additionally, the draft ordinance requires a security plan and security guards, and the ability to deny a permit request when the city's public safety resources are strained, either due to vacancies in staffing or due to other conflicting special events that drain public safety resources.

Next Steps in the Environmental Review Process

The MAUCRSA statutory CEQA exemption expired on June 30, 2021. Although AB 1719 (Bonta) would provide that CEQA does not apply to specified actions taken by a city that authorizes commercial cannabis activity if certain conditions related to the premises are met, September 14, 2023 is the last day for any bill to be passed in 2023, and October 14, 2023 is the last day of the Governor to sign or veto bills. Therefore, under current law, the City must conduct environmental review before adopting an ordinance authorizing cannabis businesses.

The California Supreme Court has held that an ordinance amending zoning regulations to allow up to four medicinal cannabis dispensaries in each council district at specific locations with a conditional use permit qualified as a project under CEQA. The court found the regulations could potentially result in indirect physical changes in the environment by permitting the establishment of a sizeable number of a new type of business that could foreseeably result in new retail construction to accommodate the businesses and by changing patterns of vehicle traffic. (Union of Med. Marijuana Patients, Inc. v. City of San Diego (2019) 7 Cal.5th 117; see also 4 CCR 15010.)

In summary, staff recommends the City Council approve the project description for cannabis businesses so that the Community Development Department can start environmental review under the California Environmental Quality Act.

Attachment: 1. Project Description (Draft Ordinance)

Writings distributed for discussion or consideration on this matter within 72 hours prior to the meeting, pursuant to Government Code § 54957.5, will be made available at the following link:
<https://monterey.org/Submitted-Comments>