



# City of Huntington Beach

File #: 22-444

MEETING DATE: 6/21/2022

## REQUEST FOR CITY COUNCIL ACTION

**SUBMITTED TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Sean Joyce, Interim City Manager

**VIA:** Travis K. Hopkins, Assistant City Manager

**PREPARED BY:** Grace Yoon-Taylor, Senior Administrative Analyst

**Subject:**

**Request for City Council direction on regulatory framework and ordinances on commercial cannabis activities**

**Statement of Issue:**

Since passage of the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and Medicinal and Adult-Use Cannabis Regulation and Safety Act, many California cities have allowed cannabis-related businesses to operate within their jurisdictions. Consequently, the State and these municipalities have developed regulations and licensing structures to regulate various types of cannabis business activities within their jurisdictions. In contrast, Huntington Beach prohibits all forms of commercial cannabis activities. However, the City Council (or voters by ballot initiative) has the discretion to permit and regulate such businesses.

In November and December 2021, two private parties filed separate cannabis petitions to legalize cannabis sales and commercial activities in Huntington Beach without gathering City Council or staff input. Upon receiving the petitions, the City Council established a three-member ad-hoc subcommittee consisting of Councilmembers Bolton, Kalmick, and Peterson in order to develop a cannabis program that would be tailored to the needs and interests of the Huntington Beach community. The subcommittee worked with staff, cannabis industry representatives, and local stakeholders to learn about best management practices in similar cities. Subsequently, the subcommittee presented their preliminary framework during a February 15, 2022 Study Session.

On March 1, 2022, the City Council voted to place a measure on the 2022 Primary Election ballot asking city voters whether to adopt a cannabis business tax, which is a special tax levied upon retail and non-retail business gross receipts for the specific purposes of supporting the City's (a) police services for public safety and (b) homelessness prevention and behavioral services. This approach, if approved by 2/3 of voters, would provide an opportunity for the City to maintain some level of local control over a future cannabis program.

At that time, staff was also directed to return to the City Council with the implications of various

unresolved policy areas associated with commercial cannabis activities for further consideration. The ad-hoc subcommittee met to consider those policy areas and developed a regulatory framework outlined in the draft ordinances (Attachment I and II).

The City has solicited feedback from residents, businesses, and community stakeholders on the proposed regulatory framework through a community forum hosted on June 9, 2022 and by accepting written comments via email and the City's website until June 13, 2022.

Based on unofficial election results from the OC Registrar of Voters website as of June 15, 2022, approximately 64.57% of Huntington Beach voters approved "City of Huntington Beach Cannabis Business Tax Measure," also known as, Measure A. However, as of the date of the drafting of this item, the measure is short of the 2/3 (66.7%) of votes required to pass.

City staff is recommending that the City present two ballot measures on the November 2022 General Election asking voters whether the City should allow and regulate retail and non-retail cannabis businesses and if allowed, impose local excise taxes on such commercial activities (up to 6% on their gross receipts of cannabis retailers and up to 1% to non-retailers) as a General Tax.

This balanced approach will extend to voters authority as to whether commercial cannabis activities should be permitted and taxed. At the same time, it maintains the City Council's ability to develop policy positions and allow timely flexibility to respond to ever-evolving the State laws and market condition, without necessitating the delay and expense of initiating a municipal election.

City Council direction is now requested to determine as to how cannabis regulatory ordinances should be adopted and whether the City should place ballot tax measures on the November Election ballot. The City Council is also asked to provide more direction on key policy areas related to regulating cannabis businesses, such as the number of permits to be issued, zoning and buffer restrictions, and feedback on the draft ordinances (Attachment I and II).

#### **Financial Impact:**

The estimated cost of placing two City Council-sponsored ballot measures concerning cannabis business taxation and regulation on the November 2022 General Election would be approximately \$25,000 based on the estimated pages required. Adequate funds are available in the City's General Fund business unit 10040101 if this option is selected.

Per the OC Registrar of Voters, narrowing the range to a final cost will depend on a few other factors including: the total number of entities placing items on the ballot and thereby sharing in certain election costs; the number of ballot pages required for the City's measure at approximately \$8,500 for every 2 pages/3,000 words; and expenses such as postage, printing, and other forms of cost recovery.

#### **Recommended Action:**

A) Direct staff to prepare and return to the City Council for adoption a resolution placing a City-sponsored ballot measure on the November 8, 2022 General Election, asking voters if the City should allow and regulate cannabis retailers and non-retailers for medical and recreational to operate in areas zoned for cannabis commercial activity within Huntington Beach; and,

B) Direct staff to prepare and return to the City Council regulatory and zoning ordinances regarding commercial business activities for City Council adoption and the City's Commercial Cannabis Regulations to be adopted by City Council resolution; and,

C) Direct staff to prepare and return to the City Council for adoption a resolution placing a City-sponsored cannabis general tax measure, at the same rates as presented to voters on June 7, on the November 8, 2022 General Election ballot as a General Tax.

**Alternative Action(s):**

The City Council may choose one or more of the following alternative actions:

1. Do not direct staff to place a City-sponsored ballot measure on the November 8, 2022 General Election asking voters if the City should allow and regulate cannabis businesses in the City but prepare and return to the City Council regulatory and zoning ordinances for City Council adoption only; and/or
2. Direct staff to place portions of the regulatory and zoning ordinances on the November ballot measure; and/or
3. Do not direct staff to place a City-sponsored cannabis tax measure on the November 8, 2022 General Election ballot as a General Tax.

It must be noted that the City must submit all November ballot measures and ancillary materials (including a City Council resolution(s)) to the Orange County Registrar's Office by August 12, 2022 for the November 8, 2022 General Election ballot.

**Analysis:**

**Regulatory Ordinances Adopted by Voters and Council**

Comprehensive business and land use regulations for commercial cannabis activities in Huntington Beach can help preserve the quality of life for residents, mitigate negative impacts of the illicit market, drive diverse economic opportunities, and implement the City's General Plan. Such ordinances and regulations can give the City authority over licensing, enhance accountability for security and product safety, and reduce intervention from State and Federal governments.

With these goals in mind, the City Council can place a ballot measure on the November 2022 election asking voters if the City should allow and regulate cannabis retail and non-retail businesses in areas zoned for such commercial activities within Huntington Beach. If voters approve the measure, it is recommended that the Council adopt regulatory and zoning ordinances implementing the measure.

This approach leaves for voters to determine whether retail and commercial cannabis activities should be permitted in Huntington Beach. It will maintain the City Council's ability to develop policy positions while allowing flexibility to accommodate the City's specific needs timely and respond with local code amendments as the State's cannabis laws are revised, without necessitating the delay and expense of a municipal ballot measure designed to comply with evolving State legislation.

**Commercial Cannabis Regulation Adopted by Council**

Administrative regulations will be developed for City Council adoption by ordinance that specifies and govern the following:

- Application and renewal procedure
- Pre-operational requirements and operational standards for all permitted cannabis facilities including security, fire safety, and code enforcement related requirements.
  - Refer to Attachment III: Draft Commercial Cannabis Regulation
- Other administrative procedures necessary to implement the purpose of proposed regulatory ordinance and zoning code

Implementation regulation would be adopted by Council resolution, similar to a fee schedule for cost recovery on related City expenses. This approach will provide opportunities for input from the City Council and the public and enhance transparency the way the intents of the City ordinances would be interpreted and implemented.

The proposed ordinances would not take effect until such regulations, processes, and fees are promulgated.

**Cannabis Business Tax**

Based on the unofficial election results of OC Registrar of Voters as of June 15, 2022, 64.57% of Huntington Beach voters supported “City of Huntington Beach Cannabis Business Tax Measure,” also known as, Measure A, on June 7, 2022 Primary Election. However, as of the date of writing this report it has failed to reach the requisite 2/3 of votes required to pass the Measure A.

The City Council has the option of placing a tax measure on the November ballot as a general tax with proceeds going to the General Fund for general municipal services. It is envisioned that the measure would be similar to the Measure A, asking voters if the City should impose local excise taxes up to 6% on the gross receipts of cannabis retailers and up to 1% to non-retailers, but a general tax. This taxation allows flexibility for the City Council to adjust tax rates between minimum and maximum voter-approved rates for each types of cannabis businesses to address yet unpredictable, emerging industry conditions.

A simple majority of the electorate is required to pass a general tax.

**Feedback on the key highlights of the proposed draft ordinances** (Attachment I and II) include:

**Cannabis Industry Types**

- Retail types permitted
  - Storefront dispensaries and delivery-only facilities are permitted
  - Commercial activities for adult-use and medicinal cannabis/cannabis products
- Non-Retailers (Indoor Cultivation, Manufacturing, Testing Lab, and Distribution) are permitted
- Outdoor cultivation and microbusinesses will be prohibited
- Cannabis events/event organizers will be prohibited

**Number of Permits**

- Retailers up to 10 permits

- Non-retail permits regulated by zoning restrictions without a cap
- A separate permit is required for each type of commercial cannabis activity.
- Limit 1 license type per owner (e.g. 1 owner can apply for 1 retailer and 1 manufacturer permit)
- No more than 1 application per property/premise.
- A no-warehousing provision, requiring that permittee must begin operation within 1 year after permit is granted, otherwise the license is revoked.
- A permit is valid for 1 year from the date of issuance and expires unless renewed.
- Non-transferable to others within 3 years and transferees must submit the same permit application information to the City and pay applicable fees.

### **Zoning and Buffer Restrictions**

- **Retailers**
  - Allowed in the Commercial, Specific Plan Areas and Industrial Zone with buffer restrictions
    - Exclude Downtown (SP5) and the Sunset Beach Specific Plan (SP17) areas
    - Exclude Coastal Overlay Zone
  - Delivery-only retailers can locate only in the Industrial Zone
  - Permitted in multistore front buildings
  - No buffer requirement between shops
  - Buffer Distance: 1,000 ft. from high and middle schools (6-12), 600 ft. from K-5, parks, licensed commercial day care centers, and youth centers.
  - Buffer Measurement: Buffers are measured from occupied premises of businesses to the property line of sensitive receptors mentioned above.
- **Non-Retailers**
  - Allowed in the Industrial Zone only.
  - Buffer restrictions will be same as retailers above.

### **Application and Permitting Process**

- City will develop a rubric in accordance with the policy goals of the ordinances and consider a selection committee comprising of City staff and third-party evaluators.
- Application process will be two-step process with its ultimate goal to identify high-quality operators with financial capacity and experiences.
  - Step 1: Applicants will be initially screened by a set of criteria to be placed on the Eligibility List. Such minimum qualification criteria include:
    - I. Complete application packet and application fees paid to the City
    - II. Sworn affidavit and evidence that the proposed business location meets the zoning criteria
    - III. Proof of ownership or control of the business site
    - IV. A refundable security deposit of a fixed amount set forth by the City Council
    - V. Proof of having at least 4 current licenses (various types) in California, one of which must be retail if applying for retail permits
    - VI. Proof of having an identified local philanthropy partner that benefits the City

- Step 2: Applicants on the Eligibility List will be evaluated on a merit point system. Similar to RFP/RFQ process, a points-rubric will evaluate the applicants' qualifications.
  - I. Criteria including but not limited to: ownership structure, owner qualifications, capitalization plan, business and operation plan, traffic/circulation/parking plan, safety and security plan, community benefits package, and etc.
  - II. Applicants must score from an average of all scores at or above a minimum percentage of the total available points (for example, 70% or 80%) set by the City Commercial Cannabis Regulation.
- City Manager has authority to either deny, approve, or conditionally approve an application for a permit and his/her decision will be final and not appealable.
- Applicants whose permit is revoked, suspended, or not renewed can appeal to the City's Hearing Officer and proceed with the hearing.
- Permittees must enter into a Commercial Cannabis Operating Agreement with the City setting forth the terms and conditions under which the facility will operate.
- Permittees must obtain/maintain a valid business license from Finance Department and work with the Community Development, Police, and Fire Department staff to meet all the requirements outlined on the ordinances including public safety and fire plans and inspections.

### **Fire Safety, Security and Code Enforcement Measures**

Strict security requirements outlined in the Commercial Cannabis Regulation (Attachment III)

- 24/7 security guards on the premises unless alternative security is authorized by HBPD
- 24-hour security video monitoring for all entrances, exits, and all interior spaces
- Extensive background checks for owners and employees
- Customer check-in and age verification (21+) at the entrance
- No consumption allowed onsite or near premises
- Subject to inspections by authorized City personnel and grant access to surveillance videos and records at any time
- City can board any doors and windows associated with illegal cannabis businesses
- City can shut off the electric or water service to businesses in violation
- Continued joint effort between HBPD, Fire, Code Enforcement, County and State agencies to shut down illegal operations in the City.

### **Additional Community Feedback for the Council's Consideration**

Through various channels, community members shared their feedback for the City Council's consideration as followings. Depending on the City Council's direction, all or some of this feedback may be incorporated into the final ordinances.

- I. *For medicinal cannabis businesses and customers*, the City could:
  - a. Allow medicinal cannabis sales to medical patients under 21 (18+ with a valid medical card and ID) similar to the State's regulation; and/or
  - b. Differentiate tax rates and apply a lower tax rate for medicinal cannabis products as compared to adult-use, recreational cannabis sales; and/or
  - c. Permit cannabis businesses to donate medical products to veterans per SB34.
- II. *Operation Hours*: the City could extend the operation hours of storefront retailers from 6am to 10pm following the State requirement (draft language allows it to be from 8am -

8pm). This could be consistent with retail deliveries.

- III. *Buffer measurements*: buffer distance could be measured from property line to property line, instead of the occupied premises to the property line. All the other zoning and buffer distances are being measured and enforced as such. An alternative is to measure buffers from premises to premises.
- IV. *Pre-application requirement to have at least 4 local cannabis permits or State licenses, one of which must be retail for retailers*. For retail applicants: although the intent of this provision is to identify most experienced operators with proven track records and "staying" power and provide an efficient process, it may alienate local businesses and un-level the playing field that favors the biggest operators, who may also have the highest prices to consumers. The City could consider eliminating or lowering the number of required permits/licenses and/or adding other alternatives to assess applicants' qualification such as years of operating successful businesses.
- V. *Local residency requirement and/or preference*: The proposed ordinance includes a local hiring preference in the application process as one of the merit-based criteria, but the City could further support local residents and business owners by adding the following components:
- a. The City could require that business owner(s) have been Huntington Beach residents for at least 3 years and/or at least 51% of their employees are residents; and/or
  - b. The City could allocate two permits of 10 permits or allow two additional permits (total of 12) to "Locals only-Equity" businesses that get processed after the first ten and lower the entry points/less restrictive requirements.
- VI. *Location/Property Requirement*: The City could consider not requiring proof of ownership or site control of a property to lower entry barriers for small businesses and widen the application pool (e.g. West Hollywood). However, it may create a situation where applicants go through vigorous application process but cannot open a business due to lack of viable property in areas zoned for cannabis commercial activity within the City limit.

**Environmental Status:**

Not Applicable.

**Strategic Plan Goal:**

Economic Development & Housing

**Attachment(s):**

1. DRAFT Ordinance to Amend the HBMC Chapter 5
2. DRAFT Legislative Draft to Amend HBZSO
3. DRAFT Commercial Cannabis Regulation