



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: September 5, 2017
TO: Mayor and Members of the City Council
FROM: Michael A. Guina, City Attorney
SUBJECT: **Resolution Of The City Council Of The City Of Emeryville Adopting Regulations To Govern The Issuance Of Dispensary/Retailer Permits To Cannabis Businesses**

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Issue A Request For Qualifications For A Dispensary/Retailer Permit For A Storefront Dispensary

RECOMMENDATION

Staff recommends that the City Council adopt regulations to govern the issuance of dispensary/retail permits to cannabis businesses; and to authorize the City Manager to issue a Request for Qualifications (RFQ) for a dispensary/retailer permit for a storefront dispensary.

BACKGROUND

On April 4, 2017, the City Council adopted the final reading for two ordinances to establish a local regulatory framework that would allow for commercial cannabis within the City. Ordinance No. 17-002 amended the City's Planning Regulations to allow for all commercial cannabis activity, except commercial cultivation, subject to a conditional use permit from the City's Planning Commission. The ordinance became effective on May 4, 2017, and the City's Planning Division is accepting applications for conditional use permits for cannabis businesses. As of the drafting of this staff report, the City has not yet received an application for any cannabis business seeking to obtain a conditional use permit.

Ordinance No. 17-003 repealed and replaced Chapter 28 of Title 5 of the Emeryville Municipal Code, and requires all commercial cannabis businesses to obtain an Operator's Permit prior to commencing operation. This ordinance became effective September 1, 2017. Except for an Operator's Permit for retail/dispensary, cannabis businesses may apply for their Operator's Permit from the Police Department after obtaining the conditional use permit. With respect to Operator's Permits for retail/dispensary cannabis businesses, the ordinance provides that such permit will issue pursuant to regulations adopted via resolution by the City Council.

On July 25, 2017, the City Council held a study session to discuss regulations related to issuance of Operator's Permits for dispensaries. Staff presented draft regulations and a

draft RFQ, and asked nine questions of Council. The purpose of the proposed actions for this meeting is to implement the direction provided by Council at the study session.

DISCUSSION

Overall, the proposed resolution to establish the regulations for the issuance of a dispensary/retailer permit to cannabis businesses pursuant to a Request for Qualifications process, the rating sheet and the RFQ are mostly the same as what was presented at the July 25, 2017 City Council meeting. They have been modified to address and implement Council's direction provided at the July 25, 2017 meeting. The modifications are discussed below.

RFQ Process

Staff has made two sets of changes to the resolution (Attachment 1) setting forth the regulations to govern the RFQ process. The first set of changes relates to exempting non-storefront cannabis businesses that engage in sales to consumers (e.g., general public does not visit the site of operations) from the competitive RFQ process. The rationale behind the modification is that these types of operations are likely to be part of other cannabis business activities, such as manufacturing or distribution. Furthermore, the impacts associated with a non-storefront dispensary/retail operation are more similar to manufacturing and distribution because they are not open to the general public in the way a dispensary/retail business with a storefront is. It is worth noting that the Planning Regulations governing cannabis commercial activity already allow for non-storefront dispensaries/retail outlets, and thus, no modifications to the City's Planning Regulations are required. Section 9-2.417 of the Planning Regulations of the Emeryville Municipal Code defines cannabis manufacturing for land use purposes as establishments engaged in Commercial Cannabis Activity. Section 5-28.03(f) defines Commercial Cannabis Activity as including: "possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, research and development, *delivery or sale* of cannabis or cannabis products for commercial purposes, whether for profit or nonprofit." (Emphasis added.) This first set of changes is reflected throughout the resolution.

The second set of changes is found in section 5.b. The last sentence is added to reflect Council's desire to see the final scores of all applicants.

RFQ Goals

Staff asked several questions of Council related to the goals it is seeking to achieve through the selection of a qualified cannabis business for a dispensary/retailer permit. The first goal articulated related to the attributes of the business. The City Council desires to issue a dispensary/retailer permit to a cannabis business with a storefront that will serve a regional customer base, and provide a location for onsite consumption. The second goal relates to the type of cannabis sold. In recognizing some of the uncertainty of the regulatory environment, the Council has indicated that it is open to a cannabis

business that sells medical cannabis, recreational cannabis or both. The third goal relates to community benefits. The Council desires community benefits that are flexible and can be directed by the City. Finally, the last goal relates to “good neighbor” qualities. Per the Council’s direction, the goals have been articulated in the RFQ. (See Attachment 2, Exhibit A, p. 5.)

FISCAL IMPACT

Fiscal Impact of the RFQ

The Master Fee Schedule provides that application for a cannabis operator’s permit is subject to cost recovery, in addition to a \$447 fee for each individual associated with the application. For a cannabis business applying for a dispensary/retailer permit, staff estimates the cost to apply to be as follows:

- Phase I: Review of written application would cost each applicant team approximately \$1,831.52. In addition to this fee, each owner and key member would need to pay the \$447 fee.
- Phase II: An in-person meeting with the City review panel would cost \$1,352.31.

This fee estimate assumes that the review panel will consist of staff from the Police Department, City Attorney’s Office and Economic Development Division, with oversight from the Police Chief and City Attorney. Thus, the cost of administering the RFQ should be offset by the fee charged.

Fiscal Impact of Exempting Non-Storefront Dispensaries

The benefit of allowing manufacturing cannabis businesses to engage in direct sales through a delivery service is Emeryville is the point of sale for purposes of calculating sales and use tax, even if the consumer is located outside of Emeryville.¹ Based on conversations that staff has had with potential applicants, there is a potential for a non-storefront dispensary to be engaged with both distribution sales and end user sales throughout the state, which would have a positive impact in terms of tax revenue.

STAFF COMMUNICATION WITH THE PUBLIC

Staff from the City Attorney’s Office, Community Development and Police departments routinely respond to inquiries from potential cannabis business applicants about the status of Emeryville’s regulations and the timing of the City’s process. City staff also

¹ https://www.boe.ca.gov/industry/medical_cannabis.html#Dispensaries.

engages with businesses in the industry to learn as much as possible on how to regulate this new industry.

CONCLUSION

Staff recommends that the City Council adopt the two proposed resolutions referenced in the title.

PREPARED BY: Andrea Visveshwara, Assistant City Attorney

REVIEWED BY: Charles Bryant, Community Development Director
Chadrick Smalley, Economic Development and Housing Manager

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:



Michael Guina, City Attorney

ATTACHMENTS

1. Resolution Establishing Dispensary/Retailer Permit Regulations
2. Exhibit A to the Resolution Establishing Dispensary/Retailer Permit Regulations (Rating Sheet)
3. Resolution Authorizing City Manager to Issue RFQ
4. Exhibit A to Resolution Authorizing City Manager to Issue RFQ (RFQ)