



CITY OF EL MONTE
ECONOMIC DEVELOPMENT DEPARTMENT
CITY COUNCIL AGENDA REPORT

CITY COUNCIL MEETING OF DECEMBER 5, 2017

November 20, 2017

The Honorable Mayor and City Council
City of El Monte
11333 Valley Boulevard
El Monte, CA 91731

Dear Mayor and City Council:

A PUBLIC HEARING TO ADOPT A RESOLUTION ESTABLISHING AN APPLICATION PROCESS AND ASSOCIATED FEES FOR MEDICINAL COMMERCIAL CANNABIS ACTIVITIES PURSUANT TO CITY COUNCIL ORDINANCE NO. 2924

IT IS RECOMMENDED THAT THE CITY COUNCIL:

1. Open the public hearing;
2. Receive presentation from staff;
3. Pose questions to staff;
4. Allow members of the public to offer comment;
5. Pose follow-up questions to staff;
6. Conduct additional deliberation, if needed;
7. Close the public hearing; and
8. Adopt the proposed Resolution by no less than three (3) affirmative votes (see Attachment 1 – Resolution).

BACKGROUND AND PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

City Council Ordinance No. 2924: Medicinal Commercial Cannabis Activities

On November 8, 2017, the City Council adopted Ordinance No. 2924, which established a ban on medicinal and adult-use cannabis dispensaries, retailers, microbusinesses, and deliveries citywide and established regulations and a permitting process for medicinal-only cultivation, manufacturing, distribution, and laboratory testing in designated areas of the M-1 (Light Manufacturing), M-2 (General Manufacturing), C-3 (General Commercial) and O-P (Professional Office) zones (Attachment 2 – Ordinance

No. 2924). Ordinance No. 2924, which becomes effective on December 8, 2017, provides for the establishment of an application process and associated fees for such authorized medicinal-only commercial cannabis activities by City Council Resolution. Pursuant to the California Constitution, a fee may not exceed the estimated reasonable cost of providing the service or regulatory act for which the fee is charged, and a fee that does exceed such cost may be considered a special tax (Cal. Const., art. XIII C, § 1(e)).

Under Ordinance No. 2924, a valid City-issued Medicinal Commercial Cannabis Business Permit is required in order to conduct medicinal commercial cannabis activities. It established a permitting protocol with the following features:

- Background Check and Live Scan required for all Owners and employees;
- Zoning Verification Letter to ensure that the proposed location complies with locational requirements;
- Application and Evaluation Process as described in the Application Process section below;
- Conditional Use Permit, Design Review (if applicable) and Development Agreement to be reviewed and approved by the Planning Commission and City Council;
- Obtain all necessary permits from the El Monte Building Division, Los Angeles County Fire Department, Los Angeles County Public Health Department, Utility Agencies, and El Monte Business License; and
- Issuance of a Medicinal Commercial Cannabis Business Permit by the City Manager.

The Application Process

The application and evaluation process would ensure that the medicinal commercial cannabis business complies with Ordinance No. 2924 and state laws as well as conform to industry best practices (Attachment 3 – Medicinal Commercial Cannabis Business Application Procedures, Application Form, and Employee/Owner Background Application). The evaluation process will consist of six (6) phases as outlined below.

Phase 1 – Determination of Eligibility and Application

Phase 1 requires the submittal of the application and a background check and Live Scan for each Owner. As part of the application process, applicants are required to submit supplemental information for the following 11 categories outlined below:

1. Location:
 - The address and a detailed description of the proposed location.
 - Description of all sensitive uses within eight hundred (800) feet of the proposed location from the property line of a K-12 school, day care center

and youth center, and proximity to sensitive uses such as residential, parks, churches, libraries, etc.

2. Neighborhood Compatibility Plan:

- Site Plan showing onsite structures, parking areas and adjacent uses and structures on contiguous properties.
- Description of how the business, exterior areas and surrounding public areas, will be managed, to avoid becoming a nuisance or having adverse impacts on its neighbors and the surrounding community.

3. Business Plan:

- Description of day-to-day operations which meet industry best practices for the specific type of permit in which they will be applying.
- How the business will conform to local and state law.
- How products will be tracked and monitored to prevent diversion or use by minors.
- A schedule for beginning operation, including a narrative outlining any proposed construction and improvements and a timeline for completion.
- A budget for construction, operation, maintenance, compensation of employees, equipment costs, utility costs, and other operation costs.
- Proof of capitalization, in the form of documentation of cash or other liquid assets on hand, Letters of Credit or other equivalent assets.
- A pro forma for at least three years of operation.

4. Qualification of Owners

- Information concerning any special business or professional qualifications or licenses of owners that would add to the number or quality of services that the business would provide, especially in areas related to medicinal cannabis, such as scientific or health care fields.

5. Community Benefits

- Description of the benefits that the business would provide to the City/local community, such as economic incentives to the City, employment preferences for residents of the City, or local community contributions (i.e. contributions to schools, libraries, parks, public education, safety, etc.).
- As a condition of the Development Agreement, businesses shall pay fees into the General Fund on an annual basis at the following rates :

Medicinal Cultivation	\$12 per square foot
Medicinal Manufacturing	6% of gross receipts
Medicinal Distribution	2.5% of gross receipts
Medicinal Laboratory Testing	1.5% of gross receipts

6. Safety and Security Plan

- Floor plan showing existing and proposed conditions and all areas of operations.
- Safety plan: fire prevention, suppression, HVAC and alarm systems the facility will have in place. Plan shall consider all possible fire, hazardous material, and inhalation issues/threats and will have both written and physical mechanisms in place to deal with each specific situation.
- Assessment of the facility's fire safety by a qualified licensed fire prevention and suppression consultant.
- Security plan: description and detailed schematic of the overall facility security. Details on operational security to include: General security policies for the facility, 24-hour live feed camera system with remote access by Police Department, employee specific policies, training, sample written policies, transactional security, visitor security, 3rd party contractor security, and delivery security.
- Ingress and egress access, perimeter security, product security (at all hours), internal security measures for access (area specific), types of security systems (alarms and cameras), and security personnel to be employed.
- Assessment of site security by a qualified licensed security consultant.
- Submission to inspections by the Chief of Police, City Manager, or their designees to ensure compliance with Ordinance No. 2924 and state law.

7. Air Quality Plan

- Demonstrate how odors and air circulation will not impact the employees' health and welfare nor the surrounding uses.

8. Enhanced Product Safety

- Description of how the business will ensure enhanced consumer safety as required by state and/or local law in regards to packaging and labeling.

9. Labor and Employment

- Description of how the business will adhere to heightened pay and benefits standards and practices, including recognition of the collective bargaining rights of employees.
- Provide a "living wage" to facility staff and employees. Wage scale should be provided in writing for all levels of employment at the facility. "Living Wage" shall mean 150% of the minimum wage mandated by California or Federal law, whichever is greater.
- Labor and peace agreement for businesses having ten (10) or more employees.

10. Local Enterprise

- Extent to which the business will be a locally managed enterprise whose Owners reside within the City of El Monte, San Gabriel Valley, and/or the County of Los Angeles and strategies for local hire of employees.

11. Conservation & Sustainability

- Description of any proposed “green” business practices relating to energy and climate, water conservation, and materials and waste management.

Phase 2 – Third Party Evaluation and Ranking

Applicants that pass the background check and fulfill other requirements of Phase 1 will move onto Phase 2. During Phase 2, applications will be evaluated and ranked by an independent third-party, who shall score the 11 categories described above based on a point system. Applicants must provide information on how they plan to meet these point categories. An applicant’s score will be based on their ability to meet or exceed the minimum requirements of each category. Such action will become a mandatory condition of their permit. Failure to meet or comply with these requirements after permit issuance will subject the applicants to penalties and/or revocation of their permit. The third-party reviewer will recommend applicants who score a minimum of 80% to advance to Phase 3.

Phase 3 – Community Benefits Meeting

Those applicants scoring a minimum of 80% in Phase 2 will be required to attend a mandatory community benefits meeting with stakeholders and the Development Ad Hoc Committee to discuss possible benefits to the community. The applicants will hear from the stakeholders and the Ad Hoc on types of contributions that would be beneficial to the community. The applicant would use this information to respond to the “Community Benefits” category of the application during the Interview process in Phase 4.

Phase 4 – Site Inspection and Selection Committee Interview

Applicants who have advanced to Phase 3 will have to provide proof of ownership of the site or a signed and notarized statement from the owner. City staff will conduct a site visit prior to the scheduling of interviews to determine if applicants have been operating prior issuance of permits. Any applicant identified as having been in operation without a permit may be disqualified. Once the site inspection has been completed, the applicants will be scheduled for a panel interview by the Selection Committee. The Selection Committee may consist of subject matter experts from the following departments: City Manager, Economic Development, Finance, Police, and Los Angeles County Fire. All applicants who continue to maintain a score of at least 80% will advance to Phase 5.

Phase 5 – Entitlements and Environmental Review

Applicants scoring at least 80% in Phase 4 will be instructed to apply for entitlements consisting of Conditional Use Permit(s) (CUP), Design Review (if applicable) and Development Agreement (DA). A separate CUP will be required for each license type. The CUP would allow the Planning Commission and City Council to impose conditions on the businesses designed to mitigate the potentially negative impacts of the business

in the respective zones and locations. The Development Agreement between the City and applicant would set forth the terms and conditions under which the medicinal cannabis facility will operate, including, but not limited to, signage and advertising, public outreach and education, community benefits, payment of fees and other charges as mutually agreed, and such other terms and conditions that will protect and promote the public health, safety and welfare.

The entitlement process will also include applicable environmental review pursuant to the California Environmental Quality Act (CEQA). The Planning Commission will review the entitlements and make a recommendation to the City Council who will be the final hearing body. As part of the entitlement review process, the applicant shall present their proposal at public hearings before both the Planning Commission and City Council. Notice of such public hearings shall be sent to all property owners and tenants located within five hundred (500) feet of the proposed business location, which is beyond the minimum three hundred (300) feet required by law.

At the public hearings, the community will be allowed to present concerns and/or support and provide additional considerations for potential permit conditions that may be implemented by staff, the Planning Commission and the City Council. All required entitlement permits (i.e. Conditional Use Permit, Design Review, and Development Agreement) shall be adopted and/or approved by the Planning Commission and City Council prior to Phase 6.

Phase 6 – Issuance of Medicinal Commercial Cannabis Business Permit

Subsequent to the Planning Commission and City Council's approval of the entitlements and prior to obtaining the Medicinal Commercial Cannabis Business Permit, the applicant shall apply for and receive permits for all construction related permits. Permits would include, but not be limited to electrical, plumbing, Fire, planning permits or reviews, and any other permits, licenses, or reviews as may be necessary by the relevant departments or governmental entities in charge of said permits (i.e. El Monte Building Division, El Monte Police Department, Los Angeles County Fire Department, Los Angeles County Public Health Department, utilities, El Monte Business License etc.). Once all agencies have signed off on the permits, the City Manager will issue the Medicinal Commercial Cannabis Business Permit ("Permit"). The Permit is valid for twelve (12) months and shall be renewed annually.

Cannabis Employee Permit

Any person who is an employee or who otherwise works or volunteers within a commercial medicinal cannabis business must be legally authorized to do so under applicable state law and shall obtain a City-issued Cannabis Employee Permit. Employees or volunteers shall be at least 21 years of age and shall undergo a background check and Live Scan. All employees will be required to wear photo identification badges while on the business premises. The Cannabis Employee Permit shall be valid for twelve (12) months and shall be renewed annually.

Permit Fees

The application fee for the Medicinal Commercial Cannabis Business Permit is a City cost recovery mechanism permitted under the California Constitution and the California Government Code and is set in the total amount of \$17,808.96. This covers staff time for the City Manager's Office, Economic Development Department, Finance Department, City Attorney's Office, Police Department, and Third-party Reviewer and inspections. The fee also includes a 25 percent administrative overhead fee for the third-party reviewer, a 0.923 percent General Plan Surcharge fee and a 2.09 percent Technology Enhancement Surcharge fee applicable to all Planning Division applications. The full breakdown for the fee can be found in Exhibit A of Attachment 1 (Resolution – Exhibit A, Permit Application Fees). Applicants will pay separate fees, by Phase, as they continue through the application process so that fees are not imposed on applicants for Phases in which they do not participate.

The City has provisions to allow nominal fee adjustments on a yearly basis. This is to cover general increases in expenses (e.g. increased costs related to noticing requirements, supplies, staffing resources, etc.). City Council Resolution No. 8663, dated February 21, 2006, allows the City to adjust planning fees by a factor based on changes to the Employee Cost Index for State and Local Government Employees, Total Compensation, as published by the U.S. Bureau of Labor Statistics. In addition, Resolution No, 9293, dated July 3, 2012, states that all fees and surcharges established under previous resolutions shall continue to be in effect. Therefore, the Medicinal Commercial Cannabis Business Permit and the Cannabis Employee fees may be adjusted accordingly.

Two (2) public notices were published in the local newspaper, as required when establishing certain regulatory permit fees (see Attachment 4).

FISCAL IMPACT/FINANCING

The proposed fee would allow the City to recover its costs pertaining to processing and evaluation of applications for medicinal commercial cannabis activities. Such regulatory fees may not exceed the estimated reasonable cost of City services.

The City may incur additional costs that shall be reimbursed by the applicant to the City, however, the City shall only recover its reasonable and actual costs in processing development agreement applications, i.e. any local fees necessary to process the permit. The amount of unexpended fee payments made shall be reimbursable to the respective applicants.

City monitoring and enforcement costs for permitted medicinal commercial cannabis businesses will be recovered through a separate annual medicinal commercial cannabis business permit on a cost-recovery basis. Such additional annual medicinal commercial cannabis business permit fee will be set by the City Council at a future date to cover the costs of processing the renewal permit application, together with any costs incurred by

the City to administer, monitor, and enforce the medicinal commercial cannabis activities under El Monte Municipal Code Chapter 5.18.

CONCLUSION

It is recommended that the City Council approve the proposed Resolution by no fewer than three (3) affirmative votes, in accordance with Government Code Section 36936.

Respectfully submitted,

JESÚS M. GOMEZ
City Manager

ALEX HAMILTON
Assistant City Manager

MINH THAI
Economic Development Director

Attachments:

1. Resolution with Exhibit A (Permit Application Fees) and Exhibit B (Medicinal Commercial Cannabis Business Application Procedures, Application Form, and Employee/Owner Background Application)
2. Ordinance No. 2924 (adopted on November 8, 2017)
3. Public Notices (published November 23, 2017 and November 30, 2017)

DATE: December 5, 2017
PRESENTED TO EL MONTE CITY COUNCIL
<input type="checkbox"/> APPROVED
<input type="checkbox"/> DENIED
<input type="checkbox"/> PULLED
<input type="checkbox"/> RECEIVE AND FILE
<input type="checkbox"/> CONTINUED
<input type="checkbox"/> REFERRED TO
CHIEF DEPUTY CITY CLERK