



CITY COUNCIL AGENDA REPORT
PUBLIC HEARINGS
AGENDA ITEM NO. K.1

DATE: December 1, 2020

TO: City Council

FROM: Jeff Pengilley, Interim Community Development Director, (805) 385-8208, jeff.pengilley@oxnard.org

SUBJECT: Amendment to Chapter 11, Article XVII of the Oxnard City Code (OCC) Pertaining to Commercial Cannabis Regulations, Repeal of Chapter 11, Article XV of the OCC Pertaining to Medical Cannabis Delivery, and Repeal of Chapter 7, Article XVI of the OCC Pertaining to Cannabis and Medical Cannabis Activities. (15/20/15)

RECOMMENDATION

That the City Council:

1. Introduce an Ordinance (by title only, waiving further reading) that:
 - A. Repeals and readopts Chapter 11, Article XVII of the Oxnard City Code (Oxnard City Code Sections 11-450 to 11-496) regarding Commercial Cannabis Regulations;
 - B. Repeals Chapter 11, Article XV of the Oxnard City Code (Oxnard City Code Section 11-390 to 11-403) regarding medical cannabis delivery; and
 - C. Repeals Chapter 7, Article XVI of the Oxnard City Code (Oxnard City Code Sections 7-280 to 7-285) regarding cannabis and medical cannabis activities; and
2. Authorize the waiver of permit fees (Phases 1 to 3) for the City's new retail cannabis and local equity retail cannabis program for those entities that participated in the City's prior retail cannabis and local equity retail cannabis program.

BACKGROUND

Executive Summary

There were inconsistencies discovered in Chapter 11, Article XVII (Commercial Cannabis Activity) of the Oxnard City Code, and the form of the rejection letters did not notify the retail cannabis applicants of their right to appeal the City Manager's November 2, 2020 determination of the retail cannabis application ranking. In the interest of fairness to those retail cannabis applicants, on November 18th, the City notified all 50 applicants that the City was immediately terminating the existing retail cannabis and local equity retail cannabis program (the "Program") pursuant to Oxnard City Code Section 11-457(D). Additionally, the City determined that it should reject the applications because this would be in the best interest of the City, taking into consideration the health, safety and welfare impacts on the City (Oxnard City Code Section 11-466(F)).

The subject actions will revise and update the City's cannabis ordinance due to concerns that have arisen during the retail cannabis permitting process. The ordinance modifications will implement the City's Local Equity Cannabis program, update appeal provisions, correct code citations, and make a number of other non-substantive updates to the cannabis regulations. The recommended action would also repeal Article XV of Chapter 11 of the Oxnard City Code regarding medical cannabis delivery (Oxnard City Code Sections 11-390 to 11-403). Stand alone delivery of cannabis was determined legal by the State in January 2019. Finally, Council's action involves repealing Chapter 7, Article XVI as the regulation of commercial cannabis is now contained in Chapters 11 and 16 of the OCC.

The City is committed to a new accelerated retail cannabis and local equity retail cannabis program (the “New Program”). Additionally, as part of the New Program, the City is proposing to issue 13 retail cannabis permits and 3 local equity retail cannabis permits (increased from 10 permits) to qualified applicants by March 2021. The New Program will open for applications on or before December 4, 2020, with a deadline for submitting applications on January 7, 2021 at 6:00 p.m. Subject to City Council approval, the Phase 1-3 fees for the New Program will be waived for each applicant who submitted an application during the prior Program and who paid these fees in the Program.

Background

Over the past two years, the City has adopted numerous ordinances pertaining to different types of cannabis uses, and adopted subsequent code modifications and program elements which have impacted cannabis codification and proper ordinance citation.

In April 2018, the City Council adopted a cannabis delivery ordinance including permit fees (Ord. No. 2937 - Chapter 11, Article XV). In January 2019, the State legalized cannabis delivery by state-licensed firms and eliminated the City’s ability to regulate cannabis delivery. Repealing of this article is consistent with state regulations and limitations.

On June 18, 2019, City Council adopted Ord. No. 2960 establishing regulations pertaining to manufacturing, testing, and distribution of cannabis. On October 1, 2019, City Council then adopted Ord. No. 2965, modifying the discretionary permitting process along with other non-substantive ordinance adjustments pertaining to manufacturing, testing, and distribution of cannabis. On December 17, 2019, City Council adopted Ord. 2972 establishing regulations for retail cannabis (dispensary) uses. On September 15, 2020, City Council adopted Ord. No. 2985 to permit cannabis retail dispensaries in the downtown zones (“Downtown-Core” and “Downtown-General”), and update the cannabis regulations in the City’s newly adopted Industrial Code (Chapter 16 of the OCC). On October 20, 2020, City Council adopted a cannabis local equity program.

The non-retail cannabis solicitation process has been successful. To date, all four of the five manufacturing applicants and all three distribution operators have applied for the authorized Development Design Review (DDR) permit. Administrative hearings for two of the DDR applicants are anticipated in late 2020 and early 2021.

DISCUSSION

Council is being requested to repeal and readopt the City’s Commercial Cannabis Regulations pertaining to cannabis manufacturing, distribution, testing, and retail dispensaries contained in Chapter 11, Article XVII (“Code”). The ordinance modifications would implement the City’s Local Equity Cannabis program, update appeal provisions, and make a number of other nonsubstantive updates to the cannabis regulations. Adoption of a comprehensive Commercial Cannabis Article in Chapter 11, Article XVII will ensure consistent and proper implementation of City Council’s previously adopted cannabis regulations. City Council is also being asked to repeal Chapter 11, Article XV (Medical Cannabis Delivery), and Chapter 7, Article XVI (Cannabis and Medical Cannabis Activities) due to State legalization of state-licensed cannabis delivery operators.

In summary the repeal and readoption efforts are as follows:

- Repeal and Readopt Chapter 11, Article XVII of the Oxnard City Code (Oxnard City Code Sections 11-450 to 11-496) regarding Commercial Cannabis Regulations - Correct appeal language within this Article; ensure consistency between all prior City Council adopted Ordinances and conceptual land use maps; incorporate definitions and details associated with the City’s Local Equity Program; clarification of which regulations apply to the various types of cannabis uses; and correct terminology to reflect updated cannabis operations and activities.
- Repeal Chapter 11, Article XV of the Oxnard City Code (Oxnard City Code Section 11-390 to 11-403) regarding medical cannabis delivery - Removal of requirements since these uses are now permitted by the State (as of

2019) and cannabis delivery is associated with the cannabis regulations (Chapter 11, Article XVII).

- Repeal Chapter 7, Article XVI of the Oxnard City Code (Oxnard City Code Sections 7-280 to 7-285) regarding cannabis and medical cannabis activities - Removal of this entire Chapter since commercial cannabis is now regulated by Chapters 11 and 16 of the OCC.

The need for re-adoption of Article XVII was brought to the City's attention after letters were sent to the 50 applicants providing them the City's Final Retail Cannabis Ranking. The letters provided to the 40 unsuccessful retail cannabis applicants on November 2, 2020 did not state that the applicants had the right to appeal the City Manager's decision relating to the award of retail cannabis permits. As such, unsuccessful applicants did not receive a notification of a right to appeal the City Manager's decision.

However, despite this lack of notice, four unsuccessful applicants did file an appeal of the City Manager's decision. These appeals highlighted inconsistencies within the Oxnard City Code, with one code section authorizing an appeal of the City Manager's decision (Oxnard City Code Section 11-465), while two other provisions specifically indicating that the City Manager's decision was final and thus not subject to an appeal (Oxnard City Code Sections 11-457 and 11-466).

Because four of the unsuccessful applicants filed an appeal while other applicants were not informed of the right to file an appeal, the City is electing to terminate the Program and launching a New Program and correct inconsistencies by re-adopting Chapter 11, Article XVII. Executing the OCC update in this fashion will ensure the appeal provisions are internally consistent, the updated code incorporates the City Council's recently adopted Local Equity Program is incorporated in the City's regulations, and corrects minor ordinance language which has become problematic as a result of the retail cannabis solicitation process.

New Program

The City will initiate an accelerated retail cannabis and local equity retail cannabis program on or before December 4, 2020. The application window will close at 6 p.m. on January 7, 2021. The City will release a revised Commercial Cannabis Business Application Procedure Guidelines on or before the New Program opens. Further, in alignment with Chapter 11, Article XVII, and in the interest of advancing the cannabis retail process in an expeditious manner, the City will permit up to 16 dispensaries by March 2021 (13 retail cannabis permits and 3 local equity retail cannabis permits). Applicants would be required to obtain all required land use approvals following the issuance of the retail cannabis permit in March 2021. Subject to City Council action, no new Phase 1 -3 fees will be required for an applicant who was the signatory on the original application during the prior Program (i.e., the legal entity, not the individual owners of that legal entity) and who paid these fees in the Program.

ENVIRONMENTAL IMPACT

In accordance with the California Public Resources Code Sections 21000 et seq. and State California Environmental Quality Act (CEQA) Guidelines (Sections 15000 et seq.), the proposed Municipal Code amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15061 and 15305 of Title 14, Division 6, Chapter 3 of the California Code of Regulations.

STRATEGIC PRIORITIES

This agenda item supports the Economic Development strategy. The purpose of the Economic Development strategy is to develop and enhance Oxnard's business climate, promote the City's fiscal health, and support economic growth in a manner consistent with the City's unique character. This item supports the following goals and objectives:

Goal 1. Create vibrant and economically sustainable commercial, industrial and retail industries throughout the City.

Goal 2. Enhance business development throughout the City.

Objective 2a. Develop a strong citywide economy which attracts investment, increases the tax base, creates employment opportunities, and generates public revenue.

Objective 2b. Improve relationships and communication between the City and the business community.

FINANCIAL IMPACT

The City will utilize the services of HdL to assist in the evaluation of the cannabis applications. There is currently \$27,000 remaining in the HdL contract for cannabis related services. A contract amendment and budget appropriation will be necessary to add additional funds. This is tentatively scheduled for the City Council's December 15th agenda.

COMMITTEE OUTCOME

This amendment is not a land use decision so it did not require consideration by the Planning Commission.

The City Council set clear policy direction over the last two years at various City Council meetings regarding the subject ordinance. There are no substance changes to the ordinance therefore this ordinance did not go back to the Housing and Economic Development Committee (HEDC).

Prepared by: Kathleen Mallory, Planning & Sustainability Manager

ATTACHMENTS

1. Amended Article XVII - Commercial Cannabis Regulations Ordinance
2. Amended Article XVII - Commercial Cannabis Regulations (Redline)
3. CC 12.1.20 Presentation