



CITY OF COMMERCE AGENDA REPORT

TO: Honorable City Council **Item No. _____**

FROM: City Manager

SUBJECT: Commerce Commercial Cannabis Permit Program Status Update

MEETING DATE: March 16, 2021

RECOMMENDATION:

Receive and file a status update regarding the Commerce Commercial Cannabis Permit Program under Chapter 5.61 Commercial Cannabis Businesses as a follow-up to the report provided to the City Council on July 21, 2020 and at Council's discretion provide direction to staff.

BACKGROUND:

Ordinance No. 700, establishing Chapter 5.61 (Commercial Cannabis Businesses) was adopted by the Commerce City Council on September 4, 2018. Ordinance No. 700 established the set of regulations that permitted cannabis businesses must abide by in the City of Commerce. The Ordinance also set forth the process by which applications were considered, reviewed and amended. Finally, Ordinance No. 700 also outlines the City's enforcement provisions which are supplemented by individual development agreements that the City enters into with individual operators.

As is the case with most newly established sets of regulations, during the review and implementation process itself, items were identified within the Ordinance that could be improved whether for efficiency, strength of enforcement, or streamlining with other similar types of approvals. Accordingly, on July 21, 2020 staff provided an update to the City Council, and was directed to provide a report back to the City Council on proposed revisions to Ordinance No. 700.

Currently there are seven (7) licensed operators lawfully utilizing at least one if not all of their authorized license types. As of today's date, the program has brought in over \$5,000,000 in revenue to the City of Commerce. As has been previously shared with the City Council, however, there are certainly areas for improvement that we have identified.

Recently the City's voters struck down 2 new development agreements along with 4 development agreement amendments. While it is staff's professional perspective that the industry itself was the concern at that time, not the merits of the respective projects, the

revisions discussed herein, also acknowledge the divisiveness of the issue. Staff is proposing additional restrictions to address some of the expressed concerns, such as increasing the distance that these uses would be from sensitive receptors as well as establishing a cap on the number of commercial cannabis permits that the City of Commerce will issue.

Revenue from Commercial Cannabis Permit Program:

As of February 28, 2021 with only seven (7) operators cleared for business, including four (4) that are only partially approved for some license types and not their full set of approvals under their development agreements, the City has received \$5,598,839.14 in revenues from the Commercial Cannabis Permit Program. The following tables provide a breakdown of the approximate revenues and expenditures as of February 28, 2021.

Commercial Cannabis Permit Revenues	
	Amount
Community Benefits	\$861,070.64
Ongoing Fees	\$1,697,417.90
Program Fees	\$3,040,350.60
Grand Total	\$5,598,839.14

Commercial Cannabis Permit Activity	Expenditures
Community Benefits	\$1,182,840
Public Grants	\$127,500
Departmental Matters/Items	\$791,070
Rental Assistance	\$264,271
Program Costs	\$1,265,312
Contractual Services/Consulting	\$595,432
General Advertising	\$83,135
Legal Services	\$451,468
Personnel/Admin Charges	\$135,276
Grand Total	\$2,448,152

As proven in the tables above, the Commercial Cannabis Permit Program continues to be self-sustainable with only a positive impact on the City’s finances. Currently that figure is approximately \$3,150,687.14 in CCP funds that have not been expended on program costs or community benefits funded projects/services.

ANALYSIS:

At the request of the City Council, staff sought out recommendations from the Commerce Cannabis Business Association, which represents lawful commercial cannabis operators in the City and also analyzed best practices from surrounding cities. Based on the input received, staff proposes the recommendations listed in the following tables for the City Council’s consideration. The tables also provide a brief overview and explanation for the reason each particular change should be considered by the City Council.

Items in black are amendments recommended for City Council consideration by staff in an effort to improve our commercial cannabis program. Language in black has been officially endorsed by the Commerce Cannabis Association. Language printed in blue reflect amendments specifically requested by Cannabis Association which may conflict with staff's initial recommendation and/or require additional review and research by staff if the City Council is inclined to consider them.

Proposed Amendments to Chapter 5.61 (Commercial Cannabis Businesses)

Section and Existing Language	Proposed Language	Reason for Change
Throughout 5.61 – “City Administrator”	“City Manager”	Consistency within Municipal code for changes made to title to City Manager
Throughout 5.61 – “Public Works and Development Services Department”	“Economic Development and Planning Department”	Consistency with the change in name for Department
5.61.060 – Commercial Cannabis Permit: authorized and lawful commercial cannabis business. (Section currently provides standards and restrictions, however, no zoning restriction was previously set.)	Proposed language would require that proposed businesses only be considered to be sited within the M-2 zoning designation.	This increases the likelihood that proposed businesses are not closer to homes and/or sensitive uses.
5.61.060 – Commercial Cannabis Permit: authorized and lawful commercial cannabis business.	Proposed language adds residential zoning districts as sensitive uses.	This amendment would further ensure distance from sensitive uses and addresses some of the concerns brought forth by the community as a compromise.
5.61.070 – Number of Commercial Cannabis Businesses Authorized	Proposed language would provide a maximum number for each type of license in the city. These maximums would be established by the City Council at the time that the actual ordinance is considered.	The lack of a clear cap on the number of cannabis businesses has been raised as a community and City Council concern. This amendment would address that.
5.61.080 (c)(N)- Application requirements – Labor Peace Agreement - Current code requires LPA for those cannabis businesses over 20 employees.	Proposed language lowers the trigger for LPA to 10 employees.	This is aligned with the policy preference of the City Council as exhibited in the approvals granted by the City Council most recently in January 2020.
5.61.090 (c)(3) – Application	Proposed language added	Provides further clarification for

Review	extends when applications can be rejected to beyond the 3 phases.	fee collection in the interest of making the City's fee collection process more explicit to operators and/or potential operators.
5.61.120 (a) and (b)	Added language requires submittal of application renewals 60-90 days prior to expiration to allow city time for thorough review and to avoid going into expired period. Further clarifies that City could require that the applicant stop operations if still in review once the original application is considered expired.	Allows more time for review and encourages timely submittals for renewals by noting the ability to stop operations when expired even if being reviewed.
5.61.140 (Appeals)	Revised language would make any City Manager decisions appealable to City Council not Planning Commission.	This reassigns authority from the Planning Commission to the City Council. Normally only Planning Director Decisions are appealable to Planning Commission and the City Manager's decisions are appealable to City Council. Furthermore, City Council makes the final decision on original applications so it makes sense that the appeals would be heard by City Council only. Lastly, the regulations in question are situated in the Municipal Code not Chapter 19 of the Zoning Code where provisions that are under the Planning Commission's purview are typically located.
5.61.150(a) – Commercial cannabis permit – Nonassignable and nontransferable	Added language references new language in following two sections allowing provisions for transferring with City Council approval if certain objective criteria are met. ** The Association supports but further requested review by Planning Commission only**	Consistency with proposed sections following this. Makes process objective related to transferring/change of ownership but still subject to City Council review.

<p>5.61.160 – Change in Location of Commercial Cannabis Businesses</p>	<p>Language would allow relocation of an existing CCP operator to a previously approved CCP site.</p> <p>Staff proposes that if City Council is in agreement with the Association’s amendment, that language be added that would restrict this approval only to sites located within the M-2 zone.</p>	<p>Makes process objective related to relocating to a previously approved CCP site.</p> <p>Limiting to the M-2 zone addresses some of the concerns brought forth by the community.</p>
<p>5.61.160 – Change in Location of Commercial Cannabis Business</p>	<p>Noticing requirement for change in location is amended from 21 days to 10 days.</p>	<p>Provides consistency with projects that are categorically exempt from CEQA.</p>
<p>5.61.170 – Change in ownership of commercial cannabis business.</p> <p>And, 5.61.180 – Change in ownership when the permittee is a partnership or corporation.</p>	<p>Approved as long as the owner receives City Council’s approval according to the objective criteria already required to be met for change in ownership requests and original ownership applications for that matter.</p> <p><i>**Association requested review of CCP Exhibit or Addendum by Planning Commission.</i></p>	<p>If the proposed owners comply with state law and pass background check, and vice versa, decision is objective. There’s really no discretionary decision to be made. However, City Council is still the decision-making authority for change of ownership requests through a more streamlined process for the sake of practicality.</p> <p>This meets the intent of the requested change which is to order to make the process as objective as possible and remove lengthier process.</p>

Proposed Amendment to Table 19.11.030A– Underlined language is proposed.

Use	C/M-1	M-1	M-2	*Notes and Exceptions
<u>14. Commercial Cannabis</u>	<u>X</u>	<u>X</u>	*-	<u>Regulated by Chapter 5.61 of the Municipal Code; subject to application development standards in Chapter 19.</u>

The Commerce Cannabis Association is also recommending adjustments to the fee structure outlined in individual approved development agreements. Staff has yet to carefully review the following proposed revisions. However, consistent with the past position taken at the staff level, staff does suggest that the City Council consider tiers of these fees, if at all, to ensure that minimum fees are consistently met and that the largest and most capable operators are attracted and/or retained. In the event that City Council wishes to entertain the following set of amendments, staff will undertake a closer review and report back.

	Current	Proposed
Non-Storefront Retail Delivery	5% gross receipts	2% gross receipts Medical Patient Tax Reduction for Delivery
Distribution	3% gross receipts	2% of gross receipts on products that are produced and COA tested on premise. 2% of gross margin (Revenue-COGS) for products that were not cultivated or manufactured in Commerce.
Manufacturing	3% gross receipts	2% gross receipts
Microbusiness	Taxed according to revenue generated by license type usage. (i.e. 3% distribution, 3% manufacturing, etc.)	Charge taxes based on which license type conducts the sale.
Testing	1.5% gross receipts	1.5% gross receipts
Cultivation	\$13/sq ft of canopy	2% gross receipts AND \$10/sq ft canopy.
Cultivation Nursery	--	Option 1: 2% gross receipts Option 2: \$2/sq ft canopy

As the City Council is aware, staff has reviewed this concept for Non-Storefront Retail Delivery and has studied the following:

Non-Storefront Retail Delivery:

- 5% of gross receipts, for gross receipts up to and including \$3,000,000.00.
- 4.5% for gross receipts up to and including \$13,000,000.00.
- 4% for gross receipts up to and including \$23,000,000.00.
- 3.5% for gross receipts up and including \$33,000,000.00.
- 3% for gross receipts above \$33,000,000.00.
- But at no time, will Owner pay an annual operating fee less than \$92,218.00, which is currently the mandatory annual minimum operating fee for the first year of cannabis business operations.

CONCLUSION:

It should be noted that only preliminary information has been provided as part of this report. The Commerce Cannabis Association’s first recommended change is reasonable, however there is a greater responsibility and impact on non-storefront delivery services for

the City Council to consider. The second recommended change that the Commerce Cannabis Association proposes related to fees for medical patients appears to be reasonable and merits further analysis. The City Council is asked to advise staff as to whether or not they will consider the amendments indicated in the tables immediately above so that staff may adequately review and propose draft amendments to Ordinance No. 700 in the future.

While the City's Commercial Cannabis Permitting Program has experienced success there is ample room to grow and improve. If the City Council wishes to entertain these revisions and/or others, now might be the appropriate time. The City Council may instead wish to introduce any of the adjustments above individually or adjustments that are not contemplated in this report such as relaxing the current moratorium on new applications for Testing uses, for example. (This has been a concern noted in the Commerce business community given that there is only one operator approved for such a use and because the goal of that use is to have a safe and healthy product.) On the other end of the spectrum, the City Council could opt to provide direction to further restrict cannabis uses if it so wishes at this time.

ALTERNATIVES:

The City Council may:

- 1) Receive and file report; or
- 2) Direct staff to further study any or all of the proposed amendments as necessary for future City Council action; or
- 3) Provide alternative direction related to Chapter 5.61 for future City Council action.

FISCAL IMPACT:

Approval of this item will not have an impact on the City's budget.

Recommended/Prepared by: CCP Staff

Respectfully submitted: Edgar P. Cisneros, City Manager