



Agenda Report

Item #: 24-127

Meeting Date: 05/07/2024

TITLE: CANNABIS EMPLOYEE BADGE FEE REDUCTION AND BACKGROUND CHECK PROCESS

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTED BY: MICHELLE HALLIGAN, SENIOR PLANNER

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RECOMMENDATION:

Staff recommends that the City Council receive the staff presentation, hear public comment, and provide direction on reducing the badging fee and certain administrative aspects of the cannabis employee badge process.

BACKGROUND:

At the March 19, 2024 City Council meeting, during the review of the City's cannabis ordinance revisions, the City Council directed staff to return to City Council for consideration of the following: (1) potential reduction of cannabis employee badging fee; (2) the issuance of one badge to persons that are employed by multiple City cannabis operations owned by the same owner; (3) the outsourcing of cannabis required employee background checks; (4) the issuance of temporary cannabis employee badges; (5) providing the average Department of Justice (DOJ)/Federal Bureau of Investigation (FBI) background check response times, and (6) updating of the City's cannabis badge design to be State-compliant.

March 19, 2024 City Council agenda report:

<https://costamesa.legistar.com/View.ashx?M=F&ID=12756774&GUID=BD1ADFBA-5B90-4891-AB98-A4C5B8E50800>

March 19, 2024 City Council video:

https://costamesa.granicus.com/player/clip/4107?view_id=14&redirect=true

ANALYSIS:

Employee Badge Fee Reduction

Costa Mesa Municipal Code (CMMC) Section 9-495 (g)(10) requires that "Every owner, manager, supervisor or employee of the cannabis business must submit fingerprints and other information deemed necessary by the City Manager for a background check by the Costa Mesa Police Department to verify the person's criminal history." CMMC Section 9-496 establishes further the following regulations regarding cannabis employee background checks and badges:

- (a) Any person who is an employee or who otherwise works within a cannabis business must be legally authorized to do so under applicable State law;
- (b) No cannabis business or owner thereof may employ any person who has been convicted of a felony within the past seven years, unless that felony has been dismissed, withdrawn, expunged or set aside pursuant to Penal Code section 1203.4, 1000 or 1385, or who is currently on probation or parole for the sale, distribution, possession or manufacture of a controlled substance. Exempted from this prohibition is a conviction for a felony involving cannabis and/or marijuana for which the underlying cannabis or marijuana offense has subsequently been designated a misdemeanor or infraction or decriminalized pursuant to the provisions of the Control, Regulate and Tax Adult Use of Marijuana Act or federal law; and
- (c) All employees must wear an identification badge while on the premises of the business, in a format authorized by the City Manager.

At the March 19, 2024 City Council meeting, the Council proposed reducing the cannabis employee background check fee from \$631 to \$306. The current fee was established in 2021, following a ClearSource Financial Consulting study. Prior to the ClearSource study, the City's fee for a cannabis employee background check and badge was \$341. The study found that the full cost recovery of providing the service was \$631, and thus the fee was increased by the City Council to be paid in full for services rendered. Reducing the fee to \$306 would not cover the full cost of City staff time to review the applications, correspond with applicants regarding missing or incorrect items, review DOJ/FBI results, prepare badges, and manages employee databases. It should be noted that implementation of the City's on-line permitting system (TESSA) has reduced several of the steps in the initial employee background/badge process and staff processing efforts have slightly decreased.

Multiple-Facility Employee Badge

Presently, a cannabis employee in Costa Mesa who works for multiple cannabis operations in the City is required to obtain a background check and a separate badge for each cannabis location and pay a separate fee. The City Council directed staff to explore ways to instead issue one badge for cannabis employees who work for multiple cannabis businesses in Costa Mesa under the same ownership. Staff believes that issuing one badge per employee for multiple cannabis operations under the same ownership can be completed in compliance with State badging requirements. This proposed change was made to the ordinance after direction from the City Council at the March 19, 2024 meeting in Title 9-496(c). The result would be a new badge design. If adopted by the City Council on 2nd reading, Staff could implement the improved badge design for new employees that have not already obtained a City-issued badge after developing procedures which will included in updates to the Administrative Regulations.

DOJ and FBI Background Check Timeframe

Staff analyzed California DOJ and FBI response times for Costa Mesa cannabis employees and owners that processed Live Scan fingerprints between January 1, 2023 and March 27, 2024. Based upon this data, clearances were sent to Costa Mesa Police Department (CMPD) for 57 percent of applicants within 24 hours, and 87 percent of clearances were sent within two weeks. DOJ/FBI response times fluctuate due to a variety of reasons; however, primarily because of criminal record dispositions. The Live Scan data analysis results are summarized below:

- 57 percent cleared within 24 hours;
- 30 percent cleared between 24 hours to 2 weeks;
- 5 percent cleared between 15 days to 4 weeks;
- 2 percent cleared between 29 days to 6 weeks; and
- 6 percent cleared after more than 6 weeks.

Approximately 6.5 percent of cannabis employee badge applicants do not pass the Live Scan background check.

Temporary Employee Badge

The City Council directed staff to explore creating a temporary badge program to provide cannabis operators the option of temporarily hiring employees during the background check process.

During this research, the City Attorney determined that allowing persons who have not completed and passed the background check process to work in cannabis businesses could result in cannabis operators temporarily hiring individuals that: (1) have been convicted of a felony(ies) within the past seven years that have not been dismissed, withdrawn, expunged or set aside pursuant to Penal Code section 1203.4, 1000 or 1385; and/or (2) who are currently on probation or parole for the sale, distribution, possession or manufacture of a controlled substance. Although the employment would be considered temporary, the operator could be found in violation of CMMC Section 9-496. As noted above, approximately 6.5 percent of cannabis employee applicants do not pass the Live Scan background check. If the City issued temporary badges, it is possible that a similar percentage of the employees permitted to work under a temporary badge would be found to be ineligible.

If the City Council desires staff to create a temporary badge process, the City Attorney could be directed to work with staff to develop such a program, which may require a revision to the Municipal Code and amendment to the Administrative Regulations.

Outsourcing Background Checks

The City Council directed staff to explore outsourcing background checks as a means to reduce processing times and costs. Staff contacted the City's cannabis consultant (HdL), which assists City staff with numerous components of cannabis application reviews, to determine if they could provide background checks consistent with the City's current standards for review and as required by the CMMC. According to HdL, there are several aspects of the City's current background check process that HdL would not be able to provide the same level of service and would not be consistent with certain background check regulations of the CMMC. Specifically, HdL does not provide fingerprinting, which is explicitly required by the CMMC. In addition, the HdL background check process is limited to current criminal dispositions (the current status or final outcome of an arrest or prosecution that has already occurred) and does not include the "live scan" capability of the City's current background check process. The HdL background check process would not inform the City of an owner or employee who was prosecuted for a felony after the initial background check was performed. To partially address this issue, HdL could require all owners and employees to undergo an annual background check renewal process for an additional fee.

Based on the above information, staff recommends continuing to utilize the Live Scan background check process. Further, with interdepartmental coordination and utilization of TESSA to save time resulting in improvements to internal procedures, staff believes that the timeframe for issuing badges after receiving results from the DOJ/FBI will be shortened.

Updating Badge Design

As directed by the City Council, staff will update the design of City-issued badges to meet the requirements of California Code of Regulations Title 4 Section 15043, such as including the business' Department of Cannabis Control license number.

ALTERNATIVES:

As directed by the City Council, several of the City's cannabis badge and background processing procedures are analyzed above. The City Council can direct staff to modify any of these procedures, or direct staff to continue processing as currently administered. The City Council has the following alternatives:

1. Adopt a resolution reducing the cannabis employee badge fee to \$306 or as otherwise determined;
or
2. Not adopt the cannabis employee badge fee and the fee will remain at \$631.
3. Direct staff to modify cannabis badge and background processing procedures; or
4. Direct staff to not modify the cannabis badge and background processing procedures.

FISCAL REVIEW:

The cannabis employee badge fee is presently set at full cost recovery at a rate of \$631 per badge. The City Council proposed a reduction in badge fees from \$631 to \$306, an approximate a 50% reduction. The reduced fee would no longer achieve full cost recovery; however, would be more consistent with other cities' badge fees that were surveyed.

The City collects an average of \$25,000 in badge fees per month, or \$300,000 per year. The fiscal impact of the fee reduction is projected to reduce the City's badge fee revenue by \$150,000 per year.

LEGAL REVIEW:

The draft Resolution and staff report have been prepared in conjunction with and reviewed by the City Attorney's Office.

CITY COUNCIL GOALS AND PRIORITIES:

This item supports the City Council Goal of achieving long-term fiscal sustainability, in that cannabis operations are subject to Measure Q and Measure X taxes, and efficiency in the cannabis employee background review will further the success of cannabis businesses in Costa Mesa.

CONCLUSION:

The cannabis employee background check and badge fee topics described above are intended to provide the City Council information to provide staff with direction on modifications to the badging fee and certain administrative aspects of the cannabis review process.