



Agenda Report

Item #: 23-1426

Meeting Date: 11/07/2023

TITLE:

REQUEST FOR CITY COUNCIL DIRECTION REGARDING THE POTENTIAL PREPARATION OF A MORATORIUM AND/OR OTHER ALTERNATIVE PROCEDURE TO DISCONTINUE OR SUSPEND ACCEPTANCE AND PROCESSING OF CANNABIS RETAIL APPLICATIONS

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTED BY: JENNIFER LE, DIRECTOR OF ECONOMIC AND DEVELOPMENT SERVICES

CONTACT INFORMATION: JENNIFER LE, DIRECTOR OF ECONOMIC AND DEVELOPMENT SERVICES, (714) 754-5270

RECOMMENDATION:

Staff recommends the City Council provide direction regarding the potential preparation of a moratorium and/or other alternative procedure to discontinue or suspend acceptance and processing of cannabis retail applications.

BACKGROUND:

On November 3, 2020, Costa Mesa voters approved Measure Q, the Costa Mesa Retail Cannabis Tax and Regulation Measure. This measure allowed the City to adopt regulations permitting cannabis storefront retail (dispensaries) and non-storefront retail (delivery) within the City subject to certain requirements. On June 15, 2021, the City Council adopted Ordinances No. 21-08 and No. 21-09 to amend Titles 9 and 13 of the CMMC to establish regulations for legal cannabis storefront and non-storefront (delivery) businesses. The Ordinances are linked below:

- [Ordinance No. 2021-08](#) (Title 9, Business Licenses);
- [Ordinance No. 2021-09](#) (Title 13, Zoning).

The Ordinances establish standards, regulations and permitting requirements for cannabis retail businesses.

On September 5, 2023, the City Council provided direction to staff on a 7-0 vote to work with the City's Planning Commission to explore various amendments to the existing Cannabis Ordinance to reduce business displacement and potential overconcentration of cannabis retail businesses, among other items. Depending on data obtained regarding these items, staff would work with the Planning Commission to develop options, recommendations and/or an ordinance amendment to address those issues. The Planning Commission would make a recommendation to the City Council, as the City Council is the final decision-making body.

The City Council directed staff to compile information and prepare recommendations related:

- Establishing a minimum separation between cannabis storefronts
- Increasing the minimum separation between cannabis storefronts and youth centers, as defined in the CMMC, from 600 feet to 1,000 feet to be consistent with other sensitive use separations
- Establishing a minimum separation between residential zoning districts and cannabis storefronts
- Adding limitations to prohibit the marketing of cannabis and cannabis products to youth
- Establishing a maximum number of retail cannabis businesses
- Establishing bonafide labor peace agreement requirements for cannabis storefronts
- Allowing the word "cannabis" on signage in the City
- Considering the establishment of provisions for notification and relocation fees for existing businesses that would be displaced by retail cannabis uses.

Initial discussions with the Planning Commission on these topics are anticipated for November 2023.

At the October 3, 2023 City Council meeting, Councilmember Harper requested an item be agendized to discuss the possibility of adopting a moratorium to temporarily suspend cannabis retail permit processing while staff completes potential amendments to the City's cannabis retail regulations. Council Members Manuel Chavez and Andrea Marr concurred with that request.

ANALYSIS:

Potential Moratorium

Government Code Section 65858 provides the authority to adopt urgency measure interim ordinances, commonly referred to as moratoria. A moratorium requires a four-fifths vote of the entire seven-member Council for adoption and is in effect for 45 days. Ten days prior to the expiration of the moratorium the City Council is required to issue a written report describing the measures taken to alleviate the condition which led to the adoption of the moratorium. Thereafter, the Council may then extend the moratorium for 10 months and 15 days, and subsequently extend the interim ordinance for an additional one-year period. Any extension also requires a four-fifths vote for approval. Not more than two extensions may be adopted.

In order to approve a moratorium, the City Council must find that:

"there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare" (Government Code section 65858(c)).

If the Council directs staff to prepare a moratorium, staff would work with the City Attorney's Office to bring the moratorium for Council consideration at its next regular meeting, scheduled to be on December 5th with the written report referenced in the aforementioned Government Code for adoption by the City Council, along with the extension of the moratorium for a temporary specified period of time (if desired).

Resolution Pursuant to Municipal Code Section 9-486 (d)

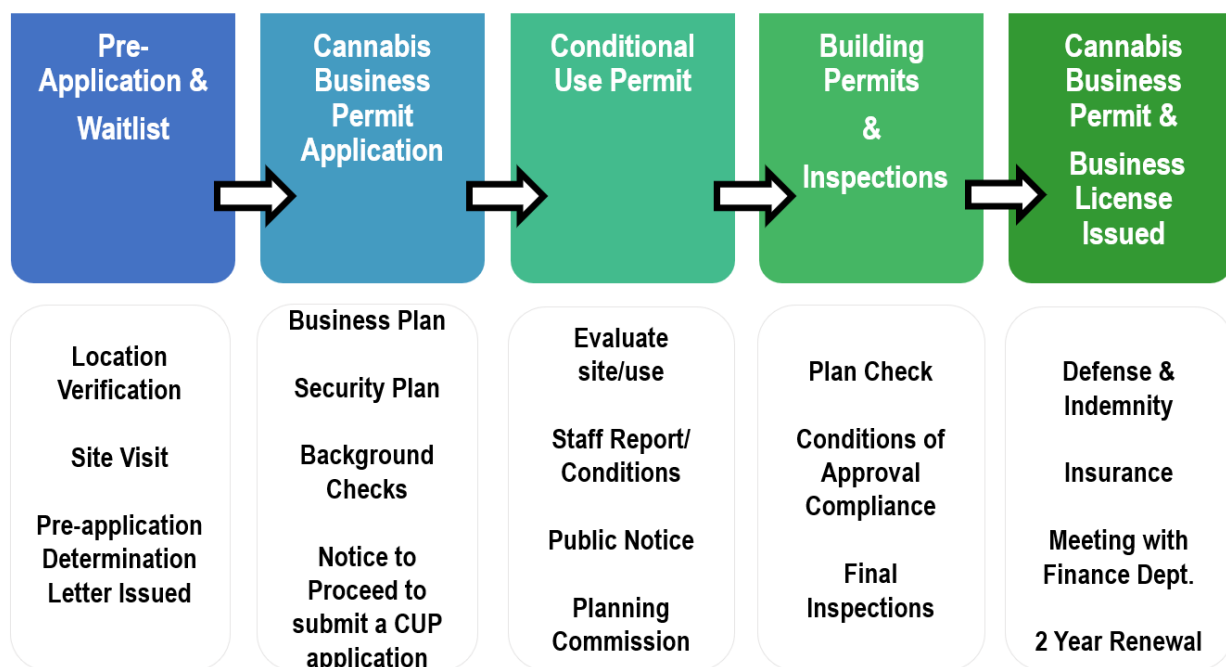
An alternative to the moratorium is to adopt a Resolution pursuant to the Costa Mesa Municipal Code. Municipal Code Section 9-486(d) states: "The city council may by resolution limit and/or restrict the number of cannabis retail permits available for issuance and/or renewal".

Pursuant to this section, and in response to concerns previously raised by the City Council regarding business displacement and overconcentration, the Council may limit the number of Cannabis Business Permits issued for retail by the adoption of a Resolution. The adoption of a Resolution requires approval by a majority vote of the quorum of the City Council.

Status of Cannabis Retail Applications

For background, applicants must complete the following steps and receive City approvals and State approval before conducting a legal cannabis retail business in Costa Mesa:

- Pre-Application Determination;
- Cannabis Business Permit (CBP) Notice to Proceed to submit a Conditional Use Permit application;
- Conditional Use Permit (CUP) approval;
- Building Permit(s) Issued;
- Final City Inspections and Building Permit Final/Certificate of Occupancy Issued;
- CBP Issuance; and
- City Business License



Storefronts

The City has 53 cannabis retail storefront applications on file.

Of those, 22 Conditional Use Permits have been approved. Of the 22 CUPs approved, nine are open and operating at the following locations:

- 1990 Harbor Blvd (420 Central) – Issued November 22, 2022
- 2801 Harbor Blvd (Off The Charts) – Issued May 8, 2023
- 2710 Harbor Blvd (Stiiizy) – Issued May 10, 2023
- 2275 Newport Blvd (Nectar) – Issued June 16, 2023
- 1854 Newport Blvd (Mr. Nice Guy) – Issued June 29, 2023
- 2664 Newport Blvd (Secret Garden) – Issued July 12, 2023
- 170 East 17th Street (Catalyst) – Issued July 20, 2023
- 2845 Harbor (Mr. Nice Guy) – Issued September 8, 2023
- 2001 Harbor (South Coast Safe Access) – Issued October 23, 2023

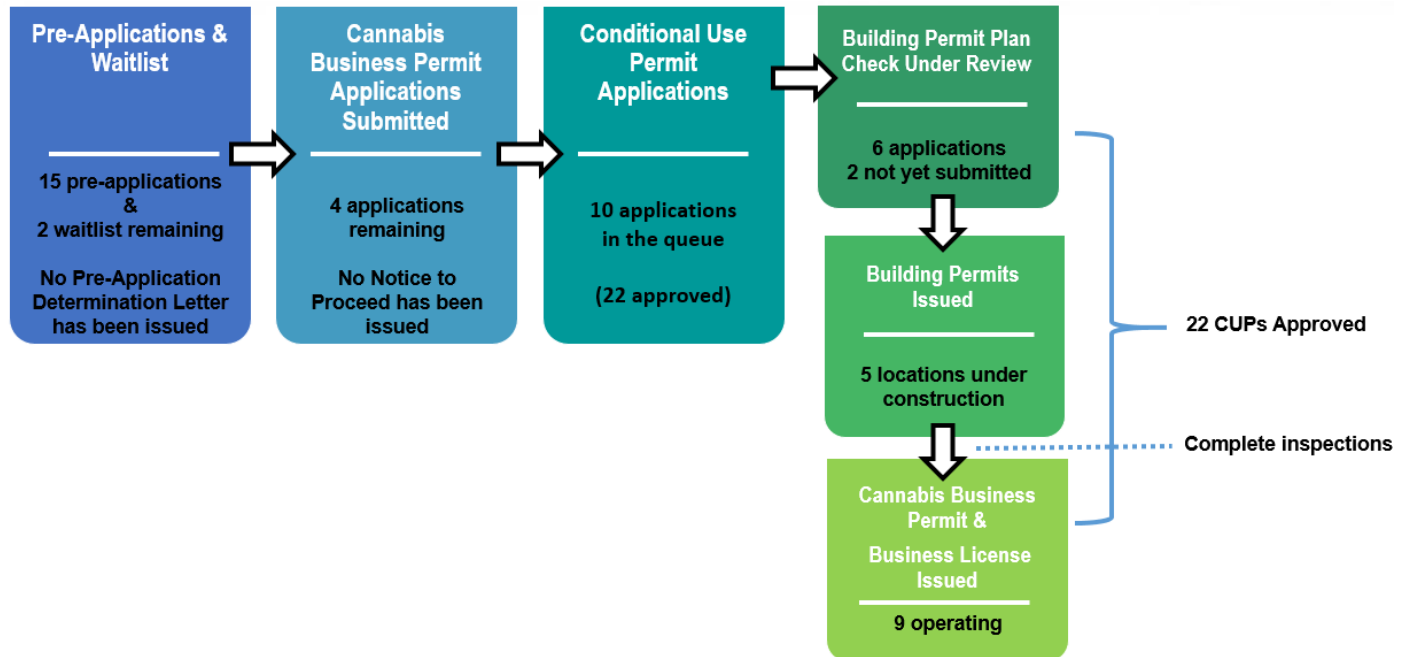
Of the remaining 13 retail storefronts that have been issued a CUP, but are not yet open, two have not yet submitted for plan check, six are in plan check but have not yet been issued building permits, and 5 have been issued building permits and are under construction.

Additionally, 10 applicants have completed the pre-application determination process and background checks and were issued a Notice to Proceed to the Conditional Use Permit application phase of the process. They have submitted a CUP application, which is in the queue for review and a Planning Commission hearing.

Four additional applicants have completed the pre-application determination process but have not yet been issued a Notice to Proceed to a CUP application.

An additional 17 applications have submitted a “pre-application” but have not been reviewed by staff and have not yet received a Pre-application Determination Letter from the City.

A flowchart showing the number of applications within each application status category is provided below.



ALTERNATIVES:

The City Council can decide not to direct staff to agendize consideration of a moratorium or a resolution as described herein. Staff would continue processing applications for cannabis retail storefront businesses under existing regulations, while potential amendments to the City's regulations are being evaluated.

FISCAL REVIEW:

There is no fiscal impact associated with preparing a moratorium or resolution for consideration.

LEGAL REVIEW:

The City Attorney's Office has reviewed and approved this report as to form.

CITY COUNCIL GOALS AND PRIORITIES:

This item is administrative in nature.

CONCLUSION:

Staff recommends the City Council provide direction regarding the potential preparation of a moratorium and/or other alternative procedure to discontinue or suspend acceptance and processing of cannabis retail applications.