

Issues and Proposed Revisions to Chula Vista Marijuana Business Proposal

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Issue: The residential buffer is too wide.

150 feet is a wider buffer from residents than in other jurisdictions in San Diego County, despite the fact that Chula Vista is much more compact. (100 feet is the standard used by San Diego City with far more pure commercial zones). 150 feet is wider than a four lane freeway, and with no exceptions for barriers, would limit access on the other side of a freeway.

Citation: Page 18, Section 5.19.060, B.3.c

Storefront Retailers shall not be located within 150 feet of any existing residential use or proposed exclusive residential use .

Suggested Revision: Limit the buffer to 100 feet.

Storefront Retailers shall not be located within 100 feet of any existing residential use or proposed exclusive residential use

Issue: There does not appear to be any criteria in the Phase One Application Submission process that requires the applicant to identify and be in possession of a suitably zoned premise.

This could lead to applicants who have not even acquired and may not have the ability to acquire a suitable property monopolizing the lottery.

Citation: Page 10, Section 5.19.050 City License Application Process.

The following procedures shall govern the application process for the issuance of any City License under this Chapter.

A. Phase One Application Process

...

Suggested Revision: Require that the location be identified as part of the Phase One Application Submission and that the location must be located in an appropriate zone. If a sensitive use is found to affect the property , the application will be denied and another applicant will be selected

Issue: The Phase One Application Process is not clearly described

The text makes reference to a deadline for submittal, but it does not clarify how long, prior to this deadline, applications will be available, and what staff assistance or interactions will be possible prior to this deadline.

Citation: Page 10, Section 5.19.050 City License Application Process.

The following procedures shall govern the application process for the issuance of any City License under this Chapter.

B. Phase One Application Process

...

Suggested Revision:

The following procedures shall govern the application process for the issuance of any City License under this Chapter.

1. Phase One Application Process

1. The City shall release the Phase One applications for Commercial Cannabis Businesses to the public. Following the release of the Phase One Applications, the City will have a 60 day window to accept completed Phase One applications for Storefront and Non-Storefront Retailer Licenses, and establish a designated time and date, following the 60 day application window, as a deadline for Phase One Storefront and Non-Storefront Retailer Applications submittal. This deadline may be extended if a sufficient number of retail applications have not been received in a complete and acceptable form prior to the application deadline. During the designated application window, staff shall be available to accept completed applications that are of the required form and to answer questions from potential applicants regarding their application submissions. Applications for all other commercial cannabis businesses shall not be subject to Phase One application deadlines and may be submitted their completed applications at any time.

Issue: We have no idea what sort of tax measure the council is contemplating putting on the June ballot, but the entire ordinance is contingent on this tax measure passing.

Will it be popular? Will it be economically feasible for cannabis businesses?

Citation: Page 39, 5.19.290 Effectiveness Conditioned on Passage of Tax Measure.

The effectiveness of the ordinance enacting this Chapter is contingent upon voter approval and the continuous legal validity of a tax measure anticipated to be submitted to voters in June 2018. The tax measure would impose an excise tax, in an amount and form yet to be determined, on all Commercial Cannabis Businesses. In the event the proposed tax measure is not approved by the voters, or is suspended or invalidated for any reason, the provisions of this ordinance permitting Commercial Cannabis Businesses shall be void without any further action required by the City.

Suggested Revision: Please have the council provide some indication as to what tax measures are being considered and include some guidelines for such a measure in this ordinance.

Issue: Residential buffers include residences outside of exclusively residential zones

If a residence is located in a zone allowing commercial or industrial activity, there is no reason that they should be included as a sensitive use barrier, since any other business can operate in their vicinity.

Citation: Page 18, Section 5.19.06 B.3.c

Storefront Retailers shall not be located within 150 feet of any existing residential use or proposed exclusive residential use

Suggested Revision: Limit this buffer to residential use within residential zones without commercial activities allowed.

Issue: Definition of Private Park is so broad that it would theoretically include swing sets in private residences.

Citation: Page 8, paragraph 1.

“Private Parks” means privately owned outdoor premises containing recreational areas or playground equipment, including tot-lots, swings, or similar equipment, designed for use by Minors.

Where a Private Park is located within a parcel containing other uses, the Private Park premises shall be defined as the area within which all recreational areas or playground equipment designed for use by Minors is contained.

Suggested Revision:

“Private Parks” means privately owned outdoor premises, *for private, or public, community use*, containing recreational areas or playground equipment, including tot-lots, swings, or similar equipment, designed for use by Minors. Where a Private Park is located within a parcel containing other uses, the Private Park premises shall be defined as the area within which all recreational areas or playground equipment designed for use by Minors is contained.

Issue: The definition of “Youth Business” is so broad; it could include any eating establishment where families are present, and many other unforeseen businesses.

This could theoretically include Basket & Robbins and Kentucky Fried Chicken.

Citation: Page 9.

“Youth-Oriented Business” means any for-profit or non-profit business where the majority of individuals who patronize, congregate, or assemble at the business location are less than 21 years old.

Suggested Revision:

“Youth-Oriented Business” means any for-profit or non-profit business *that exclusively offers programs, services, or goods, for individuals under the age of 21*, and where the majority of individuals who patronize, congregate, or assemble at the business location are less than 21 years old.

Issue: By combining the limit on storefront and delivery retail operations, and mandating that at least one delivery only licensed be issued, the district limits may be fulfilled by delivery services, eliminating all storefront retailers.

Citation: Page 10, Section 5.19.040, A

“Storefront and Non-Storefront Retailer Licenses: Twelve (12) total, with no more than three (3) City Licenses available for Operation within each Council District. Of the three (3) City Licenses available for Operation within each Council District, no more than two (2) City Licenses shall be available for Storefront Retailers”

Suggested Revision: Eliminate the allowance of one license per council district to a delivery service.

“Storefront and Non-Storefront Retailer Licenses: Twelve (12) total, with no more than three (3) City Licenses available for Operation within each Council District. ~~Of the three (3) City Licenses available for Operation within each Council District, with no more than two (2) City Licenses shall be available for Storefront Retailers”~~

Issue: Storefront Retailers will only be allowed to sell adult use marijuana, depriving medical patients the benefits of the variety and customer service of a storefront location.

Citation: Page 10, Section 5.19.040, C

“Storefront Retailer City Licenses shall be limited to A-Licensees only. All other City License types may be available to A-Licensees and M-Licensees.”

Suggested Revision: Allow storefronts to sell medical marijuana along with adult use marijuana.

“Storefront Retailer City Licenses shall be limited to A-Licensees only. All other City License types may be available to A-Licensees and M-Licensees.”

Issue: An application may be denied, without the ability to resubmit for a year, due to a missing field.

This is overly punitive for a clerical error.

Citation: Page 12, 5.19.050, A.3.b

3. The Phase One Application shall be reviewed by the Finance Director for completeness and to determine if City’s minimum City License qualifications have been satisfied. Phase One Applications may be rejected by the Finance Director for any of the following reasons in his/her discretion:

...

b. The application is not in the required form and/or is incomplete.

Suggested Revision: Allow the applicant the opportunity to try to submit, receive feedback from staff, and make corrections prior to the retail application deadline.

The application is not in the required form and/or is incomplete *by the designated time and date.*

Issue: The exclusion for a past felonies is overly broad, not allowing for mistakes in the far past to prejudice individuals today.

Citation: Page 14, Section 5.19.050 A.4.c.

4. Phase One applications accepted by the Finance Director as minimally qualified shall be forwarded to the Police Chief for review and completion of any and all required background checks. Phase One Applications may be rejected by the Police Chief for any of the following reasons in his/her discretion:

..

c. The Applicant or any Owner, Officer, or Manager has been convicted of a felony

Proposed Revision: Limit this to felonies for which the applicant was convicted within the last ten years, to exclude conviction long since served. We also recommend that this limitation apply to felonies committed by a landlord.

Issue: The restriction on applicants who have been previously fined for marijuana businesses is too broad.

This restriction includes any fines from any jurisdictions, not just Chula Vista. Prior to 2015, marijuana zoning rules were relatively murky and undefined in many jurisdictions and at the state level. Many marijuana businesses that had operated with at least some level of permission from their jurisdiction were fined with subsequent changes to city code.

Citation: Page 14, Section 5.19.050 A.4.c

4. Phase One applications accepted by the Finance Director as minimally qualified shall be forwarded to the Police Chief for review and completion of any and all required background checks. Phase One Applications may be rejected by the Police Chief for any of the following reasons in his/her discretion:

..

f. The Applicant, or any Owner, Officer, or Manager has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure.

Suggested Revision: Limit this to material violations within the last three years, since prior to this the rules were ill defined in many jurisdictions and at a state level. We also recommend that this restriction applied to landlord violations.

Issue: Storefront Retailers cannot conduct deliveries

Citation: Page 24, Section 5.19.090 Operating Requirements for Storefront Retailers.

B. A Storefront Retailer shall not conduct Deliveries.

Suggested Revision: Allow Retailers to conduct deliveries

Issue: The ordinance does not appear to allow for any product display inside a storefront retail cannabis business.

This would mean that customers would be purchasing cannabis sight unseen.

Citation: Page 31, 5.19.160 Security Measures.

A. All City Licensees shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing Cannabis or Cannabis Products, and to deter and prevent the theft of Cannabis or Cannabis Products at the Premises of the Commercial Cannabis Business. Except as may otherwise be determined by the Police Chief, these security measures shall include, but shall not be limited to, all of the following:

...

Except for live growing plants which are being cultivated at a Cultivation Premises, all Cannabis and Cannabis Products shall be stored in a secured and locked room, safe, or vault. All Cannabis and Cannabis Products, including Live Plants that are being cultivated, shall be kept in a manner as to prevent diversion, theft, and loss,

Suggested Revision:

Except for live growing plants which are being cultivated at a Cultivation Premises, all Cannabis and Cannabis Products shall be stored in a secured and locked room, safe, vault *or display case*.