

**Memorandum**

**To:** The City of Chula Vista, Council, the City Attorney, and Staff  
**From:** Coast Drive Management  
**Re:** Chula Vista Municipal Code Draft Ordinance, "Chapter 5.19 Commercial Cannabis Businesses."  
**Date:** February 06, 2018  
**Document Length:** 6 pgs  
**Time to Complete:** 2hr 30 min

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**Question Presented:**

Whether the Chula Vista Municipal Code Ordinance Chapter 5.19, "The Chula Vista Municipal Code to Regulate Commercial Cannabis," benefits Chula Vista community members who want to operate a Cannabis Delivery Business as described under the "First Reading" of Chapter 5.19.

**Short Answer:**

Probably no. The ordinance does not make it feasible for Chula Vista residents to become cannabis delivery business owners.

**Analysis:**

The ordinance discusses various business categories and definitions. Delivery drivers would fall under the "Non-Storefront Retailer" category. The following analysis dissects the sections of the ordinance that apply to delivery businesses.

**5.19.040 Maximum Number and Types of Authorized City Licenses**

Storefront and Non-Storefront Retailer Licenses: Twelve (12) total, with no more than three (3) City Licenses available for Operations within each Council District. Of the three (3) City Licenses available for Operations within each Council District, no more than two (2) City Licenses shall be available for Storefront Retailers. Chula Vista Municipal Code Draft

Ordinance, Chapter 5.19.040(A), p. 6.)

The City will take no action to increase the maximum number of authorized Storefront Retail Licenses until July 1, 2020. (Chula Vista Municipal Code Draft Ordinance, Chapter 5.19.040(A)-(F).) After July 1, 2020, the City Council may consider increasing the maximum number of authorized Storefront Retail Licenses, but only after receiving and considering a report from the City Manager regarding any observed or projected adverse impacts on the community from such businesses.

The City Council may make a referral to the City Manager to decrease the total number of City Licenses for any or all types of Commercial Cannabis Businesses at any time. If the total number of City Licenses for any or all types of Commercial Cannabis Businesses within the City is decreased, any and all previously issued City Licenses shall continue to be valid for the remainder of the time for which each City License was granted. (Chula Vista Municipal Code Draft Ordinance, Chapter 5.19.040 (F).)

When applying the parameters outlined in the ordinance, including what the State of California refers to as, “kid zones,” there are very few areas a business may actually be located. Although you may believe this applies to “Store front” locations, it may apply delivery drivers as well, since you are required to have a place of business within the city.

#### 5.19.050 City License Application Process

Chula Vista Municipal Code Draft Ordinance, Chapter 5.19.050(A)(1)(e) raises an issue as it requires an applicant to demonstrate that either i) at least one Owner and one Manager each engaged in a minimum of twelve consecutive months of lawful Commercial Cannabis Activity, within the previous 5 years, in a jurisdiction permitting such Commercial Cannabis Activity. The 12 consecutive months of lawful Commercial Cannabis Activity must be of a type “substantially similar” to the Chula Vista license they are now applying for. Or the applicant must show that ii) at

least one Owner and one Manager have a minimum of thirty-six (36) consecutive months of experience managing or operating a lawful alcohol or pharmaceutical business license that is regulated by the state the federal government. The 36 months of experience demonstrated must be of a type “substantially similar” to that allowed by the Chula Vista City license the applicant is now applying for.

This is concerning as the majority of licenses currently held in San Diego are those of storefront businesses. Furthermore, this is concerning because there are currently 13 licensed storefronts currently operating in San Diego. The scarcity of these storefronts means that consumers with health issues must deal with crowded lobbies, limited parking and longer than usual wait times.

Chula Vista Municipal Code Draft Ordinance, Chapter 5.19.050(A)(1)(f) raises concern as to the need for documentation demonstrating a minimum of \$300,000 in Liquid Assets available to an applicant. Collective and cooperative models are the traditional modes of financing within the Cannabis Industry. Thus, there is no indication whether the City will discredit those businesses that have multiple financiers, as opposed to one wealthy financier.

Furthermore, the Chula Vista Chamber of Commerce website indicates that the median household income for the average Chula Vista resident is \$63,283.000.<sup>1</sup> The U.S. Census Bureau reported in 2016 that 38.1% of the Chula Vista population made less than \$50,000.00 a year.<sup>2</sup> Furthermore, the same report shows Chula Vista has a 9.7% unemployment rate. Finally, the report shows that 12.1% of the population is experienced in retail, 5.7% in transportation and warehouse and utilities, yet 89.3% of residents commuted to work. That is, they took their services and social capital to another city. Therefore, the City of Chula Vista is likely limiting the

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<sup>1</sup> <http://www.chulavistachamber.org/demographics.html>

<sup>2</sup> <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

average Chula Vista Resident from affording a delivery service business within their own City despite a person having experience in retail, transportation, or having the need to be employed.

The City of San Diego, recently chose not to regulate independent delivery services, and they are currently paying the price. Advertising sites, like Weedmaps, shows hundreds of unregulated and untaxed cannabis delivery services operating within the City of San Diego. Enforcement against these unregulated services is costly and largely ineffective. Not allowing a reasonable amount of business licenses to be issued to cannabis delivery businesses may result in the same issues.

Another area of concern is Chula Vista Municipal Code Draft Ordinance, Chapter 5.19.050(A)(1)(i), the requirement to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department. State licensing requirements already require such information. Thus, there is a possibility businesses will have to pay two agencies for satisfying their background check requirements, merely because they did not initially submit their information to the Chula Vista Police Department.

Another area of concern under the rejection of an application under Chula Vista Municipal Code Draft Ordinance, Chapter 5.19.050(A)(4) where during the “phase one” process by the Police Chief for any of the following reasons in his/her discretion:

- “The Applicant, an Owner, a Manager, or any Responsible Person has been convicted for any offense involving moral turpitude or the use of a weapon.
- There are charges pending against the Applicant, or any Owner, Officer, or Manager for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon.
- 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.”

This is of concern because an arrest does not always result in a conviction. Furthermore, many past convictions for possession, sale, and/or cultivation of marijuana may be eligible for expungement pursuant to California Penal Code 1203.4, resentencing under Proposition 47, and/or the sealing of criminal records.

Furthermore, a crime of “moral turpitude” is also very vague and may include a wide array of activities that may not be directly related to the ability of a person to successfully manage a business. For example, in California “moral turpitude” may include “nonfelonious conduct” (People v. Pearson (2013) 56 C. 4th 393, 434.) The cultivation of marijuana is a crime of moral turpitude and relates to the issue in the above paragraph because a person may have been convicted and their case may be expunged. (People v. Gabriel (2012) 206 Cal. 4th 450, 459.) The same argument applies to convictions for the sale of marijuana, a drug or possession of marijuana. (People v. Navarez (1985) 169 Cal. 3d 936; see also People v. Castro (1985) 38 Cal. 3d. 301.)

#### 5.19.060 Location Requirements for Cannabis Businesses

Subsections (C)(1)-(3) discuss the requirements for “Non-Storefront Retailers.” Such retailers will be allowed in following Industrial Zones; I-L Limited Industrial; I-R Research Industrial; I General Industrial; and equivalent Industrial Zones in Sectional Planning Area Plans that allow industrial uses. Furthermore, Non-Storefront Retailers must not be located within 150 feet of any zone allowing residential uses.

The issues under this section include, the limited number of licenses available, the fact that a landlord may not permit an establishment within a designated area despite the business’ legal actions.

#### 5.19.100 Operating Requirements for Non-Storefront Retailers

Subsection (C)(1)(f) requires all vehicles used for Delivery shall be outfitted with a dedicated Global Positioning System (GPS) device for identifying the geographic location of a Delivery vehicle. The issue with this requirement is that there is no indication who will track the vehicle. There is no indication whether this information is required to be logged, stored, or shared with law enforcement or City code enforcement.

Subsection (6) requires all drivers to carry with them a delivery invoice. The issue with this is what type of information that invoice is required to display. An issue may arise where such an invoice carries private medical information of a client.

#### 5.19.200 Right of Access & Testing

Chula Vista Municipal Code Draft Ordinance, Chapter 5.19.200(A)-(F) grants the City officials, employees, and their designees authorized to enforce the provisions of the Code and to have full access to inspect and enter onto any Premises of a City Licensee. This section is concerning because it grants the City too much discretion. There are no time limits on how long the inspection can take nor any “reasonableness” restrictions on the City’s right to act. Without such restrictions, the City may enter whenever they decide is fit and for any reason they find is sufficient.

Subsection (A)(2) allows the City to test any equipment possessed by, in control of, or used by a City Licensee, Responsible Persons, and any other employee, agent, or volunteer of a City Licensee. The section does not specify that the equipment must be one that is used or has been used for business purposes. This opens up a business to liability for personal effects of “Responsible Persons, and any other employee, agent, or volunteer.”

Subsection (A)(4) also grants access to copy any materials, books, or records of any City Licensee, Responsible Person, and any other employee, agent, or volunteer of a City Licensee.

Although other sections of the ordinance specify that searches of documents and information does not apply to medical records, this subsection does not.

**Conclusion:**

For the above named reasons the current version of Chula Vista Municipal Code Ordinance Chapter 5.19 does not make it feasible for it's local residents to afford to become business owners, entrepreneurs, or to stimulate the local economy. Furthermore, the ordinance presents issues as it relates to client's and patient's rights.