

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

04/10/18
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Moyer on April 10, 2018 at 1:30 p.m. at the Banning Civic Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Council Member Andrade (arrived at 2:17 p.m.)
Council Member Franklin
Council Member Peterson
Council Member Welch
Mayor Moyer

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Rochelle Clayton, Interim City Manager
Kevin Ennis, City Attorney
Art Vela, Public Works Director
Patty Nevins, Community Development Director
Robert Fisher, Interim Police Chief
Sonja De La Fuente, Deputy City Clerk

The Mayor called for Public Comment on the workshop topic.

John Hagan expressed his concern with the close proximity of the industrial zone to his residential area. He wants to be sure the City has extra enforcement available to monitor the area.

Kenneth King advised the Council that he is available to help the City with security.

Seeing no further comments, the Mayor closed Public Comment.

WORKSHOP

1. Overview of Municipal Options for Allowing Commercial Cannabis Cultivation, Other Commercial Cannabis Activity, Options for Local Ballot Measure, and Related Ordinances and Regulations

Community Development Director Patty Nevins and Maricela Marroquin, Senior Attorney with the City Attorney's office of Richards Watson and Gershon, presented information to the City Council regarding commercial cannabis cultivation, other commercial cannabis activity, and options for local ballot measure, and related ordinances and regulations. (See Exhibit "A")

Council Member Peterson asked for clarification on 22,000 square feet and if it means 22,000 square feet of mature plants or 22,000 square feet of seedlings, packaging, etc. Maricela explained that it would be 22,000 total canopy space for the mature plant. The office space and waste processing, etc. would be separate or additional space allowed.

Council Member Welch asked if there would be a minimum criteria to qualify for the lottery if one was held. Maricela confirmed it is an option for the Council to meet a minimum criteria (i.e. property in industrial zone and meet distance requirement from sensitive uses).

Council Member Peterson pointed out that marijuana is a Schedule 1 Drug and asked about processing cash from the cannabis businesses. Maricela explained it is something being worked out at the State level. There are some credit unions allowing the placement of the money from cannabis businesses. However, there are issues related to this. It is up to the State Attorney General to prosecute.

Council Member Peterson shared an issue that a property manager is experiencing in another city where growers are bagging waste (parts of the cultivation process that cannot be sold) and placing in dumpsters, which then draws the homeless population. Maricela indicated part of the State license requires proper disposal of waste. Cathedral City has some regulations in place related to disposal as well.

Maricela pointed out that there is a potential Assembly Bill at the State level to lower the cannabis excise tax from 15% to 11%.

Council Member Franklin asked about the City using too much water if a cannabis cultivation operation uses a lot of water, as she is concerned about the City being fined. Maricela explained that cannabis cultivators are required at the state level to designate their water source. She does believe it would impact the City's usage levels. Maricela explained there are different manufacturing levels and staff is recommending only level one manufacturing to avoid the higher volatility.

Council Member Franklin asked if these plants are more volatile, in regard to fire or if it is the same as other plants. Maricela doesn't believe it would burn more or less than another plant. However, the manufacturing or cooking side of the process could be volatile.

Council Member Peterson asked if the State does what they need to do to make accepting money from the cannabis industry legal, would other vendors have the same liability and culpability of money laundering as others would. Maricela believes it would be. But, the State is already processing licenses. She would recommend companies consult their legal counsel.

Mayor Moyer explained the City Council is looking into this for financial purposes only. He asked if staff has obtained information from other cities indicating financial growth. Director Nevins noted that Desert Hot Springs has experienced development.

City Attorney Ennis indicated that before January 1, 2018 Adult Use of Marijuana was not legal in California. There may be information available related to medical marijuana.

Mayor Moyer asked Interim City Manager Clayton what she learned from a program she attended. She advised that Santa Ana has realized a \$3 million increase from 2015 to present.

Director Nevins explained that the City could recoup costs during the application process with application fees.

Maricela indicated that per a news article in April 2017, the City of Adelanto was in a deficit of \$2.5 million, then welcomed marijuana cultivation and they are currently in a \$0.5 million deficit, and to be in the black by next year.

PUBLIC COMMENTS

The Mayor opened the item for Public Comment.

John Hagan asked for clarification as to what kind of security would be in place. (i.e. would they be armed and would perimeter security be required?)

Seeing no further comments, the Mayor closed Public Comment.

Staff requested direction from the Council.

Council Member Peterson is in support of starting with cultivation to hopefully increase the tax base for the City. He feels the City is doing things the right way by taking one step at a time.

Council Member Andrade indicated she is in favor of dispensaries.

Council Member Welch recommends a reasonable approach and feels the following areas need to be looked at closely: 1) facility – protect environment, 2) residents – location in relation to the potential business sites, 3) security and waste disposal.

Council Member Franklin expressed her concern with the residents and the how their living environment is affected. She feels there is a lot more to do before making a decision.

Mayor Moyer asked what the time frame would be to get this on the ballot.

Staff will prepare a draft Ordinance to bring back to Council next month, then to Planning Commission in June, and back to City Council by the end of June. City Attorney Ennis shared that the absolute deadline is August 14th to have the measure on the Ballot. Maricela clarified that it would go to Planning Commission June 6th, then back to the City Council July 10th. Director Nevins will bring the regulations to the Cannabis Ad Hoc Committee by the end of April.

Mayor Moyer asked if this included testing. Council Member Peterson explained the Ad Hoc Committee is recommending Cultivation and Manufacturing Level One. Maricela clarified this is using non-volatile solvents with indoor cultivation only. She also explained that manufacturing is not limited by space size by the State.

There was a consensus of the Council that staff proceed with preparing a draft ordinance to include allowing indoor only cultivation with a minimum size of 10,000 square feet and a maximum size of 22,000 square feet and allowing manufacturing with no size limitations. Cultivation and manufacturing would only be allowed in industrial zones and distancing requirements need to be addressed. The Council is not interested in looking at dispensaries at this time.

Council Member Franklin would like size suggestions for manufacturing.

City Attorney Ennis asked about tax rates. The Mayor asked staff to provide the Ad Hoc Committee with the information and come back to Council with a recommendation.

Council Member Peterson expressed his concern with the small residential section of Barber and Charles west of Hathaway. That area was originally residential and was changed a few years back to industrial. He would like that area looked at.

The Mayor asked if there were any further comments from the Public.

John Hagan asked if the residents that were rezoned to industrial a few years back would be allowed to apply for a variance. He was advised they would not be.

Nick Frazier suggested looking at testing if the City is looking at cultivation and manufacturing.

Seeing no further comments, the Mayor closed Public Comment.

ADJOURNMENT

By common consent the meeting adjourned at 3:00 p.m.

Minutes Prepared by:



Sonja De La Fuente, Deputy City Clerk

These Action Minutes reflect actions taken by the City Council. The entire discussion of this meeting can be found by visiting the following website: <https://banninglive.viebit.com/player.php?hash=rIP6ldpoGv90> or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.

Exhibit “A”

to the April 10, 2018

1:30 P.M. Special City Council Meeting

Cannabis Workshop

City Council Workshop

City of Banning
99 E. Ramsey Street
Banning, CA 92220

April 10, 2018
1:30 P.M.



Overview

- Ad hoc committee meetings
- State licensing categories
- Banning vote on Proposition 64
- Ad hoc committee recommendations and restrictions that can be imposed on cannabis businesses
- Taxes

Cannabis Ad Hoc Committee

- At the June 27, 2017 City Council meeting, Council established a Marijuana Ad Hoc Committee, including Councilmembers Peterson and Welch, to work with staff on exploring the possibility of allowing cannabis uses within the City
- At the January 9, 2018 City Council meeting, staff presented the Ad Hoc Committee's recommendation to have staff prepare an ordinance allowing indoor cannabis cultivation uses in industrial zones
- The City Council concurred with the Ad Hoc Committee's recommendation and directed staff to move forward with Municipal Code Amendments to regulate indoor commercial cannabis cultivation and to prepare a ballot measure to impose a municipal tax on such activity



State Licensing Categories

There are currently 25 State licensing categories including:

- Retailer (2)
- Distributor (2)
- Testing (1)
- Manufacturer (2)
- Microbusiness (1)
- Cultivation (17)

Retailer and Distributor Licenses

- Retailer: Sells cannabis goods to customers at its premises or by delivery
- Retailer (nonstorefront): Sells and delivers cannabis goods to customers
- Distributor: Transports cannabis goods, arranges for testing of cannabis goods, and conducts quality assurance review of cannabis goods to ensure they comply with all packaging and labeling requirements
- Distributor transport: Allows a licensee to transport cannabis goods between licensed cultivators, manufacturers, and distributors

Testing, Manufacturing and Microbusiness

- Testing laboratory: A laboratory that offers or performs tests of cannabis goods
- Microbusiness: Allows a licensee to engage in cultivation (on an area less than 10,000 square feet), manufacturing (Level 1 manufacturing), distribution, and retail sale, or any combination of the four activities
- Manufacturing Level 1: For sites that manufacture cannabis products using nonvolatile solvents, or no solvents
- Manufacturing Level 2: For sites that manufacture cannabis products using volatile solvents. Volatile solvent is a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures

Cultivation

- Specialty Cottage Outdoor: An outdoor cultivation site with up to 25 mature plants
- Specialty Cottage Indoor: An indoor cultivation site with up to 500 square feet or less of total canopy
- Specialty Cottage Mixed-Light: A mixed-light cultivation site with 2,500 square feet or less of total canopy
- Specialty Outdoor: An outdoor cultivation site with 5,000 square feet or less of total canopy—or up to 50 mature plants on noncontiguous plots
- Specialty Indoor: An indoor cultivation site of between 501 and 5,000 square feet of total canopy

Cultivation

- Specialty Mixed-Light: A mixed-light cultivation site of between 2,501 and 5,000 square feet of total canopy
- Small Outdoor: An outdoor cultivation site of between 5,001 and 10,000 square feet of total canopy
- Small Indoor: An indoor cultivation site of between 5,001 and 10,000 square feet of total canopy
- Small Mixed-Light: A mixed-light cultivation site of between 5,001 and 10,000 square feet of total canopy

Cultivation

- Medium Outdoor: An outdoor cultivation site of between 10,001 square feet and 1 acre of total canopy
- Medium Indoor: An indoor cultivation site of between 10,001 and 22,000 square feet of total canopy
- Medium Mixed-Light: A mixed-light cultivation site of between 10,001 and 22,000 square feet of total canopy
- Nursery: Cultivation of cannabis solely as a nursery
- Processor: A cultivation site that conducts only trimming, drying, curing, grading, or packaging of cannabis and nonmanufactured cannabis products

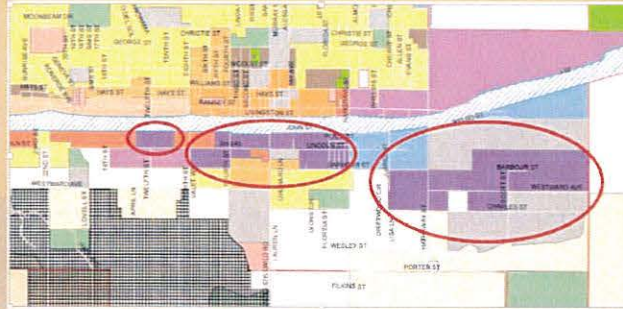
How the Banning Electorate Voted on Proposition 64

- Banning voters opposed Proposition 64 (56% opposed versus 44% in favor)
- 5,213 voted against Proposition 64 and 4,215 voted in favor



Industrial Zoning

The Ad Hoc Committee recommended that Cannabis Cultivation and potential Manufacturing Level 1 uses be limited to Industrial zoning districts.



Size Limits for Businesses

Ad Hoc Committee recommendations:

- Allow businesses with an indoor cultivation site of a minimum of 10,000 square feet of total canopy area to operate in the City
- Did not address size limits for manufacturing businesses

Other options for indoor cultivation:

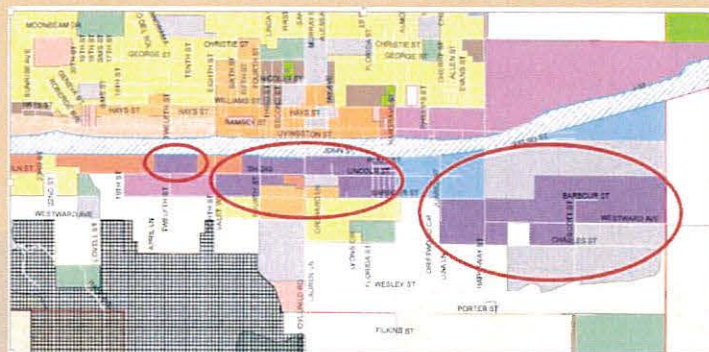
- 501 – 5,000 square feet of canopy area
- 5,001 – 10,000 square feet of canopy area
- 10,001 – 22,000 square feet of canopy area

Limits on Number of Cannabis Businesses

- Cities are authorized to limit the number of cannabis businesses that operate in the City
- Distance requirements from sensitive uses
 - State law sets forth a distance requirement of 600 feet from (K-12) schools, day care centers, youth centers
 - Include parks and/or residences?
- Distance requirement from other cannabis businesses?
- Recommendation for a lottery once businesses have met certain objective criteria

Distancing/Separation

Many areas of industrially zoned land (purple) are adjacent to residentially zoned property (yellow, beige, white, tan).



Distancing/Separation

Additionally, there are existing non-conforming residential uses within Industrial zoning districts.



Security

- Cash carrying/handling
 - at the facility
 - at City offices
- Building security
 - Security guard
 - security cameras
 - secure lobby vestibule areas
- Waste processing

Additional Regulations To Be Included in Ordinance

- Not open to the general public
- Cannabis cannot be visible from outside the building
- Ventilation regulations: install ventilation and filtration systems to prevent odors generated from the cannabis business from escaping the buildings so odors cannot be detected outside of the building
- Signage: restriction on use of graphics, illumination, numbers, size
- Indemnification of the city
- Insurance requirements

Options for Additional Regulations

- Limit on hours of operation?
- Limit on not sharing wall space with any other use other than another cannabis business?
- Additional set backs?
- Other regulations?

Regulatory Permit

- Amendment to Title 5 of the Municipal Code to allow the issuance of a regulatory permit to cannabis businesses
- The regulatory permit would include background check, operation regulations, and additional regulations

Cannabis Conditional Use Permit

- Amendment to Title 17 of the Municipal Code to allow consideration of a Cannabis Conditional Use Permit to allow certain types of cannabis businesses. The Ad Hoc Committee recommended that Cannabis CUPs be reviewed by Planning Commission for recommendation and final approval by the City Council
- The Conditional Use Permit would address land use issues associated with any Cannabis business

State Taxes



- A State cannabis excise tax of 15% of the gross receipts of any retail sale
- Cultivation tax is set at \$9.25 per ounce for cannabis flowers and \$2.75 per ounce for cannabis leaves

Proposition 218 and 62 Requirements

- General taxes require a 50% + 1 voter approval to pass
- Special taxes require a 2/3 voter approval to pass
- Measure imposing a general tax cannot be placed on the ballot unless it is approved by a two-thirds vote of all members of the City Council (4/5th vote)
- Measure imposing taxes must be considered at an election consolidated with a regularly scheduled general election for members of the City Council, except in cases of an emergency

Tax Fairness, Transparency, and Accountability Act

- Proposed State ballot measure that has not yet qualified for the ballot
- Requires 2/3 voter approval of any tax, whether general or special



Tax Rates for Cannabis Businesses

Cultivation

- Typically based on a price per square foot of canopy space
- Broad range: example from \$5 to \$25 per square foot of canopy space

Manufacturing

- Typically based on a percentage of the gross receipts
- Range from 0% to 15%
- Sometimes distinction based on whether cannabis is for medicinal or adult-use