



**DOUGLAS T. SLOAN**  
**City Attorney**

November 27, 2019

**MEMORANDUM**

**TO: Cannabis Businesses**

**RE: City Laws Applicable to Cannabis Businesses**

The City is not currently issuing local permits to establish a cannabis business, but may begin to do so depending on the final outcome of future land use text amendments and environmental review.

**BACKGROUND**

On December 14, 2017, the City Council directed staff to prepare an amendment to the zoning code to allow medical cannabis operations, cultivation, manufacture, extraction, testing, distribution, delivery, and dispensaries within the City. In March 2018 the DARM Director initiated an amendment to the zoning code to allow adult use cannabis cultivation, manufacture, extraction, testing, and distribution, but not retail sales or delivery. On November 6, 2018, a Cannabis Business License Tax measure was approved by the voters. On December 6, 2018, Council adopted a Resolution setting the tax rates as follows:

- Cultivation: \$6.00 annually per square foot of canopy space for commercial cannabis cultivation;
- Retail Sales: 4% of gross receipts;
- Testing Laboratory: No gross receipts tax;
- Distribution: 1% of gross receipts; and
- Manufacturing: 4% of gross receipts.

On December 13, 2018, the City Council adopted the Cannabis Retail Business and Commercial Cannabis Business Ordinance, which sets out the permitting framework and regulatory requirements for Medicinal and Adult Use Cannabis businesses to eventually operate within the City. Its effective date is January 13, 2019.

**CANNABIS FRAMEWORK**

For the City to have a complete cannabis framework, the following components would need to be adopted by the City Council:

First, the Cannabis Business License Tax would need to be approved by voters and then rates set by Council Resolution.

Second, the City Council would need to adopt a regulatory ordinance which includes operational standards, location requirements, business permits, and the application requirements for a cannabis business.

Third, the City Council would need to adopt a text amendment which will set out the requirements for a Cannabis CUP, design guidelines for businesses, and allow certain cannabis uses in specified locations in the City.

Fourth, an amendment to the cultivation ordinance would need to be adopted by the City Council.

Fifth, these components would need to be analyzed under the California Environmental Quality Act (CEQA). The text amendment and cultivation ordinance amendment cannot be adopted until CEQA has been adopted.

### **NO PERMITS ISSUED AT THIS TIME**

Although the Cannabis Business License Tax has been approved and the regulatory ordinance has been adopted, the City can not issue any Commercial Cannabis Business Permits to begin operating legally until the three remaining cannabis components are completed.

It is expected to take approximately six to nine months to create and adopted the CEQA document, process the text amendment to be reviewed by District Committees, the Airport Land Use Commission, the Planning Commission, and adopted by the City Council, and draft the amendment to the cultivation ordinance for City Council adoption. However, there is no guarantee if or when these amendments will be adopted by the City Council.

The City cannot give authorization to any state license applicants until the City land use entitlement process is complete and the business has been properly permitted.

### **GENERAL INFORMATION**

Neither the setting of Cannabis Business License Tax Rates or adoption of the cannabis regulatory ordinance, nor any other representation, authorization, nor permit issued by the City shall create any vested right regarding cannabis operations or businesses. Any benefit conferred is temporary and subject to change, and shall expire permanently on the effective date of the City Council's enactment of new cannabis legislation. No claim for loss of property rights or due process of any kind shall be maintained against the City.

The City Attorney's Office is the point of contact for state agencies to notify the City of state license applications and to give authorizations for such businesses.

A business license issued by the City does not permit a cannabis business to operate, but is merely the required registration to pay City taxes.

Please be advised that under federal law, it is still illegal to possess, cultivate, or distribute cannabis.

### Medical Cannabis

Currently, Fresno Municipal Code section 15-2739-D provides:

A medical marijuana dispensary and/or medical marijuana cooperative shall be allowed only in a zone district designated for medical offices and only if consistent with state and federal law.

Since medical cannabis dispensaries are only allowed if consistent with state and federal law, a "temporary cannabis event" which includes retail sales or dispensing of medical cannabis would not be permitted at this time.

### Adult Use Cannabis

All Adult Use cannabis businesses are prohibited in the City. Fresno Municipal Code section 15-2739.1.

### Cultivation

State law currently allows a person 21 years of age or older to possess and cultivate, within a single private residence, up to six cannabis plants.

Fresno Municipal Code section 12-2104 provides:

Marijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, is prohibited in all zone districts within the city.

The City currently prohibits all indoor and outdoor cannabis cultivation. This prohibition on indoor growing may be preempted by state law that allows up to six indoor plants per residence.

## **FREQUENTLY ASKED QUESTIONS**

QUESTION: Fresno Municipal Code Section 9-3307(c) requires the distance from a retail dispensary to a school be no closer than 800 feet. Is this parcel to parcel? Door to door? Legal walking distance, or a straight line?

ANSWER: *Fresno Municipal Code Section 15-304.E. defines "Measuring Radius":*

*Measuring Radius. When a specified land use is required to be located a minimum distance from another land use, the minimum distance is measured in a straight line from all points along the lot line of the subject project.*

QUESTION: What constitutes a school for the purpose of Fresno Municipal Code Section 9-3307(c)(2)?

ANSWER: *The term "Schools, Public or Private" is defined in the Fresno Municipal Code in Section 15-6703 "Public and Semi-Public Use Classifications". As such, "Schools, Public or Private" is defined as: "Facilities for primary or secondary education, including public schools, charter schools, and private and parochial schools having curricula comparable to that required in the public schools of the State of California."*

*Schools are distinguished from "Cultural Institutions", also found in Fresno Municipal Code Section 15-6703, defined as: "Public or non-profit institutions engaged primarily in the display or preservation of objects of interest in the arts or sciences that are open to the public on a regular basis. This classification includes performing arts centers for theater, music, dance, and events; buildings of an educational, charitable, or philanthropic nature; libraries; museums; historical sites; aquariums; art galleries; and zoos and botanical gardens."*

The foregoing is only a general outline of applicable local provisions. Individuals are responsible for ensuring compliance with all federal, state, and local laws. The City Attorney's Office does not provide legal advice to the public.

Respectfully submitted,



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