



City Council Memorandum

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MEMORANDUM: August 5, 2016

AGENDA DATE: August 9, 2016

TO: Mayor and City Council

FROM: Susan A. Stanton, ICMA-CM
City Manager

TITLE: **MEDICAL MARIJUANA REVISED FACILITY PERMIT
PROCEDURES**

BACKGROUND:

During the past six weeks, there has been extensive discussion regarding the process of selecting and taxing commercial cannabis businesses in the City of Greenfield. After conducting the initial round of review for commercial cannabis businesses desiring to obtain a regulatory permit for operating a Medical Marijuana facility in the City, I recognized city staff does not have sufficient resources or the technical expertise to implement the application process without impacting other essential community services. In order to better ensure a more comprehensive and transparent review process, the City approved a professional services contract with HdL Companies, which possesses the expertise in implementing Medical Marijuana Regulatory Programs. HdL staff will take the lead to coordinate and manage the selection process and recommend fees associated with the application process that will recover the City's administrative cost to provide this oversight.

After further evaluation of the current process, HdL and the City Attorney concur with my recommendation that the current process be modified to incorporate "best practice" procedures that HdL has developed and that have been used with other cities in order to establish a detailed application process for obtaining a license to operate a Medical Marijuana Facility in Greenfield. If the City Council approves this procedure the City will begin implementing the application process beginning August 15, 2016.

The revised procedure would create a limit on the total number of regulatory permits that could be issued during the initial process. The limits in each category would be as follows:

Type	Number
Cultivation	8
Manufacturing	8
Dispensaries	2

It should be noted, that the City award of an individual regulatory permit may require the successful business to obtain multiple cultivation state permits based on a specific square feet of premises canopy space. This issuance of a City regulatory permit does not guarantee any cannabis business that the State will issue the permits that they desire or need to make their business profitable. Correspondingly, the City's limits on regulatory permits would bear no relationship to the number of state permits that an applicant might be required to obtain, such that a single regulatory permit could be obtained for a facility that might require multiple state permits.

The permits would be allocated using an evaluation and selection process that consists of four phases that will be evaluated and scored based on a 3,000-point assessment scale. A summary of each phase is as follows:

Phase 1: Determination of Eligibility and Application: Each Principal will be required to undergo a criminal history check demonstrating compliance with the eligibility requirements of GMC Section 5.28.060 for background checks. Applications will be considered complete only if they include all information required for Phases 1, 2 and 3 and show the proposed location of business.

Phase 2: Initial Ranking: Applications will be evaluated based on the following criteria: 1) Proposed Location of business. 2) Business Plan, 3) Neighborhood Compatibility Plan, 4) Safety and Security Plan.

The top applications for each category in Phase 2, if applicable, will move on to Phase 3.

Phase 3: Second Ranking: The top applications in each category, if applicable, will be interviewed and evaluated by the Selection Committee based on an approved criterion. Prior to the scheduling of the interviews in Phase 3 each of the final applicants per category will be required to have their proposed site inspected by designated city staff and the Consultant to ascertain current conditions of the facility if applicable. One Principal from each applicant may be required to pass a Medical Cannabis Expertise Examination, demonstrating a working knowledge of state and local compliance standards as well as the Attorney General's Guidelines on Medicinal Cannabis.

This second ranking will be scored based on the following criteria: 1) Final Location, 2) Business Plan, 3) Community Benefits, 4) Enhanced Product Safety, 4) Environmental

Benefits, 5) Labor & Employment, 6) Local Enterprise, 7) Neighborhood Compatibility Plan, 8) Qualifications of Principals, and 9) Safety and Security Plan.

After all the applicants from Phase 3 scores have been tabulated they will be combined with Phase 2 to establish a new ranking of the top applicants.

The top applicants for each category in Phase 3, if applicable, will move onto Phase 4 of the selection process.

Phase 4: Selection Committees Final Evaluation and City Council's Final Selection will consist of the following: 1. Selection Committee's final review and evaluation. 2. City staff final rankings report to City Council. and 3. City Council makes final selection.

Upon the completion of the final review process, the Selection Committee will tabulate its final scores of the top applicants. The City Manager will present to the City Council the final ranking in which the City Council will award a predetermined number of permits for each category as determined by the City Council and pursuant to GMC Section 5.28.050.

Only those applicants on the final list will be eligible to be issued a permit from the initial permit process. Top Applicants approved by the City Council may need to attend a City Council meeting in Greenfield in order to provide a public presentation before the Mayor and City Council introducing their team and providing an overview of their proposal if requested by the City Manager.

BUDGET AND FINANCIAL IMPACT:

The cost to the applicants for Phase 1 of the application process will be **\$3,604**, which is due upon the submittal of the application on the due date. For the remaining phases the commercial cannabis businesses facility applicant will be notified by the City whether their application is advancing to Phase 2 and, subsequently, to Phase 3. A payment of **\$1,114** will be due before Phase 2 and a payment of **\$1,807** will be due before Phase 3. As part of Phase 4 the top eight (8) Applicants for Cultivation and Manufacturing and the top two (2) Dispensary Applicants which will be presented to City Council must pay a fee of **\$846** in order to move forward for final consideration for each permitted category. Deadlines for these payments will be included in the e-mail notification to the primary contact person. This new process will also require the submission of a Business Plan that describes the day-to-day operations of the facility and the mechanisms for ensuring that the facility will operate on a Not-for-Profit basis, how medical cannabis will be tracked and monitored to prevent diversion. Finally, a schedule for beginning operation, including a narrative outlining any proposed construction and improvements and a timeline for completion.

REVIEWED AND RECOMMENDED:

The proposed selection process is very detailed and designed to protect the City and ensures only top quality commercial business are permitted in the City. It is the recommendation of staff and

HdL that all commercial cannabis businesses that have not been previously awarded a regulatory license by the City Council be required to submit an application through the revised application process in order to be granted a regulatory permit. Requiring all perspective operators to have their application professionally reviewed through this process will ensure the safety and welfare of the community and ensure that each operator will be in compliance with all city and state laws. The revised process also ensures that the total number of permits granted is limited and that the limited number of permits are allocated fairly, equitably, and transparently.

In the last month, several perspective permittees have either purchased land, or are in the process of purchasing or leasing property in order to conduct a commercial cannabis business. These businesses owners have communicated to staff that is was their understanding that the issuance of a regulatory permit by the City was simply a “formality” as long as their proposed business was located on land that was property zoned (or could be rezoned) with the one caveat that they pass a criminal background check. Despite any representations made, inferred or suggested by any representative of the City, the Medical Marijuana Facilities Regulatory Permit Ordinance (Chapter 5.28.040 (A), clearly states the following:

Prior to initiating operations and as a continuing requisite to operating a medical marijuana facility, the persons or legal representative of the persons wishing to operate a medical marijuana facility **shall first obtain a regulatory permit** from the city manager or designee under the terms and conditions set forth in this chapter.

As City Manager, I have not issued any regulatory permits on behalf of the City or authorized any other person or persons claiming to represent the City to suggest that the issues of such a permit was a formality or simply based on proper zoning or the ability to pass a criminal background check.

I have discussed the option of allowing businesses that have been discussing the formation of a cannabis facility with the City, but have not been issued a permit from the City Council, to go through the application process that the City utilized when the City Council issued the first two permits. However, it is the opinion and professional recommendation of the City Attorney and the Consultant that such an exemption could cause legal risks associated with interaction of state law and the City’s existing process.

This is a very complex issue and continues to evolve at the state level as the state agencies begin to develop regulations related to the issuing of permits and compliance requirements. It is important that the City Council understand the regulatory environment that overlays this entire emerging industry. Under existing law, medical marijuana facilities will require licenses from the State. Dispensaries will require licenses from the Department of Consumer Affairs (Bus. & Prof. Code, sect. 19334); cultivation from the Department of Food and Agriculture; and manufacturing from the Department of Public Health. (Bus. & Prof. Code, sect. 19341.) None of these licensing programs are anticipated to be in place prior to January 1, 2018. But, until such time as the state licensure schemes are operating, nothing prevents medical marijuana facilities from operating consistently with local regulations.

State law imposes certain limits on the size of licensed facilities and may impose limits on the number of licenses. In particular, state law limits the number of Type 3A permits. Type 3A cultivation permits are state permits that allow premises of between 10,000 and 22,000 square feet of canopy space. By contrast, state law will not limit the number of permits for premises smaller than 10,000 square feet. In addition, the state law does not clearly define the term premises at this time and may be interpreted by the regulating agency to mean a parcel of land. Those future regulatory determinations could create conflicts between the City permits and the authorization the permittee is able to obtain from the state. Furthermore, current applicants seeking City regulatory permits are requesting approvals for cultivation facilities that in an aggregate are greater than 22,000 square feet of canopy space per parcel. If the state does treat such facilities held in a single ownership as a single premise, it will require the owners to transfer the facilities to others in order to obtain state licenses. Additionally, California law also requires the Department of Food and Agriculture (“DFA”) to limit the number of Type 3A licenses available for cultivation of between 10,000 and 22,000 square feet. (Bus. & Prof. Code § 19332(g).) DFA may limit the licenses on a statewide basis or at a local basis. For all of these reasons, it may be the case that only some of the operations permitted by Greenfield will be able to obtain state licenses, or the operations may need to modify their operations to a Type 2A license which is less than 10,000 square feet of canopy space per premise.

If that occurs, the permit holders that do not obtain state licenses will be incentivized to invalidate the local permits of other medical marijuana operators. Similarly, applicants that do not receive local permits may attempt to invalidate the permits allocated to others all together. The competitive environment makes it critically important that the process the City utilizes to grant regulatory permits be done fairly and consistently with the City’s regulations and procedures.

The proposed review process is comprehensive and designed to protect the welfare and safety of the community. Furthermore, as part of the application process the City at its sole discretion may require one Principal from each application to take and pass the Medical Cannabis Expertise Examination to ensure regulatory compliance with state and local laws. This examination will test the applicant’s familiarity with the Greenfield Ordinance, the Medical Marijuana Regulation and Safety Act, California Law related to medical cannabis, and the Attorney General’s Guidelines on Medicinal Cannabis.

To ensure transparency, applicants will not be allowed to make amendments to their application or to supplement their application, except as otherwise specifically permitted in these procedures or authorized in writing by the City. Being awarded a Medical Marijuana Facility permit will not constitute a land use entitlement nor will it waive or remove the requirements of applying for and receiving permits by the relevant departments or governmental entities that have jurisdiction in this process. All permit awardees will still be required to apply and receive a Conditional Use Permit (CUP) with the City of Greenfield for the proposed construction or occupation of their facility.

Finally, to ensure neighborhood compatibility, every application will need to address how the medical marijuana facility, including its exterior areas and surrounding public areas, will be managed, so as to avoid becoming a nuisance or having impacts on its neighbors and the surrounding community.

In summary, during the last three weeks, I have, regrettably, had to personally familiarize myself with existing and pending law regulating this new industry in more detail than I ever anticipated or felt necessary to learn. Like other cities around the state and in the region, Greenfield has struggled to find the right balance in making accommodations for this new industry while also trying to take proper steps to avoid any deleterious impacts by closely evaluating and screening new Commercial Cannabis businesses. With the approval of this process, I am confident. that the City can continue to position itself to benefit from this new industry and generate new economic benefits, employment and improve the quality of life in the community.

CONSEQUENT ACTION:

Completed applications must be received by the City by 4:00 pm on Wednesday September 14th, 2016. Phase 4 recommendation is anticipated to be completed within 60 days' subject to no delays in Live Scan processing from the Department of Justice.

POTENTIAL MOTION: I MOVE TO APPROVE/DENY RESOLUTION NO. 2016-72, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENFIELD APPROVING MEDICAL MARIJUANA REVISED FACILITY PERMIT PROCEDURES AND THE FEE SCHEDULE ASSOCIATED WITH SUCH PERMIT