



# Agenda Report

April 12, 2021

**TO:** Honorable Mayor and City Council

**FROM:** City Manager

**SUBJECT: PROPOSED ZONING CODE AMENDMENTS TO THE CITY'S  
CANNABIS REGULATIONS**

**RECOMMENDATION:**

It is recommended that the City Council:

1. Find that the actions proposed herein are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption); and 15301(Existing Facilities); there are no features that distinguish this action from others in the exempt class, and there are no unique circumstances; and,
2. Direct the City Attorney's Office to prepare an ordinance to amend the Zoning Code to adopt the proposed City cannabis regulations with the findings as contained in Attachment A.

**BACKGROUND:**

**STATE AND LOCAL CHANGES IN THE LAW**

In November 2016, California voters approved Proposition 64 - The Control, Regulate and Tax Adult Use of Marijuana Act ("Prop. 64"). Prop. 64 permits adults 21 years of age and over to possess and grow specified amounts of marijuana for recreational use. Statewide, Prop. 64 was approved by 57% of voters; in Pasadena, the approval rate was even higher, at 63%. Subsequently, the City Council put forward to voters Measures CC and DD, on June 5, 2018. Measure CC allowed for a limited number of cannabis businesses to operate within the City, and Measure DD applied a business license tax on commercial cannabis activity. Measure CC allows for three types of commercial cannabis uses: retail, cultivation and testing laboratories. The regulations permit up to six commercial cannabis retailers, four cultivators and four testing laboratories, citywide, based on location requirements that are specified in the Zoning Code.

04/19/2021

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MEETING OF 04/12/2021

AGENDA ITEM NO. -12

**Implementation of Local Rules:**

Following approval by voters of Measures CC and DD, the City undertook a qualifications-based selection process for cannabis retailers. The top scoring six applicants were subsequently invited to apply for the required land use approvals, i.e., Conditional Use Permit (CUP) – Cannabis Retailer.

Although Measure CC envisioned permitting up to six retail cannabis locations, there are only *three* retailers that are moving forward. This is due to the distance separation requirements that were established by the City Council, which are more restrictive than those established by the state, coupled with the additional restriction of not more than one retailer per Council district.

Three of the six applicants that were selected to move forward have applied for the same Council District, District 3. However, based on the current regulations, only the first applicant to submit a complete and code compliant application has been processed for District 3, that of Harvest of Pasadena LLC. The applications from the other two applicants, SweetFlower Pasadena LLC and The Atrium Group LLC, are complete but are not being processed. The following chart is a summary of the 6 applicants that were selected to move forward:

	<b>Applicant</b>	<b>Date of Submissions</b>	<b>Proposed Location</b>	<b>Council District</b>	<b>Current Status</b>
1.	SweetFlower Pasadena, LLC	June 12, 2019 June 27, 2019 July 3, 2019 August 8, 2019	827 E Colorado Blvd	3	CUP application complete. Cannot be processed due to other complete applications submitted in Council District 3.
2.	Harvest of Pasadena, LLC	June 12, 2019	169 W Colorado Blvd	3	Cannabis Permit issued – Tenant Improvement work needed prior to opening.
3.	The Atrium Group, LLC	June 12, 2019	70 W Union	3	CUP application complete. Cannot be processed due to other complete applications submitted in Council District 3.
4.	Varda (Tony Fong)	June 17, 2019	3355 E Colorado Blvd	4	Retail location is open.
5.	Integral Associates Dena, LLC	June 27, 2019	908 E Colorado Blvd	7	Retail location is open doing business as Essence.
6.	MME Pasadena Retail, Inc.	September 18, 2019	536 S Fair Oaks Ave	6	Material changes to ownership – withdrawn from consideration.

Three Retail Dispensaries:

While three applicants have received cannabis permits from the City and one applicant has been withdrawn from further consideration, it is unlikely that the other two will be able to obtain their permits before the June 5, 2021 code required deadline. Given the inventory of commercial real estate that is actually available for dispensaries under the existing rules, it does not appear that there will be more than three retail dispensaries in the City. Staff believes that the present situation is not in the best interest of the City, and is not in keeping with the intent of the voters who wished cannabis retailing in the City and reasonably expected there to be six cannabis retailers in the City.

On November 25, 2019, the City Council considered potential changes to the existing rules that would have allowed all six applicants to move forward. However, at that time, none of the applicants had obtained a cannabis permit and the City Council directed staff to return once three applicants had done so (Attachment E, November 25, 2019 Agenda Report and Minutes). As indicated in the chart above, Varda, Essence and Harvest have obtained cannabis permits and staff is returning with proposed changes for the Council's consideration.

Community Benefits:

Approximately 20% of each applicants score was based on their proposed Community Benefits Plan. The Community Benefits Plans for the three businesses that have obtained cannabis permits are included in Attachment F. Some highlights of these plans include: Varda has committed to a minimum 30% local hiring initiative as well as founded a local non-profit called New Discovery Foundation (NDF) which commits a minimum of \$10,000 per year to provide grants to organizations that support or assist in the education of children and those that have been disproportionately impacted in Pasadena. Varda has also committed 5% of its annual net profits for financial assistance to local non-profits, community groups, city initiatives, city needs, and community programs with a focus on educating children and those who have been disproportionately impacted in society. Essence has established a group called the Pasadena Community Advisory Board (PCAB) to identify and participate in community education programs up to four times in any calendar year. Essence will also host its own community education events at least twice per quarter and has pledged one million dollars (\$1,000,000.00) to the betterment of Pasadena, comprised of \$50K donations to 5 different causes (\$250K) per year, for four (4) years after licensure. Harvest has committed to a minimum \$15,000 annually to local charitable and non-profit organizations and has committed to partner with existing Pasadena businesses to provide goods and services necessary for their retail operations. All applicants are required to actively participate in City-led public outreach and educational programs for youth and educational institutions that outlines the risks of youth use of and addiction to cannabis and identifies resources related to drugs and drug addiction. All applicants have also committed to hiring practices which focus on hiring of those disproportionately impacted by cannabis criminalization. If changes are made that would allow additional cannabis permits to be issued, those applicants would also be required to implement a Community Benefits Plan.

## **DISCUSSION OF PROPOSED CHANGES:**

Measure CC provides an explicit mechanism for the City Council to fine tune the regulations, as it authorizes the City Council to make revisions to the regulations without having to return to the voters. The proposed Zoning Code Amendment is recommended as a fair and equitable way of addressing uncertainties that existed when the ordinance was adopted and to carry out the will of the voters and would allow the remaining two applicants to move forward and obtain cannabis permits.

SweetFlower and Atrium are not being processed because the proposed locations are not consistent with the limitation of one dispensary per Council District and the required 1,000-foot buffer between dispensaries. The impending City Council redistricting efforts will most certainly change district boundary lines and supports a flexible policy approach to the restriction of one dispensary per district.

The proposed action would result in a more equitable approach to the processing of these applications while ensuring the protection of sensitive uses without expanding the total number of permitted dispensaries beyond six.

The proposed location changes are as follows:

1. To allow up to three cannabis retailers per council district instead of one; and
2. To decrease the required distance between cannabis retailers from 1,000 feet to 450 feet.

This code amendment will not change any other regulations for cannabis retailers as contained in Section 17.050.066 of the Zoning Code (Attachment D), including the limitation of six commercial cannabis retailers citywide, or the protections from sensitive uses such as schools and churches, or the required distance from residential districts. The proposed limitation of three per council district and the 450 foot distance separation will also ensure that all six retail establishments do not locate in the same immediate area (all located on the same block for example).

Based on the applications that have been submitted, if the two amendments are adopted, there could be three code complaint locations in Council District 3, including the permitted Harvest location at 169 W. Colorado Boulevard, another at 70 W. Union Street and a third at 827 E. Colorado Boulevard. These would be in addition to the other two already permitted dispensaries: Varda in Council District 4 and Essence in Council District 7 (see Attachment C that shows a map of the locations). Based on these locations, the closest distance between retailers would be 475 feet (between SweetFlower and Essence. As indicated above, as the City goes through required redistricting, it is important to note that the per-district summary set forth above will most likely change – and established locations will be grandfathered in.

The Zoning Code contains a number of uses that have distance separations (Attachment D). These distance separations vary from 100- 1,000 feet depending on the use. Staff's proposed distance of 450 feet between retailers, while maintaining the

distance requirement of 600 feet to all other sensitive uses, is consistent with the range of distances that are currently regulated by the Zoning Code. It should be noted that there are no other land uses in the city that have an overall maximum number, besides these cannabis use limitations of six retail, four testing lab and four cultivators. Additionally, the State does not place a cap on the overall number. For retailers, the State only requires a distance of 600-feet to a k-12 school, day care center and youth center. So the local restrictions, even if amended will still be far more stringent than the state restrictions.

#### **PLANNING COMMISSION RECOMMENDATION:**

As discussed during the November 25, 2019 meeting, the Planning Commission considered the staff recommended changes and voted to make no changes to the existing cannabis regulations.

Some members of the Planning Commission were not opposed to changing the regulations to allow six cannabis retailers to operate within the City; however there was no consensus on what the changes would be. Some of the suggestions made to staff by individual commissioners as ideas to put forth to the City Council include:

- Allowing one per commercial district instead of one per council district
- Possibly reducing the distance to churches to 500 feet
- Looking at some of the sensitive receptors and making adjustments
- Studying how to diversify the uses throughout the City so locations could open up beyond Colorado Boulevard (including to the north part of the city)

Some members of the Planning Commission expressed concerns over making any changes at this time and about making changes to regulations that are voter approved. In this regard, the voters specifically authorized the City Council to make changes to these regulations in the manner in which other ordinances are amended, without a vote of the people.

#### **EFFECT OF NO CHANGES TO CODE**

If no changes to the code are made, it is uncertain exactly what would happen (and existing litigation may also impact the location and number of retailers in the City) but it does not appear that the remaining applicants, SweetFlower and Atrium, would be able to secure a cannabis permit prior to June 5, 2021 and the City would be left with three dispensaries.

Conceptually, three dispensaries may be perfectly acceptable to Council. However, as discussed at the Council's previous meeting, if market demand exceeds that which can be satisfied by the operation of legally permitted operators, an incentive will exist for illegal operators to re-enter the marketplace. As the City has experienced, closing down such operators can be costly and time consuming. If we end up with 3 or even 4 dispensaries, Pasadena would rank as the highest or second highest ratio of population to licensed retailer of the survey cities.



City	Population	Retail Cannabis Permits	Ratio of licenses to population
Pasadena	141,371	6 4 3	23,562 35,342 47,123
West Hollywood	36,854	8	4,607
Long Beach	469,450	31	15,144
San Francisco	883,305	No limit on # of permits 37 retail permits issued to-date (estimate over 100 illegal currently operating)	No limit
Los Angeles	3,990,456	No limit on # of permits 188 retailer permits issued to-date (estimated 250 illegal currently operating)	No limit
San Diego	1,425,976	36 (additional cap of 4 per Council District)	39,610
Santa Cruz	65,021	12	5,418

If the City Council is interested in making amendments to the regulations, it would be appropriate to make them now, since the Planning Department is preparing to begin work with cultivators and laboratories to process their Conditional Use Permits and the allowed locations and distance separation requirements for future dispensaries would be further compounded by the location of any approved dispensary or lab.

**ENVIRONMENTAL ANALYSIS:**

The proposed action is exempt from the CEQA pursuant to State CEQA Guidelines Section 15061(b)(3), the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Even if the changes proposed herein were considered a “project,” the changes are exempt from CEQA pursuant to State CEQA Guidelines Section 15301 “Existing Facilities” (Class 1). Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. Given the built-out commercial and mixed use areas of the City where these uses may locate, and the fact that the changes proposed herein do not expand those areas, it is virtually certain that such uses will reoccupy existing structures. Beyond the controversy that may surround this particular use, for environmental analysis purposes it is simply a retail use, and there are no unique circumstances that would exempt these changes from a Class 1 exemption.

Finally, as set forth in the Governor’s 2019 budget trailer bill, CEQA “does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage

in commercial cannabis activity.” The budget trailer bill extended this exemption to July 1, 2022.

As each retailer may come forward for permits, any potential environmental effects from that particular application will be subject to environmental review during the permitting process.

**FISCAL IMPACT:**

The proposed changes to the ordinance may result in additional cannabis retailers than would otherwise be allowed under current regulations. This would likely result in additional tax revenues from Measure DD in the hundreds of thousands of dollars.

Respectfully submitted,



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Attachments: (6)

- Attachment A - Findings
- Attachment B - Zoning Code Regulations
- Attachment C - Map of CUP Locations
- Attachment D - Distance Separations for Other Uses
- Attachment E - November 25, 2019 Agenda Report and Minutes
- Attachment F - Community Benefits Plans for Varda, Essence and Harvest