STAFF REPORT

MEETING
DATE: October 22, 2019

TO: City Council

FROM: Vicki Parker, Community Development Director

SUBJECT: Commercial Cannabis Licensing and Permitting

REQUEST

Hold a public hearing; and, introduce two ordinances amending the Novato Municipal Code (NMC) to (1) establish commercial cannabis licensing allowances and requirements and (2) designate zoning areas where the activities can occur; and, adopt a resolution establishing procedures for evaluating applications, issuing licenses and operating commercial cannabis businesses; and make findings that said actions are exempt from the California Environmental Quality Act (CEQA) under Bus. & Prof. Code section 26055(H), among other provisions of the law.

DISCUSSION

The purpose of the proposed NMC amendments is to enable the City to respond to the passage in November 2016 of Proposition 64 which legalized recreational or “adult use” cannabis and the commercial activities associated with cultivation, manufacture, distribution and sales of adult use cannabis. Following passage of Proposition 64, the state legislature passed SB 94 which repealed earlier regulations associated with medicinal cannabis and merged them with adult use requirements into one regulatory schema. (Please see the attached Planning Commission staff report for a more detailed summary of this background.) The City currently has a one-year moratorium on all commercial cannabis activities. This moratorium ends on November 14, 2019.

The proposed amendments consist of adopting two ordinances to add new sections to the NMC and a resolution which would govern the processes associated with announcing available licenses, accepting applications for those licenses, selecting operators and establishing parameters for operations. More specifically, a new section would be added to Chapter 8 (Licensing) which would establish the specific types of activities and the maximum number of each activity that can be permitted, while other new and amended sections to Chapter 19 (Zoning) would establish appropriate zones for these activities along with standards specific to commercial cannabis uses. The Planning Commission took action on the proposed zoning amendments at their meeting of September 23, 2019. A copy of that staff report and meeting minutes are attached hereto for the Council’s information and a summary of their actions and deliberations is included later in this report. The Council may wish to consider the content of their comments and similarly suggest modifications to the amendments.
Licensing

The proposed types and numbers set forth in Section 8-11 are:

- Non-Store Front Retailer – maximum of one (1)
- Testing Laboratory – maximum of two (2)
- Manufacturing – maximum of two (2) including license sub-types N, P & S
- Indoor Cultivation – maximum of two (2)
- Microbusiness – maximum of one (1)
- Distribution – maximum of one (1) if permitted as a standalone business operation holding a State license Type 11 only. No limit if permitted as an ancillary activity to one of the above listed businesses, where permitted by state law.

Attached to this staff report is a summary of the specific State license types that govern these activities. State license types include those that were established with the approval of SB 94, including varying sizes of cultivation operations (measured by vegetation canopy size) and light sources (outdoor with natural light, indoor with artificial light or “mixed light” which utilizes a combination of natural and artificial light), a nursery type (immature plants only), two types of manufacturing licenses (utilizing volatile or non-volatile solvents), distribution (transfer between licensees), retail sales (both a storefront and a non-storefront type), and a microbusiness type. Microbusiness licenses are a vertically integrated business model which must include at least three of four activities (cultivation less than 10,000 square feet of canopy), manufacturing, distribution or retail. Through adoption of the various regulations by State agencies, three additional license types (N, P & S) were established.

Not all activities allowed via State license are proposed within the NMC amendments. Specifically, staff has excluded outdoor and mixed light cultivation and storefront retail activities. As proposed, manufacturing activities would also include license sub-types N, P, and S as these are common properties of a manufacturing business.

Delivery

Though also detailed in the Planning Commission staff report, it is helpful here to repeat important information regarding cannabis delivery. State licensing differentiates cannabis “delivery” and cannabis “distribution.” Distribution is defined similarly to the traditional wholesaler; i.e., it is transport between two licensees. Delivery is transport to retail customer.

All holders of State Retail licenses are allowed to deliver to their customers but do not have the right to deliver to another licensee without also obtaining a Distribution license. All other commercial cannabis licensees except Testing Labs, can obtain a Distribution license and often select the Type 13 license which allows them to transport their cultivated or manufactured goods to a retailer. As structured in Section 8-11, there is a limit of one for a standalone Distribution facility but no limit on Distribution licenses which are issued in conjunction with another license type.

Non-Storefront Retail which is proposed to be included in the City’s program operates essentially as a delivery service. Goods are stored in a single location and deliveries can occur both within and outside the City limits. Because of its warehousing nature, staff has proposed that Non-Storefront Retail occur also in the industrially zoned areas of the City.
Delivery to Novato properties can occur from either out-of-City companies or companies located within the City. Both must obtain a Cannabis Delivery Permit from the Police Department but only those with physical locations in the City would go through the selection process and be issued a City cannabis license. Because the City would not be issuing licenses to businesses located outside of the City, those operational requirements reside in Section 8-11 and not the Council resolution. All operators providing delivery services need to obtain a Cannabis Delivery Permit, must comply with the requirements of Section 8-11, must obtain a City business license and must pay sales tax on their Novato deliveries. Staff is proposing hours of allowable delivery service to between the hours of 8:00 am to 8:00 pm, seven days/week. State regulations allow 6:00 am to 10:00 pm, seven days/week but allow local agencies to be stricter.

Process

Section 8-11.11 of the proposed amendments outline the process for selecting and ultimately approving licenses. That process is generally:

- City releases a Request for Proposals to call for applications of available license types
- Staff level technical committee reviews applications and awards points based on established criteria. All applications with at least 80 percentage points go to City Council for consideration
- City Council holds public hearing and successful operators, up to the maximum number for each activity type, are awarded a Conditional Certificate
- Operators who successfully meet all conditions, execute all necessary agreements and complete all permitting requirements within the time limit of the Conditional Certificate are issued their ministerial Commercial Cannabis Business Permit. Ordinance allows for City Manager to issue Conditional Certificate time extensions of up to 6 months on a case by case basis if operators encounter unanticipated problems. (Please see Planning Commission section below for a discussion on time limits.)
- Commercial Cannabis Business Permits have a term of one year and renewals can be issued by the City Manager based on a record of successful operations. City Manager decisions are appealable to the City Council. (Please see Planning Commission section below for a discussion on time limits.)
- City staff would re-issue a Request for Proposals at regular intervals so long as licenses were available.

Other important aspects of the proposed regulations are:

- The amendments make no distinction between adult use and medicinal cannabis. Both could be permitted and are counted the same toward maximum allowable licenses.
- Inspections by building and fire district staff are mandatory even if no building permits are required.
- Specific locations must be identified in initial proposals but property owner certification is not required until final determination by the City Manager. This allows operators and property owners to mutually agree upon timelines for tenancy without the property having to remain vacant until all conditions and permits have been secured.
- “Youth centers” are also identified at time of proposal and Conditional Certificate issuance. Once the Conditional Certificate is approved, a new youth-oriented facility locating within 600-feet would not disqualify a commercial cannabis activity. The City website will publish list of all locations with pending Commercial Cannabis Business Permits.
Significant mandatory security measures, developed in cooperation with the City’s Police Department, are established in Section 200 of the proposed Council resolution.

Any relocation of a commercial cannabis business would trigger a new approval process, complete with new proposal and hearing before the City Council.

All operations subject to regulatory compliance and financial audits.

Commercial Cannabis Business Permits may be revoked for any violation of State or City regulations.

Suspension, revocation or termination of a State license immediately suspends, revokes or terminates City license. Re-application ability is at the discretion of the City Manager; decision is appealable to the City Council.

Requests for transfer require transferee to file application with City Manager. City Manager (or designee) must hold a public hearing once transferee’s background check is complete. Transfer decisions by City Manager are appealable to the City Council.

Changes in ownership which affect more than 51% of ownership go through the transfer process.

Change in business entity allowed with no additional process in very limited circumstances (see Section 8-11.23(e)).

Several fees will need to be subsequently established and adopted by the City Council.

The intent of the Conditional Certificate is to provide applicants with the security that an allowance is reserved for them for the period of one year in order to give them sufficient time to obtain all permits and approvals, implement all conditions of approval, and complete all necessary tenant improvements following Council approval of their proposal. Once all necessary requirements have been met, operators are issued a Commercial Cannabis Business Permit and have another one year term before their license must be renewed.

As experience with commercial cannabis activities evolves, the City Council may revise allowable commercial cannabis operation types and numbers through a subsequent NMC amendment. Through Section 8-11.9(c), the Council is not required to issue all available licenses or to issue to every applicant, even if a license is available.

Community Benefit Agreements
The amendments provide for community benefit agreements to be negotiated between the City and individual operators. These benefit agreements allow for mutually agreeable conditions or requirements that are specifically tailored to individual operations in specific locations. Terms of the agreements could include specific support of youth or drug education programs, monetary payments in lieu of taxes, or other benefits to the community as the Council deems appropriate. Staff would work with the City Attorney to develop a template agreement for subsequent review by the Council prior to review of commercial cannabis operations.

Planning Commission

At their regular meeting of September 23, 2019, the Planning Commission evaluated the proposed amendments to NMC Chapter 19, Zoning. The proposed amendments to Chapter 8, Licensing and the proposed resolution establishing process, were also provided to the Commission as background information and context. The attached Planning Commission staff report details staff’s recommendations for the proposed zoning amendments. The Commission provided recommendations to the Council for the Chapter 19 amendments which is their purview, as well as comments on the other proposed actions. These two actions are discussed separately below.
Zoning Amendments – Following public testimony, including from the owner of CB Labs, a Novato-based cannabis testing lab, regarding the small amounts of cannabis held on site for testing purposes, the Commission voted to accept the staff recommendation regarding zoning districts with one exception. The Commission voted unanimously to expand the zones allowing testing labs to all commercial districts which also allow Medical – Clinics, Offices and Laboratories. This recommended change has been incorporated into the proposed ordinance amending NMC Chapter 19, Zoning.

Licensing – The Commission received significant public testimony during their public hearing on September 23, 2019. The testimony was received from community members, youth organization representatives and cannabis business owners and operators. Following the testimony and their deliberations, the Commission desired to also provide comments to the City Council on items contained in the proposed new licensing section of the NMC as well as the resolution establishing process. These comments are summarized below for the Council’s information and use, however, because these amendments are not within the purview of the Planning Commission, changes have not been incorporated into the proposed amendment for licensing or the process resolution. Should the Council decide to incorporate the Commission’s comments or make other amendments, staff will incorporate the revisions into a final ordinance or resolution.

- **Storefront Retail.** The Commission felt strongly that, if designed and operated properly, storefront retail could be an appropriate new use. Public testimony from established operators in nearby cities confirmed that a significant proportion of their business is from Novato residents. Testimony from these operators called attention to the product education that can only occur with face-to-face contact and would not be possible with delivery services. The Commission asked the Council to make storefront retail a high priority for re-evaluation as soon as possible.

- **Number of Outlets.** The Commission had extensive discussion regarding the limits proposed. They felt generally that having both considerable discretion to approve licenses as well as mandatory limits were not necessary. In addition, public testimony from operators regarding the number of existing Novato customers that they currently serve resulted in the Commission asking the Council to consider increasing the number of non-store retail from one to three and increasing the limit of microbusinesses from one to three.

- **Inventory.** Section 400(e), Operating Requirements for Non-Store Front Retailer of Commercial Cannabis, of the proposed resolution includes a limitation on the quantity of cannabis products that can be stored on the site. Facilities may have only that quantity on hand that is reasonably anticipated to meet weekly demand. Public testimony from operators included facts on the impracticality of this restriction. Their input included details on the variety of products that consumers require, common requirements for minimum orders by distributors and typical shelf lives of products. The City’s licensing consultant also commented that inventory limits may not be necessary for non-storefront retail because they are not open to the public and are, therefore, inherently more secure. Following this feedback, the Commission felt the inventory restriction should be increased significantly or eliminated altogether in order to allow businesses to make decisions appropriate for their individual operation.
• Time Limits. As drafted, both the Conditional Certificate and the Commercial Cannabis Business Permit, have one year terms. The Commission felt both of these time limits were insufficient to accommodate all of the work required to obtain all permits and approvals (including State licenses), hire staff, etc. and that a one year operations term was insufficient for a new business to establish itself. The Commission recommended the Conditional Certificate have a term of two years and that the Commercial Cannabis Business Permit have a term of two or three years.

• Local Preference. The Commission felt that priority should be given to local businesses in the evaluation criteria that is used to approve operators. If the Council adopts the proposed NMC amendments to allow commercial cannabis business activities, staff will fully develop evaluation criteria and an accompanying point system for Council review. If the Council concurs that a local preference should be added, staff will develop a definition of “local” to be used in the evaluation process.

Staff’s recommendations and alternative actions the Council may consider are outlined below.

**FISCAL IMPACT**

Staff costs associated with development of the proposed amendments has been absorbed within the operations budgets of Community Development and Administrative Services. Costs associated with the City Attorney review and HdL Companies consulting expertise has been paid for under previously approved professional services contracts.

**STRATEGIC PLAN ALIGNMENT**

Through the creation of opportunities for a new industry to locate in Novato, this item directly accomplishes Objective 1 of Goal 3: Economic Vitality. That objective is to “Actively recruit new retail, restaurants and other businesses and develop retention plans and strategies.”

Because the sales tax and other revenues possibly generated by this new industry, the amendments also help to accomplish Objective 1 of Goal 5: A City that Works. That objective is to “Ensure a fiscally sustainable City.”

**RECOMMENDATION**

Staff recommends the City Council take the following actions:

1) Introduce an ordinance amending Chapter 8 to add Section 8-11 titled “Licensing of Commercial Cannabis Businesses” to the Novato Municipal Code and finding the amendments exempt from the requirements of CEQA pursuant to guidelines Section 15061(b)(3) and California Business and Professions Code Section 26055(H);

2) Introduce an ordinance amending Chapter 19 of the Novato Municipal Code adding Section 19.34.066 Cannabis – Commercial Activities and amending Table 2-7 of Section 19.12.030 Allowable Uses and Permit Requirements, Section 19.14.030(B) Special Purpose District Land Uses and Permit Requirements and Section 19.60.020 Definition of Specialized Terms and Phrases and finding the amendments exempt from the requirements of CEQA pursuant to guidelines Section 15061(b)(3) and California Business and Professions Code Section 26055(H);
3) Adopt a resolution establishing the process for evaluating applications and issuing commercial cannabis licenses and establishing certain operational parameters for commercial cannabis business activities and finding the actions exempt from the requirements of CEQA pursuant to Guidelines Section 15061(b)(3).

**ALTERNATIVES**

1. Direct staff to amend the regulations and adopt a variation of the proposed amendments.
2. Direct staff to develop regulations prohibiting all commercial cannabis businesses with the exception of out-of-city based delivery services.

**ATTACHMENTS**

1. Planning Commission Staff Report and Meeting Minutes of September 23, 2019
2. License Types
3. Draft Ordinance Amending Municipal Code Chapter 8
5. Draft Resolution Establishing Process and Operational Standards