



CITY COUNCIL STAFF REPORT

TO: Honorable Mayor and City Council **DATE:** October 16, 2017

FROM: Matthew Bronson, City Manager

PREPARED BY: David Hale, City Attorney
Bruce Buckingham, Community Development Director
John Peters, Police Chief
Steve Lieberman, Five Cities Fire Authority, Fire Chief

SUBJECT: Statement of Facts and Findings for Determination of Commercial Medical Cannabis Dispensary Eligibility Ranking List and Proposed Ordinance Changes

RECOMMENDATION

Adopt the Resolution approving a Statement of Facts and Findings for determining the commercial medical cannabis dispensary eligibility ranking list and provide direction to staff on changes to the Commercial Medical Cannabis Land Use and Regulatory Ordinances.

BACKGROUND

Statement of Facts and Findings for Dispensary Eligibility Ranking List

At the September 25, 2017 City Council meeting, the Council provided a preliminary determination for the final eligibility ranking list for the commercial medical cannabis dispensary pre-applications and identified the top two applicants for consideration in receiving a Use Permit. This preliminary determination followed the submittal of 12 pre-applications and a staff assessment presented to the Council on September 7, 2017 based on the following evaluation criteria:

1. Proposed Dispensary Site (10 Points)
2. Business Plan (25 Points)
3. Qualifications and Experience of Principals (25 Points)
4. Neighborhood Compatibility Plan (15 Points)
5. Operations and Security Plan (15 Points)
6. Local Enterprise (10 Points)

The Council identified seven eligible pre-applications at the September 7th meeting and provided direction to staff to return to the Council at a special meeting on September 25, 2017 to further review the seven eligible pre-applications and establish a final eligibility ranking list that identifies the top two applicants. During the September 25th meeting, the Council reviewed the above evaluation criteria and also considered the following factors in establishing a final eligibility list:

- Distance to Sensitive Uses in Primary Areas
- Commitment to Community
- Economic Impact
- Experience in Operating an Existing Dispensary
- Timeframe to Begin Operating
- Concentration of Locations
- Background Review

As a result of this review of the evaluation criteria and additional factors, the Council established a final eligibility list for the dispensary pre-applications that identified the top four pre-applications among the seven that were eligible. Each Council Member identified their top four pre-applications in rank order and articulated their reasoning for selecting specific applicants. Staff calculated ratings for the pre-applications based on this rank order using a four-point scale which determined the top two applicants and two alternatives as shown below:

- Natural Healing Center 10 points
- The Monarch 9 points
- 805 Beach Breaks 8 points
- Milkman 8 points

Council affirmed this determination of Natural Healing Center and The Monarch as the top two applicants and 805 Beach Breaks and Milkman as alternates as indicated by the points reported. However, following the meeting, staff discovered a calculation error in the ratings that inadvertently provided an extra point to The Monarch. As a result, the updated ratings indicate a three-way tie for second place between The Monarch, 805 Beach Breaks, and Milkman with each applicant receiving 8 points. In determining the final eligibility ranking list, the Council is asked to consider affirming the initial determination of Natural Healing Center and The Monarch as the top two applicants or make an alternative determination of the top two applicants.

To formally establish the final eligibility list, the Council is asked to adopt the Resolution shown in Attachment 1 approving a Statement of Facts and Findings (shown in Attachment 2) that support the Council's determination of the top two dispensary pre-applications and the two alternative applicants. Pending Council's adoption of this Resolution, staff will work with the top four applicants on review of submitted Use Permit applications with the top two applications presented to the Planning Commission for a recommendation before going to the Council for final consideration. The two alternative applicants may be issued Use Permits for commercial medical cannabis uses other than a dispensary at this time, which is reserved for only the top two applicants under the current limit in the ordinance of issuing up to two dispensary permits.

Proposed Changes to Commercial Medical Cannabis Ordinances

Also at the September 25th meeting, the Council directed staff to return to the Council with proposed changes to the Commercial Medical Cannabis Land Use and Regulatory Ordinances. Staff has identified several changes to the ordinances listed below to address inconsistencies in the current ordinances, respond to Council comments, and incorporate State statutory and regulatory changes:

- Increase the maximum number of dispensary permits that could be issued from two to four
- Make the timeframe in the Regulatory Ordinance for considering information in individual background reviews consistent at 10 years
- Incorporate a number of State statutory and regulatory changes recently signed into law by the Governor

The City Attorney is assessing the degree of changes required by the new State law and will provide this information to the Council at the October 16th meeting. Though there will likely be a number of related changes to make to the City's ordinances, these changes will be required in our ordinances to remain compliant with the evolving State legal framework in regulating commercial cannabis businesses.

Pending Council direction on these proposed changes, staff would amend the Land Use and Regulatory Ordinances with the Land Use Ordinance presented to the Planning Commission on November 9 for review and recommendation to the Council on November 20. The Regulatory Ordinance would be presented directly to the Council on November 20 with a first reading and public hearing conducted on both ordinances. The second reading and adoption of both ordinances could be scheduled for the December 4th Council meeting.

FISCAL IMPACT

Staff has previously estimated the amount of annual revenue generated by the City's commercial cannabis tax to range from \$1,000,000 to \$2,000,000 over time as commercial cannabis businesses are established. The 2017-18 budget assumes an initial estimate of \$200,000 in revenue this year as the first businesses begin operating this fiscal year. These estimates will be updated as permits are issued for individual applicants and there is greater clarity on the timing and scope of commercial medical cannabis business that are allowed to establish. The 2017-18 budget also included approximately \$200,000 in costs associated with regulating commercial medical cannabis businesses with revenue from permit and application fees offsetting these costs.

ALTERNATIVES

The City Council has the following alternatives to consider:

1. Adopt the Resolution approving a Statement of Facts and Findings for determining the commercial medical cannabis dispensary eligibility ranking list and provide direction to staff on changes to the Commercial Medical Cannabis Land Use and Regulatory Ordinances; or
2. Provide alternative direction to staff.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act. Notification of the meeting was sent to the seven eligible dispensary pre-application applicants.

ATTACHMENTS

1. Resolution
2. Statement of Facts and Findings
Exhibit A: Seven Qualified Dispensary Applicants
Exhibit B – Map of Top Two and Alternate Dispensary Locations

RESOLUTION NO. 17-__

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF GROVER BEACH APPROVING FINDINGS AND A STATEMENT OF FACTS
REGARDING A CANNABIS DISPENSARY ELIGIBILITY LIST**

WHEREAS, the City Council of the City of Grover Beach approved Ordinance No. 17-05 on May 15, 2017 amending and adding sections to the Grover Beach Municipal Code authorizing certain cannabis uses; and

WHEREAS, Ordinance No. 17-05 was adopted by the City Council to allow the establishment of commercial cannabis uses for the cultivation, manufacturing, dispensation, transportation, distribution and testing of medical marijuana and medical marijuana products; and

WHEREAS, Ordinance No. 17-05 added section 4.10.045 to the Grover Beach Municipal Code which established that certain Commercial Cannabis Activity and Uses, subject to a Use Permit would be allowed within the Industrial (I), Coastal Industrial (CI), and Coastal Industrial Commercial (CIC) zone districts of the City; and

WHEREAS, those uses authorized within the Municipal Code included commercial medical cannabis dispensaries; and

WHEREAS, subsection "D" of Section 4.10.045 specifically limited the maximum number of dispensary permits to two; and

WHEREAS, in anticipation of high demand for the subject permits and to establish a fair, reasonable and objective process to issuing the two authorized permits, the City of Grover Beach implemented a Medical Cannabis Dispensary Pre-Application Process; and

WHEREAS, the process encompassed applicants submitting pre-application information to the City between the dates of June 12, and July 10, 2017; and

WHEREAS, the City received 12 applications for the authorized two permits and implemented the process enumerated within the "Statement of Facts and Findings"; and

WHEREAS, on September 25, 2017, the City Council deliberated and established a Cannabis Dispensary Eligibility List choosing the top two applicants with two alternates.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Grover Beach does hereby adopt this Resolution and the Statement of Facts and Findings as an accurate, true, and fair Application Process implemented by the City of Grover Beach for the establishment of a list prioritizing and ranking the applicants.

On motion by _____ seconded by _____, and on the following roll-call vote, to wit:

AYES: Council Members -

NOES: Council Members -

ABSENT: Council Members -

ABSTAIN: Council Members -

the foregoing Resolution was **PASSED, APPROVED, and ADOPTED** at a Regular meeting of the City Council of the City of Grover Beach, California this 16th day of October, 2017.

**** D R A F T ****

JOHN P. SHOALS, MAYOR

ATTEST:

DONNA L. McMAHON, CITY CLERK

**STATEMENT OF FACTS AND FINDINGS
PRE-APPLICATION PROCESS FOR CANNABIS DISPENSARIES**

WHEREAS, the City Council of the City of Grover Beach set a hearing for September 25, 2017, to consider the establishment of an eligibility list for Commercial Cannabis Dispensaries, and

WHEREAS, the eligibility list is for implementation of Grover Beach Municipal Code section 4.10.045, subsection “D” which limits the maximum number of dispensaries authorized to operate within the City to two (2), and

WHEREAS, the City received 12 applications for the two (2) authorized permits and implemented a pre-application process to assist the Council in development of an eligibility list.

THEREFORE, the City Council in furtherance of establishing this eligibility list, enumerates the following Statement of Facts and Findings in support of their decision to create a list prioritizing and ranking the applications in a manner to facilitate the ability to issue the subject dispensary permits authorized under the Code.

STATEMENT OF FACTS

1. The City Council adopted Ordinance No. 17-05, adding Section 4.10.045, subsection “D” limiting the number of dispensary applications to a maximum of two (2).

2. City staff proposed and the City Council approved the establishment of a Medical Cannabis Dispensary Pre-application process which was comprised of three phases. Phase 1 included a preliminary determination of eligibility; Phase 2 was comprised of a ranking process; and Phase 3 was the Council consideration and deliberation on establishing an Eligibility Ranking List.

3. Phase 1 included, but was not limited to, determining the applicant’s proposed business location was in compliance with City zoning requirements; the application submitted was complete; and the applicants had completed and passed a Live Scan and background check resulting in there being no “Good Cause” as defined in Grover Beach Municipal Code Section 4000.20 to disqualify them. Staff proceeded with Phase 2 prior to completion of all background checks. No applicants were disqualified as part of this initial phase.

4. Phase 2 included the establishment of a working staff group to review, interview and rank all applicants based upon six evaluation criteria. The criteria considered by staff along with the weighting for each criterion were the following:

- Proposed Dispensary Site (10 Points)
- Business Plan (25 Points)

- Qualifications and Experience of Principals (25 Points)
- Neighborhood Compatibility Plan (15 Points)
- Operations and Security Plan (15 Points)
- Local Enterprise (10 Points)

Upon conclusion of the second phase, staff ranked seven (7) applicants as being qualified pursuant to the Evaluation and Selection Process to proceed to Phase 3 which the Council affirmed on September 7, 2017.

5. Phase 3 was implemented by Council at a hearing conducted on September 25, 2017. The City Manager presented a rating sheet with the seven qualified applicants shown in Exhibit A incorporated by reference herein as if set out in full. The Council reviewed the above evaluation criteria and also considered as additional factors the following:

- Distance to Sensitive Uses in Primary Areas
- Commitment to Community
- Economic Impact
- Experience in Operating an Existing Dispensary
- Timeframe to Begin Operating
- Concentration of Locations
- Background Review

Based upon the Council's thorough and complete consideration of the initial six evaluation criteria, the additional seven factors listed above, staff's recommendations on Attachment 1 and their deliberation of the merits of each application, the Council established the top four candidates on the eligibility list. Each Council Member articulated their reasoning for choosing specific applicants, and rated the top two applicants as conditionally qualifying for issuance of a Commercial Cannabis Permit and a Cannabis Dispensary Use Permit along with two alternate applicants. Council awarded four points to the number one applicant, three points for the number two applicant, two points for the number three applicant and one point for the number four applicant. Council provided direction for staff to proceed with working with the top two applicants in furthering their issuance of a use permit which under the Grover Beach Municipal Code is a prerequisite to receiving the Commercial Cannabis Permits. Based upon the above criteria, Council rated Natural Healing Center and The Monarch as the top two. The initial ranking was as follows:

- Natural Healing Center 10 points
- The Monarch 9 points
- 805 Beach Breaks 8 points
- Milkman 8 points

Following the meeting on September 25, 2017, staff discovered a calculation error in the ratings that inadvertently provided an extra point to The Monarch. As a result, the updated ratings indicate a three-way tie for second place between The Monarch, 805 Beach Breaks and the Milkman with each receiving 8 points. The Council hereby reaffirms the initial determination and ranking of Natural Healing Center and The Monarch as the top two (2) applicants for the reasons stated herein.

FINDINGS

During the September 25, 2017 Council meeting, Council Members deliberated and ranked the top four (4) applicants for dispensaries based upon the above enumerated criteria. The Council considered public safety as an important issue and an open facility that was designed to be safe and accessible to the community and users. Council Members looked at the applicant's vision for the community and investment in the community as a significant factor in their decision. Applicants were ranked higher based on their attentiveness to the needs of the community, ability to work with Grover Beach public safety services like police and fire, and providing a facility that was conducive to safe and easy access to the public. Applicants that invested in real property and designed plans in anticipation of the Council's hearing and that attempted to prepare ahead of time to facilitate opening the business earlier were given higher points. Another criterion that gave applicants higher points was the adherence of the proposed business to City ordinances and policies as well as intangibles, such as community involvement prior to the hearing. Applicants with activities like assisting non-profit organizations and supporting events that contributed to the well-being of the community were given higher points.

Council Members also considered information obtained from the background reviews on the individual principals of each business and the positive economic impact that each applicant would have on generating economic activity and tax revenues. Operation and management experience in the cannabis industry was also a factor in rating applicants higher along with offering programs to facilitate job creation and access to higher education. Location of the business was another important factor in establishing the ranking so as to not have an overconcentration of dispensaries in a certain area.

The deliberation of the Council in choosing the top two applicants for Commercial Medical Cannabis Dispensary Permits, was based in part on the criteria and business model listed in this Findings Section. The Natural Healing Center and The Monarch were the most qualified candidates based upon the submitted application information, interviews, background checks and public presentations. 805 Beach Breaks and Milkman were ranked as alternates and may proceed with applying for Commercial Medical Cannabis Dispensary Permits if one of the top two applicants fails to complete the application process.

Map of Dispensary Locations

Exhibit B, which is hereby incorporated by reference as if set out in full, indicates the business locations of the top four (4) applicants. As articulated above, the applicant's business locations were criteria used by the Council in how they ranked the applicants. Exhibit B shows business locations of these four applicants do not represent an overconcentration in one area of the city.

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EXHIBIT A

QUALIFIED COMMERCIAL MEDICAL CANNABIS DISPENSARY APPLICANTS

- 805 Beach Breaks – 1053 Highland Way
- GDI Grover Beach Retail – 650 Farroll Road
- House of Holistics – 821 South 4th Street
- Milkman – 923 Huber Street
- The Monarch – 239 South 3rd Street
- Natural Healing Center – 998 Huston Street
- Trident Management Solutions – 1071 Highland Way

Exhibit B

Top Two and Alternate Dispensary Locations

