



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
September 20, 2022

TOPIC: Ordinance Amendment No. 2022-01 - Commercial Cannabis Regulatory and Tax Updates

AGENDA TITLE:

Public Hearing - Ordinance Amendment No. 2022-01 to Update Chapters 18, 21, and 40 of the Santa Ana Municipal Code Addressing Medicinal Cannabis Retail, Consumption Lounges and Temporary Events, Measure BB Waitlist Termination, Retail Facility Relocation, Commercial Cannabis Eligible Areas, Commercial Cannabis Tax Rate Reductions for Commercial Cannabis Cultivation, Distribution, and Manufacturing, and Adopt Language Addressing Proposed Tax Treatment of Microbusinesses and Shared Manufacturing, and Make Other Administrative Amendments of a Complimentary Nature

RECOMMENDED ACTION

1. Approve first reading of an ordinance amending Chapters 18, 21, and 40 of the Santa Ana Municipal Code addressing medicinal cannabis retail, consumption lounges and temporary events, Measure BB Waitlist termination, retail facility relocation, commercial cannabis eligible areas, commercial cannabis tax rate reductions for commercial cannabis cultivation, distribution, and manufacturing, and adopt language addressing proposed tax treatment of microbusinesses and shared manufacturing, and make other administrative amendments of a complimentary nature.
2. Adopt a resolution modifying various non-retail commercial cannabis tax rates.
3. Adopt a resolution establishing a map of commercial cannabis eligible areas in the City.

DISCUSSION

Background

The City of Santa Ana permits a variety of types of cannabis business activity, which include retail sales of medicinal and adult-use cannabis, and cannabis cultivation, distribution, manufacturing, and testing. These cannabis business activities were permitted through adoption of multiple ordinances beginning with Measure BB (Ordinance

NS-2684) in November 2014 ending with Ordinance NS-2944 in May 2018. In November 2018, Santa Ana voters approved Measure Y (Ordinance NS-2962), which established commercial cannabis business license taxes for adult-use cannabis retail sales, cannabis cultivation, distribution, manufacturing, and testing. The most recent commercial cannabis ordinance updates were adopted by the City Council in September 2019 (Ordinance NS-2973). These updates amended various sections of Chapters 18, 21, and 40 of the Santa Ana Municipal Code (SAMC) to address horizontal and vertical integration of cannabis businesses, to streamline and modernize regulations in response to State changes allowing microbusinesses and shared manufacturing, and to establish consistency among various SAMC sections addressing employee badge requirements and minimum purchasing age.

Ongoing changes to State cannabis laws and evolving market demands prompt the City to regularly revisit its ordinances and tax collection to ensure that Santa Ana: (1) maintain its competitive position in the region; (2) remain compliant with applicable State laws; and (3) streamline and equalize its implementation of non-retail commercial cannabis taxation. In response to these changes, the City is proposing to update the SAMC in various chapters and sections to address medicinal cannabis retail, consumption lounges and temporary events, Measure BB Waitlist termination, retail facility relocation, commercial cannabis eligible areas, commercial cannabis tax rate reductions affecting nominal gross receipts tax rates as well as alternate (minimum) square footage tax rates for commercial cannabis cultivation, distribution, and manufacturing, and adopt language addressing proposed tax treatment of microbusinesses and shared manufacturing. These updates are intended to foster an environment in which commercial cannabis businesses continue to operate safely and in accordance with all applicable local and State regulations while maintaining Santa Ana's top position in the regional cannabis industry.

Market Analysis

On July 29, 2022, the City Council conducted a work-study session to discuss municipal code changes related to Cannabis and requested a market analysis with comparative tax information from other cities. The comparative tax information is included in Exhibit 5.

Based on the City Council's discussion of July 29, 2022, and the comparative tax information available, staff recommends a reduction of the Cannabis supply tax rate for cultivation, distribution, and manufacturing from the current 6% to 1%, as outlined below. Cannabis business with multiple licenses to cultivate, manufacture, distribute and sell product can take advantage of the vertical and horizontal integration approved by City Council in 2019 to further reduce their net gross receipts tax burden. Multiple-license businesses only owe a City tax when they sell to a third party, not when they internally sell/transfer product from one of their vertically/horizontally integrated operations to another.

In 2020, the City of Long Beach reduced its Cannabis supply tax rate from 6% to 1%. Representatives of the Cannabis industry indicated that Long Beach tax collections significantly increased after the rate reduction. Staff obtained revenue estimates from Long Beach and found, in aggregate, that supply businesses in that city are generating roughly the same amount of tax, on a per-percentage basis, as supply businesses in the City of Santa Ana (an average of approximately \$8,900 per 1% percent of tax rate, per location). Therefore, it appears that Long Beach's action in 2020 merely increased tax collections to the same comparative level as Santa Ana.

In conjunction with the recommended rate reduction to 1%, staff recommends a reduction of the alternate (minimum) square footage tax rates for commercial cannabis cultivation, distribution, and manufacturing. The proposed square-footage tax-rate reductions are as follows: cultivation from \$10 per square foot to \$7; distribution from \$4 per square foot to \$3; and manufacturing from \$10 per square foot to \$3.

At this time, staff does not recommend an adjustment of the 8% Cannabis retail rate or the 6% medicinal rate. The City's retail Cannabis tax revenue continues to grow. Staff obtained revenue estimates from other jurisdictions and it appears that, on average, Santa Ana Cannabis businesses generate higher sales volume than those in other jurisdictions. In May of this year, the Long Beach City Council directed staff to prepare a report exploring the feasibility of reducing the Long Beach retail tax rate (currently 8%) to align with the medicinal tax rate (currently 6%). The item was presented to the City of Long Beach Economic and Finance Committee on August 18, 2022, recommendation of committee was to "Receive and File". Long Beach staff did, however, recommend a reduction of the tax rate for eight new equity storefronts to enhance their ability to compete with established storefronts. There was no recommendation to reduce the tax rate for existing Cannabis retail businesses. If desired, Santa Ana City Council could direct staff to return in one year with an updated market analysis, including the latest revenue estimates for further comparison.

The State of California recently enacted AB195, which includes tax credits for "high-road" Cannabis employers that compensate employees at or above 150% of minimum wage, provide group health insurance and retirement benefits, provide safety equipment and training, and provide workforce development training to build skills and competitiveness. Because tax credits are available at the state level, staff does not recommend tax credits at the local level at this time. Staff is not aware of any other cities currently considering local tax credits.

Proposed Amendments – Financial (SAMC Chapter 21)

Table 1 (Proposed Amendments to Chapter 21) describes the finance-related ordinance amendments. Additional details are provided in the subsections that follow.

Table 1: Proposed Financial Amendments

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Item		Impact																						
Amend (SAMC Sections 21-127, 21-133, and 21-135)		Amendment:																						
		(1) Amend SAMC Chapter 21 (Licenses) provisions relating to Article XII (Medical Marijuana) - Section 21-127- to reflect definitional changes, and Article XIII (Commercial Cannabis) - Section 21-133 – to adopt a separate business license category for consumption lounges and temporary consumption/ special events and to reduce cannabis tax rates for commercial cannabis cultivation, distribution, and manufacturing activities;																						
		(2) by further amendment of Section 21-133 to administratively simplify the taxation of shared manufacturing activities to maintain Santa Ana’s competitive advantage visa via these commercial cannabis business activities, and to also relax and equalize square footage assessment treatment as between co-located cannabis distribution and manufacturing businesses who are not horizontally/vertically integrated and those that are; and (3) also amend Section 21-135 to equalize the tax treatment of microbusinesses to insure fair treatment.																						
		The recommended Commercial Cannabis Tax Rate Adjustments, including a \$2,000 basic tax rate per license, are described in detail in Exhibit 4.																						
		Impacts:																						
		Reduction of commercial cannabis business license tax rates for commercial cannabis cultivation, distribution, and manufacturing activities, first effective <u>January 1, 2023</u> , is estimated to result in lower end of fiscal year non-retail commercial cannabis business tax revenue as follows:																						
		<ul style="list-style-type: none">• A reduction in the projected revenue in the range of approximately \$1,626,500 to \$1,210,000 for FY 2022-23, when measured against actual receipts for FY 2021-22 of approximately \$2,310,000; and																						
		<table><tr><th>FY 2022-23 REVENUE ESTIMATE</th><th>FY 2021-22 Actual Revenue Received</th><th>FY 2022-23 Revenue Estimate (Upper Range)</th><th>FY 2022-23 Revenue Estimate (Lower Range)</th></tr><tr><td>CULTIVATION</td><td>\$1,223,376</td><td>\$841,000</td><td>\$640,000</td></tr><tr><td>DISTRIBUTION</td><td>\$863,446</td><td>\$595,000</td><td>\$423,000</td></tr><tr><td>MANUFACTURING</td><td>\$215,152</td><td>\$190,500</td><td>\$147,000</td></tr><tr><td>Total</td><td><u>\$2,310,974</u></td><td><u>\$1,626,500</u></td><td><u>\$1,210,000</u></td></tr></table>			FY 2022-23 REVENUE ESTIMATE	FY 2021-22 Actual Revenue Received	FY 2022-23 Revenue Estimate (Upper Range)	FY 2022-23 Revenue Estimate (Lower Range)	CULTIVATION	\$1,223,376	\$841,000	\$640,000	DISTRIBUTION	\$863,446	\$595,000	\$423,000	MANUFACTURING	\$215,152	\$190,500	\$147,000	Total	<u>\$2,310,974</u>	<u>\$1,626,500</u>	<u>\$1,210,000</u>
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	<ul style="list-style-type: none">The foregoing non-retail commercial cannabis figures do not include potential offsetting revenues which may be anticipated from future shared manufacturing and microbusiness revenues and from the enhanced natural growth of Santa Ana’s non-retail commercial cannabis business community which will be encouraged by the rate reductions, and the simplification and equalization of tax treatments for cultivation, distribution, manufacturing, shared manufacturing, and microbusinesses. At present, however, the City is lacking in sufficient information to reasonably project such additional revenues.Likewise, the City may anticipate future increased revenues from primary manufacturers and participating shared manufacturers taking advantages of Santa Ana’s proposed favorable and administratively streamlined treatment of shared manufacturers and the proposed relaxation and equalization of the tax treatment as between manufactures and distributors who are co-located, regardless of whether they are horizontally or vertically integrated or not.Similarly, there will be an increased likelihood of formation of microbusinesses based on Santa Ana’s going-forward equalization of microbusiness tax treatment, so that microbusinesses will not have to include the annual \$2,000 basic tax rate assessment for each licensed category of commercial cannabis business they choice to engage in, but instead they will be liable to only pay once for the primary																				

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Item	Impact
	commercial cannabis activity they choose to engage in. This effectively affords microbusinesses the same net administrative tax treatment as other categories of commercial cannabis business.

Consumption Lounges & Temporary Consumption/Special Events and Shared-Use Manufacturing – Elimination of Alternate Square Footage Tax Assessment

Consumption Lounges & Temporary Consumption/Special Events are locations where an underlying retail cannabis business licensee is already subject to a square footage assessment. Likewise, Shared Manufacturing premises are places where multiple shared manufacturers (also known as sub-manufacturers) rotate on a variable schedule and share space and equipment provided by a primary commercial cannabis manufacturing business, the alternate square footage method of assessment is made too cumbersome to apply and the need to impose it is mitigated by the fact that the primary manufacturing business owning and controlling the manufacturing premises is already subject to the assessment. Therefore, staff recommends that the City Council establish both the Consumption Lounge & Temporary Consumption/Special Events and Shared Use Manufacturing square footage tax rates at zero (\$0) dollars, effectively eliminating the Alternate Square Footage Tax Assessment method as a component in computing taxes owed by shared manufacturers operating at primary manufacturing locations within the City. Effective elimination of the alternate tax will remove the principle administrative tax impediment to facilitating consumption and shared manufacturing within the City.

Microbusinesses – Elimination of De facto Assessment of Multiple Basic Tax Rate Assessments

The City's Business License Tax Code dealing with cannabis businesses establishes an annual Basic Tax Rate assessment of \$2,000 per each licensed commercial cannabis activity engaged in at a single location in the City. This requirement poses a challenge for microbusinesses, which were not contemplated as a commercial cannabis category to be authorized to do business in the City at the time the Basic Tax Rate assessment was adopted for commercial cannabis businesses pursuant to Voter Ballot Measure Y. The Basic Tax Rate assessment was primarily intended as the means - together with the Alternate Square Footage Tax - of assuring a minimum level of City revenue from commercial cannabis businesses. Microbusinesses are required by the state to engage in a minimum of three commercial cannabis activities, and thus are required by the City to obtain a business license for each of these activities. *(No administratively reasonable methodology exists or is likely to become available for combining all categories of commercial cannabis assessment into one business license account.)*

However, the requirement for multiple Basic Tax Rate assessments can be seen to have a negative impact on the formation of microbusinesses within the City. To address this issue, staff recommends that the City Council adopt a special proviso for microbusinesses allowing them to pay the annual Basic Tax Rate only upon their predominate commercial cannabis activity, and thus allow them to be exempted from the requirement on all of their other licensed activities engaged in at a single location within the City.

Proposed Amendments – Regulatory (SAMC Chapters 18 and 40)

In addition to the proposed changes listed in Table 1, the City is proposing to update and streamline certain sections of Chapter 18 (Medicinal Marijuana) and Chapter 40 (Commercial Cannabis Business Activities Other Than Medicinal Marijuana). Table 2 (Proposed Regulatory Amendments) describes the regulatory-framework ordinance amendments.

Table 2: Proposed Regulatory Amendments	
<i>Item</i>	<i>Amendment and Impact</i>
Repeal and Readopt Medicinal Cannabis Retail Regulations (SAMC Article XIII of Chapter 18)	<p><u>Amendment:</u> Removes medicinal cannabis retail regulations from Chapter 18 by deleting Article XIII and readopting as Article II of Chapter 40.</p> <p><u>Impacts:</u></p> <ul style="list-style-type: none"> • Creates a single SAMC chapter addressing all commercial cannabis (medicinal and adult-use) business activities, including retail, cultivation, distribution, manufacturing, and testing. • Enhances internal consistency of commercial cannabis regulations by consolidating all regulations into a single chapter within the SAMC.
Community Benefits, Sustainable Business Practices, and Social Equity (SAMC Sec. 40-1)	<p><u>Amendment:</u> Updates community benefit and sustainable business practices requirement by codifying requirements and integrating required social equity components.</p> <p><u>Impacts:</u></p> <ul style="list-style-type: none"> • Addresses the termination date of existing commercial cannabis operating agreements, which are set to expire December 31, 2022. • Codifies requirement for all commercial cannabis businesses to submit and have a Community Benefit, Sustainable Business Practices, and Social Equity Plan (“Plan”) on file with the City. • Allows the City to require proof of satisfaction of the Plan. • Integrates key social equity principles into the Plan. • Establishes a Plan template for internal consistency, reporting, and auditing, if required.

Table 2: Proposed Regulatory Amendments	
<i>Item</i>	<i>Amendment and Impact</i>
Commercial Cannabis Eligible Areas (SAMC Secs. 40-5, 40-6, and 40-105)	<p><u>Amendment:</u> Establishes an updated commercial cannabis eligible areas map to maintain a buffer between commercial cannabis businesses and sensitive land uses, such as schools, parks, and residential zones.</p> <p><u>Impacts:</u></p> <ul style="list-style-type: none"> • Updates the existing map of commercial cannabis eligible areas adopted March 18, 2020, and requires adoption of the new map by resolution of the City Council. • Maintains a buffer between commercial cannabis businesses and sensitive land uses based on the original 1,000-foot buffer. • Allows operating and pending businesses to expand within existing buildings. • Creates consistency between ordinance and adopted map.
Relocation of Commercial Cannabis Retail Facilities (SAMC Secs. 40-7 and 40-104)	<p><u>Amendment:</u> Allows relocation of currently-operating commercial cannabis retail locations within Santa Ana.</p> <p><u>Impacts:</u></p> <ul style="list-style-type: none"> • Addresses facilities impacted by changes in market conditions and/or impacted by projects such as the Costa Mesa (SR-55) Freeway widening. • Facilitates the opening of remaining pending and five new retailer storefronts, for a total of 35 retail storefronts. • Allows the City to achieve its full revenue-generating potential of the commercial cannabis ordinance.
Consumption Lounges as an Ancillary Component of Retail (SAMC Secs. 40-5 and 40-8)	<p><u>Amendment:</u> Establishes a means by which cannabis retailers may apply to construct and operate a consumption lounge.</p> <p><u>Impacts:</u></p> <ul style="list-style-type: none"> • Consistent with State law, allows cannabis consumption lounges as an ancillary component to retail activities subject to full compliance with State licensing, local permitting, environmental and public health, and building and fire safety regulations. • Allows the City to achieve its full revenue-generating potential of the commercial cannabis ordinance. • Maintains Santa Ana's competitive edge and leadership position within the regional cannabis industry.

Table 2: Proposed Regulatory Amendments	
<i>Item</i>	<i>Amendment and Impact</i>
Temporary Consumption Festivals and Events (SAMC Sec. 40-8)	<p><u>Amendment:</u> Establishes a means by which cannabis retailers may apply to conduct special events that include cannabis sales and consumption.</p> <p><u>Impacts:</u></p> <ul style="list-style-type: none"> • Allows cannabis retailers each to hold up to two (2) temporary consumption events per calendar year. • Allows the City to organize and hold its own festivals. • Activities would be required to satisfy all applicable State licensing, local permitting, environmental and public health, and building and fire safety regulations. • Allows the City to achieve its full revenue-generating potential of the commercial cannabis ordinance. • Maintains Santa Ana's competitive edge and leadership position within the regional cannabis industry.
Various Administrative Amendments for Internal Consistency (SAMC Secs. 40-2, 40-9, 40-9.2, 40-10, and 40-100 through 40-108)	<p><u>Amendments:</u> Updates various sections of Chapters 21 and 40 to establish internal consistency in terminology and regulations, update background check requirements, and require plan submittal and opening for all remaining pending cannabis retail businesses.</p> <p><u>Impacts:</u></p> <ul style="list-style-type: none"> • Edits title of Chapter 40 and updates definitions to address amendments described above. • Removes local badge requirements and requires only live scans for business owners. • Updates application selection process for commercial cannabis businesses and addresses consumption lounges. • Modifies various sections to remove references to now-defunct Article XIII of Chapter 18. • Requires all pending medicinal and adult-use retail locations to submit construction plans and open within one year of the effective date of the ordinance.

Among the proposed amendments, the number of permitted retail locations and relocation of pending/selected and existing retailers, termination of the Measure BB Waitlist, changes to the buffer requirements from sensitive land uses, and consumption lounges and temporary events represent substantive changes that are described in further detail in the subsections below. These amendments are intended to address evolution in market conditions for cannabis businesses in Santa Ana and maintain the City's competitive position in the regional cannabis industry.

Number of Permitted Retail Locations, Retail Relocation, and Termination of the Measure BB Waitlist

Existing ordinance regulations permit up to 20 medicinal and 30 adult-use cannabis retail locations; however, such facilities may be co-located in a single facility. The proposed amendments would allow an additional five (5) retail locations, for a total of 35 storefronts in the City. If approved, the amendments would allow all 35 retail licenses to sell both medicinal and adult-use cannabis.

There are currently 27 operating storefront retailers in the City. Of these, 19 sell medicinal and adult-use cannabis, and 8 sell adult-use only cannabis. In addition, there are 1 pending/selected medicinal-only and 3 pending/selected adult-use retailers. The amendment would incentivize the pending/unopened retailers to open sooner and provide the retailers greater revenue-generating potential through both medicinal and adult-use retail cannabis sales.

The amendments would also allow existing retailers to relocate subject to full compliance with all zoning, buffer, and separation requirements from other existing or pending/selected locations. This amendment also addresses the SR-55 widening project, which will result in physical impacts to at least one retailer, as well as evolving market conditions as the industry matures in Santa Ana. Currently, relocation is prohibited, and those businesses that have relocated have done so pursuant to various agreements with the City. The amendments would standardize the process for all entities and further incentivize the pending/selected businesses that have not yet opened to properly locate and open.

Lastly, the amendments would terminate the Measure BB Waitlist, which has consistently shrunk since 2015 from 575 entities to its current five (5). Pursuant to Measure BB, each year waitlisted entities must notify the City of their desire to remain on the Waitlist, and the City updates the Waitlist annually between April and May. The amendments would set forth a process by which the City notifies the waitlisted entities of the intended termination and allow them to apply for the five new retail locations by March 30, 2023. Should all five not open, the priority for remaining storefront positions would then be given to those entities scored as part of the adult-use retail selection process in 2018; those entities would need to apply by July 31, 2023. Should remaining storefront positions be available thereafter, the City would accept applications from brand-new entities beginning July 31, 2023, subject to the same merit-based evaluation process employed in 2018 that included criteria such as site control, previous experience, commitment to community benefits, having remained on the Waitlist, residing in Santa Ana, and being in good standing. This staggered method will ensure consistency with prior processes and create a fair opportunity for those waitlisted entities to submit competitive applications to operate new retail locations in the City. Any remaining positions available after this staggered

process would follow the same selection process employed in 2018 using merit-based criteria.

Commercial Cannabis Eligible Areas Map

All commercial cannabis businesses were initially subject to specific, codified regulations for separation from sensitive land uses (schools, parks, and residential zones) under Measure BB for medicinal cannabis retail sales, and subsequently by Ordinance No. NS-2929, which created Chapter 40 of the Santa Ana Municipal Code for all other commercial cannabis business activities. The regulations allowed commercial cannabis business activity in the City's light and heavy (M1 and M2) industrial zoning districts and required a 1,000-foot separation from these sensitive land uses; no accompanying map was officially adopted to illustrate these parameters.

Following redevelopment of industrial properties east of the Costa Mesa (SR-55) Freeway, the City Council adopted a map of commercial cannabis eligible areas on March 20, 2018 in which commercial cannabis business activities could locate subject to full compliance with applicable local, County, and State regulations. The map, however, is currently in conflict with existing ordinance language requiring the 1,000-foot buffer from residential zones.

Among the actions proposed for City Council consideration to address this conflict is adoption of a resolution establishing new map largely based on the existing 1,000-foot buffer from schools, parks, or properties zoned for residential purposes. The new map would specify on a parcel-specific level those properties that are eligible for commercial cannabis businesses. The proposed ordinance would also be modified to reflect the map, rather than specify the buffer in text. Modification to the map could take place with future resolutions as needed, without requiring an amendment to the overall ordinance.

Consumption Lounges and Temporary Events

State law was modified in 2019 to create a framework allowing cannabis consumption lounges and temporary (special) events with cannabis consumption. Cannabis consumption lounges are permitted to be opened and operated by businesses holding a retailer license. The proposed amendments would allow the City's commercial cannabis retail businesses to submit applications to operate consumption lounges on the same site as and physically contiguous to a cannabis retailer. In addition, standards would be in place to allow temporary consumption festivals organized and held by the City, and temporary consumption events held by cannabis retail businesses.

Several development and operating standards are included to ensure the health and safety of visitors to retailers and to minimize impacts onto surrounding properties. Among these, lounges will need to be designed so that a patron need not enter a consumption

lounge in order to access a retail-only portion of the facility, and the lounges may only be accessible to those aged 21 or older. Lounges and special events may also offer food and non-alcoholic beverages, but the sale or consumption of alcohol or tobacco products will be prohibited. Lastly, cannabis retailers would be able to construct specific spaces within the retail area for the opening and limited consumption of cannabis products for educational purposes, without the need to construct a dedicated consumption lounge.

In addition, smoking cannabis will be permissible subject to odor control and elimination, and consumption or smoking of cannabis products shall not be visible from any public place, public right-of-way, or area where minors may be present. If the consumption lounge or event contains an outdoor area, the outdoor area shall be oriented so as to eliminate visibility from any adjacent public place, public right-of-way, area where minors may be present, or adjacent business, tenant space, or building. As with all other commercial cannabis businesses, odor control and ventilation systems must be in place to eliminate any odors. Lastly, all facilities or event operators must abide by odor control response measures specified in the ordinance.

Orange County Grand Jury and Orange County Advocacy Alliance

On June 3, 2021, the Orange County Grand Jury (OCGJ) issued an investigate report with findings and recommendations regarding the City's licensed retail adult-use cannabis program and regulatory framework. Subsequent staff reports were presented on the matter to the City Council, most recently on September 7, 2021. Following the September 7 meeting, the City issued a letter on September 13, 2021 to the Honorable Erick Larsh, Presiding Judge, with the City's responses to six findings and three recommendations. The proposed ordinance will maintain the City's commercial cannabis regulatory framework in keeping with these findings. Moreover, the proposed amendments to community benefit and sustainable business practice requirements reflect the OCGJ's recommendation to further streamline and unify such obligations by the licensed commercial cannabis businesses operating in Santa Ana, and enable more routine and accurate reporting of such engagements.

Most recently, the Orange County Advocacy Alliance (OCAA) issued a letter to the City Council urging a modification to commercial cannabis tax rates as "the number one priority to create a sustainable, competitive, and profitable cannabis business marketplace." The proposed tax code amendments to reduce certain non-retail commercial cannabis tax rates reflect not just OCAA's sentiments, but also feedback received by dozens of business operators and research that the Planning and Building and Finance and Management Services agencies' staff performed between 2020 and 2022 into competitive jurisdictions' commercial cannabis tax rates.

Community Benefits, Sustainable Business Practices, and Social Equity

In response to recommendations from the OCGJ investigative report and industry feedback, the City is also proposing modifications to its community benefit and sustainable business practice requirements that would clarify and streamline obligations, options, and reporting. The proposed amendments would sunset the requirement for individual operating agreements but would require all commercial cannabis businesses to maintain a community benefit and sustainable business practices plan on file with the City.

Staff met with a focused group of industry representatives on April 21, 2022 to obtain insight on the proposed code amendments. Representatives recommended modifications to the required community benefits and sustainable business practices to reflect current labor trends and industry practices. In addition, representatives expressed a desire to standardize reporting to the City. Because of this meeting, staff tailored community benefit and sustainable business practice options in the proposed ordinance to address the concerns brought up by the industry representatives.

All commercial cannabis businesses will be required to report community benefit and sustainable business practice obligations twice a year as a condition of maintaining the regulatory safety permit in good standing and as a condition of their annual renewal. The annual reporting will require descriptions of the following components:

1. Action – a thorough breakdown of all stated commitments/obligations and the actions taken by the business to satisfy the required commitments/obligations.
2. Value – A detailed, quantitative description of the value of the commitments/obligations, either as money spent or time/resources committed by the business and its staff.
3. Community Benefit Value – A qualitative description of the resulting value of the commitments/obligations' quantitative impacts, otherwise known as the "local multiplier effect" when one dollar is spent locally.
4. Local Engagement – A detailed narrative of engagement by business owners with local organizations, community groups, and civic/government organizations. Examples include coordination with the City's Economic Development Division, the Santa Ana WORK Center, job fairs, local educational institutions' skills training, and local community and not-for-profit organizations.

A component of the ordinance requires that all commercial cannabis businesses operating in the City provide community benefits through a Community Benefits, Sustainable Business Practices, and Social Equity Plan ("Plan") that promotes health and sustainability of the community in a format acceptable by the Executive Director of the Planning and Building Agency as reviewed and verified from time to time as a component of issuance of an annual regulatory safety permit. Obligations to satisfy the Plan's

requirements will be based on a percentage rate of a business's gross reportable revenue from the prior reporting year (0.50% from January 1, 2023 to January 1, 2024, and 1.00% thereafter). The Plan will document each of the business's commitment to local hiring, local sourcing, community engagement and contributions, sustainable business practices, and consideration of social equity goals through paying prevailing wages, hiring from disadvantaged communities, supporting local non-profit organizations (NPOs), and job and skills training. Moreover, the Plan will quantify the value of each commitment therein. The format is also intended to enable businesses committing to certain social equity principles to apply for consideration by the State for tax credits, complementing the provisions of Section 17053.64 of the California Revenue and Taxation Code.

ENVIRONMENTAL IMPACT

In accordance with the California Environmental Quality Act (CEQA), these actions are exempt from further CEQA analysis pursuant to CEQA Guidelines Section 15061(b)(3), as the proposed amendments address business activities already permitted in the City and will not result in any significant physical effect on the environment. Because Santa Ana is a built-out, urbanized community, and the uses permitted and regulated by the cannabis ordinance are already allowed by the underlying zoning designations and the development standards in Chapter 41 (Zoning) of the Santa Ana Municipal Code, the updates to the ordinance will not lead to any cumulative or unforeseen impacts. A Notice of Exemption, Environmental Review (ER) No. 2022-15, will be filed for these actions.

FISCAL IMPACT

There is a projected fiscal impact associated with approval of the recommended actions, as they will reduce the projected commercial cannabis revenues for cultivation, distribution, and manufacturing as compared with the actual revenues received in FY 2021-22. Assuming the proposed rate changes become effective January 1, 2023, the cumulative revenue reduction is estimated to be between approximately \$685,000 and \$1,100,000 for FY 2022-23; and between approximately \$1,360,000 and \$1,600,000 in FY 2023-24. However, other elements of the staff recommendations contained within this Staff Report relating to shared manufacturing, microbusinesses, and notably consumption lounges and temporary events, and allowing all retailers to sell both medicinal and adult-use cannabis, will likely provide some degree of offsetting revenues. Staff, however, lacks reasonable data on which to make increased revenue projections. Likewise, the addition of five (5) potential added retail sales locations, while encouraging in terms of future revenue; cannot, as yet, be counted on as a reliable projected revenue for the current 2022-23 fiscal year or the approaching 2023-24 fiscal year due to the long lead times involved in bringing such retail locations into operation.

Failure to adopt the above recommended action items, however, would have a negative impact on a significant number of established cannabis businesses as well as pending commercial cannabis applicants awaiting adoption of those recommended items before committing to entering the approval, permitting, and licensing process and who will defer

or cancel their decision to enter the Santa Ana market, thus causing the hoped for revenues to not be realized.

EXHIBIT(S)

1. Ordinance
2. Resolution modifying various commercial cannabis tax rates
3. Resolution establishing a map of commercial cannabis eligible areas in the City
4. Recommended commercial cannabis tax rate adjustments table
5. Comparative tax information (market analysis)

Submitted By: Minh Thai, Executive Director of Planning and Building Agency and
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Approved By: Kristine Ridge, City Manager