

AGENDA ITEM

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Date: July 3, 2023

Council Action Date: July 24, 2023

**TO:** Honorable Mayor and City Council

**FROM:** Andrew Heglund, City Attorney

**SUBJECT:** Resolution Increasing the Number of Commercial Cannabis Businesses to be Permitted to Operate in the City

**SUMMARY**

If approved, the City Council will increase the maximum number of cannabis retail businesses that may be permitted to operate in the City from five to six.

**RECOMMENDATIONS**

Rescind Resolution No. 2021-009 and replace it with a Resolution increasing the maximum number of cannabis retail businesses that may be permitted to operate in the City from five to six.

**DISCUSSION/ANALYSIS**

In 2021, the City Council of San Buenaventura adopted San Buenaventura Municipal Code (SBMC) Chapter 6.420 titled, "Commercial Cannabis Businesses" to allow for commercial cannabis businesses in the City of San Buenaventura (City). Pursuant to SBMC Section 6.420.220, City Council adopted Resolution No. 2021-009 on February 8, 2021, to establish the maximum number of commercial cannabis businesses that may be permitted to operate in the City. By that resolution, City Council designated a maximum of five retail storefront or non-storefront retailers or microbusinesses and a maximum of ten manufacturers, distributors, or testing laboratories.

The application selection process for those five licenses has been completed through Final Selection made by the City Manager on October 21, 2022, pursuant to SBMC Section 6.420.230. The City Manager made his final selection of three retailer applicants for conditional award of permits, and reserved two of the five retailer permits. The two were reserved for a future application round to allow for permits in the Coastal Zone pending application from the City for a Local Coastal Program Amendment (LCPA) with the California Coastal Commission. Following the conditional award of three permits, the

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five retailer finalists which were not selected for cannabis permits filed appeals with the City.

The City has reached a conditional settlement agreement with the five Phase IV appellants that would resolve their appeals in exchange for a partial redo of Phase IV wherein the five appellants would compete for three permits. This would result in a total of six issued permits in the City instead of the five originally approved by the City Council. The conditional permits awarded to the existing three successful applicants will be issued as soon as the selection of the three new applicants from the partial redo of Phase IV is completed, which will occur no later than August 31, 2023.

In broad terms, the agreement contemplates the following process:

- 1) The City increases the total available Commercial Retail Cannabis Licenses from five to six by means of resolution (the action recommended this evening).
- 2) The Interim City Manager will formally rescind the prior City Manager's denials of the five appellants' Phase IV applications.
- 3) The City will conduct a new partial Phase IV competitive process in accordance with the City's cannabis ordinance, by which the five appellants will have the opportunity to compete for all three remaining available cannabis licenses.
- 4) City staff will draft a report as required by SBMC Section 6.420.230(a)(5), which report will be made available to the public approximately one week before the final Phase IV selection interviews.
- 5) Those Phase IV selection interviews will be conducted in person and will be live streamed and recorded to ensure that the public has sufficient knowledge of what is said during those interviews.
- 6) The public will have an opportunity to submit written comments on the selection of the three remaining licenses. These comments will be provided to the City Manager or City Manager designee making the selection decision.
- 7) Subsequently, the City's Phase IV decision maker will issue a new selection decision, awarding the three remaining licenses to three of the five appellants, who have agreed to waive any additional administrative appeal of that decision.

To accomplish the first step of the settlement agreement, Staff recommends adoption of a Resolution increasing the maximum number of Commercial Cannabis Retail Businesses that may be permitted to operate in the City from five to six (Attachment A). Staff also recommends simultaneously rescinding City Council's previous Commercial Cannabis Retail Business authorization Resolution No. 2021-009, which is being replaced by the proposed Resolution attached to this staff report, to clarify the record going forward. Staff has drafted the proposed Resolution to incorporate those portions of Resolution No. 2021-009 which are not being altered by the new resolution.

Staff anticipates that City Council may wish to further expand the number of authorized Commercial Cannabis Retail Licenses at a future date to allow for one or more potential retailers to operate in the Coastal Zone, if and when the City has been authorized to do so by the Coastal Commission.

**FINANCIAL IMPACT**

City staff will be required to spend staff time working on the new Phase IV process, which requires some use of City resources. Moving forward with the recommended course of action halts the existing appeal process, thus saving the City the considerable ongoing costs of litigating those appeals. Moreover, in all likelihood the current appeal process – if not settled – could lead to further civil litigation, which could cost the City considerable amounts of money (somewhere on the order of several hundred thousand dollars). Approving this course of action reduces the likelihood of such a lawsuit, although it does not entirely protect the City from a lawsuit from the two appellants who are unsuccessful in the new Phase IV competition.

**ALTERNATIVES**

The City Council could refrain from approving an increase of available Commercial Retail Cannabis Licenses from five to six. This would almost certainly terminate any possible settlement with the five appellants and would require the City to continue to expend significant resources litigating those appeals, as well as exposing the City to a high likelihood of further civil litigation after final adjudication of the current administrative appeal process. Staff does not recommend this course of action.

Prepared by: Christopher de la Vega, Assistant City Attorney

ATTACHMENT:

Attachment A – Resolution

# ATTACHMENT A

RESOLUTION NO. 2023-\_\_\_\_

## **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, INCREASING THE MAXIMUM NUMBER OF COMMERCIAL CANNABIS RETAIL BUSINESSES PERMITTED TO OPERATE IN THE CITY AND RESCINDING RESOLUTION NO. 2021-009**

WHEREAS, The City Council has voted to allow commercial cannabis businesses to operate within the City and the requirements of the City's commercial cannabis business program are codified in Chapter 6.420, "Commercial Cannabis Businesses," of the San Buenaventura Municipal Code ("Municipal Code"); and,

WHEREAS, In accordance with Section 6.420.220 of the Municipal Code, the City Council may expand by resolution the maximum number of commercial cannabis retail storefront or non-storefront businesses that may be issued a cannabis business permit; and,

WHEREAS, the City Council previously authorized, by Resolution No. 2021-009, on February 8, 2021, a maximum number of five (5) commercial cannabis retail storefront or non-storefront businesses to operate in and be permitted by the City, which Resolution also established a maximum of ten (10) Manufacturers, Distributors, or Testing Laboratories as defined in Section 6.420.030 of the Municipal Code, and also established Sensitive Use Buffer Zones pursuant to Section 6.420.370 of the Municipal Code.

NOW, THEREFORE, the City Council of the City of San Buenaventura does hereby resolve, find, determine and order as follows:

Section 1: Resolution No. 2021-009 is rescinded and replaced with this Resolution, as follows.

Section 2: MAXIMUM NUMBER OF PERMITTED COMMERCIAL CANNABIS RETAIL BUSINESSES. Pursuant to Section 6.420.220 of the Municipal Code, the following maximum number of Commercial Cannabis

Businesses, as defined in Section 6.420.030 of the Municipal Code, may be permitted:

- A. Storefront or Non-Store Front Retailers and Microbusinesses. A maximum of six (6) Storefront or Non-Store Front Retailers or Microbusinesses, as defined in Section 6.420.030 of the Municipal Code, may be issued a cannabis business permit pursuant to the application process established in Section 6.420.230.
- B. Manufacturers, Distributors, and Testing Laboratories. A maximum of ten (10) Manufacturers, Distributors, or Testing Laboratories, as defined in Section 6.420.030 of the Municipal Code, may be issued a cannabis business permit pursuant to the application process established in Section 6.420.230.

This Resolution is only intended to increase the maximum number of Commercial Cannabis Retail Businesses that may be issued permits to operate in the City. Nothing in this Resolution mandates that the City issue any or all authorized cannabis business permits.

Section 2: SENSITIVE USE BUFFER ZONES. Pursuant to Section 6.420.370 of the Municipal Code, the following sensitive use buffer zones are established, and each Commercial Cannabis Business must comply with these requirements:

- 1) The front door of any Commercial Cannabis Business shall not be closer than six hundred (600) feet from any parcel containing any elementary, middle, or high school, (whether public, private, or charter) in existence at the time Section 6.420.370 of the Municipal Code was adopted, unless the State licensing authority specifies a greater radius.

Section 3: EXEMPTION FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council further finds that the enactment of these regulations pursuant to this Resolution is determined to be exempt under Section 15061(b)(3) of Title 14 of the California Code of Regulations (the "State CEQA Guidelines") in that its adoption merely establishes limitations on the City's commercial cannabis business permit program. It can therefore be foreseen that the enactment of this ordinance does not have the potential to result in significant effects on the environment.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Joe Schroeder, Mayor

ATTEST:

\_\_\_\_\_  
Michael B. MacDonald, CMC  
City Clerk

APPROVED AS TO FORM  
Andrew Heglund, City Attorney

BY:  7/13/23  
\_\_\_\_\_  
Christopher de la Vega      Date  
Assistant City Attorney