

City Council Report

915 I Street, 1st Floor

Sacramento, CA 95814

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File ID: 2020-01183

October 13, 2020

Discussion Item 31

Title: Ordinance Amending Section 5.150.350 of the Sacramento City Code Relating to Storefront Cannabis Dispensaries and a Resolution Establishing the Process to Issue Available Storefront Cannabis Dispensary Permits (To be published in its entirety in lieu of pass for publication)

Location: Citywide

Recommendation: 1) Adopt an Ordinance amending section 5.150.350 of the Sacramento City Code to increase the number of allowed valid storefront cannabis dispensary permits and change the process for issuance of a permit to include a competitive process, to be published in its entirety within 10 days of adoption in lieu of pass for publication per City Charter section 32(d); and 2) adopt a Resolution establishing the process to issue available storefront cannabis dispensary permits through a request for qualifications (“RFQ”).

Contact: Davina Smith, Cannabis Manager, (916) 808-4772; Zarah Cruz, Program Specialist, (916) 808-8925, Office of Cannabis Management, Office of the City Manager.

Presenter: Davina Smith, Cannabis Manager, (916) 808-4772, Office of Cannabis Management, Office of the City Manager.

Attachments:

- 1-Description/Analysis
- 2-Ordinance (Clean)
- 3-Ordinance (Redline)
- 4-Resolution
- 5-Exhibit A

Description/Analysis

Issue Detail: The City of Sacramento (“City”) currently has an allowed limit of 30 valid storefront cannabis dispensary (“storefront dispensary” or “dispensary”) permits with a requirement that the permits be issued by lottery if any become available under Sacramento City Code (“SCC”) section 5.150.350.

On August 9, 2018, Council established the Cannabis Opportunity Reinvestment and Equity (CORE) Program in an effort to remove barriers to entry into the cannabis industry for individuals and communities that were disproportionately impacted by the enforcement of cannabis-related crimes. One of the benefits of being admitted into the CORE Program is priority for storefront dispensary permits when they become available.

On November 12, 2019, the Mayor proposed the addition of storefront permits exclusive for the CORE participants and directed staff to bring an item to Council for consideration. A Council workshop was held on January 14, 2020, during which Council provided the following direction:

Issue	Council Direction
1. Adjustment to the cap	Add 10 new dispensary permits (five in 2020 and five in 2021)
2. Eligibility: CORE and General Public vs. CORE exclusive	CORE exclusive
3. Term and ownership of permits issued to CORE participants	Permits must maintain 51% CORE ownership and 51% in CORE profit sharing for 10 years.
4. Storefront Dispensary Locations	Add shopping center (SC) zone for storefront dispensary use; and limit Arden Way/Del Paso Special Planning District (SPD) cannabis uses to storefront dispensary only.
5. Timeline by which new storefront dispensaries must be operational	Three years after being selected in the lottery.

Council’s direction on number 4 was adopted on June 30, 2020.

A proposed ordinance and resolution addressing items 1, 2, 3, and 5 were brought to City Council on September 1, 2020. At that meeting, Council directed staff to further amend the Code to replace the requirement for awarding storefront dispensary permits by lottery with a competitive-based process like a request for proposal (“RFP”) system that would evaluate CORE applicants’ likely success and business-readiness in applying for permits and operating a dispensary.

In consideration of a RFP process, staff reviewed the City's current policy on RFPs and noted that a request for qualifications ("RFQ") process scores and weighs qualifications and a RFP process takes proposals for provision of services. In addition, staff observed that some responses might receive the same scores. This then may require the City to have a blind method to select an applicant from those with the same scores if there are more tied top scores than available permits. As a result, staff recommends that the issuing process be through a RFQ and that the process include the ability to use a blind selection process, such as a lottery, to select an applicant if there are more tied top scores than available permits.

Based on the above, the proposed Ordinance (attachments 2 and 3) reflects Council's direction from its September 1, 2020 meeting and item 1, above. Items 2, 3, and 5 and the RFQ process are addressed in the attached resolution (Attachment 4). Of note in that resolution will be staff's recommendation that rather than providing for five storefront dispensary opportunities in 2020 and five in 2021, that all 10 permits be available at one time given that only three months remain in 2020.

Following Council's direction, staff hosted two CORE stakeholder meetings on September 2 and October 8, 2020 to discuss a competitive process for issuing permits. Staff also sent out a survey to solicit input from stakeholders on possible evaluation criteria. Stakeholders also supported the idea of issuing 10 permits at once.

Policy Considerations: The addition of 10 new storefront dispensary permits and allowing for a issuance process that evaluates business-readiness and likelihood of success in opening and operating a storefront dispensary, rather than a lottery, for those permits requires an amendment to SCC section 5.150.350.

Economic Impacts: None.

Environmental Considerations: This action is exempt from the California Environmental Quality Act (CEQA) because it is the adoption of an ordinance, rule, or regulation that requires discretionary review, including environmental review, and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity (CEQA Guidelines sections 15061(B)(1), California Business and Professions Code section 26055(h)) and because it does not have the potential for causing a significant effect on the environment (CEQA Guidelines section 15061(b)(3)).

Sustainability: Not applicable.

Commission/Committee Action: On September 29, 2020, the Law and Legislation Committee passed a motion with a vote of 4-0 to forward the proposed ordinance to the Council.

Rationale for Recommendation: The CORE Program was established to assist individuals and communities impacted by the disproportionate enforcement of cannabis-related crimes by helping eligible applicants prepare to start a cannabis business or provide job-skills for applicants to work in the cannabis industry. A storefront dispensary is the most sought-after business model among CORE Program participants. However, with the current cap there has been no opportunity for CORE Program participants to open a storefront dispensary, even after completing business training and mentorship through the CORE Program. The proposal to raise the number of storefront permits is a major step towards achieving the City's goal of achieving 50% CORE-eligible ownership of all cannabis business permits.

Financial Considerations: BOP fees for CORE applicants are waived, so there will be no revenues from program fees from the 10 storefront dispensary permits. All cannabis businesses are required to pay a four percent gross receipts tax, so the 10 new storefront permits will likely generate new Business Operating Tax (BOT) revenues for the City. The current annual BOT paid by storefront dispensaries range from \$81,000 to \$650,000.

Local Business Enterprise (LBE): Not applicable.

ORDINANCE NO.

Adopted by the Sacramento City Council

[Date Adopted]

AN ORDINANCE AMENDING SECTION 5.150.350 OF THE SACRAMENTO CITY CODE, RELATING TO STOREFRONT CANNABIS DISPENSARIES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 5.150.350 of the Sacramento City Code is amended to read as follows:

5.150.350 Limit on storefront cannabis dispensary permits.

- A. Notwithstanding any contrary provision in this chapter, the city shall not issue a new storefront cannabis dispensary permit if there are 40 or more valid storefront cannabis dispensary permits at the time an application is submitted.
- B. Whenever the number of valid storefront cannabis dispensary permits is less than 40, the city manager may issue an available permit through a process that is established by city council resolution. The process must, at a minimum, be consistent with this code and may:
 - 1. Evaluate whether applicants will be able to successfully submit a complete application for a storefront cannabis dispensary permit;
 - 2. Evaluate whether applicants will be able to successfully operate a storefront cannabis dispensary; and
 - 3. Utilize criteria reasonably necessary to protect the public health, safety, and welfare.

ORDINANCE NO.

Adopted by the Sacramento City Council

[Date Adopted]

AN ORDINANCE AMENDING SECTION 5.150.350 OF THE SACRAMENTO CITY CODE, RELATING TO LIMIT ON STOREFRONT CANNABIS DISPENSARY PERMITS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 5.150.350 of the Sacramento City Code is amended to read as follows:

5.150.350 Limit on storefront cannabis dispensary permits.

- A. Notwithstanding any contrary provision in this chapter, the city shall not issue a new storefront cannabis dispensary permit if there are ~~340~~ or more valid storefront cannabis dispensary permits at the time an application is submitted. ~~Whenever the number of storefront cannabis dispensary permits falls below 30, the city manager may conduct a lottery, in accordance with this section, to determine eligible applicants for the available permit or permits.~~
- B. ~~Prior to sconducting a lottery, the city manager shall publish a noticethe request in a newspaper of general circulation in the city pursuant to California Government Code section 6063. The notice must announce a date for the lottery, a request that any person wishing to be considered for a storefront cannabis dispensary permit should fileda lottery application with the city manager, and a date when applications are due. The city manager may give additional public notice of the lottery as the city manager deems appropriate. Whenever the number of storefront cannabis dispensary permits falls below 40, the city manager may issue an available permit to an applicant through a process that is established by city council resolution. The process must, at a minimum, be consistent with the code and may:~~
- ~~1. Evaluate whether applicants will be able to successfully submit a complete application for a storefront cannabis dispensary permit;~~
 - ~~2. Evaluate whether applicants will be able to successfully operate a storefront cannabis dispensary; and~~
 - ~~3. Utilize criteria reasonably necessary to protect the public health, safety, and welfare.~~

- ~~C. Lottery applications may require information or documentation consistent with the provisions of this code, resolution of the city council, and state law, and other assurances that the applicant will be able to successfully apply for and operate a storefront cannabis dispensary if they are selected in the lottery.~~
- ~~D. The director shall thereafter conduct a lottery among all those filing a complete establish a sequence in which potential applicants will be considered for the available permits. Specific rules and procedures for the lottery shall be established by the director and approved by resolution of the city council.~~
- ~~E. If the selected applicant fails to qualify for a storefront cannabis dispensary permit or elects not to proceed with the permit application process, applicants drawn in sequence in the lottery shall be considered until the permit is issued.~~

RESOLUTION NO. 2020-

Adopted by the Sacramento City Council

**Process to Issue
Storefront Cannabis Dispensary Permits**

BACKGROUND

- A. The City of Sacramento may have no more than 40 valid storefront cannabis dispensary (“storefront”) permits. (Sacramento City Code section 5.150.350)
- B. The City Manager may issue a storefront permit through a process that is established by resolution of the City Council. (Sacramento City Code section 5.150.350)
- C. The process must comply with the City Code and may evaluate an applicant’s ability to successfully apply for and operate a storefront and utilize criteria reasonably necessary to protect the public health, safety, and welfare. (Sacramento City Code section 5.150.350)
- D. The City’s Cannabis Opportunity Reinvestment and Equity (“CORE”) Program was established to reduce barriers of entry and participation to cannabis businesses for communities and individuals negatively impacted by the disproportionate enforcement of cannabis-related crimes. CORE Program participants are currently granted priority for any storefront permits. (Resolution 2018-0323.)
- E. On January 14, 2020, the City Council determined that: i) all storefront permits should be issued to an individual or a group of individuals in classifications 1 or 2 of the City’s CORE Program; ii) at least 51% of the ownership interest in and profits from these new storefronts must be allocated to participants that meet classifications 1 or 2 of the CORE Program for a period of 10 years from issuance of the permit; and iii) CORE Program participants be given three years from selection to apply for and operate a storefront dispensary.
- F. On September 1, 2020, the City Council determined that a storefront dispensary permit should be issued through a competitive process that weighs qualifications of CORE Program participants.
- G. A fair and equitable way to allocate a storefront permits, and ensure that the best qualified CORE Program participants are selected, is through a request for qualifications (“RFQ”) process that utilizes criteria that evaluate the ability for an individual or group of individuals in the CORE Program to successfully apply for and operate a storefront dispensary.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The RFQ Process for issuing storefront cannabis dispensary permits to individuals or groups of individuals in classifications 1 or 2 of the CORE Program is hereby adopted. (Exhibit A).

- Section 2. Exhibit A is a part of this Resolution.

CITY OF SACRAMENTO
REQUEST FOR QUALIFICATIONS (“RFQ”) PROCESS TO ISSUE A
STOREFRONT CANNABIS DISPENSARY PERMIT

The following RFQ process is established pursuant to Sacramento City Code section 5.150.350, which provides that whenever the number of storefront cannabis dispensary permits falls below 40, the City may issue a permit to an applicant through a process that is consistent with the City Code and established by city council resolution. (Resolution No. _____)

A. Definitions.

The following definitions apply to this process:

1. “Applicant” means an individual or group of individuals in classification 1 or 2 of the CORE Program who submits a statement of qualifications in response to the City’s RFQ for issuance of a permit.
2. “Cannabis dispensary, storefront” has the same meaning as in City Code section 5.150.020.
3. “Classification 1” means classification 1 of the CORE Program as described in City Council resolution 2018-0323.
4. “Classification 2” means classification 2 of the CORE Program as described in City Council resolution 2018-0323.
5. “City Attorney” means the City Attorney or the City Attorney’s designee.
6. “City Manager” means the City Manager or the City Manager’s designee.
7. “CORE Program participant” has the same meaning as described in City Council resolution 2018-0323.
8. “CORE Program” means the City’s Cannabis Opportunity Reinvestment and Equity Program, adopted by City Council resolution 2018-0323.

9. "Individual" means a sole, natural person.
10. "OCM" means the City's Office of Cannabis Management.
11. "Ownership interest" has the same meaning as in City Code section 5.150.020.
12. "Permit" means a business operations permit issued by the City to operate a storefront cannabis dispensary.
13. "Permit application process" means the City's process for an applicant to obtain a permit in accordance with applicable state law and City Code. It includes, at a minimum, obtaining a certificate of occupancy, conditional use permit, and a business operating permit.
14. "Request for Qualifications" or "RFQ" means a written request for the submission of qualifications to successfully apply for and operate a storefront cannabis dispensary.
15. "Statement of Qualifications" or "SOQs" means the written document submitted in response to a RFQ.

B. Process.

1. **Who May Apply?** The RFQ is open to all individuals who are CORE Program participants in classification 1 or 2.
2. **Advertising.** When a permit becomes available, OCM will advertise the RFQ for 10 calendar days on the City's website and through other industry appropriate means.
3. **RFQ Requirements.**
 - a. The RFQ will be used solely to identify CORE Program participants with the highest scoring SOQs to successfully apply for and operate

a storefront cannabis dispensary within three years of being awarded the opportunity to apply for the permit.

- b. OCM will prepare the RFQ. The RFQ must be in the City's standard RFQ format.

4. RFQ Evaluation Criteria.

- a. The RFQ shall utilize criteria that comply with the City Code and all applicable City procurement policies and procedures; are reasonably necessary to protect the public health, safety, and welfare; and evaluate the experience and training of applicants to determine which applicants will be the most successful at applying for and operating a storefront cannabis dispensary including:
 - i. A description of classes, trainings, and workshops completed to prepare the applicant for operating a successful cannabis business in the city of Sacramento.
 - ii. A business plan that includes a detailed timeline, budget, and a plan to achieve success and sustainability.
- b. In developing the RFQ criteria, OCM must consider input of CORE Program participants.
- c. The criteria for the RFQ are subject to the approval of the City Manager and the City Attorney.

5. Statement of Qualifications.

- a. To respond to the RFQ, CORE Program participants must submit a SOQ in writing to OCM by the due date indicated in the advertisement.
- b. A SOQ may be submitted by one CORE Program participant or by a group of participants. No individual may be identified in any capacity in more than one SOQ. Such a duplicate submission will result in the

subject SOQs being deemed nonresponsive and disqualified from review.

6. Required Certifications in SOQs.

- a. Applicants must certify in their SOQ that for a period of 10 years from the issuance of the permit that:
 - i. At least 51% of the ownership interest in the storefront cannabis dispensary will be held by one or more CORE Program participants in classifications 1 or 2, and
 - ii. Owner(s) of the dispensary who are CORE Program participants will receive at least 51% of the storefront cannabis dispensary's profits.
- b. The certification of ownership and profits will be a condition on the permit.

7. SOQ Acceptance and Evaluation.

- a. SOQs shall not be altered after opening.
- b. No criteria may be used in evaluating a SOQ that are not specified in the RFQ or in applicable City Code or other applicable laws or regulations.
- c. All responsive SOQs shall be reviewed and scored by an unbiased and neutral review panel who possess the relevant knowledge or experience to evaluate the SOQs. Members of the review panel may consist of individuals who:
 - i. Have some level of expertise in economic or business development;
 - ii. Have an active involvement in social equity matters; or
 - iii. Are cannabis business regulators from another jurisdiction.

- d. Under no circumstances will a member of the review panel be an employee or a contractor of the City or affiliated in any way with the cannabis industry in the city of Sacramento.
- e. No member of the review panel may discuss the SOQ with applicants for any purpose other than administrative clarification after the submission of SOQ, except during the presentation phase, if any.
- f. Once OCM has received and calculated all the reviewing panels' scores, the top scoring SOQs shall be awarded the opportunity to apply for a permit, until all available permits have been issued.
- g. OCM will notify all applicants of the status of their SOQs through award announcements and publish the scores for all SOQs on its website as soon as reasonably possible.

8. Late and Nonresponsive SOQs.

- a. A SOQ is late if it is received at the location designated in the RFQ after the deadline specified in the RFQ. A late SOQ shall be rejected and not considered, regardless of the reason for the lateness, including circumstances beyond the control of the individual or group that submits the SOQ. A late SOQ may only be opened for identification purposes.
- b. A SOQ is nonresponsive if it does not comply with requirements of the RFQ or if it is submitted in accordance with section 5(b).
- c. Late and nonresponsive SOQs will be returned.
- d. OCM shall have the authority to reject SOQs that are late or nonresponsive.

9. **Public Disclosure.** SOQs submitted in response to the RFQ will be made available in response to a request for public records in accordance with the California Public Records Act.
10. **Timeframe for Opportunity to Apply for a Permit.** It is imperative that permits are actually issued to businesses that will successfully operate within a reasonable period of time. Therefore, any opportunity to apply for a permit shall become void and of no effect if the awarded applicant surrenders the opportunity to apply in writing or the storefront cannabis dispensary is not operating after a period of three years from the date of the applicant's award announcement.
11. **Conditions on Permits.** By responding to the RFQ, applicants understand and agree that in addition to all other applicable permit conditions, the City will place the following conditions on their permit for 10 years starting from its issuance: at least 51% of the ownership of the permitted storefront cannabis dispensary must be held by one or more CORE Program participants in classifications 1 or 2; and at least 51% of the profits of the dispensary must be allocated to the CORE Program participant owner(s).
12. **Tied Scores.** If there are tied top scoring SOQs and there are more tied scores than permits, then the City will use a process to randomly select an applicant from among those tied SOQs.