

RESOLUTION NO. 2018-153

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ADOPTING A SELECTION PROCESS AND STEPS TO BE INCLUDED IN A SCHEDULE FOR THE GRANTING OF CANNABIS RETAILER REGULATORY PERMITS

THE CITY COUNCIL OF THE CITY OF BANNING DOES RESOLVE AS FOLLOWS:

Section 1. Findings: The City Council of the City of Banning hereby finds, determines and declares that:

(a) On June 26, 2018, the City Council adopted Resolution No. 2018-82 calling for the placement of a measure on the ballot of the November 6, 2018 municipal election to adopt an ordinance imposing a general tax on cannabis retail businesses (which later became Measure O); and

(b) On November 6, 2018, Banning voters approved Measure O; and

(c) On November 13, 2018, the City Council adopted Ordinance 1527, which added Chapter 5.33 to the Municipal Code to establish procedures for the issuance of regulatory permits to cannabis retailers. At the same meeting, the City Council also adopted Ordinance 1531 which added Chapter 17.54 to the Zoning Code to allow for the issuance of conditional use permits to cannabis retailers; and

(d) Ordinance 1531 provides that only one cannabis retailer for every 10,000 residents may lawfully operate in the City, with any fraction of that ratio being rounded down to the nearest whole number. Based on Banning's current population, three cannabis retailers will be permitted to operate in the City. Staff was therefore tasked with creating a fair process to select the three retailers that will be permitted to operate in the City; and

(e) By the adoption of Ordinances 1527 and 1531, as described above, the City Council has adopted a two-step process for cannabis retailers to lawfully operate in the City. A cannabis retailer must first apply for a cannabis regulatory permit in compliance with the provisions of Chapter 5.33 of the Banning Municipal Code. If the cannabis retailer secures a cannabis regulatory permit, then it must apply for and obtain a cannabis conditional use permit in compliance with Chapter 17.54 of the Banning Municipal Code. Only three retailers will be issued cannabis conditional use permits; and

(f) City staff and the City Council anticipate that more than three qualified and approvable applications for cannabis retail operations may be submitted to the City once Ordinances 1527 and 1531 take effect on January 1, 2019; and

(g) By this Resolution, the City Council intends to establish a schedule and selection process for the initial granting of cannabis regulatory permits so that the

granting of the first three cannabis regulatory permits are accomplished in an orderly and fair manner consistent with the requirements of Ordinances 1527 and 1531 as amended.

Section 2. Schedule. The City Council hereby authorizes and directs the City Manager to develop a schedule for processing of applications for cannabis regulatory permits that includes the following steps and actions:

- A. A public information workshop will be held.
- B. Cannabis regulatory permit applications will be made available on the City's website and at City Hall.
- C. Appointments can be made to meet with Community Development Department staff to answer questions the applicants may have about the application process.
- D. Applications will be accepted in the Community Development Department by appointment only.
- E. City Staff, and the City Manager, in consultation with the Police Chief, will process the applications.
- F. City staff will issue a notice to each applicant that submitted a complete application informing the applicant that the applicant is/is not eligible to participate in the lottery and of the applicant's right to appeal the decision.
- G. Any applicant who has been determined to be ineligible to participate in the lottery may file an appeal by submitting an appeal form with the Community Development Department.
- H. Any appeals will be heard following the close of the application submittal time, and prior to the lottery being held.
- I. If no appeals are submitted, the public lottery will be held within a reasonable time after the deadline for filing appeals.
- J. The public lottery will be held after all appeals have been heard and acted upon by the independent hearing officer.
- K. The City Manager is authorized to add additional steps to this process or to modify the order of the steps as is needed to facilitate the process of issuing cannabis regulatory permits.

Section 3. Policies and Procedures. The City Council hereby adopts the following procedures for selecting the eligible cannabis retailers that will be issued a cannabis regulatory permit and be permitted to apply for a cannabis conditional use permit.

A. Application process. Applicants must apply for a cannabis regulatory permit by the deadline set forth in Section 2 above, unless otherwise extended by the City Manager. Applicants must pay the \$5,000 non-refundable fee at the time that the application is submitted.

B. Application Submittal.

1) To submit an application, an applicant must make an appointment to meet with a Community Development Department staff member. Appointment times can be made by calling or e-mailing the Community Development Department at the designated phone number and e-mail address that will be released to the public in compliance with the schedule adopted pursuant to Section 2. Applications will be accepted by appointment only.

2) Staff will meet with the applicant during the specially designated appointment time to go over the application to ensure that the application contains all the required information and that the application is complete.

3) Beginning on the date set by the City Manager, or as soon thereafter as determined by the City Manager, if the application is deemed complete by the Community Development Department staff, the application will be date and time stamped and accepted. If the application is incomplete, the applicant will be informed in writing of the incompleteness and will have the opportunity to make an additional appointment with Community Development staff to submit a complete application so long as the application is not being submitted on the last day that applications are accepted.

C. Processing. Any application that is incomplete will not be accepted by staff. Staff will provide all applicants that attempt to submit an incomplete application a pre-printed form that identifies the sections of the application that are incomplete. Staff shall also retain a copy of this form in the City's files along with a copy of the application that will be marked "Incomplete" or "Not Accepted." If the applicant fails to submit a timely and complete application, the applicant will be denied a cannabis regulatory permit. All other applications will be processed by staff according to the criteria set forth in Chapter 5.33.

D. Eligibility to Participate in the Lottery. The City Manager in consultation with the Police Chief will review all completed applications that are submitted by the application deadline. If the application satisfies the criteria for approval in Chapter 5.33, then the City Manager and Police Chief shall determine the application eligible to participate in the lottery.

E. Notice. Staff will notify all applicants about whether they are eligible to participate in the lottery. The notification must be sent to the address listed on the application form for service, and must be sent by first class mail.

F. Appeals. If an applicant is denied the opportunity to participate in the lottery due to the applicant's failure to submit a complete application by the required

deadline, failure to satisfy the criteria for issuance of the permit, or for any other reason, the applicant may appeal this decision. The appeal must be in writing and must be filed with the Community Development Department office by the deadline set forth in Section 2 above, or as soon thereafter as determined by the City Manager. After the deadline to appeal has passed, the decision to deny the cannabis regulatory permit shall be deemed final, and may no longer be appealed. Appeals will be heard by an independent hearing officer. The decision of the hearing officer will be final. The lottery will not be held until all timely appeals have been heard by an independent hearing officer.

G. Lottery. The lottery will be conducted as follows:

1) A single lottery ball, with a unique number, shall be assigned to each application that has been determined by the City Manager, in consultation with the Chief of Police, to be eligible to participate in the lottery as specified in Subsection D of Section 2 above.

2) The lottery balls shall be placed into the lottery machine and shall be selected at random until all balls are pulled. The applicants with the corresponding first three balls that are pulled will be issued a cannabis regulatory permit pursuant to the procedures set forth in Chapter 5.33 of the Municipal Code and will be eligible to apply for a cannabis conditional use permit. The remaining applicants will be placed on a waiting list based on the order that their ball was pulled.

3) If any of the first three applicants does not apply for or obtain a cannabis conditional use permit, staff will contact the first applicant on the waiting list to determine whether any information in the application has changed since the application was first submitted. The City Manager, in consultation with the Police Chief, will re-evaluate the application and staff will notify the applicant whether he or she will be issued a cannabis regulatory permit. If the applicant is issued a cannabis regulatory permit, the applicant will also be informed that he or she is eligible to apply for a cannabis conditional use permit. Staff will follow this same process, contacting the applicants that are next in order, until three cannabis conditional use permit applications have been issued.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Resolution or any part hereof is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portion of this Resolution or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared invalid or unconstitutional.

Section 5. Effective Date. The fees established by this Resolution shall become effective immediately.

PASSED, APPROVED and ADOPTED by the City Council of the City of Banning on this 11th day of December, 2018.




Arthur L. Welch, Mayor
City of Banning

ATTEST:



Laurie Sampson, Acting Deputy City Clerk
City of Banning

**APPROVED AS TO FORM AND
LEGAL CONTENT:**



Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Laurie Sampson, Acting Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-153, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11th day of December, 2018, by the following vote, to wit:

AYES: Council Members Andrade, Happe, Peterson, Wallace, and Mayor Welch

NOES: None

ABSTAIN: None

ABSENT: None



Laurie Sampson, Acting Deputy City Clerk
City of Banning, California