



Visalia City Council

Staff Report

Visalia City Council
707 W. Acequia
Visalia, CA 93291

File #: 23-0261

Agenda Date: 7/17/2023

Agenda #: 1.

Agenda Item Wording:

Consideration of and direction to authorize staff to initiate zoning ordinance updates to address required changes in response to state law requirements that become effective in January 2024 under Senate Bill (SB) 1186, and to hire a consultant through a sole source contract process to assist with the preparation of potential revisions to cannabis regulations in Visalia including preparing a potential tax measure for cannabis sales.

Deadline for Action: 7/17/2023

Submitting Department: Community Development

Contact Name and Phone Number:

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Department Recommendation:

It is recommended the City Council approve the following:

1. Direct staff to initiate a zoning ordinance update to implement reasonable zoning regulations in response to SB 1186, and
2. Hire a consultant, via a sole source contract, to assist staff with the preparation of a potential local sales tax measure specifically for cannabis sales for the 2024 general election and to identify potential revisions to cannabis regulations in Visalia, including but not limited to:
 - a. Draft ordinance language in the event additional state mandates prevent local agencies from prohibiting commercial cannabis businesses from legally operating in the City of Visalia or in the event the City Council may decide to authorize commercial cannabis sales at a future date.
 - b. Draft a potential process criteria for selection of cannabis businesses.
 - c. Consider additional zoning regulations based on other jurisdictions' provisions related to this matter.

Background Discussion:

Senate Bill (SB) 1186, the "Medicinal Cannabis Patients' Right of Access Act" was signed into law in late 2022. This state law, which becomes effective on January 1, 2024, will prohibit local agencies from enforcing any local regulations that prohibit the retail sale by delivery of medicinal cannabis. After this date, "delivery only" (i.e., delivery of medicinal cannabis) businesses will be permitted, subject to reasonable zoning regulations for public health and safety, within the City of Visalia. This means that warehouse-based businesses could legally operate in the City of Visalia as long as they sold medicinal cannabis via delivery only (i.e., no retail store front).

Applicable local taxes can be charged under SB 1186, but no specific excise tax for cannabis currently exists within the city. At this time, when the law becomes effective on January 1, 2024, only the normal business license fees, at the same rate as other types of delivery businesses such as sales tax, could be charged. Given upcoming changes due to SB 1186 and further potential erosion of local control regarding cannabis sales within the State of California, staff is also seeking permission from Council to authorize the hiring of a consultant to draft a potential cannabis sales tax measure, which would be subject to review and approval by Council, and if authorized by Council, would be placed on the general election ballot in 2024 for consideration by the voters. The measure would not be proposing to legalize other types of cannabis sales. The tax would only authorize the City of Visalia to collect additional tax revenue from cannabis sales that state law has authorized to be conducted in Visalia or if the City Council at a later date decides to allow cannabis sales.

In addition, if the City Council desires, the consultant could assist staff with potential cannabis regulations and processes so the City would be ready in the event additional state mandates prevent local agencies from restricting other types of cannabis businesses. These potential updates would require separate approval to be implemented but would be prepared to provide the City with an outline of an ordinance, primarily a selection process, in case future state law modifications require local agencies to broadly allow cannabis sales but allow for restrictions in the number of businesses. Business selection has been a contentious issue in other jurisdictions and City staff does not want to be unprepared if state law changes. Due to the potential time constraints of getting a sales tax measure on the 2024 general election ballot, staff's desire would be to use a sole source contract process to expedite the selection of a consultant to help in this effort.

Direction from Council is being sought as to potential ordinance changes to implement as a result of delivery only medicinal cannabis being allowed within the City of Visalia beginning January 1, 2024 under state law.

In 2016, California voters passed Proposition 64 which established a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis. Proposition 64 also reserved the right to local jurisdictions the regulation of commercial adult-use cannabis.

Currently, Visalia Municipal Code Chapter 8.64 addresses the Public Use/Consumption of Medical Marijuana. Section 8.64.050 states that (A) "a medicinal marijuana dispensary...may not be established", (C) "Commercial marijuana activities are prohibited..." and (D) "Delivery of marijuana is prohibited with the city regardless of whether the delivery is initiated within or outside of the city...". It is noted that state law and regulations adopted by the California Department of Cannabis Control have made it clear that the City cannot prevent deliveries of marijuana within Visalia when the sales were made in jurisdictions that allow sales of cannabis by delivery and the delivery vehicles are

following applicable state regulations. Sales taxes for cannabis in California are calculated based on the location of the seller, not the location of the buyer, as encouragement for the legalization of cannabis sales by local agencies.

On January 1, 2024, SB 1186 will take effect which will “prohibit a local jurisdiction from adopting or enforcing any regulation that prohibits the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers by medicinal cannabis businesses, as defined, or that has the effect of prohibiting the retail sale by delivery within the local jurisdiction...”. SB 1186 also provides that “the act may be enforced by an action for writ of mandate brought by a medicinal cannabis patient or their primary caregiver, a medicinal cannabis business, the Attorney General, or any other party authorized by law.” This law partially negates the rights reserved to local jurisdictions under Proposition 64 to decide whether to allow cannabis businesses.

However, SB 1186 allows for local agencies to pass “reasonable zoning restrictions” and development conditions requirements on such delivery businesses to meet security, public health, and safety requirements. If directed by Council, City staff will begin working on preparing zoning ordinance amendments to allow for and regulate delivery only medical marijuana businesses. Recommendations for such an amendment are listed in this staff report. The zoning ordinance updates in response to SB 1186 will be separately presented to the City Council later this year.

Applicable local taxes can be charged under SB 1186. For medical marijuana sales the statewide sales tax is not allowed but the statewide excise tax on marijuana is charged in addition to locally imposed excise taxes. City staff have begun researching the process to pass a local excise tax, and what an excise tax on marijuana sales could require since state law will be modifying the City's current complete prohibition on marijuana sales.

The City has no separate excise tax applicable to marijuana. In consideration of potential additional state mandates, City staff are requesting authorization to hire a consultant to assist staff with the preparation of an excise tax on marijuana sales that could be presented at the next general election, which will occur in 2024. Any such tax measure would need separate approval by the City Council before it could be placed on the ballot. Staff is not seeking approval for this type of measure currently but is requesting authority to move forward with preparing a tax measure for review. If approved by voters, such a tax would allow the City to collect additional revenues from the retail sale of marijuana. In addition, a consultant could assist staff with potential cannabis regulations so the City would be ready in case additional state mandates prevent local agencies from restricting other types of marijuana businesses.

General taxes must be approved by a majority vote during a regularly scheduled election. Special taxes must be approved by a two-thirds majority but can be passed during a regular or special election. Special taxes can be processed faster since they do not have to wait for a general election to be held, but by having the status as a “special tax” the revenues, if the tax is approved, can only be used for specified purposes. General tax revenues can be used by local agencies as general fund revenue but the process for approval can be longer due to the need for the proposed tax to be first approved by the governing body and then placed on the ballot during a general election.

Cities can propose a tax (general or special) by ordinance, which requires first and second reading. In addition, there must be at least 88 days between the date the ordinance is passed and the date of the election. This presents timing considerations for the November 2024 general election. For this

reason, staff is recommending working with the Purchasing Department on a sole source contract with a qualified consultant instead of conducting a full Request for Proposals (RFP) process. Once a consultant is identified, staff will come back to Council for authority to execute the sole source contract and appropriate adequate funds from the general fund. City staff are recommending a consultant be hired for assistance since a consultant would have experience in the preparation of such items and will likely have some knowledge of what has worked well and not worked well in other jurisdictions.

Zoning Ordinance Recommendations

Below is a description of potential municipal code changes that staff will be considering when preparing a zoning ordinance update to allow for delivery-only medical marijuana sales as required by state law. These recommendations are based on requirements in other municipalities for marijuana businesses but additional or less restrictions could be considered. Staff is also continuing to research the requirements of SB 1186 to determine the types of requirements that can be required by local agencies on these types of businesses.

1. Staff will include modifications to portions of current municipal code Visalia Municipal Code Chapter 8.64 that broadly prohibit all commercial cannabis activities. These ordinances would be revised to reflect state law mandating that delivery only businesses that sell medical marijuana would be a permitted use, subject to applicable zoning requirements.
2. Update the zoning code matrix in Visalia Municipal Code chapter 17.25 of types of business uses in commercial mixed use, office, and industrial zones to include a category for delivery based medical marijuana businesses. In addition, the general provisions sections of the zoning ordinance would be updated to conform with the proposed additional ordinance allowing the designated types of marijuana businesses.
3. Propose specific provisions for the approval of delivery based medical marijuana businesses. As discussed below this could be done in several ways:
 - a. Begin a separate municipal code chapter on marijuana businesses to specify what is permitted and that states all other commercial cannabis activities remain prohibited.
 - b. Determine which zoning designations would be appropriate locations for delivery based medical marijuana businesses. If these businesses are considered similar to trucking/warehousing/internet fulfillment centers, then they would be allowed in Commercial Service, Industrial Zone, and Light Industrial Zone.
 - c. City staff would recommend that this type of usage require a conditional use permit in the Commercial Service Zone but allowed as a permitted right in the Industrial Zone and Light Industrial Zone. In all zones these businesses would need to meet specific operational requirements.
 - d. The usage would not be permitted near existing or planned public or parochial elementary schools, middle schools, high schools, licensed day care facilities, libraries, parks, or other recreational facilities where minors congregate. In addition, these types of business would be required to be spaced apart geographically to avoid overly

concentrating marijuana businesses in any specific areas within the city.

- e. Security plans, including cameras would be required for the site and the Visalia Police Department would be required to review and approve the security plans prior to the business being allowed to operate. Video cameras of all entrances, product storage area, building exterior, and parking area would be required as part of the security plan.
- f. A site plan of the proposed business would be required.
- g. Fencing, security gates, and block walls may be required as part of the security plan for the site.
- h. The business would be required to be closed to the public. Sales would only be permitted by delivery.
- i. Adequate parking for all employees and delivery vehicles must be provided onsite.
- j. Delivery vehicles must be inspected by City and obtain an operating permit prior to use and must meet all state requirements for cannabis delivery vehicles.
- k. Cultivation would not be permitted to occur onsite.
- l. Background inspections of all owners and all drivers would be required for the business to operate.
- m. Signage would be restricted to avoid attention to the business and to discourage the public from entering the premises.
- n. The business would be required to prevent the smell of marijuana from the business from being detected on adjacent private properties and the public right of way. This would require an odor control plan be prepared and submitted to the City for approval.

Fiscal Impact:

The proposed consultant would be hired through a sole source contract conducted by City staff under applicable City of Visalia purchasing procedures and paid for out of the City General Fund. Staff will come back to Council for formal approval to execute sole source contract and appropriate funds from general fund.

Prior Council Action: N/A

Other: N/A

Alternatives:

The City Council may elect to direct staff to take no action, which would allow businesses under SB 1186 to operate as "by right" uses similar to other delivery only businesses with no other restrictions. Such uses could include warehouse-based locations that conduct all sales by delivery only.

Recommended Motion (and Alternative Motions if expected):

I move to authorize staff to:

1. Initiate a Zoning Ordinance update to implement reasonable zoning regulations in response to SB 1186, and
2. Hire a consultant through sole source contract process to assist staff with the preparation of a potential local sales tax measure specifically for cannabis sales for the 2024 general election and to identify potential revisions to cannabis regulations in Visalia, including potential process criteria for selection of cannabis businesses, or
3. **(Alternatively)** Hire a consultant through sole source contract process to assist staff with the preparation of potential local sales tax measure specifically for cannabis sales for the 2024 general election only.

Environmental Assessment Status:

The requested action is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) since the activity in question is not a "project" as defined in CEQA Guidelines Section 15378 since it does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Furthermore, even if the resolution were to be determined to be a project, the resolution is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) since there is no reasonable possibility that the resolution or its implementation would have a significant effect on the environment.

CEQA Review:

The requested action is not a "project" under CEQA

Attachments:

1. PowerPoint Presentation
2. SB 1186

Senate Bill No. 1186

CHAPTER 395

An act to amend Section 26200 of, and to add Chapter 26 (commencing with Section 26320) to Division 10 of, the Business and Professions Code, relating to cannabis.

[Approved by Governor September 18, 2022. Filed with
Secretary of State September 18, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1186, Wiener. Medicinal Cannabis Patients' Right of Access Act.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by Proposition 215 at the November 6, 1996, statewide general election, declares that its purpose is, among other things, to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes, as specified, and exempts from state criminal liability certain patients and their primary caregivers who possess or cultivate marijuana for the personal medical purposes of the patient. Existing law, known as the Medical Marijuana Program, establishes a voluntary registration program for qualified medicinal cannabis patients and their primary caregivers through a statewide identification card system maintained by the State Department of Public Health and sets forth guidelines for the possession of medicinal cannabis.

The Control, Regulate and Tax Adult-Use of Marijuana Act of 2016 (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, established a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana. AUMA reserved to a local jurisdiction specified powers regarding commercial adult-use cannabis activity, including adopting and enforcing local ordinances regulating commercial adult-use cannabis activity. Existing law, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities, including the retail sale of medicinal cannabis.

This bill would enact the Medicinal Cannabis Patients' Right of Access Act, which, on and after January 1, 2024, would prohibit a local jurisdiction from adopting or enforcing any regulation that prohibits the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers by medicinal cannabis businesses, as defined, or that has the effect of prohibiting the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers in a timely and readily

accessible manner and in types and quantities that are sufficient to meet demand from medicinal cannabis patients within the local jurisdiction, as specified. The bill, on and after January 1, 2024, would provide that the act may be enforced by an action for writ of mandate brought by a medicinal cannabis patient or their primary caregiver, a medicinal cannabis business, the Attorney General, or any other party otherwise authorized by law.

This bill would incorporate additional changes to Section 26200 of the Business and Professions Code proposed by AB 2210 to be operative only if this bill and AB 2210 are enacted and this bill is enacted last.

To the extent this bill would impose additional duties on local jurisdictions, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 26200 of the Business and Professions Code is amended to read:

26200. (a) (1) Except as set forth in the Medicinal Cannabis Patients' Right of Access Act (Chapter 26 (commencing with Section 26320)), this division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.

(2) Except as set forth in the Medicinal Cannabis Patients' Right of Access Act (Chapter 26 (commencing with Section 26320)), this division shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements.

(b) This division shall not be interpreted to require the department to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing, permitting, or other authorization requirements.

(c) A local jurisdiction shall notify the department upon revocation of any local license, permit, or authorization for a licensee to engage in commercial cannabis activity within the local jurisdiction. Within 60 days of being so informed, the department shall begin the process to determine

whether a license issued to the licensee should be suspended or revoked pursuant to Chapter 3 (commencing with Section 26030).

(d) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this division and the regulations promulgated by the department, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall assume complete responsibility for any regulatory function pursuant to this division within the city limits that would otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(e) (1) This division does not prohibit the issuance of a state temporary event license to a licensee authorizing onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding temporary events of this nature, provided that the activities, at a minimum, comply with all the following:

(A) The requirements of paragraphs (1) to (3), inclusive, of subdivision (g).

(B) All participants who are engaged in the onsite retail sale of cannabis or cannabis products at the event are licensed under this division to engage in that activity.

(C) The activities are otherwise consistent with regulations promulgated and adopted by the department governing state temporary event licenses.

(D) A state temporary event license shall only be issued in local jurisdictions that authorize such events.

(E) A licensee who submits an application for a state temporary event license shall, 60 days before the event, provide to the department a list of all licensees that will be providing onsite sales of cannabis or cannabis products at the event. If any changes occur in that list, the licensee shall provide the department with a final updated list to reflect those changes. A person shall not engage in the onsite retail sale of cannabis or cannabis products, or in any way participate in the event, who is not included in the list, including any updates, provided to the department.

(2) The department may impose a civil penalty on any person who violates this subdivision, or any regulations adopted by the department governing state temporary event licenses, in an amount up to three times the amount of the license fee for each violation, consistent with Sections 26018 and 26038.

(3) The department may require the event and all participants to cease operations without delay if in the opinion of the department or local law enforcement it is necessary to protect the immediate public health and safety of the people of the state. The department may also require the event organizer to immediately expel from the event any participant selling cannabis or cannabis products without a license from the department that

authorizes the participant to sell cannabis or cannabis products. If the unlicensed participant does not leave the event, the department may require the event and all participants to cease operations immediately.

(4) The order by the department for the event to cease operations pursuant to paragraph (3) does not entitle the event organizer or any participant in the event to a hearing or an appeal of the decision. Chapter 3 (commencing with Section 490) of Division 1.5 and Chapter 4 (commencing with Section 26040) of this division shall not apply to the order by the department for the event to cease operations pursuant to paragraph (3).

(5) The smoking of cannabis or cannabis products at temporary events authorized pursuant to this subdivision is prohibited in locations where smoking is prohibited. For purposes of this section, “smoking” has the same meaning as defined in subdivision (c) of Section 22950.5.

(f) This division, or any regulations promulgated thereunder, shall not be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

(g) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a retailer or microbusiness licensed under this division if all of the following are met:

(1) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older.

(2) Cannabis consumption is not visible from any public place or nonage-restricted area.

(3) Sale or consumption of alcohol or tobacco is not allowed on the premises.

(h) This division shall not be interpreted to supersede Section 6404.5 of the Labor Code.

SEC. 1.5. Section 26200 of the Business and Professions Code is amended to read:

26200. (a) (1) Except as set forth in the Medicinal Cannabis Patients’ Right of Access Act (Chapter 26 (commencing with Section 26320)), this division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.

(2) Except as set forth in the Medicinal Cannabis Patients’ Right of Access Act (Chapter 26 (commencing with Section 26320)), this division shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements.

(b) This division shall not be interpreted to require the department to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing, permitting, or other authorization requirements.

(c) A local jurisdiction shall notify the department upon revocation of any local license, permit, or authorization for a licensee to engage in commercial cannabis activity within the local jurisdiction. Within 60 days of being so informed, the department shall begin the process to determine whether a license issued to the licensee should be suspended or revoked pursuant to Chapter 3 (commencing with Section 26030).

(d) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this division and the regulations promulgated by the department, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall assume complete responsibility for any regulatory function pursuant to this division within the city limits that would otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(e) (1) This division does not prohibit the issuance of a state temporary event license to a licensee authorizing onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding temporary events of this nature, provided that the activities, at a minimum, comply with all the following:

(A) The requirements of paragraphs (1) to (3), inclusive, of subdivision (g).

(B) All participants who are engaged in the onsite retail sale of cannabis or cannabis products at the event are licensed under this division to engage in that activity.

(C) The activities are otherwise consistent with regulations promulgated and adopted by the department governing state temporary event licenses, except as otherwise provided in paragraphs (6), (7), and (8).

(D) A state temporary event license shall only be issued in local jurisdictions that authorize such events.

(E) A licensee who submits an application for a state temporary event license shall, 60 days before the event, provide to the department a list of all licensees that will be providing onsite sales of cannabis or cannabis products at the event. If any changes occur in that list, the licensee shall provide the department with a final updated list to reflect those changes. A person shall not engage in the onsite retail sale of cannabis or cannabis products, or in any way participate in the event, who is not included in the list, including any updates, provided to the department.

(2) The department may impose a civil penalty on any person who violates this subdivision, or any regulations adopted by the department governing

state temporary event licenses, in an amount up to three times the amount of the license fee for each violation, consistent with Sections 26018 and 26038.

(3) The department may require the event and all participants to cease operations without delay if in the opinion of the department or local law enforcement it is necessary to protect the immediate public health and safety of the people of the state. The department may also require the event organizer to immediately expel from the event any participant selling cannabis or cannabis products without a license from the department that authorizes the participant to sell cannabis or cannabis products. If the unlicensed participant does not leave the event, the department may require the event and all participants to cease operations immediately.

(4) The order by the department for the event to cease operations pursuant to paragraph (3) does not entitle the event organizer or any participant in the event to a hearing or an appeal of the decision. Chapter 3 (commencing with Section 490) of Division 1.5 and Chapter 4 (commencing with Section 26040) of this division shall not apply to the order by the department for the event to cease operations pursuant to paragraph (3).

(5) The smoking of cannabis or cannabis products at temporary events authorized pursuant to this subdivision is prohibited in locations where smoking is prohibited. For purposes of this section, “smoking” has the same meaning as defined in subdivision (c) of Section 22950.5.

(6) (A) All licensees who are issued a state temporary event license allowed pursuant to this subdivision may, upon completion or cessation of the temporary event, reconcile unsold inventory of cannabis or cannabis products and return it to the licensee’s retail premises.

(B) All unsold inventory of cannabis or cannabis products from the temporary event shall be noted in track and trace prior to transport.

(C) All unsold inventory of cannabis or cannabis products from the temporary event shall be in its original packaging in which it was placed pursuant to Chapter 12 (commencing with Section 26120).

(7) The inventory of cannabis or cannabis products authorized to be sold by a state temporary event license pursuant to this subdivision shall only be transported to and from the temporary event by a licensed distributor or licensed microbusiness.

(8) The department shall not deny an application for a state temporary event license pursuant to this subdivision solely on the basis that there is a license issued pursuant to the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000)) for the proposed premises of the event. Furthermore, the Department of Alcoholic Beverage Control shall not take any disciplinary action against a person licensed pursuant to the Alcoholic Beverage Control Act on the basis of a state temporary event license issued by the department to a licensee pursuant to this subdivision that utilizes the same premises as the person licensed pursuant to the Alcoholic Beverage Control Act.

(A) All on- and off-sale privileges of alcoholic beverages at the venue shall be suspended for the day of the event and shall not resume until 6 a.m. on the day after the event has ended.

(B) Alcohol consumption on the venue premises shall be strictly prohibited for the day of the event and shall not resume until 6 a.m. on the day after the event has ended.

(f) This division, or any regulations promulgated thereunder, shall not be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

(g) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a retailer or microbusiness licensed under this division if all of the following are met:

(1) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older.

(2) Cannabis consumption is not visible from any public place or nonage-restricted area.

(3) Sale or consumption of alcohol or tobacco is not allowed on the premises.

(h) This division shall not be interpreted to supersede Section 6404.5 of the Labor Code.

(i) This section does not alter or affect the prohibition on the sale of alcoholic beverages by a licensee, as provided in Section 26054, on or at a venue premises licensed under this division.

SEC. 2. Chapter 26 (commencing with Section 26320) is added to Division 10 of the Business and Professions Code, to read:

CHAPTER 26. MEDICINAL CANNABIS PATIENTS' RIGHT OF ACCESS ACT

26320. The Legislature finds and declares as follows:

(a) Access to medicinal cannabis is an integral aspect of access to health care, and eliminating barriers to medicinal cannabis access is essential to promoting and preserving the health of Californians for whom physicians have recommended the use of cannabis or cannabis products.

(b) It is the policy of the state and the intent of the Legislature to ensure that Californians throughout the state have timely and convenient access to safe, effective, and affordable medicinal cannabis.

26321. (a) This act shall be known, and may be cited, as the Medicinal Cannabis Patients' Right of Access Act.

(b) For purposes of this chapter:

(1) "Medicinal cannabis" means medicinal cannabis or medicinal cannabis products, as those terms are defined in paragraph (1) of subdivision (ai) of Section 26001.

(2) “Medicinal cannabis business” means a retailer authorized to engage in the retail sale by delivery of medicinal cannabis to medicinal cannabis patients pursuant to an M-license.

(3) “Medicinal cannabis patient” means a qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who possesses a physician’s recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2, or a qualified patient or primary caregiver for a qualified patient issued a valid identification card pursuant to Section 11362.71 of the Health and Safety Code.

(4) “Regulation” means a local ordinance, regulation, policy, or practice.

26322. (a) A local jurisdiction shall not adopt or enforce any regulation that prohibits the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers, or that otherwise has the effect of prohibiting the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers by licensed medicinal cannabis businesses in a timely and readily accessible manner, and in types and quantities that are sufficient to meet demand from medicinal cannabis patients within the local jurisdiction, including, but not limited to, regulation of any of the following that has the effect of prohibiting the retail sale by delivery of medicinal cannabis:

(1) The number of medicinal cannabis businesses authorized to deliver medicinal cannabis in the local jurisdiction.

(2) The operating hours of medicinal cannabis businesses.

(3) The number or frequency of sales by delivery of medicinal cannabis.

(4) The types or quantities of medicinal cannabis authorized to be sold by delivery.

(5) The establishment of physical premises from which retail sale by delivery of medicinal cannabis within the jurisdiction is conducted by a licensed nonstorefront retailer, except that this paragraph shall not be construed to require the establishment of additional physical premises in a local jurisdiction that allowed medicinal cannabis retail as of January 1, 2022, and in which at least one physical premises engaged in the retail sale of medicinal cannabis, whether storefront or delivery, is already established.

(b) Nothing in this chapter shall be construed to prohibit the adoption or enforcement of reasonable regulations on retail sale by delivery of medicinal cannabis, including, but not limited to, reasonable regulations related to:

(1) Zoning requirements that are not inconsistent with subdivision (a). If compliance with subdivision (a) would otherwise require a local jurisdiction to authorize a physical premises from which retail sale by delivery of medicinal cannabis within the jurisdiction is conducted, this paragraph shall not be construed to alter that requirement.

(2) Security or public health and safety requirements.

(3) Licensing requirements.

(4) The imposition, collection, and remittance of any applicable state or local taxes upon retail sales occurring within the local jurisdiction.

(5) Regulations consistent with requirements or restrictions imposed on cannabis businesses by this division or regulations issued under this division.

(c) Nothing in this chapter shall be construed to limit or otherwise affect the ability of a local jurisdiction to adopt or enforce any regulations on commercial cannabis operations other than retail sale by delivery of medicinal cannabis in the local jurisdiction.

(d) This section shall become operative on January 1, 2024.

26323. (a) This chapter may be enforced by an action brought pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure by any of the following parties, who shall be beneficially interested within the meaning of Section 1086 of the Code of Civil Procedure:

(1) A medicinal cannabis patient or their primary caregiver who seeks to purchase medicinal cannabis or medicinal cannabis products within the local jurisdiction.

(2) A medicinal cannabis business that seeks to offer medicinal cannabis for sale within the local jurisdiction.

(3) The Attorney General.

(4) Any other party otherwise authorized by law.

(b) This section shall not be construed to limit the availability of any other remedy otherwise available to enforce this chapter. The existence of any other remedy shall not restrict the availability of relief to enforce this chapter under Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure.

(c) This section shall become operative on January 1, 2024.

26324. Nothing in this chapter shall be construed to limit or otherwise affect the ability or right of a local jurisdiction to regulate adult-use cannabis pursuant to Section 26200.

26325. This chapter addresses a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 26200 of the Business and Professions Code proposed by both this bill and Assembly Bill 2210. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends Section 26200 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 2210, in which case Section 1 of this bill shall not become operative.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

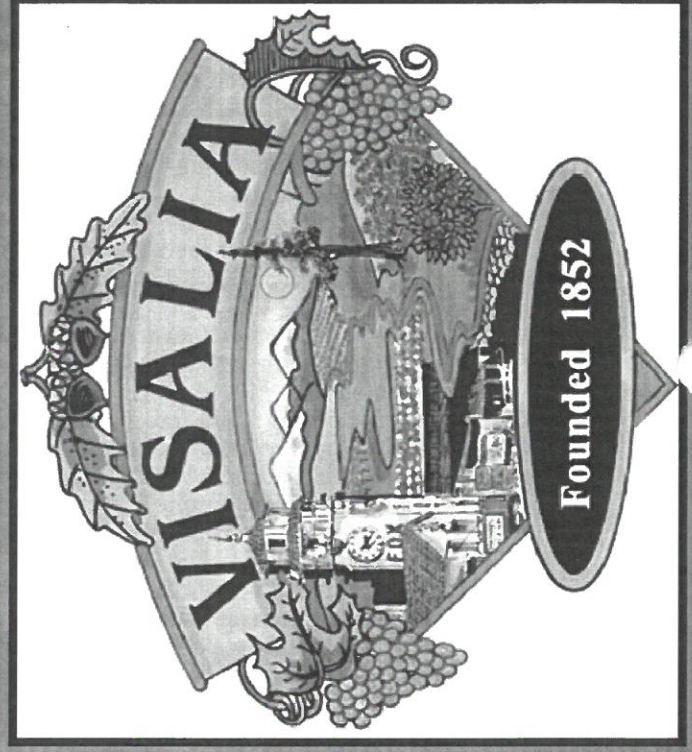
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CITY OF VISALIA

City Council Meeting

July 17, 2023

Item _



SB 1186 & CANNABIS

Consideration of and direction to authorize staff to:

1. Hire a consultant through sole source contract to assist with the preparation of a potential tax measure for cannabis sales and potential revisions to cannabis regulations in Visalia
2. Initiate zoning ordinance updates to address required changes due to state Senate Bill 1186

SB 1186

The “Medicinal Cannabis Patients’ Right of Access Act”

- Signed into CA law in late 2022
- Effective on January 1, 2024
- Prohibits local agencies from enforcing any local regulations prohibiting the retail sale by delivery of medicinal cannabis
- “Delivery only” retail businesses will be permitted, subject to reasonable zoning regulations for public health and safety, within the City of Visalia

SB 1186

Applicable local taxes can be charged under SB 1186, but no specific excise tax for cannabis currently exists within the city.

When law becomes effective the normal business license fees could be charged.

E.g., Delivery vehicle only:

- Semi annual business tax of \$85 for 1st vehicle and \$47.50 for each additional or a business tax which is calculated on gross receipts at \$.40 per thousand.

E.g., Retailer with delivery only facility in Visalia:

- Semi annual tax calculated at \$.70 per \$1,000 of gross receipts with a minimum of \$38 and maximum of \$998.50.

CANNABIS TAX MEASURE CONSULTANT

Staff is seeking authority from Council to hire consultant to:

- Draft a potential cannabis sales tax measure
- Which if authorized separately by Council, would be placed on the 2024 general election ballot
- Measure would not be proposing to legalize other types of cannabis sales but rather authorize the collection of local taxes if cannabis sales were allowed in the City

CANNABIS TAX MEASURE CONSULTANT

The consultant may also identify potential cannabis regulations to include:

- Outline of an ordinance
- A business selection process if applicable
- These potential regulations would require separate approval to be implemented

Staff would recommend sole source contract given time constraints to potentially add general tax item on the November 2024 general election

SB 1186 ORDINANCE IMPLICATIONS

Direction from Council is needed to address upcoming SB 1186 changes:

- Potential ordinance changes as a result of delivery only medicinal cannabis being allowed within the City as of Jan. 1, 2024
- "Reasonable zoning restrictions" and development condition requirements
- If directed by Council, staff will prepare ordinance amendments to allow for and regulate delivery only medical marijuana businesses

SB 1186 ORDINANCE IMPLICATIONS

1. Modify VMC Chapter 8.64 that broadly prohibit all commercial cannabis activities
2. Update zoning code matrix in VMC chapter 17.25 of types of business uses by zone and the general provisions sections to conform with the proposed addition allowing designated types of marijuana businesses

SB 1186 ORDINANCE IMPLICATIONS

- a. Separate chapter for marijuana businesses
- b. Determination of appropriate zoning designations for delivery based medical marijuana businesses
- c. Unless state law expressly prohibits, staff would recommend requiring a conditional use permit in the C-S zone and permitted by right in the I and I-L zone

SB 1186 ORDINANCE IMPLICATIONS

- d. Not permitted near schools, licensed day care, libraries, parks, or other recreational facilities where minors congregate
- e. Security plans, including video cameras would be required
- f. A site plan of the proposed business would be required
- g. Fencing, security gates, and block walls may be required as part of the security plan
- h. Closed to the public (delivery only)

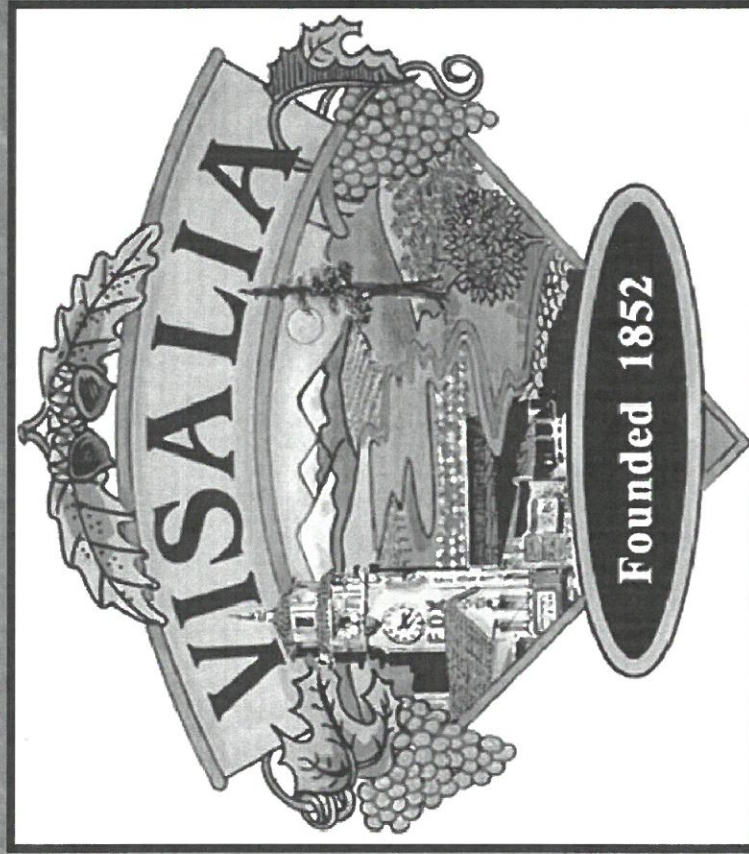
SB 1186 ORDINANCE IMPLICATIONS

- i. Adequate parking for all employees and delivery vehicles onsite
- j. Delivery vehicles must be inspected by City and obtain an operating permit prior to use
- k. Cultivation would not be permitted onsite.
- l. Background inspections of all owners and drivers required
- m. Signage would be restricted
- n. Odor control plan

STAFF RECOMMENDATION

1. Authorize staff to hire a consultant through sole source contract to prepare a potential local sales tax measure specifically for cannabis sales for the 2024 general election and to identify potential revisions to cannabis regulations in Visalia, including potential process criteria for selection of cannabis businesses, and;
2. Initiate a Zoning Ordinance update to implement reasonable zoning regulations in response to SB 1186.

QUESTIONS?

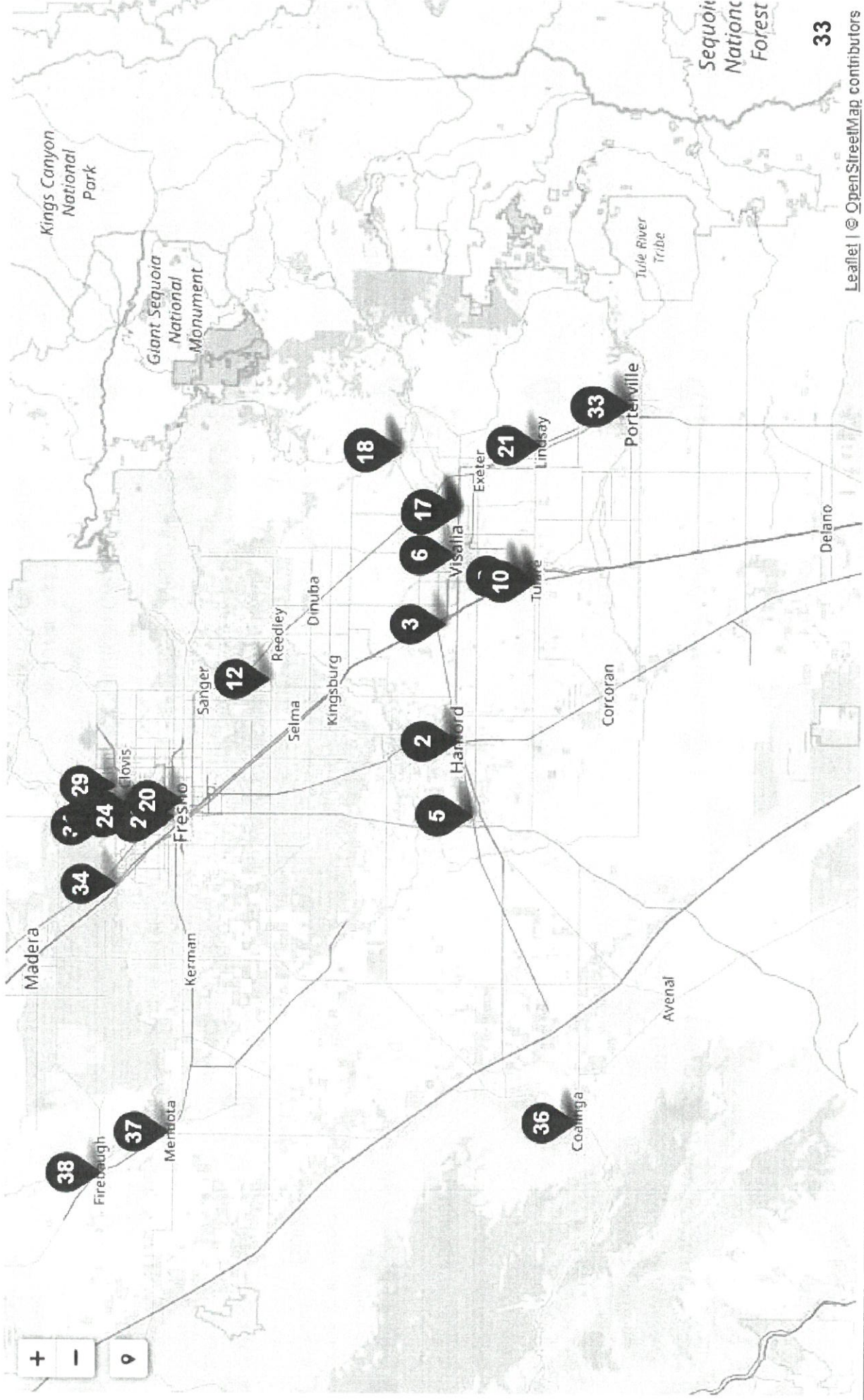


Retailers Near Me

Source: CA Dept. of Cannabis Control - <https://search.cannabis.ca.gov/retailers>

Search for a Location

Visalia, California



21	VALLEY PURE 133 Honolulu St W Commercial - Retailer 28.7 miles	Lindsay	26	Higher Level of Care 4795 Blackstone Ave N Commercial - Retailer 33.1 miles	Fresno	31	The Artist Tree 7835 Palm Ave N, #103 Commercial - Retailer 36.4 miles	Fresno	36	Have a Heart CC 286 5th St N Commercial - Retailer 46.8 miles	Coalinga
22	Haven 1704 Belmont Ave E Commercial - Retailer 29.6 miles	Fresno	27	Cookies Fresno 5048 Blackstone Ave N Commercial - Retailer 33.4 miles	Fresno	32	HAVEN #7, LLC 1 Morton Ave W Commercial - Retailer 36.6 miles	Porterville	37	Element 7 Mendota LLC 796 Oller St Commercial - Retailer 52.7 miles	
23	Dr. Greenthumb's Fresno 1264 Wishon Ave N Commercial - Retailer 30.4 miles	Fresno	28	Culture Cannabis Club 314 Bullard Ave E Commercial - Retailer 34.2 miles	Fresno	33	Culture Cannabis Club 230 Main St N, #230-232 Commercial - Retailer 36.9 miles	Porterville	38	Element 7 Firebaugh LLC 1210 12th St Commercial - Retailer 60.1 miles	
24	Embarc Fresno 4592 N Blackstone Ave Commercial - Retailer 32.9 miles	Fresno	29	TBD 6929 Willow Ave N Commercial - Retailer 34.2 miles	Fresno	34	Traditional 6926 Weber Ave N Commercial - Retailer 38.2 miles	Fresno			
25	Infinity Assets Fresno LLC 618 E Shaw Ave Commercial - Retailer 33.1 miles	Fresno	30	Banyan Tree 213 E Sierra Ave Commercial - Retailer 34.6 miles	Fresno	35	Coalinga Retail Partners LLC 144 Durian Ave E Commercial - Retailer 46.8 miles				