



STAFF REPORT
7/28/2021

TO: Honorable Mayor and City Council Members

FROM: Gabriel Martin, City Manager
Best Best & Krieger LLP, City Attorney

SUBJECT: Ordinance No. 1185 Regarding Labor Peace Agreement Requirements for Cannabis Businesses

RECOMMENDATION (BY COUNCIL MEMBERS DELGADO AND BEAMAN JACINTO)

Introduce by title and waive first reading of an ordinance entitled “An Ordinance of the City Council of the City of Coachella, California Adding Coachella Municipal Code Sections 5.68.040 and 5.69.030 to Require Cannabis Businesses with Five or More Employees to Enter into Labor Peace Agreements as a Condition of Cannabis Business Regulatory Permit Issuance or Renewal.

BACKGROUND

A Labor Peace Agreement, as defined by California cannabis law, is defined as an agreement between a cannabis licensee and any bona fide labor organization that, at a minimum, prohibits labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant’s business. (Bus. & Prof. Code, § 26001(x).) This agreement must include a provision that the cannabis business has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the business’ employees. The agreement must also provide a bona fide labor organization access at reasonable times to areas in which the business’ employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. Finally, under state law, the agreement need not mandate any particular method of election or certification of the bona fide labor organization.

DISCUSSION

California’s Assembly Bill 1291, which went into effect on January 1, 2020, mandates that all cannabis license applicants employing more than 20 employees must enter into a “labor peace agreement,” as defined by Business and Professions Code Section 26001(x), that prohibits a union from engaging in strikes, work stoppages and other economic interferences. Employers without a qualifying labor peace agreement do not qualify for a state cannabis license.

The four key elements of a Labor Peace Agreement (Bus. & Prof. Code, § 26001(x)) are as follows:

- prohibits labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the cannabis business' operations;
- the cannabis business agrees not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the business' employees;
- a bona fide labor organization must have access at reasonable times to areas in which the business' employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment; and
- the Labor Peace Agreement need not mandate any particular method of election or certification of the bona fide labor organization.

Some cities have adopted ordinances that reduce the minimum number of employees of cannabis businesses from twenty (20) employees to a lower number. For instance, Cathedral City adopted an ordinance that requires cannabis operators with ten (10) or more employees to enter into a Labor Peace Agreement. Likewise, Pomona and Palm Springs have adopted ordinances that requires cannabis permittees with five (5) or more employees to enter into, and abide by, a labor peace agreement. The City of Corona requires cannabis businesses to enter into Labor Peace Agreements, regardless of the number of employees.

In addition to the number of employees, different cities apply the labor peace agreement requirement to different categories of employees. For instance, Cathedral City's ordinance only applies when ten (10) "full-time equivalent non-supervisory employees" are employed. Pomona's ordinance applies when five (5) or more employees, regardless of category, are employed. Corona's ordinance similarly does not require the employees to be of any particular category.

The proposed Ordinance would amend Coachella Municipal Code Sections 5.68.040 and 5.69.030 to add a requirement for all cannabis business applicants/permittees seeking renewal with 5 or more employees to provide proof, satisfactory to the City Manager, that the applicant or permittee has entered into and will abide by the terms of a labor peace agreement. For applicants/permittees who have not yet entered into a labor peace agreement, the applicant/permittee would be required to provide a notarized statement indicating the applicant/permittee will enter into and abide by the terms of a labor peace agreement as soon as reasonably practicable after issuance or renewal of the regulatory permit, but in no event later than one hundred eighty (180) days following the issuance or renewal. Once the applicant has entered into the labor peace agreement, the applicant must provide the City Manager with a copy of the page of the labor peace agreement that contains the signatures of the union representative and the applicant.

Labor Peace Agreements have withstood legal challenges when the public agency imposing them is doing so to protect a proprietary, as opposed to a regulatory interest. At the state level, the State of California is asserting a proprietary interest in the significant sums of tax revenue that are expected to be received from the cannabis industry. Again, as the application of Labor Peace

Agreements moves away from the City's proprietary interests and towards its regulatory interests, the legal issues become less clear.

Therefore, the City Council is being asked to consider conducting a first reading/introduction of the proposed ordinance, requiring Labor Peace Agreements by cannabis businesses with five (5) or more employees. Should the City Council conduct this first reading/introduction, the ordinance would need to come back for a second reading. After the second reading, the ordinance would become effective in 30 days.

FISCAL IMPACT

It is expected that expanding the requirement of Labor Peace Agreements will have a positive fiscal impact to the City, in that such agreements prohibit labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the cannabis businesses. Those activities have a negative impact on the cannabis industry within the City. As such, by reducing those negative impacts on cannabis business' activities, the City would be expected to realize additional tax revenue from those cannabis businesses.

ATTACHMENT

Ordinance 1185