

## REPORT TO THE CITY COUNCIL

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**DATE:** August 5, 2014

**TITLE:** Proposed General Tax Measures Regarding  
Sale/Distribution and Cultivation of Marijuana for Medical  
and Casual and Recreational Uses

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### RECOMMENDATION

- 1) Adopt the resolution placing on the November 4, 2014 ballot a general tax measure proposing a \_\_\_\_\_ percent tax on the proceeds of the sale/distribution of medical marijuana;
- 2) Adopt the resolution placing on the November 4, 2014 ballot a general tax measure proposing a \$\_\_\_\_\_ per square foot tax on the space dedicated to the cultivation of medical marijuana;
- 3) Adopt the resolution placing on the November 4, 2014 ballot a general tax measure proposing a \_\_\_\_\_ percent tax on the proceeds of the sale/distribution of marijuana for casual and recreational use, should such use be legalized or decriminalized in California; and/or
- 4) Adopt the resolution placing on the November 4, 2014 ballot a general tax measure proposing a \$\_\_\_\_\_ per square foot tax on the space dedicated to the cultivation of marijuana for casual and recreational use, should such use be legalized or decriminalized in California.

### BACKGROUND

The Desert Hot Springs Municipal Code currently prohibits the operation of medical cannabis collective/cooperative dispensaries and related cultivation activities. On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of cannabis by seriously ill individuals upon a physician's (written or oral) recommendation. However, the City Council adopted a "contingency" ordinance that would permit dispensaries in the event any court of competent jurisdiction rendered an opinion that prohibited cities from banning dispensaries and the related cultivation activities.

Although the California Supreme Court has now held that cities are authorized to adopt outright bans of dispensaries, the Court also recognized that cities are permitted to allow dispensaries and related cultivation subject to local regulations.

The City Council directed staff to present to the Planning Commission the issue of where medical marijuana dispensaries and cultivation sites should be located. The Planning Commission has reviewed the matter and is expected to present a recommendation to the City Council in the near future.

### Tax Measures

Although medical marijuana dispensaries and cultivation are not currently permitted in the City, it appears that there is a general consensus of the City Council to permit them, subject to input from the Planning Commission on certain land use and zoning matters and further consideration by the City Council of other matters pertaining to the operation and management of medical marijuana dispensaries and cultivation activities. In the meantime, however, staff was directed

to present to the City Council options regarding possible revenue the City could receive in the form of revenue from fees and taxes related to the sale/distribution and/or cultivation of medical marijuana and/or marijuana used for casual or recreational purposes, if such uses are legalized or decriminalized in California.

At a prior City Council meeting, staff presented the following survey of marijuana-related taxes that have been approved by the voters of various jurisdictions in California:

CITY	SALES TAX	CUTIVATION/OTHER TAX	Yes	No
Long Beach	6%-10%	\$15-\$50/sq ft.	74.00%	26.00%
Berkley	2.5%	\$25/sq ft. for 1 <sup>st</sup> 3000 sq ft., then \$10/sq ft.	82.97%	17.03%
Albany		\$25/sq ft.	84.34%	15.66%
Oakland	5.0%		70.49%	29.51%
Richmond	5.0%		78.38%	21.62%
Palm Springs	15%		66.28%	33.72%
Stockton	2.5%		66.60%	33.40%
Vallejo	10%		76.51%	23.49%
La Puente	10%	Or \$100/sq ft.	68.32%	31.68%
Rancho Cordova	12%-15%	\$15,000 if over 5x5 Growing Space	68.22%	31.78%
Los Angeles	\$50/\$1000 Sales		59.34%	40.66%
Sacramento	2%-4%		71.74%	28.26%
San Jose	10%		78.33%	21.67%

The above taxes were presented (in most cases) as general taxes which required only a simple majority (50% plus 1) approval by the voters. They are considered to be general taxes since the proceeds are to be deposited in the general fund to fund general municipal services. However, as you can see, they all easily passed in all the above jurisdictions.

Moreover, staff also informed the City Council that some cities have adopted “contingency” taxes on the sale of marijuana for casual and recreational use, in the event casual or recreational use marijuana is approved in the State, like it has in the states of Colorado and Washington.

### ***Proposed Tax Measures***

In light of the foregoing, staff recommends that the City Council consider four possible general tax measures for the November 4, 2014 ballot.

**IT IS IMPORTANT TO NOTE THAT** the election to approve a general tax must be conducted in the context of a “regularly scheduled general election” for city council members, **except in cases of emergency declared by unanimous vote of the City Council.** In light of the foregoing, if the City Council wants to place any general tax measure on the November 4, 2014 ballot, it is recommended that the City Council again declare a fiscal emergency based on the City’s current financial circumstances and vote to place any such tax measure(s) on the ballot no later than August 7, 2014, which is the last date to place any tax measure on the November 4, 2014 ballot.

#### ***1. Tax on Sale/Distribution of Medical Marijuana***

This measure, if approved by a simple majority of the voters, will require every medical marijuana collective, cooperative, dispensary, operator, establishment, provider or other type of

entity legally dispensing medical marijuana consistent with the provisions of the Medical Marijuana Program Act (California Health & Safety Code § 11362.5 *et seq.*) within the jurisdictional boundaries of the City of Desert Hot Springs to pay a tax at a rate of \_\_\_\_\_ percent (\_\_\_\_%) of its proceeds. The tax will be due and payable to the City on a monthly basis, with the tax proceeds used by the City to fund general municipal services.

This tax will not be specifically charged or assessed to any qualified patient or primary caregiver. It will solely be the responsibility of the medical marijuana collective, cooperative, dispensary, operator, establishment, provider or other type of entity, that is authorized to legally dispense medical marijuana consistent with the provisions of the Medical Marijuana Program Act (California Health & Safety Code § 11362.5 *et seq.*) within the jurisdictional boundaries of the City of Desert Hot Spring, to pay and remit the tax to the City.

“Legally dispensing” will mean any marijuana collective, cooperative, dispensary, operator, establishment, provider or other type of entity authorized by City ordinance to sell, distribute, exchange, deliver, provide or dispense medical marijuana within the jurisdictional boundaries of the City of Desert Hot Springs.

“Proceeds” will mean gross receipts of any kind, including without limitation, membership dues; the value of in-kind contributions, exchanges, bartered goods or services; the value of volunteer work; reimbursements provided by members regardless of form; cash payments; and anything else of value obtained by any medical marijuana collective, cooperative, dispensary, operator, establishment, provider or other type of entity for legally dispensing medical marijuana consistent with the provisions of the Medical Marijuana Program Act (California Health & Safety Code § 11362.5 *et seq.*) within the jurisdictional boundaries of the City of Desert Hot Springs.

The City Council will be permitted to repeal the tax, or amend it in a manner which does not result in an increase in the amount of the tax or broaden the scope of the tax imposed, without further voter approval. If the City Council repeals any provision of the tax ordinance approved by the voters, it may subsequently reenact it without voter approval, as long as the reenacted provision does not result in an increase in the amount of the tax or broaden the scope of the tax.

The City Manager, or designee, and/or the City Council by ordinance, will be allowed to promulgate regulations to implement and administer the tax ordinance approved by the voters.

Any entity that fails to pay the tax within thirty (30) days after the due date will be required to pay, in addition to the tax, a penalty for nonpayment in a sum equal to twenty-five percent (25%) of the total amount due. Additional penalties will be assessed in the following manner: ten percent (10%) shall be added on the first day of each calendar month following the month of the imposition of the twenty five percent (25%) penalty if the tax remains unpaid -- up to a maximum of one hundred percent (100%) of the tax payable on the due date. Receipt of the tax payment by the City will govern the determination of whether the tax is delinquent. Postmarks will not be accepted as adequate proof of a timely payment. Any violation of the voter-approved tax ordinance will also constitute a public nuisance and infraction pursuant to the provisions of Chapters 4.16 and 4.28 of the Municipal Code.

Whenever it is necessary to examine any books or records, including tax returns, of any entity subject to the provisions of the voter-approved ordinance, to ascertain the amount of any tax due pursuant to the ordinance, the City will have the power and authority to examine such necessary books and records at any reasonable time including, but not limited to, during normal business hours. Records will have to be maintained for at least seven (7) years.

Payment of the tax will not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in the proposed ordinance is intended to imply or authorize that any activity connected with the cultivation, possession or

provision of marijuana is legal unless otherwise authorized and allowed by the State of California for medical purposes and permitted by the City.

Finally, the tax will become operative commencing upon the effective date of a City Council-approved ordinance permitting marijuana collectives, cooperatives, dispensaries, operators, establishments, providers or other type of entities to sell, distribute, exchange, deliver, provide or dispense medical marijuana within the jurisdictional boundaries of the City of Desert Hot Springs.

## **2. Tax on Space Dedicated to Cultivation of Medical Marijuana**

If this proposed tax measure passes, every medical marijuana collective, cooperative, dispensary, operator, establishment, provider or other type of entity legally cultivating medical marijuana consistent with the provisions of the Medical Marijuana Program Act (California Health & Safety Code § 11362.5 *et seq.*) within the jurisdictional boundaries of the City of Desert Hot Springs will be required to pay an annual tax of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per square foot of space dedicated to the cultivation of medical marijuana.

This tax will also not be specifically charged or assessed to any qualified patient or primary caregiver. It will solely be the responsibility of the medical marijuana collective, cooperative, dispensary, operator, establishment, provider or other type of entity, that is authorized to legally cultivate medical marijuana consistent with the provisions of the Medical Marijuana Program Act (California Health & Safety Code § 11362.5 *et seq.*) within the jurisdictional boundaries of the City of Desert Hot Spring, to pay and remit the tax to the City.

“Legally cultivating” will mean any marijuana collective, cooperative, dispensary, operator, establishment, provider or other type of entity authorized by City ordinance to cultivate medical marijuana within the jurisdictional boundaries of the City of Desert Hot Springs.

“Space dedicated to cultivation” will mean any space or ground, floor or other surface area (whether horizontal or vertical) which is used during the marijuana germination, seedling, vegetative, pre-flowering, flowering and harvesting phases, including without limitation any space used for activities such as growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, curing or drying marijuana or any such space used for storing any products, supplies or equipment related to any such activities, no matter where such storage may take place or such storage space may be located.

The tax will be subject to an annual adjustment beginning on July 1, 2015, and July 1 of each succeeding year based on the Consumer Price Index (“CPI”) for all urban consumers in the Los Angeles-Riverside-Orange County areas as published by the United States Government Bureau of Labor Statistics; however, no adjustment will be applied to decrease the tax, unless approved by the City Council.

The tax will be remitted to the City biennially, on or before December 31 and June 30 every year.

The City Council will be permitted to repeal the voter-approved tax ordinance, or amend it in a manner which does not result in an increase in the amount of the tax or broaden the scope of the tax, without further voter approval. If the City Council repeals any provision of the voter-approved ordinance, it may subsequently reenact it without voter approval, as long as the reenacted provision does not result in an increase in the amount of the tax or broaden the scope of the tax.

The City Manager, or designee, and/or the City Council by ordinance, may promulgate regulations to implement and administer the provisions of the voter-approved tax ordinance.

Any entity that fails to pay the tax required by the voter-approved ordinance within thirty (30) days after the due date will be required to pay in addition to the taxes a penalty for nonpayment in a sum equal to twenty-five percent (25%) of the total amount due. Additional penalties will be assessed in the following manner: ten percent (10%) will be added on the first day of each calendar month following the month of the imposition of the twenty five percent (25%) penalty if the tax remains unpaid -- up to a maximum of one hundred percent (100%) of the tax payable on the due date. Receipt of the tax payment in the office will govern the determination of whether the tax is delinquent. Postmarks will not be accepted as adequate proof of a timely payment.

Any violation of the voter-approved ordinance will constitute a public nuisance and infraction pursuant to the provisions of Chapters 4.16 and 4.28 of the Municipal Code.

Whenever it is necessary to examine any books or records, including tax returns, of any entity subject to the provisions of the voter-approved ordinance, to ascertain the amount of any taxes due, the City will have the power and authority to examine such necessary books and records at any reasonable time including, but not limited to, during normal business hours. Records will have to be kept for at least seven (7) years.

No payment of any tax required under the provisions of the voter-approved ordinance may be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in the ordinance is intended to imply or authorize that any activity connected with the cultivation, possession or provision of marijuana is legal unless otherwise authorized and allowed by the State of California for medical purposes and permitted by the City.

If approved by the voters, this tax will become operative commencing upon the effective date of a City Council approved ordinance permitting marijuana collectives, cooperatives, dispensaries, operators, establishments, providers or other type of entities to sell, distribute, exchange, deliver, provide or dispense medical marijuana within the jurisdictional boundaries of the City of Desert Hot Springs.

### **3. *Tax on Sale/Distribution of Marijuana for Casual or Recreational Use***

If this tax is approved by the voters, every person or entity engaged in the sale or distribution of marijuana within the City for casual or recreational use, if such use is legalized or decriminalized in California, will be required to pay a tax at a rate of \_\_\_\_\_ percent (\_\_\_\_%) of the proceeds received as consideration, which shall be due and payable to the City on a monthly basis with the revenue being used by the City to fund general municipal services.

“Proceeds” will mean gross receipts of any kind, including without limitation, membership dues; the value of in-kind contributions, exchanges, bartered goods or services; the value of volunteer work; reimbursements provided by members regardless of form; cash payments; and anything else of value obtained by any person or entity for the sale or distribution of marijuana for casual or recreational use.

This tax will not be specifically charged or assessed to any consumer. It will solely be the responsibility of the person or entity legally engaged in the sale or distribution of marijuana within the City for casual or recreational use, consistent with any applicable state laws.

The City Council will be permitted to repeal the voter-approved ordinance, or amend it in a manner which does not result in an increase in the amount of the tax or broaden the scope of

the tax, without further voter approval. If the City Council repeals any provision of the ordinance, it may subsequently reenact it without voter approval, as long as the reenacted provision does not result in an increase in the amount of the tax or broaden the scope of the tax.

The City Manager, or designee, and/or the City Council by ordinance, may promulgate regulations to implement and administer the provisions of the voter-approved tax ordinance.

Any entity that fails to pay the tax within thirty (30) days after the due date will be required to pay, in addition to the tax, a penalty for nonpayment in a sum equal to twenty-five percent (25%) of the total amount due. Additional penalties will be assessed in the following manner: ten percent (10%) shall be added on the first day of each calendar month following the month of the imposition of the twenty five percent (25%) penalty if the tax remains unpaid -- up to a maximum of one hundred percent (100%) of the tax payable on the due date. Receipt of the tax payment by the City will govern the determination of whether the tax is delinquent. Postmarks will not be accepted as adequate proof of a timely payment.

Any violation of the voter-approved ordinance will constitute a public nuisance and infraction pursuant to the provisions of Chapters 4.16 and 4.28 of the Municipal Code.

Whenever it is necessary to examine any books or records, including tax returns, of any entity subject to the tax, to ascertain the amount of any tax due, the City will have the power and authority to examine such necessary books and records at any reasonable time including, but not limited to, during normal business hours. Records will have to be maintained for at least seven (7) years.

No payment of any tax required under the voter-approved ordinance may be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in the ordinance is intended to imply or authorize that any activity connected with the cultivation, possession or provision of marijuana is legal unless otherwise authorized and allowed by the State of California for casual or recreational purposes and permitted by the City.

This tax will become operative commencing upon the effective date of a City Council approved ordinance permitting a person or entity to sell, distribute, exchange, deliver, provide or dispense marijuana for casual or recreational purposes within the jurisdictional boundaries of the City of Desert Hot Springs.

#### **4. *Tax on Space Dedicated to Cultivation of Marijuana for Casual or Recreational Use***

If this tax is approved by the voters, every person or entity engaged in the business of legally cultivating marijuana for casual or recreational use, consistent with state law, within the jurisdictional boundaries of the City of Desert Hot Springs will be required to pay an annual tax of \_\_\_\_\_ dollars per square foot of space dedicated to the cultivation of marijuana.

This tax will not be specifically charged or assessed to any consumer. It will solely be the responsibility of the person or entity legally engaged in the cultivation of marijuana for casual or recreational use, consistent with any applicable state laws, within the jurisdictional boundaries of the City of Desert Hot Spring.

“Space dedicated to cultivation” will mean any space or ground, floor or other surface area (whether horizontal or vertical) which is used during the marijuana germination, seedling, vegetative, pre-flowering, flowering and harvesting phases, including without limitation any space used for activities such as growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, curing or drying marijuana or any such space used for storing any products, supplies or equipment related to

any such activities, no matter where such storage may take place or such storage space may be located.

The tax will be subject to an annual adjustment beginning on July 1, 2015, and July 1 of each succeeding year based on the Consumer Price Index ("CPI") for all urban consumers in the Los Angeles-Riverside-Orange County areas as published by the United States Government Bureau of Labor Statistics; however, no adjustment shall decrease any tax imposed by this chapter.

The tax will be remitted to the City biennially, on or before December 31 and June 30 every year.

The City Council may repeal the voter-approved ordinance, or amend it in a manner which does not result in an increase in the amount of the tax or broaden the scope of the tax, without further voter approval. If the City Council repeals any provision of the ordinance, it may subsequently reenact it without voter approval, as long as the reenacted provision does not result in an increase in the amount of the tax or broaden the scope of the tax.

The City Manager, or designee, and/or the City Council by ordinance, may promulgate regulations to implement and administer the provisions of the voter approved tax ordinance.

Any entity that fails to pay the tax within thirty (30) days after the due date will be required to pay in addition to the taxes a penalty for nonpayment in a sum equal to twenty-five percent (25%) of the total amount due. Additional penalties will be assessed in the following manner: ten percent (10%) shall be added on the first day of each calendar month following the month of the imposition of the twenty five percent (25%) penalty if the tax remains unpaid -- up to a maximum of one hundred percent (100%) of the tax payable on the due date. Receipt of the tax payment in the office will govern the determination of whether the tax is delinquent. Postmarks will not be accepted as adequate proof of a timely payment.

Any violation of the voter approved ordinance will constitute a public nuisance and infraction pursuant to the provisions of Chapters 4.16 and 4.28 of the Municipal Code.

Whenever it is necessary to examine any books or records, including tax returns, of any entity subject to the tax, to ascertain the amount of any tax due, the City will have the power and authority to examine such necessary books and records at any reasonable time including, but not limited to, during normal business hours. Records will have to be maintained for at least seven (7) years.

No payment of any tax required under the voter-approved ordinance may be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in the ordinance is intended to imply or authorize that any activity connected with the cultivation, possession or provision of marijuana is legal unless otherwise authorized and allowed by the State of California for casual or recreational purposes and permitted by the City.

#### **FISCAL IMPACT**

It will cost the City \$10,000 (estimated) per measure to place on the November 4<sup>th</sup>, 2014 ballot. The most recent informational campaign for a ballot measure cost the City \$14,500.

#### **EXHIBITS:**

- 1) Medical Marijuana Sale/Provision Tax Measure Resolution
- 2) Medical Marijuana Sale/Provision Tax Ordinance
- 3) Medical Marijuana Cultivation Tax Measure Resolution
- 4) Medical Marijuana Cultivation Tax Ordinance
- 5) Casual/Recreational Marijuana Sale/Provision Tax Measure Resolution

- 6) Casual/Recreational Marijuana Sale/Provision Tax Ordinance
- 7) Casual/Recreational Marijuana Cultivation Tax Measure Resolution
- 8) Casual/Recreational Marijuana Cultivation Tax Ordinance