

REPORT TO THE CITY COUNCIL



DATE: March 6, 2018

TITLE: Discussion Regarding Taxation of Marijuana Manufacturing

Submitted by: Jennifer Mizrahi, City Attorney

Reviewed by: Charles L. Maynard, City Manager

RECOMMENDATION

Provide direction as the City Council deems appropriate and direct Staff to come back with a Resolution or Ordinance memorializing same.

BACKGROUND:

It has come to the City's attention that various developers and business people have inquired into various local laws and issues related to Medical Marijuana Facilities. Staff would like to have City Council direction.

Persons have inquired into whether or not there is a marijuana tax on "manufacturing." The DHSMC codified voter-approved ordinances to tax marijuana activities. Attached hereto are the DHSMC Chapters, 3.33, 3.34, 3.35, and 3.37 which are the marijuana local taxation laws. Because manufacturing is often proposed along-side cultivation, the City currently taxes manufacturing at a square footage rate. Currently, Staff is seeking direction in this area.

Recreational Marijuana Manufacturing

Specifically, as it related to **recreational** marijuana, Section 3.34.005 of the DHSMC provides as follows:

*In the event the casual/recreational use of marijuana is legalized or decriminalized in California, any person or entity legally selling **or providing** marijuana for casual/recreational use within the City shall pay to the City a monthly tax of 10 percent of its proceeds from such sales or provision. (Ord. 560 11-4-14)*

The terms "or provides" could likely be held to include manufacturing, since manufacturing activities are included in the chain of marijuana production.

That said, DHSMC 3.33.060 allows the City Council to amend the amount of the tax, in a manner which does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein, without further voter approval. Further, if the City Council repeals any provision of Chapter 3.33, it may subsequently re-enact it without voter approval, so long as the re-enacted provision does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein.

Medical Marijuana Manufacturing

DHSMC Section 3.37.005 provides as follows:

*Every medical marijuana collective, cooperative, dispensary, operator, establishment, provider or other type of entity legally selling **or providing** medical marijuana within the City, consistent with the provisions of the Medical Marijuana Program Act (California Health and Safety Code Section 11362.5 et seq.) shall pay to the City a monthly tax of 10 percent of its proceeds from such sales or provision.*

The terms “or provides” could likely be held to include manufacturing since manufacturing activities are included in the chain of marijuana production. Further, DHSMC Section 3.37.040 bolsters the argument that any person within the production chain of the marijuana business would need to pay a tax, as it provides as follows:

*“Legally selling or providing” shall 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.*

That said, DHSMC 3.37.060 allows the City Council to amend the amount of the tax in a manner which does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein, without further voter approval. Further, if the City Council repeals any provision of Chapter 3.37, it may subsequently re-enact it without voter approval, as long as the re-enacted provision does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein.

Taxation Amounts Use by Other Jurisdictions

For Council’s reference, Exhibit 5 to the Staff Report is a chart that sets forth the taxation amounts for both 1) Coachella Valley Cities and 2) Riverside and San Bernardino Cities.

EXHIBITS:

- 1) Chapter 3.33 of the DHSMC
- 2) Chapter 3.34 of the DHSMC
- 3) Chapter 3.35 of the DHSMC
- 4) Chapter 3.37 of the DHSMC
- 5) Comparison of Local Cannabis Taxes