

REPORT TO THE CITY COUNCIL



DATE: May 15, 2018

TITLE: Ordinance Stating that Marijuana Manufacturing Facilities, as Defined by Desert Hot Springs Municipal Code, Are Not Subject to the Taxes as Contemplated in Chapters 3.34 and 3.37

Submitted by: At the direction of the City Council

Prepared by: Jennifer Mizrahi, City Attorney

RECOMMENDATION

- 1) Staff Report;
- 2) Entertain questions from the City Council to Staff;
- 3) Open the Public Hearing;
- 4) Take testimony of those in Favor;
- 5) Take testimony of those who Opposed;
- 6) Take testimony of those in a neutral position;
- 7) Close the Public Hearing;
- 8) City Council discussion; and
- 9) Introduce for First Reading and read by title only, "An Ordinance of the City Council of the City of Desert Hot Springs, California, amending Chapters 3.34 and 3.37 to add Sections 3.34.045 and 3.37.065 stating that Marijuana Manufacturing Facilities, as defined by Desert Hot Springs Municipal Code ("DHSMC") Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, are not subject to the taxes as contemplated in Chapters 3.34 and 3.37.

DISCUSSION

It has come to the City's attention that developers and business people have inquired into various local laws and issues related to whether or not Marijuana Manufacturing Facilities, as defined by Desert Hot Springs Municipal Code Section ("DHSMC") 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, are subject to local taxation. DHSMC Section 3.34.005 as it relates to recreational marijuana imposes taxes 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." Arguably the terms "or providing" could be held to encompass Marijuana Manufacturing Facilities, as defined by DHSMC Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, since manufacturing activities are included in the chain of marijuana production.

On March 6, 2018, the City Council agendized an action item as to whether Marijuana Manufacturing Facilities, as defined by Desert Hot Springs Municipal Code Section ("DHSMC") 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, applicable to both recreational and medical marijuana, are subject to taxation pursuant to Chapters 3.34 and 3.37. The City Council deemed by a majority vote that Marijuana Manufacturing Facilities, as defined by DHSMC Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, as applicable to both recreational and medical marijuana should not at the time be subject to taxes contemplated in Chapters 3.34 and 3.37 respectively. DHSMC Section 3.34.040 provides in part that the City Council can amend the recreational marijuana 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.

DHSMC Section 3.37.005 as it relates to medical marijuana imposes taxes 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.” Arguably the terms “or providing” could be held to encompass Marijuana Manufacturing Facilities, as defined by DHSMC Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, since manufacturing activities are included in the chain of production of marijuana. DHSMC Section 3.37.060 provides in part that the City Council can amend the medical marijuana 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. The equal dignity rule would suggest that the non-implementation of taxes as proposed by this Ordinance be adopted by ordinance.

The proposed Ordinance provides that Marijuana Manufacturing Facilities, as defined by DHSMC Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, as applicable to both recreational and medical marijuana should not at the time be subject to taxes contemplated in Chapters 3.34 and 3.37 respectively.

FISCAL IMPACT

With the change proposed for marijuana manufacturing in this ordinance the City will lose tax revenues going forward on all manufacturing of marijuana.

Example of funding loss on a 25,000 square foot building:

- Tax on the building would be \$25.00 for the first 3,000 square feet and \$10.00 for the remaining square footage of 22,000 (\$75,000 + \$220,000).
- If the entire building was used for manufacturing, the loss of revenue would be \$295,000.
- The potential loss of revenues could greatly impact the City going forward.

EXHIBIT

1) Ordinance