



**CITY OF MORRO BAY
CITY COUNCIL
Notice of Special Meeting**

*The City of Morro Bay is dedicated to the preservation and enhancement of the quality of life.
The City shall be committed to this purpose and will provide a level of municipal service and
safety consistent with and responsive to the needs of the public.*

**City Council Workshop
Wednesday, March 1, 2017
Community Center Multi-Purpose Room - 4:00 P.M.
1001 Kennedy Way, Morro Bay, CA**

ESTABLISH QUORUM AND CALL TO ORDER

PUBLIC COMMENT RE: ITEMS ON THE AGENDA


SPECIAL MEETING AGENDA ITEM:

- I. PROPOSITION 64 AND MARIJUANA LAW WORKSHOP

RECOMMENDATION: This is an educational workshop and is not intended as a vehicle for the Council to provide any definite direction with regard to any changes to marijuana policies in the City of Morro Bay.

ADJOURNMENT

DATED: February 24, 2017



Jamie L. Irons, Mayor

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE THAT REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

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AGENDA NO: I

MEETING DATE: March 1, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: February 23, 2017

FROM: Chris F. Neumeyer, Assistant City Attorney

SUBJECT: Proposition 64 and Marijuana Law Workshop

RECOMMENDATION

This is an educational workshop and is not intended as a vehicle for the Council to provide any definite direction with regard to any changes to marijuana policies in the City of Morro Bay.

Thus, staff recommends Council receive and comment on these issues, providing staff direction for next steps in what should be a robust community discussion in the 10 months ahead. At an appropriate time, Council will need to:

Consider **possible further action** on following topics concerning Proposition 64 and marijuana law, including community outreach and feedback, for development of local ordinances governing:

- 1) Personal marijuana cultivation (indoor and outdoor);
- 2) Personal marijuana use;
- 3) Commercial marijuana operations (medical and recreational) which include dispensaries, cultivation sites, testing, manufacturing and delivery; and
- 4) Marijuana taxation and fees.

Consider likely **definite further action** to address following issues which involve loss of local control if no action taken:

- 1) Regulation of indoor personal marijuana cultivation;
- 2) Before January 1, 2018 determine whether to regulate or ban commercial marijuana operations which otherwise will be eligible for state licenses; and
- 3) Before January 1, 2018 determine whether marijuana deliveries into the City, from lawful operations outside the City, will be allowed or prohibited.

FISCAL IMPACT

The fiscal impact of Proposition 64 on the City is uncertain. The state will tax the growing and selling of medical and nonmedical marijuana. The Legislative Analyst's Office estimates state revenue from a few hundred million dollars to \$1 billion. Cities are eligible for certain grants funded by the new state revenue for law enforcement, fire protection and public health and safety. The amount of the grants which will be available is uncertain, especially as a substantial amount of the revenue is already dedicated to other state programs. If a city bans the cultivation or retail sale of marijuana, then that city is not eligible for these state grants.

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Prepared By: CFN

Dept Review: _____

City Manager Review: DWB

City Attorney Review: _____

Cities may also impose local taxes on commercial marijuana operations (both medical and recreational). Any City taxes must be approved by the voters. See below for a more detailed discussion of both taxation and fees. Depending on the direction from Council there may be staff and legal costs expended to conduct public outreach, prepare the necessary amendments to the Morro Bay Municipal Code, and/or to conduct an election regarding taxation of certain activities related to marijuana.

BACKGROUND

I. Brief History of Marijuana Laws

In 1970, Congress through passage of the federal Controlled Substances Act (CSA) prohibited nationwide the cultivation, distribution or possession of marijuana.

In 1996, California voters passed the Compassionate Use Act (i.e., Proposition 215) (CUA) which decriminalized medical marijuana.

In 2003, the Medical Marijuana Program Act (MMPA) established a voluntary program for medical marijuana identification cards and provided state criminal immunity to certain medical marijuana activities.

In 2013 the U.S. Justice Department ordered that in states which have implemented “strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale and possession of marijuana,” federal prosecutors are advised to consider enforcement of CSA not a priority.

On December 9, 2014 the U.S. Congress passed the Rohrabacher-Farr amendment, which specifically prohibits federal funds from being used to prevent states from implementing laws authorizing the use, distribution, possession or cultivation of medical marijuana.

On October 19, 2015, a federal district court in *USA v. Marin All. For Med. Marijuana* (N.D. Cal., 2015 No. C 98-00086 CRB) held that under the Rohrabacher-Farr Amendment the federal Department of Justice is precluded from enforcing permanent injunction prohibiting medical marijuana dispensary from distributing marijuana to extent dispensary complied with California law.

In 2015, Sacramento passed the Medical Marijuana Regulation and Safety Act (MMRSA) to establish a statewide regulatory system for licensing and operation of commercial “for-profit” medical marijuana operations (starting by January 1, 2018).

On August 16, 2016, the federal Ninth Circuit Court of Appeals in *United States v. McIntosh* (833 F.3d 1163) held that federal Department of Justice under Rohrabacher-Farr Amendment cannot prosecute medical marijuana patients and providers for violating federal marijuana laws as long as full compliance with state laws legalizing medical marijuana.

October, 2016 Gallup Poll shows 60 percent of American adults now say that marijuana should be legal, the highest level of support in nearly a half-century of polling on the question.

On November 8, 2016, California voters by a margin of 57% adopted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA). AUMA legalized for individuals 21 years of

age or older the personal use of marijuana, personal possession of up to one ounce of marijuana (and eight grams of concentrated marijuana), and (limited) personal cultivation of up to six marijuana plants. AUMA also provides for the statewide regulation and licensing of commercial recreational marijuana operations (starting by January 1, 2018).

On November 8, 2016 Donald Trump was elected President of the United States. The new President has subsequently appointed Jeff Sessions as Attorney General, who has expressed interest in vigorous enforcement of the CSA.

As of February 23, 2017, while the CSA remains valid federal law, twenty-nine states (and D.C.) have legalized medical marijuana use and eight states (and D.C.) have legalized recreational marijuana use.

On or before January 1, 2018, AUMA provides for the issuance by the State of California of (if certain conditions are met) 19 different state licenses for commercial recreational marijuana businesses for various types of cultivation, manufacturing, testing, distribution and retail sales. AUMA also establishes a statewide marijuana regulatory system to be administered by a new Bureau of Marijuana Control. A state license will be required to operate one of these commercial recreational marijuana operations. AUMA further authorizes cities to define, regulate and/or prohibit all commercial recreational/nonmedical marijuana businesses. Similar provisions for state licensing and regulation of commercial medical marijuana operations have been provided by MMRSA.

II. January 24, 2017 City Council Discussion on Proposition 64

On January 24, 2017 a presentation was made to the City Council summarizing Proposition 64 and seeking direction from the City Council for further action. Direction was sought on whether to: 1) regulate the personal cultivation of nonmedical marijuana indoors; 2) regulate or ban the personal cultivation of nonmedical marijuana outdoors; 3) regulate nonmedical marijuana businesses; 4) update current land use regulations for nonmedical and medical marijuana operations; 5) impose local taxes on marijuana within the parameters of Proposition 218; and 6) revise existing restrictions regarding medical marijuana cultivation and store-front and mobile dispensing.

At the conclusion of the January 24, 2017 presentation on Proposition 64, the City Council directed the City Attorney's Office to provide a further educational session for the City Council addressing both the above six topics as well as general issues as they relate to development of appropriate City of Morro Bay ordinances addressing both medicinal and recreational marijuana, including prospective community outreach and involvement in the discussion.

DISCUSSION

I. PERSONAL MARIJUANA CULTIVATION

A. Law Before Passage of Proposition 64

Before the passage of Proposition 64, the personal cultivation of marijuana for recreational purposes was completely illegal throughout California, although the personal cultivation of marijuana for medical purposes was generally lawful unless a city banned the activity.

Morro Bay Municipal Code § 9.06.040(B) expressly and broadly provides that "marijuana cultivation by any person... is prohibited in all zones throughout the City" (with a limited exception for personal

medical marijuana cultivation). This prohibition applies to both medical marijuana and recreational marijuana cultivation.

B. Current Law With Passage of Proposition 64

As of November 9, 2016, California residents lawfully may cultivate up to six living marijuana plants “within a single private residence, or upon the grounds of that private residence, at one time.” (Health and Safety Code §§ 11362.2(a)(3).) A “private residence” is defined as “a house, an apartment unit, a mobile home, or similar dwelling.” (Health and Safety Code §§ 11362.2(b)(5).)

Cities may ban personal cultivation “**outdoors** upon the grounds of a private residence” through an express prohibition. (Health and Safety Code §§ 11362.2(b)(3).) However, unless outdoor personal cultivation is expressly prohibited, then individuals under State law have the right to cultivate at his/her residence up to six plants outdoors.

Cities are preempted from prohibiting individuals from cultivating up to six living marijuana plants “**inside** a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.” (Health and Safety Code § 11362(b)(2).) However, cities may “enact and enforce reasonable regulations to reasonably regulate” indoor cultivation which do not act to effectively prohibit indoor cultivation. (Health & Safety Code § 11362.2(b)(1).)

C. City Options for Regulation of Personal Marijuana Cultivation

Morro Bay Municipal Code § 9.06.040(B) presently prohibits marijuana cultivation in all zones throughout the City (with an exception for personal medical marijuana cultivation). However, Proposition 64 preempts the application of this ban on indoor personal recreational cultivation.

Thus, the status quo in Morro Bay in regards to personal recreational marijuana cultivation is that while outdoor recreational marijuana cultivation remains illegal, individuals may grow unregulated up to six recreational marijuana plants inside a private residence.

The City could prospectively allow for regulated or unregulated outdoor recreational marijuana cultivation. Regulations could include property owner approval of cultivation and/or stricter limits than six plants. If the City takes no action, then outdoor personal cultivation remains prohibited.

The City could also impose “reasonable” regulations on the indoor cultivation of recreational marijuana. Common types of regulation include odor control, security requirements, permits, fire department inspections and/or electrical use regulations. If the City takes no action, then indoor personal cultivation of up to six plants remains allowed and unregulated.

In Pismo Beach, Grover Beach and San Jose, review indicates that the indoor cultivation of up to six recreational marijuana plants remains unregulated. However, some cities have already imposed regulations on indoor marijuana cultivation.

In Paso Robles, indoor cultivation requires a permit and is only allowed in “accessory structures” separate from a primary residence such as a greenhouse. In Indian Wells (Riverside County) indoor cultivation requires registering for a \$141 per year permit, as well as authorization for officials to allow a home inspection to determine no more than six plants being grown, there is adequate ventilation, and cultivation is in a designated locked area. San Jacinto (Riverside County)

allows indoor cultivation only if a resident has no recent felony drug convictions or pending code enforcement actions. In Montebello (Los Angeles County) indoor cultivation requires a permit which is only issued to residents who cannot owe city fees and must agree not to use any more water than needed to keep six plants alive.

Whether some of these more restrictive indoor cultivation regulations will effectively act to prohibit indoor cultivation, and thus violate Proposition 64, may be the subject of future litigation.

II. PERSONAL MARIJUANA USE

A. Law Before Passage of Proposition 64

Before the passage of Proposition 64, the personal use of recreational marijuana (i.e., for a nonmedical purpose) was illegal under California law.

B. Current Law With Passage of Proposition 64

Proposition 64 largely preempts local control over (limited) personal use, possession and cultivation of recreational (i.e., nonmedical) marijuana. AUMA provides that “it shall be lawful under state and local law, and shall not be a violation of state or local law,” for persons 21 years of age or older to both use, possess, process, transport, purchase, obtain, consume and share up to 28.5 grams (1 ounce) of marijuana (and up to eight grams of concentrated marijuana), as well as to cultivate up to six marijuana plants. (Health & Safety Code § 11362.1.)

C. City Options for Regulation of Personal Marijuana Use

Proposition 64, however, does not “affect the ability of [public and private] employers to have policies prohibiting the use of marijuana by employees and prospective employees.” (Health & Safety Code § 11362.45(f).) A revised Drug-Free Workplace Policy which takes into consideration Proposition 64 is being considered for adoption at the March 14, 2017, City Council meeting.

AUMA recognizes the “ability of a... local government agency to prohibit or restrict” marijuana related activities “within a building owned, leased, or occupied by the... local government agency.” (Health & Safety Code § 11362.45(g).) The City may desire to review and/or update its policies on marijuana related activities on City properties.

Proposition 64 also provides that the new laws permitting use and possession of marijuana shall not be interpreted to permit any person to smoke marijuana or marijuana products in public places or in any place where smoking tobacco is prohibited. (Health & Safety Code § 11362.3(a) (1-2).)

Morro Bay Municipal Code § 9.24.040 provides that smoking in Morro Bay is prohibited “everywhere in the City” including in all public places; residences used as child care, health care, board and care, or community foster care facility as such terms are defined by state Health and Safety Code; places of employment, except outdoor construction sites; enclosed and unenclosed places of hotels, businesses, restaurants, bars and other public accommodations; and any means of public transit including associated waiting areas, and service areas, enclosed or not. While this list is reasonably comprehensive, the City may want to expressly expand the smoking ban to include other locations.

III. MARIJUANA COMMERCIAL OPERATIONS

A. Law Before Passage of Proposition 64

1. Recreational Marijuana

Before the passage of Proposition 64 on November 8, 2016, all recreational marijuana commercial operations and uses were illegal under California law.

2. Medical Marijuana

Since 1996 pursuant to the Compassionate Use Act (Proposition 215), and as clarified by the Medical Marijuana Program Act of 2003, non-profit medical marijuana dispensaries and cultivation have been lawful when done “collectively” or “cooperatively,” though cities can ban these operations.

In October 2015, the State legislature enacted the Medical Marijuana Regulation and Safety Act (“MMRSA”) to establish a statewide regulatory system for the licensing and operation of seventeen different types of medical marijuana commercial “for-profit” operations.

State licenses will start being issued by January 1, 2018. These include ten types of cultivation licenses (for various sizes of indoor, outdoor, mixed-light and nursery operations), two types of manufacturing licenses, a testing license, two types of dispensary license, a distribution license, and a transporter license. The licenses will be valid for one year and must be renewed annually. A state license is required to lawfully operate any of these commercial medical marijuana businesses.

Before one of the new medical marijuana state licenses will be issued, an applicant must have obtained a local license/permit for the medical marijuana commercial activity.

3. Morro Bay Municipal Code

The Morro Bay Municipal Code (“MBMC”) expressly prohibits medical marijuana dispensaries and all marijuana cultivation (with an exception for personal medical marijuana cultivation). The MBMC also prohibits the issuance of a license or permit for “marijuana processing” which includes creation of marijuana products and concentrates (e.g., edibles). (MBMC § 9.06.040(A-C).)

B. Current Law with Passage of Proposition 64

1. Recreational Marijuana

The Council is recommended to expressly decide what will be the status of each of the different types of recreational commercial marijuana businesses that will be lawfully permitted by the state starting on or about January 1, 2018. A failure to affirmatively address a license type will reasonably allow that commercial recreational marijuana operation to locate in the City. This is for a number of reasons, perhaps most importantly the statutory language in the AUMA regarding local control seems to suggest that a city must affirmatively adopt an ordinance explicitly prohibiting and/or regulating recreational marijuana operations (rather than relying on the silence of its local code to argue a use is prohibited) if a city seeks to ban or regulate these operations. (Bus. & Prof Code § 26200).

2. Medical Marijuana

As discussed above, the State of California will also begin issuing state licenses for medical marijuana commercial operations at about the same time as state licenses for recreational marijuana operations will begin to be issued. In contrast to recreational marijuana operations (with the exception of delivery operations, see below), commercial medical marijuana operations likely will remain prohibited in a city after January 1, 2018 unless expressly allowed.

However, the “normalization” of marijuana activities arguably allows someone to claim entitlement to issuance of a local license for commercial medical marijuana activities, as a similar use to existing broad categories of use, when the local code is otherwise silent on that specific commercial medical marijuana activity. It is recommended the City expressly address (if not already covered in the local code) the various types of commercial medical marijuana operations in its local code one way or the other.

3. Morro Bay Municipal Code

The MBMC continues to ban medical marijuana commercial dispensaries. However, unless the City takes action before state licenses for recreational marijuana commercial dispensaries begin being issued, then the issuance of a state license for a recreational marijuana dispensary will reasonably entitle the license holder to operate in the City.

The current ban on general marijuana cultivation (both medical and recreational) should operate to prohibit all commercial marijuana cultivation operations (both medical and recreational).

The MBMC does not expressly address delivery and testing commercial marijuana operations. The MBMC arguably prohibits manufacturing operations.

C. City Options for Regulating Commercial Marijuana Operations

Beginning on or about January 1, 2018, there are several different categories of state licenses that will be available from the State for the operation of both medical, and recreational, commercial marijuana businesses. These are summarized below, with information regarding what the Council can allow and prohibit for each license type.

It is recommended that the City Council expressly decide what will be the status of each of the different types of both medical and recreational commercial marijuana businesses that will be lawfully permitted by the state starting on or about January 1, 2018.

Regionally, Grover Beach plans to establish a “marijuana district” in a 70-acre industrial zone which will allow medical marijuana dispensaries, recreational marijuana dispensaries (when the state begins issuing licenses), nurseries, manufacturing and testing. In contrast, both Carmel and Pismo Beach have proposed a ban on all commercial recreational marijuana operations.

1. Marijuana Dispensaries

The City currently bans medical marijuana dispensaries. The Council may elect to continue this ban or to allow medical marijuana dispensaries. When the state begins issuing recreational marijuana dispensary licenses in or before January, 2018, if the City does not have a ban on recreational marijuana dispensaries then reasonably a state license will allow such operations in the City.

Should the Council choose to permit sales activities (medical and/or nonmedical), these may be limited to a specific number or an allocation based on the City's population (i.e., 1/10,000), or the Council could allow market demand to determine how many dispensaries operate. If the Council chooses to limit the number of dispensaries, this can be done through a lottery, a selection process or a "first come, first processed" system.

The Council may also limit sales activities to specific zones or land use designations and prohibit their establishment within proximity to residential areas and sensitive uses, such as parks or schools (this would be similar to adult business regulations). Proposition 64 bans the sale or dispensing of recreational marijuana within 600 feet of schools, daycare centers, or youth centers which are in existence at the time the license is issued. Cities may increase this radius. Additionally, the sale of marijuana cannot occur at an establishment that sells tobacco or alcohol products.

The Council can also provide for various types of regulations, including record keeping requirements, use of security cameras, lighting, hours of operation, employee training, insurance requirements, alarm systems, guards, odor control, and indemnification of the City.

Sales activities will not be permitted until the state licensing scheme is established, scheduled for establishment by January 1, 2018. Any proposed sales activities would be permitted by the state in addition to obtaining any permits from the City.

It should be noted that even though nonmedical (recreational) marijuana dispensaries will be permitted by the State beginning about 2018, it is anticipated there will still be a significant demand for medical marijuana dispensaries because retail sale of medical marijuana will be exempt from the state sales and use tax (unlike retail sale of nonmedical marijuana), and also certain medical patients will be able to purchase more than one ounce of marijuana for medical purposes.

AUMA also provides a license type for a "microbusiness" to allow for small scale cultivators to also engage directly in retail sales.

2. Marijuana Deliveries

The Council can ban or regulate deliveries of marijuana (both medical and recreational) into the City from outside of the City. Likewise, deliveries from a lawful dispensary in the City to a resident in the City can be banned or regulated. The City cannot prohibit the use of its public streets by delivery services simply passing through Morro Bay.

The City currently does not have an express ban on marijuana deliveries. The MMRSA provides that unless a local jurisdiction has an express ban on local deliveries of medical marijuana or on mobile dispensaries, then after the state begins issuing delivery licenses (by January 1, 2018) such a state delivery license will authorize delivery into that city from an out-of-area dispensary. (Business & Professions Code § 19340(a).)

The same applies for Proposition 64 - when the state begins issuing recreational marijuana delivery licenses by January 1, 2018, a local express prohibition on deliveries of recreational marijuana will also be required to prevent deliveries into the City of recreational marijuana from lawful operations outside of the City.

If the Council desires to expressly ban marijuana deliveries and does not want out-of-area marijuana operations delivering into Morro Bay, then before Sacramento begins issuing delivery licenses the City should adopt an express ban.

If the Council wants to allow marijuana deliveries (after the state begins issuing delivery licenses by January 1, 2018), then nothing needs to be done to local law. Additionally, local regulations can be imposed on delivery operations such as strict record keeping and licensing of delivery drivers.

Note that MMRSA also has a license category for transportation of medical marijuana between commercial operations for testing purposes. AUMA does not have this license requirement. These licensees do not directly engage in retail sales.

3. Commercial Marijuana Cultivation

The Council may restrict and/or prohibit all types of commercial cultivation operations, and/or restrict commercial cultivation operations to certain zones, limit their number, and impose regulations. The MBMC currently prohibits marijuana cultivation in all zones (with a limited exception for medical).

The Council may permit only medical marijuana cultivation, or may also allow recreational marijuana cultivation.

MMRSA provides for ten different types of commercial medical marijuana cultivation state licenses, and AUMA provides for thirteen different types of commercial recreational marijuana cultivation licenses. The differences in licenses are concerned with both size of the cultivation operation, and whether the cultivation occurs indoors, outdoors, or in mixed light.

Proposition 64 also defines and allows for the cultivation of industrial hemp products that fall below a certain content of THC and restricts their operations to agricultural areas.

4. Manufacturing of Marijuana Products

The manufacture of both medical and nonmedical marijuana products (e.g., edible marijuana such as cookies or brownies) will be licensed by the State beginning in or about January 1, 2018.

The Council may define the kinds of manufacturing that may occur within the City, or completely ban all manufacturing of marijuana products. These activities could include the manufacture of oils, pills or edible products. There are two types of state manufacturer licenses for both medical and recreational marijuana: one for use of non-volatile solvents or no solvents, and another for use of volatile solvents.

The Council may also define the zones where these types of businesses are allowed. Should these activities be permitted, they would be subject to state laws regulating their manufacture, content, labeling and packaging.

5. Marijuana Testing

Another type of commercial marijuana business activity that will be authorized statewide in or about January 1, 2018, is the testing of marijuana for contaminants and “conformance to label content of compounds” before retail sales are allowed. (Business & Professions Codes § 26101.)

The City may allow or completely prohibit both medical and nonmedical commercial marijuana testing businesses.

IV. TAXATION AND FEES

Under Proposition 64, both medical and nonmedical marijuana will be subject to a new tax on cultivation as well as a retail excise tax. A fifteen percent statewide excise tax is imposed by AUMA on purchasers of marijuana. The excise tax is collected by businesses licensed to sell marijuana and is in addition to the sales and use tax imposed by the state and local governments. A cultivation tax is imposed statewide by AUMA of \$9.25 per dry-weight ounce for marijuana flowers, and \$2.75 per dry-weight ounce for marijuana leaves. The tax is due after the marijuana is harvested, and the state may establish tax stamps or "state-issued product" bags that indicate taxes have been paid.

Nonmedical marijuana retail sales will also be subject to existing state and local sales taxes, while medical marijuana retail sales will be exempt from state sales taxes.

The City may elect to establish new local taxes on both medical and nonmedical sales, cultivation and general commercial operations. The establishment of a new tax will require voter approval of a ballot measure to impose any marijuana tax. Additionally, the County may elect (with voter approval) to establish a sales tax on marijuana and marijuana products, and this tax may extend into incorporated and unincorporated areas.

The City does not need voter approval to impose fees on commercial marijuana operations to recoup costs associating with licensing and regulating a specific commercial marijuana operation.

Some California cities are also exploring the use of development agreements with commercial marijuana operations to secure additional fees.

Two common types of local marijuana taxes are to impose a percentage tax (e.g., 5-15%) on the gross receipts of marijuana businesses, and to also impose a flat rate (e.g., \$10-25) per square foot of cultivation. Below are some examples of tax rates and revenues generated from medical marijuana in some California cities. Note that some of these numbers reasonably should be adjusted downwards if applied to Morro Bay given the City's population size and other local factors.

- 1) **Palm Springs** - tax rate 10% gross receipts (up to 15% tax approved) for 6 permitted dispensaries (tax rate of 15% for unpermitted dispensaries); population 46,000.
2013-14 FY Actual Revenue: \$492,974; 2014-15 FY Estimated Revenue: \$1,143,144
- 2) **Desert Hot Springs** - tax rate 10% gross receipts with 3 dispensaries approved in September, 2015; actual number of operating dispensaries unknown; population 28,000.
2015-2016 FY Estimated Revenue: \$200,000
- 3) **Santa Ana** - tax rate up to 10% gross receipts, starts at 5%, with minimum \$2000 annually for each MMD, and with 20 allowed dispensaries; population 335,000
2015-2016 FY Estimated Revenue: \$1,500,000
- 4) **San Jose** - tax rate 10% gross receipts on 16 permitted dispensaries; population 1,000,000
2015-2016 FY Estimated Revenue: \$4,500,000

In November, 2016 King City (Monterey County, population 14,000) projected future marijuana tax revenues of \$1 million to \$2 million annually (or almost 30% of King City's general fund), and proposed marijuana taxes in City of Gonzales (Monterey County, population 8,400) have been projected to reach \$1.6 million. Whether these projections are accurate is uncertain, and whether Morro Bay could realize the same revenues depends upon specific local circumstances including competition from neighboring cities, availability of business locations, and local demand.

City of Grover Beach voters approved marijuana taxes at their November 8, 2016 election which impose a maximum 5 percent tax on gross receipts for medical marijuana business activity, a maximum 10 percent tax on non-medical marijuana businesses, and a maximum of \$25 per square foot of canopy on the first 5,000 square feet and \$10 per square foot thereafter on marijuana cultivation.

CONCLUSION

The passage of Proposition 64 (in conjunction with the recent passage of the Medical Marijuana Regulation and Safety Act) warrants consideration by the City Council of taking action on the regulation of personal marijuana cultivation, the regulation and/or prohibition of the various types of commercial medical and recreational marijuana operations that the state will begin licensing by January 1, 2018, and review of marijuana taxation and fee issues.

The Council is advised to take definite action on issues of local control concerning the possible regulation of indoor personal marijuana cultivation, marijuana deliveries, and a determination on whether to regulate or ban commercial marijuana operations which otherwise will be eligible for state licenses.

Before taking action on any of these issues, the Council may determine the matter warrants community outreach programs such as public hearings, further workshops and/or the general solicitation of feedback and input from the Morro Bay community at large.

ATTACHMENT

None.

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