

City of Arts & Innovation

Economic Development, Placemaking and Branding/Marketing Committee

TO: ECONOMIC DEVELOPMENT, PLACEMAKING AND BRANDING/MARKETING COMMITTEE **DATE: MARCH 24, 2022**

FROM: CITY ATTORNEY'S OFFICE **WARDS: ALL**
CITY CLERK'S OFFICE
COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT
FINANCE DEPARTMENT
FIRE DEPARTMENT
POLICE DEPARTMENT

SUBJECT: AMENDMENTS TO THE RIVERSIDE MUNICIPAL CODE RELATED TO CANNABIS RETAIL USES, MICROBUSINESSES AND DISTRIBUTION, AND A FUTURE BALLOT MEASURE TO ESTABLISH A BUSINESS TAX FOR CANNABIS SALES

ISSUE:

Review and provide direction on amendments to the Riverside Municipal Code related to cannabis retail uses, microbusinesses and distribution, and a future ballot measure establishing a business tax for cannabis sales.

RECOMMENDATIONS:

That the Economic Development, Placemaking and Branding/Marketing Committee recommend that City Council:

1. Consider and provide staff with direction on the path forward for Riverside Municipal Code modifications that include:
 - a. Title 5 - Business Taxes, Licenses and Regulations amendments related to licensing of cannabis business uses;
 - b. Title 9 – Peace, Safety and Morals amendments to clean up and provide consistency in cannabis regulations and terminology; and
 - c. Title 19 – Zoning amendments related to land use regulations for cannabis related uses and microbusinesses; and
2. Consider and provide staff with direction on the path forward for a ballot measure

establishing a gross receipts business tax for cannabis sales.

BACKGROUND:

In 2016, California voters passed Proposition 64 (The Adult Use of Marijuana Act) which allowed for adults 21 or older to legally grow, possess, and use cannabis for recreational purposes and legalized the sale and distribution of cannabis statewide. Shortly thereafter, Governor Brown signed Senate Bill 94 (The Medicinal Adult-Use Cannabis Regulation and Safety Act, or MAUCRSA) into law. While the MAUCRSA created minimum requirements for licensees statewide, Proposition 64 and Senate Bill 94 gave local governments the flexibility to implement local regulatory frameworks for land-use entitlements, building permits, and business/operating licenses for cannabis related uses.

Following the passage of Proposition 64, actions related to cannabis in the City of Riverside included:

- July 25, 2017 - Prepared a moratorium on commercial marijuana activity (excluding testing laboratory facilities)
- September 12, 2017 - Adopted an interim moratorium, followed by a ten-month fifteen-day moratorium extension on October 24, 2017
- November 7, 2017 - Adopted Ordinance No. 7398 to amend Title 5 of the Riverside Municipal Code (RMC) to permit and regulate Cannabis Testing Laboratories in industrial zones, subject to permit requirements (effective December 28, 2017)
- January 9, 2018 - Continued the discussion of a regulatory framework for 45 days to follow a visit by City representatives to Denver, Colorado, to better understand the cannabis industry
- March 27, 2018 - Directed staff to immediately prepare an ordinance prohibiting (a) the retail and commercial sale of cannabis; (b) commercial agricultural cultivation of marijuana; (c) the manufacturing and sale of marijuana extractable and consumable products; (d) distribution of all marijuana and cannabis associated products; (e) the establishment of microbusinesses such as boutique lounges; and (f) outdoor cultivation of all marijuana plants, including medical marijuana
- May 31, 2018 – Amended Title 19 – Zoning - heard by Planning Commission at a public hearing (Planning Commission denied by a vote of 2 ayes, 5 noes, and 1 abstention)
- July 10, 2018 – Appealed Planning Commission decision (Councilmember Conder) - heard by City Council who voted to approve the amendments to Title 5 and Title 19 of the RMC, codifying a prohibition of commercial cannabis uses within City limits
- September 28, 2021 - The City of Riverside received a Notice of Intent to Circulate Petition for the Riverside Cannabis Taxation and Regulation Act (Attachment 1), then amended on November 5, 2021
 - November 18, 2021 - The City Attorney prepared and provided a Ballot Title and Summary to the proponents
 - If the proponents continue through the initiative process and gather enough signatures required within 180 days (May 17, 2022), City Council could choose to:
 - Call an election to place the initiative petition on the ballot; or

- Adopt the proposed initiative petition without revisions.
 - If passed by voters or accepted by the City Council, it would create a regulatory framework for all cannabis uses within the City, largely without City Council, staff, or community input. Unlike ordinances passed by City Council, regulations established through a voter-initiated ballot cannot be amended or modified by sole action of the City Council. If an alternative third party-initiated ballot measure is passed by the voters, any future amendments must go through a ballot process during a general election for approval.
- November 18, 2021 - The Economic Development, Placemaking and Branding/Marketing Committee (Committee) discussed the need to develop an ordinance with the legal and regulatory framework for the permitting, licensing, enforcement, taxation, and legal operations of commercial cannabis storefronts within the City limits and directed staff to return to the Committee with Ordinance options (Attachment 2). Since this ordinance permits taxing of the people, state and local law require this measure to be presented to the people for a vote.
- November 30, 2021 – Councilmember Fierro made a presentation to the Greater Riverside Chambers of Commerce on the Economic Development, Placemaking and Branding/Marketing Committee (Committee) discussion and a path forward.

DISCUSSION:

Following the Committee meeting, a team of City staff was assembled to address the Riverside Municipal Code amendments and the ballot measure direction. The team includes staff from the City Manager's Office, City Attorney's Office, City Clerk's Office, Community & Economic Development Department, Finance Department, Fire Department, and Police Department. The team reviewed the materials from the November 18, 2021 Committee meeting and conducted additional research to develop a way forward as it relates to legalizing cannabis retail, microbusiness, and distribution uses in the City of Riverside, and to initiate a ballot measure to determine if a business tax should be collected and what that business tax should be for the City.

Riverside Municipal Code Modifications

Cannabis regulations for the City of Riverside are located in several Titles of the Riverside Municipal Code that include:

- Title 5 - Business Taxes, Licenses and Regulations which includes license requirements for Cannabis Testing Laboratories only (Chapter 5.77);
- Title 9 – Peace, Safety and Morals which currently bans marijuana dispensaries (Chapter 9.65); and
- Title 19 – Zoning which currently prohibits cannabis-related land uses, with the exception of personal use and Cannabis Testing Laboratories as defined in Title 5.

Corresponding changes that are envisioned for each Chapter of the RMC are described below.

1) Title 5 - Business Taxes, Licenses and Regulations

- A. **Permitted Uses:** Microbusinesses, Distribution, Testing Laboratories (currently allowed), Delivery-Only Cannabis Dispensaries, and Storefront Cannabis

Dispensaries.

- B. **Prohibited Uses:** Cultivation (except when associated with a microbusiness), Nurseries and Production.
- C. **Licensing requirements:** Number of licenses (14), transfer of licenses (not allowed), defining Interested Parties, and required application permit information such as emergency and community relations contacts.
- D. **Role of City Manager:** Review applications (merit-based) based on license criteria, including reasons for permitting or denying applications including Business, Safety and Security, Neighborhood Engagement, and Labor/Employment Plans (potential Labor Peace Agreement).
- E. **Business Tax Payment:** Process and security of cash payments.
- F. **On-site Requirements:** Building layout, staff identification badges, security plan, odor control, site separation requirements and site management.
- G. **Reporting Requirements:** Criminal activity and maintaining records.
- H. **Cannabis Business Permit Application Requirements:** application form, background checks, list of Interested Parties, description of the business, floor plans, compliance with Title 19, owner consent, security and lighting plans, odor control plan, business plan, state licenses, tax compliance, insurance, annual budgets, applicant certification and indemnification.
- I. **Fees, Application Process (including Renewals) and Revocation:** Title 19 conditions, additional City Manager-imposed conditions, grounds and notice for denial, grounds and noticing for suspending/modifying/revoking cannabis business permits, and renewal timing.
- J. **Community or Operational Benefit Agreement** - As part of the application process, the City could require a Community Benefit agreement with each successful applicant. This would be a voluntarily provided rate that the business would agree to pay. The business would be required to pay this fee until an agreed sunset date if/when a ballot measure was passed. Other Benefits in the Agreement would continue past the fee sunset date.
- K. **Appeals:** Process, fees, hearing procedures, and form/contents of decisions.
- L. **Specific Use Requirements (Microbusiness, Distribution, Testing Laboratories, Delivery-Only Dispensaries, and Storefront Cannabis Dispensaries):** Permit requirements and limitations, permit fees, compliance requirements, allowed activities, display of permits, required signage, modification of activities, security plan, age restrictions, prohibitions on consumption on site, hours of operation, and delivery requirements.
- M. **Fines:** Applied to property taxes.

2) Title 9 – Peace, Safety and Morals

- A. **Clean up:** ensure language is consistent with Title 5 and Title 19.
- B. **Repeal Chapter 9.65 Mobile Marijuana Dispensaries:** End prohibition.

3) Title 19 – Zoning

- A. **Remove Prohibition:** City-wide, Northside Specific Plan area, Downtown Specific Plan area, Specific Plan Overlay Zone.

- B. **Permitted Use Table:** Permit Microbusinesses, Distribution, Testing Laboratories (currently allowed), Delivery-Only Cannabis Dispensaries, and Storefront Cannabis Dispensaries in commercial and industrial zones with a Conditional Use Permit.
- C. **Personal Use Requirements:** allowances and restrictions, including restrictions on Home Occupations.
- D. **Specific Land Use Provisions/Development Standards for Permitted Uses:** Site location standards, operational standards, signage, parking, landscaping, odor/noise attenuation, and site separation requirements.
- E. **Enforcement:** Grounds and process, property bans on illegal dispensaries (12 months).
- F. **California Environmental Quality Act (Proposition 64 – Adult Use Marijuana Act (AUMA) – exemption ended July 2021)**
 - i. **Initial Study** – Work with a consultant to prepare an Initial Study assessing impacts of cannabis-related uses (e.g., microbusiness includes retail, agriculture, and industrial use – not currently allowed in Title 19) to determine CEQA requirements.
 - ii. **Potential Impacts Evaluated:** Aesthetics, air quality, energy use and Greenhouse Gas (GHG) emissions, hazards/hazardous materials/human health, noise, public service, traffic, and utilities.
 - iii. **Findings:** No impacts or how impacts will be mitigated (**Mitigated Negative Declaration**) tiering off of the current General Plan Environmental Impact Report.

Ballot Measure

Options Related to Taxation

The City Council should not adopt a marijuana ordinance, for taxation purposes, until it is passed by the voters.

Option 1 – General Tax

Proposition 218 provides that local government taxes are either general or special taxes. General taxes may be imposed by a majority vote of the registered voters. The vote must be consolidated with a regularly scheduled general election for members of the governing body of the local government (i.e., councilmember elections). Pursuant to City Charter section 501, general municipal elections shall be held in the City on the same day as the statewide election, consistent with the primary election date set by the State. Per the Charter and the State, the city's next general municipal election year is 2024.

In *California Cannabis Coalition v. City of Upland*, the Supreme Court was asked to address the applicability of Proposition 218, which prohibits local governments from imposing a general tax unless it is submitted to the electorate and approved by a majority vote at a regularly scheduled general election. The Court held that Proposition 218's general election provisions do not apply to local tax initiatives. In that case, the California Cannabis Coalition drafted a medical marijuana initiative that proposed to:

- (1) Repeal an existing City of Upland ordinance banning medical marijuana dispensaries;
- (2) Adopt regulations permitting up to three dispensaries within the City; and
- (3) Require each dispensary to pay the City an "annual Licensing and Inspection fee" of

\$75,000.

The initiative's proponents then successfully circulated a petition requesting that the initiative be considered at a special election. In response, the City ordered an agency report that concluded the proposed \$75,000 “fee” exceeded the estimated \$15,000 cost needed to license and inspect the dispensaries.

The report concluded that the excess fee amount constituted a general tax and that, as a result, the initiative could not be voted on during a special election, but rather, under Proposition 218, had to be submitted to the voters at the next general election. The City then directed that the initiative be submitted to the voters on November 8, 2016. The Supreme Court turned to the language of Proposition 218, noting that it only applies to actions taken by a “local government.” The Court stated: “Taking account of this legal context, along with the relevant provision's text and other indicia of purpose, we conclude that the requirement in [Proposition 218] mandating that general taxes be submitted to the voters at a regularly scheduled general election - applies only to local governments and not to the electorate's initiative power without evidence that such was the intended purpose of the requirement.”

Option 2 – Unanimous Finding of an Emergency

Proposition 218 does allow a vote with a declaration of an emergency by a unanimous vote of City Council. Indicating that this particular item is an “emergency” must be supported by specific findings that establish an emergency and the vote must be unanimous by the councilmembers.

While there are no published decisions addressing what constitutes an “emergency” under Proposition 218, courts have found it sufficient in other urgency ordinances when a law recites facts that could reasonably be held to constitute an emergency.

Option 3 – Special Tax

If Council declares this a “special tax” (any tax imposed for specific purposes, including a tax imposed for a specific purpose, which is placed in a general fund), two-thirds voter approval is required. The key to a “special tax” is that the use or uses are restricted in some way. The purposes can be for broad government functions, such as police, fire, parks and recreation, and libraries. A special tax would not be required to be consolidated with a general election of the governing body.

Process

Steps to place a general tax ballot measure related to collecting a gross receipts business tax for cannabis businesses would include:

1) Statewide General Election

- A. **Election Date:** The statewide general election will be held consistent with the primary election date set by the State in 2024.
- B. **Ballot Title:** City Council determines and adopts the language for the ballot question or may direct staff to compose the ballot question for their approval before calling the election.
- C. **Resolution:** The last day for City Council to adopt a resolution calling the election to submit a ballot measure would be determined based on the primary election date in 2024.
- D. **Impartial Analysis:** City Attorney will prepare the impartial analysis (500 words or

less) based on deadlines established as the primary election date is determined.

2) Costs Associated with Initiative

A. Direct costs:

- i. **Cannabis Business Coordination:** This includes coordination of enforcement efforts and functional administrative and ministerial duties;
- ii. **Enforcement:** The City would have to maintain an adequate enforcement program to mitigate secondary impacts in connection with registered medical marijuana dispensaries;
- iii. **Administration:** This includes administering, auditing, and collecting the gross cannabis business license tax as approved by the voters; and
- iv. **Monitoring:** This includes monitoring, proper reporting, remitting, and allocation of local business tax.

B. Audits

- i. **Bi-Annual Audit:** Since marijuana dispensaries are by their nature primarily cash businesses, business license and business tax audits will need to be performed at least bi-annually.
- ii. **Estimated Costs:** Assuming 16 hours per audit, fully burdened staff time at \$60 per hour, and auditing of half or 7 registered dispensaries per year, the annual cost to the City is estimated at \$6,720. The total cost to audit 14 registered dispensaries is \$13,440 for the two-year period.

3) Business Tax

- A. **Revenue Structure and Tax Rates:** Staff will engage with a consultant (HdL) to determine the revenue structure and business tax rates.

Additional Considerations

Several items for further consideration by the Committee, and ultimately City Council, would include the following:

1) Department of Cannabis Control Proposed Emergency Regulations for Equity Fee Waivers

The State program provides financial support to cannabis businesses by waiving licensing fees if applicants and licensees meet the equity eligibility criteria set in the proposed regulation such as past cannabis convictions or arrests, reduced income, or residence in an area disproportionately impacted by past criminal justice policies, as well as other criteria. Pursuant to Business and Professions Code Section 26249(c), a local jurisdiction may implement “equity application and license” standards which require verification from the State. However, local agencies are not required to establish local equity programs to provide waiver or deferral of application or license fees. The City Council may wish to consider licenses in Riverside that would be issued as part of this equity program.

2) Public Outreach Strategy

Staff will review public noticing requirements for amendments to Titles 5, 9, and 19, and will prepare a detailed Community Outreach & Engagement Plan that is in alignment with the Draft Citywide Community Engagement Policy and Implementation Plan. The Draft Community Engagement Implementation Plan identifies six basic steps to a Community

Engagement Plan that include:

- Create – create engagement strategy
- Identify & notify – identify and notify stakeholders of engagement opportunity
- Educate – share project information with members of the community
- Listen – gather input and feedback
- Follow through – share information obtained back out to the public and let them know how their input shaped the recommendations and outcomes
- Evaluate and adapt – evaluate the process during engagement efforts and adapt the plan when/if necessary, to ensure targets are being met.

Staff will create a project outline that defines the goals, objectives, and anticipated outcomes of the community engagement efforts. The community engagement plan will:

- Identify the decision-makers and the dates formal decisions would be made;
- Determine the level of public engagement based on the scope and impacts of the project;
- Determine stakeholders and identify ways to engage them;
- Develop a timeline to achieve the remainder of the public engagement steps;
- Determine how public engagement results will be measured and archived; and
- Determine how the information will be shared with the public.

Throughout the community engagement process, staff will evaluate and adapt the plan to ensure that members of the public are provided with a meaningful opportunity to participate in the community engagement process. Staff will ensure that all outreach efforts are done in an inclusive way to ensure all populations are represented.

The ballot measure may have limitations as to when and how community engagement can be done. Staff will work with the City Clerk's Office to ensure that all community engagement efforts are within the boundaries for what is allowed.

3) Administrative Impacts

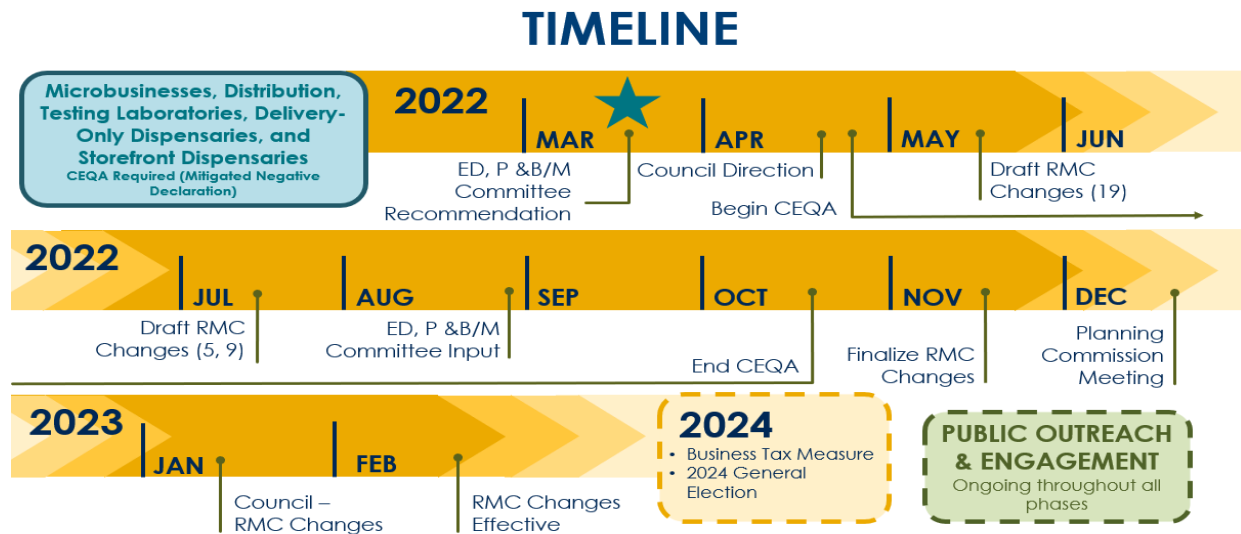
Additional resourcing is likely needed if City Council moves forward with adopting regulations that would permit cannabis businesses. This could include a dedicated administrative staff member to oversee the entire program. Many cities have Offices of Cannabis that typically are housed within the City Manager's Office to oversee and coordinate all aspects of the businesses (application submittal, application processing including the evaluation process, tax collection, code violations, illegal activity, etc.).

Additional police personnel may be needed due to the potential increase in crime, including the increase in "Black Market" sales and potential illegal dispensaries. In addition, the need for proper inventory control to prevent "back door" sales or sales to minors, including marijuana edibles often packaged as candy or food items, will need to be monitored. The potential for increased robberies, in part because of the large amount of cash on premises given federal banking regulations, and increased crime in the adjacent areas surrounding dispensaries is likely. Proper vetting/background investigations of dispensary owners and employees during the permitting process will also need to be conducted. Continuous monitoring of the dispensaries is essential to ensure they are complying with all state and local laws. Additional Code Enforcement

officers to address Code violations to both the Title 5 and Title 19 requirements, and finance staff to oversee the licensing and collection of taxes are also likely required.

Timeline

Based on research completed by the staff team, a projected timeline has been prepared to reflect the need to complete the required CEQA analysis for Title 19. Staff anticipates this to be, at a minimum, a Mitigated Negative Declaration as the environmental impacts of cannabis uses has not been evaluated as part of the General Plan EIR. The timeline for key deliverables would include:



If the City Council wanted to only move forward with distribution, testing laboratories, delivery-only dispensaries and storefront dispensaries, the timeline would include:



The City Attorney’s Office, City Clerk’s Office, Finance Department, Fire Department, and Police Department concur with this staff report.

STRATEGIC PLAN ALIGNMENT:

This item contributes to the Envision Riverside 2025 Strategic Plan:

- **Priority 3 – Economic Opportunity**
 - Goal 3.3 – Cultivate a business climate that welcomes innovation, entrepreneurship, and investment.
- **Priority 5 – High Performing Government**
 - Goal 5.4 - Achieve and maintain financial health by addressing gaps between revenues and expenditures and aligning resources with strategic priorities to yield the greatest impact.

This item aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – The City is being transparent in studying the potential for Riverside Municipal Code changes and a ballot measure. A community outreach program will be developed as part of the process and ultimately, residents will decide on the ballot measure and any potential gross receipts business tax.
2. **Equity** – The Riverside Municipal Code changes will provide opportunities for those impacted in the past because cannabis was illegal. The review process, open to all, would include criteria to choose those businesses that would best fit and operate in the City of Riverside.
3. **Fiscal Responsibility** – With the collection of a gross receipts business tax, voted on by the residents of the City, the City would realize additional revenues that are presently lost because these businesses are not permitted in Riverside.
4. **Innovation** – The changes to the Riverside Municipal Code and ballot measure would be prepared using an expert consultant that fully understands the State laws, ensuring that the best and most creative approach will be used to regulate cannabis businesses.
5. **Sustainability & Resiliency** – The proposed changes to the Riverside Municipal Code and ballot measure will help the City to realize additional gross receipts business tax that will help ensure its sustainability and resiliency.

FISCAL IMPACT:

The total fiscal impact of this action is estimated to be up to \$100,000. A supplemental budget amount in the General Fund of \$100,000 was approved by City Council on January 18, 2022, to cover the costs of these items. Staff estimates a cost of \$25,000 - \$30,000 for consultant assistance and expertise in developing the cannabis regulatory ordinance, developing the cannabis tax ordinance, public outreach, and as needed subject matter expertise. For the Title 19 changes, if required, the CEQA analysis will include an Initial Study and, potentially, a Mitigated Negative Declaration. This cost is estimated at approximately \$50,000 - \$70,000.

Upon further direction, staff will work with a consultant to develop a comprehensive Business License Fee structure and application process, as well as estimate the potential business tax revenue to be generated should a ballot measure occur and be approved. The exact cost of including the initiative on the ballot for an election is unknown at this time, but the Registrar of

Voters has indicated that the approximate cost to the City is \$160,000. If this item were to move forward, this will be included in the Department's Budget submissions and presented to City Council for approval.

Prepared by: David Welch, Community & Economic Development Director
Certified as to
availability of funds: Edward Enriquez, Chief Financial Officer/City Treasurer
Approved by: Rafael Guzman, Assistant City Manager
Approved as to form: Phaedra A. Norton, City Attorney

Attachments:

1. Notice of Intent to Circulate Petition for the Riverside Cannabis Taxation and Regulation Act
2. Economic Development, Placemaking and Branding/Marketing Committee Staff Report
3. Police Foundation Pamphlet
4. Presentation