



# COMMERCIAL CANNABIS FEE STUDY- APPEALS FEE CITY OF RIVERSIDE, CALIFORNIA

**Report of Findings**

December 22, 2023



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## Introduction

MGT is pleased to present the City of Riverside with this summary of findings for the Commercial Cannabis Appeals Fee cost analysis. This cost analysis is a follow-up to the recently completed study for Commercial Cannabis storefront retail application fee and permit. Now that the city has implemented the program and received applications for potential storefront retail businesses, they anticipate that applicants who were not selected for one of the 14 available licenses may appeal the decision. The results of MGT's study show the full cost associated with implementing an appeals fee and responding to potential appeals.

Working with the Community Development Department, MGT calculated the full cost of the City activities associated with implementing an appeals process for the commercial storefront retail cannabis program. MGT reviewed the costs using fiscal year 2023-2024 budgeted departmental expenditures and personnel costs and gathered data from key city departments responsible for the cannabis appeals process. The objectives of the MGT project were to determine costs, develop fee methodology, document city processes associated with the cannabis appeals process, and develop an appropriate fee to support this endeavor and the associated activities.

## Legal Foundations

### State Marijuana Laws

On November 8, 2016, California voters passed Proposition 64, entitled the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). Adults over 21 years old may possess, consume, manufacture, distribute, test, and cultivate nonmedical, recreational marijuana in California. However, businesses may not grow, distribute, or sell nonmedical, recreational marijuana until they receive a state license. The State began to issue licenses January 1, 2018. Before obtaining a state license, businesses must seek a local license and obtain approval to operate/use a specific location first. SB 64 and SB 94 were passed thereafter, further clarifying State marijuana/cannabis laws. On June 27, 2017, The Medical and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA") was signed into law. The MAUCRSA law provides a comprehensive regulatory framework for licensing, control, and taxation of medical and adult-use cannabis-related businesses in California.

### Local Cannabis Laws

On March 14, 2023, the City Council approved Ordinances 7628, 7629, and 7630. Ordinance 7628 amended Title 5 (Business Taxes, Licenses, and Regulations) of the Riverside Municipal Code (RMC) and replaced Chapter 5.77 (Cannabis Business Activities) in its entirety. Ordinance 7629 amended Title 9 (Peace, Safety and Morals) of the RMC, and Ordinance 7630 amended Title 19 (Zoning) of the RMC and directed staff to develop and implement a Cannabis Business Permit Program, including the development of a Cannabis Equity Program, and established a 1,000-foot buffer from K-12 schools.

Chapter 5.77 of the RMC regulates Cannabis Business Activities in the City of Riverside, including the types and maximum number of businesses permitted within the City. Based on City Council Direction, Chapter 5.77 allows up to 14 storefront retail cannabis businesses as well as an unlimited number of manufacturing/distribution cannabis businesses and Cannabis testing laboratories. Currently, all commercial cannabis cultivation operations and

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cannabis microbusinesses are prohibited. Note that the scope of MGT's study was limited to storefront retail cannabis businesses.

## User Fee Law

In California, local government is granted the authority to impose user and regulatory fees for services by the State Constitution. As defined by Article XIII C, Section 1, a fee may not exceed the estimated reasonable cost of providing the service. For a fee to qualify under this authority, it must relate to a service or activity requested by an individual. If this request causes the local agency to perform a service that is either discretionary or subject to regulation, then it is considered a user fee. The City's authority to charge user fees is also further clarified by California Government Code Sections 54985, 66014, Proposition 218 and 26.

## Cost Calculations

### Fee Methodology

The standard approach for analyzing the cost of providing fee-related services is commonly referred to as a "bottom-up" approach. The bottom-up approach was used to analyze these commercial cannabis regulation fees. A general description of the "bottom up" approach is as follows:

1. Identify all direct staff time spent on the fee related activity or service - MGT conducted a series of meetings with the subject matter experts of the commercial cannabis program, including representatives from Economic Development, Planning, and Finance. MGT then provided detailed templates and instructions to, and collected data from, staff from Finance, Community Development, Police, Fire, City Manager, and City Attorney departments, that identified every employee, by classification, who performed and will perform work directly in support of fees related to storefront retail cannabis sales and regulation. Direct staff costs are incurred by employees who are "on the front line" and most visible to the customers (e.g. Inspectors, counter staff, plan reviewers, etc.), as well as employees who are "behind the scenes", reviewing applications to ensure all required documentation is in order. Once all direct staff were identified, departments estimated how much time those employees spend, on average, working on each fee service.

In addition to the estimated time spent on each fee service, the City Attorney, City Manager, and Community Development departments spent time developing regulations and procedures, preparing applications, and drafting agreements and administrative policies. The cost of this time was allocated to all fees in the schedule proportionately based on each fee's cost. Foreseeing that the program will require considerable administrative oversight at a Director level, that cost was also allocated to all fees proportionately based on each fee's cost.

Developing time estimates for fee-related services can be challenging and departments should be commended for the time and effort they put into this. Although MGT provided departments with templates and other tools to assist them in developing average or "typical" time estimates, these calculations were necessarily developed by the subject matter experts in each operating department.

2. Calculate direct cost of the staff time for each fee using productive hourly rates - Productive hourly rates are used to support full cost recovery. A full-time City of Riverside employee typically has 2,080 paid hours per year (40 hours x 52 weeks). However, cost studies reduce this number to account for non-productive hours (sick leave, vacation, holidays, training, meetings, etc.). MGT calculated the productive hourly rate for

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each classification based on the salary and benefit information provided by the City and an analysis of annual productive hours by classification. For the employees in this study, the productive hours used were 1,728, deducting time for paid leave, sick time, and holidays.

3. Determine any other operational costs (i.e., other than personnel costs) that can readily be traced to a specific fee-related service as a direct cost. Professional services contracts are an example of an expense that can often be traced to a specific service or program.
4. Determine indirect or “overhead” costs - Generally, there are two types of indirect costs: departmental and citywide overhead. These indirect costs are allocated across user fee services to capture the full cost of providing the service. If a department performs non-fee related services, a commensurate amount of indirect cost is segregated and not allocated to the fee related services.
  - a. Departmental overhead costs – these costs include managers, supervisors, and support staff as well as other operational costs, such as materials and supplies that are incurred for a common purpose and not readily assigned to a service or program.
  - b. Citywide overhead costs – each department and fund within the city receives an allocation of cost from the city’s various central service departments. Central service departments are those whose main function is to support other city departments and funds. Such departments include Management Services, City Attorney, Human Resources, Administrative Services-Finance, and Information Technology. The methods for allocating central service costs can vary but must demonstrate a causal relationship between the allocation methodology and the costs allocated to the operating department. There are some state and federal guidelines that stress the importance of allocating citywide overhead costs in a way that “equitably reflect the value of service” provided to the department receiving the service(s). In most cases, industry standards call for one of the following methodologies for allocating central services costs:
    - Number of full-time equivalent staff in the operating department
    - Total operating budget, excluding debt and certain non-operating costs
    - Actual or estimates of time spent in support of the operating department based on documented procedures

## Data and Sources

The sources for cost information for the calculations in this report are the City’s 2023-2024 budgeted costs. The City provided MGT with salaries, expenditures and cost allocation charges budgeted for the city’s 2023-2024 fiscal year.

## Full Cost Hourly Rate

Full cost hourly rates include Indirect costs such as departmental and citywide overhead and are based on 1,728 productive hours of a 2,080 year. Productive hours are the hours an employee is available to work and does not include paid leave, breaks and staff meetings. The only city department participating in the cannabis appeals process will be the City Attorney.

## Comparison Survey

One additional tool that many agencies use when considering how to establish fees for services is a comparison of what other agencies are charging for similar services. As part of this study, MGT collected fee schedules from surrounding area jurisdictions and compared their Commercial Cannabis appeals fees with those proposed to be charged by the city. The results of the comparative survey may be found in Appendix A.

## Cost of Service Analysis

The proposed appeals fee reflects the services, activities and efforts associated with responding to appeals by cannabis storefront retail applicants. The full cost is shown below. The following elements are included in the full cost to implement the appeals process and respond to an appeal:

**City Attorney** – The Assistant City Attorney and the Deputy City Attorney estimate they will need to spend an average of 5 hours each preparing to respond to the appeal and attend the hearing. **Cost: \$1,887**

**Facilitator** – The City is contracting with a consultant to facilitate the appeals process. The facilitator estimates an average of 10.5 hours. **Cost: \$2,100**

**Hearing Officer** – the City will contract with the California Office of Administrative Hearings (OAH) to hear the appeals. The OAH charges \$373 per hour to hear the case, plus a \$100 filing fee per case. The city estimates four hours for the hearing officer to prepare for and hear the appeal. **Cost: \$1,592**

The total cost for the elements shown above is **\$5,579**. The City is recommending charging this amount as a deposit to applicants who wish to appeal a decision by the City regarding their cannabis application or permit. The city staff and facilitator will track their actual time and materials for each appeal and reconcile any difference at the end of the appeal decision.

Ord	Service Name	Fee Description	Per Unit	
			Current Fee	Full Cost
1	Commercial Cannabis Appeals Fee	Deposit	\$ -	\$ 5,579

## Recommendations Going Forward

The City's commercial cannabis permit program is brand new and therefore staff has not been able to perform time studies, nor is there any historical data to draw from. For this reason, MGT recommends that the City re-analyze the fees in approximately three years' time. Once the commitment is made to understand the full cost of providing services, it is important to review and update the analysis in order to keep pace with changes in service delivery, staffing changes, and demand levels.

Most of our agencies ask us at the conclusion of the study: how often should this type of study be undertaken? Our advice is to conduct this detailed analysis at least every three but not more than five years, with minor adjustments in the non-study years to keep pace with economic impacts. MGT recommends the City apply an inflation adjustment to fees annually, based on the most recent CPI from All Urban Consumers for the Los Angeles area to keep pace with inflation. The industry best practice is to apply this index once per year as part of the City's annual

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budget process. This is particularly helpful once an agency has chosen to adopt a cost recovery policy – whether 100% of cost or something less – in order to keep fees at the desired level.

## Attachment A – Comparative Survey

Activity	Riverside Full Cost	City of Los Angeles	Corona	San Bernardino	Pasadena	Santa Ana	Peer Avg
Application Appeals	\$5,579 deposit	Appeal to Cannabis Regulation Comm \$6,802 flat fee Appeal to Council \$6,210 flat fee	\$3,190 Uses regular Planning Appeals process.	\$3,217 fixed fee	\$6,827 (50% of Application Fee) Uses regular Planning appeals process.	\$4,944 fixed fee (Same as Planning Appeal)	\$ 4,996
Fixed Fee		X	X	X		X	
Other	X				X		
Amt for Avg		\$6,802	\$3,190	\$3,217	\$6,827	\$4,944	