

City of Desert Hot Springs

City Council

AGENDA ITEM REPORT



To: City Council
Date: February 20, 2024
Department: Code & Cannabis Compliance
Prepared by: Christina Newsom, Compliance Director
Subject: **An Ordinance to Lower Cannabis Cultivation Taxes**

RECOMMENDATION:

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 3.33 (Titled "Marijuana Cultivation Tax" and 3.35 (Titled "Medical Marijuana Cultivation Tax") to amend Sections 3.33.005 (Titled "Imposition of Tax") and 3.35.005 (Titled "Imposition of Tax") to lower recreational and medical cultivation taxes of the Desert Hot Springs Municipal Code ("DHSMC").

BACKGROUND:

In 2023 the City Council made a series of temporary tax adjustments in response to prevailing economic conditions and industry feedback. These strategic decisions aim to sustain the viability of the cannabis industry within our community while also considering the fiscal health of the City. The Council continued to hear challenges from the industry and instructed staff again to come back with further analysis and recommendations. On February 7, 2024, the City Council approved a recommendation to reduce the cannabis cultivation tax from \$10.20 per square foot to \$5.75 per square foot.

Pursuant to Desert Hot Springs Municipal Code (DHSMC) Section 3.35.050 an annual adjustment based on the Consumer Price Index shall be imposed on cultivation tax. DHSMC Chapter 3.33.005 and Chapter 3.35 reflect the cannabis cultivation tax rates of \$10 as they were adopted prior to the annual CPI adjustment.

DISCUSSION:

The proposed ordinance will reduce the cannabis cultivation tax from \$10.20 per square foot to \$5.75 per square foot of space utilized in connection with the cultivation of recreational and medical marijuana.

FISCAL IMPACT:

The reduction of the Cannabis Cultivation Tax to \$5.75 per square foot would result in the following reduction of budgeted revenues (based on 440,442 square feet of City defined canopy space):

- FY 23-24: \$1,917,759 (Not actual revenue reduction, but reduction based on \$10.20)
- FY24-25: \$2,303,146 (Not actual revenue reduction, but reduction based on \$10.20)

The above estimate does not include any new anticipated cultivation space opening in the future. Actual revenues received in Fiscal '23 and estimated '24 are in line with the adjustment to \$5.75, which is approximately \$2.5M.

ATTACHMENTS:

[1\) Cultivation Tax Amendment Ordinance](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA, AMENDING CHAPTERS 3.33 (TITLED “MARIJUANA CULTIVATION TAX” AND 3.35 (TITLED “MEDICAL MARIJUANA CULTIVATION TAX”) TO AMEND SECTIONS 3.33.005 (TITLED “IMPOSITION OF TAX”) AND 3.35.005 (TITLED “IMPOSITION OF TAX”) TO LOWER RECREATIONAL AND MEDICAL CULTIVATION TAXES OF THE DESERT HOT SPRINGS MUNICIPAL CODE SECTION (“DHSMC”)

WHEREAS, the City of Desert Hot Springs (“City”) is a municipal corporation and a charter city; and

WHEREAS, the cannabis industry is suffering hardship and struggling to pay cultivation taxes owed by Marijuana Cultivation Facilities, as defined by Desert Hot Springs Municipal Code Section (“DHSMC”) section 17.180.030, and regulated pursuant to DHSMC Section 17.180.050; and

WHEREAS, the City of Desert Hot Springs intends to establish fair and equitable tax fees for the Cannabis industry; and

WHEREAS, DHSMC Section 3.33.005 as it relates to recreational marijuana cultivation currently imposes taxes as follows, “In the event the cultivation of marijuana for casual/recreational use is legalized or decriminalized in California, any person or entity cultivating marijuana for casual/recreational use in the City shall pay an annual tax of \$10 per square foot for space utilized in connection with the cultivation of marijuana for casual/recreational use.”; and

WHEREAS, DHSMC Section 3.35.005 as it relates to medical marijuana cultivation currently imposes taxes as follows, “Every medical marijuana collective, cooperative, dispensary, operator, establishment, provider or other type of entity legally cultivating medical marijuana in the City, consistent with the provisions of the Medical Marijuana Program Act (California Health and Safety Code Section 11362.5 et seq.), shall pay an annual tax of \$10 per square foot for space utilized in connection with the cultivation of marijuana for medical use.”; and

WHEREAS, DHSMC Section 3.33.060 provides in part that the City Council can amend the recreational cultivation 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; and

WHEREAS, DHSMC Section 3.35.070 provides in part that the City Council can amend the medical cultivation 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; and

WHEREAS, DHSMC Sections 3.33.070 (recreational) and 3.35.080 (medical) provide, among other things that the City Manager, or designee, and/or the City Council by ordinance may promulgate regulations to implement Chapter 3.33 and 3.35; and

WHEREAS, on February 7, 2024, the City Council agendized an item to discuss marijuana taxation in general, and provided Staff direction to lower Marijuana Cultivation Taxes; and

WHEREAS, the City Council deems now that Marijuana Cultivation Facilities, as defined by DHSMC Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.050, as applicable to both recreational and medical marijuana cultivation should be lowered to encourage the City's competitive advantage; and

WHEREAS, at this time, the City Council desires to amend Chapters 3.33 and 3.35 to explicitly lower the marijuana cultivation tax for Marijuana Cultivation Facilities, as defined by DHSMC Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.050; and

WHEREAS, such proposed amount does in fact lower the current recreational cultivation tax, and medical cultivation tax; and

WHEREAS, the equal dignity rule requires Chapters 3.33 and 3.35 as proposed by this Ordinance be adopted by ordinance;

WHEREAS, the City Council finds that the adoption of this ordinance is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and

WHEREAS, the City Council finds that this ordinance is good for the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Desert Hot Springs as follows:

Section 1. RECITALS

That the foregoing recitals are true and correct and are herein adopted by this reference.

Section 2. AMENDMENT OF SECTION 3.33.005 TITLED "IMPOSITION OF TAX: OF CHAPTER 3.33 TITLE "MARIJUANA CULTIVATION TAX" OF THE DESERT HOT SPRINGS MUNICIPAL CODE (FOR RECREATIONAL MARIJUANA CULTIVATION)

Section 3.33.005 of the Desert Hot Springs Municipal Code shall be amended to read as follows:

3.33.005. Imposition of Tax

In the event the cultivation of marijuana for casual/recreational use is legalized or decriminalized in California, any person or entity cultivating marijuana for

casual/recreational use in the City shall pay an annual tax of ~~\$10~~ **\$5.75** per square foot for space utilized in connection with the cultivation of marijuana for casual/recreational use.

Section 3. AMENDMENT OF SECTION 3.35.005 TITLED “IMPOSITION OF TAX” OF CHAPTER 3.35 “MEDICAL MARIJUANA CULTIVATION TAX” OF THE DESERT HOT SPRINGS MUNICIPAL CODE (FOR MEDICAL MARIJUANA CULTIVATION)

Section 3.35.005 of the Desert Hot Springs Municipal Code shall be amended to read as follows:

3.35.005. Imposition of Tax.

Every medical marijuana collective, cooperative, dispensary, operator, establishment, provider or other type of entity legally cultivating medical marijuana in the City, consistent with the provisions of the Medical Marijuana Program Act (California Health and Safety Code Section 11362.5 et seq.), shall pay an annual tax of ~~\$10~~ **\$5.75** per square foot for space utilized in connection with the cultivation of marijuana for medical use.

Section 4. SEVERABILITY

That, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 5. REPEAL OF CONFLICTING PROVISIONS

That all the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

Section 6. AMENDING OF BAIL SCHEDULE

That the City Attorney’s Office is hereby directed to determine whether this ordinance necessitates amendment of the City’s Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 7. EFFECTIVE DATE

That this ordinance shall take effect on February 20, 2024.

Section 8. CERTIFICATION

That the City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the ____ day of _____, 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Scott Matas, Mayor

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Tuan-Anh Vu, Interim City Attorney