

CITY OF PALM DESERT STAFF REPORT

MEETING DATE: January 11, 2024

PREPARED BY: Richard D. Cannone, AICP, Development Services Director

REQUEST: REQUEST FOR FEEDBACK AND DIRECTION REGARDING UPDATING ZONING AND BUSINESS REGULATIONS REGARDING CANNABIS MANUFACTURING BUSINESSES

RECOMMENDATION:

Option 1 - Amend the Palm Desert Municipal Code (PDMC) to:

- a. Prohibit cannabis manufacturing businesses, except for Type P licenses that are limited to packaging and labeling of cannabis.
 - i. Limit the number of cannabis manufacturing businesses to two (2).
- b. Add Cannabis Microbusiness as a use that could be permitted through a Conditional Use Permit (CUP) in Service Industrial only with the following use limitations:
 - i. Limited to one (1) business
 - ii. No retail storefront, delivery only [Note: cannabis retail is prohibited in SI].
 - iii. Manufacturing is limited to packaging and labeling.
- c. Update/clarify any inconsistent code sections.
- d. Establish an annual fee of \$2,760 for cannabis regulatory permits for Type P Manufacturing, Microbusinesses, and Distribution businesses to cover the cost of semi-annual inspections.

BACKGROUND/ANALYSIS:

In 2017, the City Council adopted Ordinance 1329 to establish regulations for commercial cannabis businesses. The types of commercial cannabis businesses permitted through a Conditional Use Permit (CUP) include:

- Retail (storefront) businesses in the Planned Commercial (“PC”) -1 district, PC-2 district, PC-3 district, PC-4 district, and Downtown (D) district.
- Testing or research laboratories in the Office Professional (OP) district and Service Industrial (SI) district.
- Commercial cultivation businesses in the SI district.
- Delivery-only businesses (non-storefront retail) in the SI district.
- Distribution businesses in the SI district.
- Manufacture businesses in the SI district.

A retail (storefront) business is limited to six permits with additional location limitations. The remaining business types do not have a limit on the number of permits but do have a 1,500-foot separation requirement from another cannabis business or 1,000 feet from a school, daycare, or youth center. These separation distances are measured from the outer extents of the commercial cannabis business’s lease space to the outer extents of another commercial

cannabis business's lease space, or to the property line of a school, daycare center or youth center.

Another cannabis business type not explicitly listed in the City's regulations are Microbusinesses, defined as a business that does at least three of the following activities at one location:

1. Cultivation – up to 10,000 total square feet
2. Manufacturing – use of non-volatile solvents, mechanical extraction, or infusion
3. Distribution or distribution transport-only
4. Retail – storefront or non-storefront

The State of California Department of Cannabis Control (CA DCC) issues five (5) different manufacturing licenses:

Type 7: Volatile Solvent Manufacturing

- Use volatile solvents for extraction or post-extraction processing of cannabis extract.
- Use non-volatile solvents for extraction or post processing.
- Use mechanical methods for extraction.
- Make cannabis products through infusion.
- Package and label cannabis products.

Type 6: Non-Volatile Solvent Manufacturing or Mechanical Extraction:

- Use non-volatile solvents for extraction or post-extraction processing.
- Use mechanical methods for extraction.
- Make cannabis products through infusion.
- Package and label cannabis products.
- Non-volatile solvents are chemicals that do not produce a flammable gas or vapor.

Type N: Infusion of products

- Make cannabis products through infusion.
- Package and label cannabis.
- Infusion mixes cannabis extract or plant material with other ingredients to make a cannabis product.

Type P: Packaging and labeling

- Can only package and label cannabis products.

Type S: Manufacturers who work in a shared use facility.

- Extract cannabis using butter or food-grade oils, water, glycerin, vegetable oil, animal fat, or using mechanical methods.
- Make cannabis products through infusion.
- Package and label cannabis.

- Shared-use facilities are places where multiple Type S manufacturers rotate on a schedule and share space and equipment. A Type 7, 6 or N license can register all or part of their manufacturing premises as a shared-use facility.

Additionally, the CA DCC also offers a Microbusiness License that could involve manufacturing.

Type 12: Microbusiness

This license is for a business that performs at least three of the following activities at one location:

1. Cultivation – up to 10,000 total square feet
2. Manufacturing – use of non-volatile solvents, mechanical extraction, or infusion
3. Distribution or distribution transport-only
4. Retail – storefront or non-storefront (delivery)

Currently there 10 commercial cannabis businesses, seven of which have a retail storefront and five are licensed for manufacturing.

Business Name	Type
The Leaf	Retail (Storefront)
Palm Royal Collective	Retail (Storefront)
Royal Highness	Retail (Storefront)
Stiizy	Retail (Storefront)
West Coast Cannabis Club (Hwy 111)	Retail (Storefront)
Libra*	Microbusiness <ul style="list-style-type: none"> • Retail (Storefront) • Distribution • Manufacturing Type 6
West Coast Cannabis Club (Melanie)*	Microbusiness <ul style="list-style-type: none"> • Retail (Storefront) • Cultivation • Distribution • Manufacturing Type 6
JW Brands	Manufacturing Type 7 Retail (Delivery Non-storefront) Distribution
P&S Ventures	Manufacturing Type N Distribution
Thinc Cubed	Manufacturing Type 7

**Nonconforming business – component(s) of the business operation are prohibited in the zoning district.*

Over the past three months, the Development Services Department updated our administrative processes for Cannabis Regulatory Permits to include, among others, annual inspections prior to issuing a renewal to ensure compliance with the Conditional Use Permit (CUP) conditions of approval and the City’s cannabis regulations. In establishing our cannabis regulatory administrative procedures and multiagency inspections, coupled with the recent fire that

occurred at Thinc Cubed, several deficiencies have been revealed as it relates to who is responsible for inspecting manufacturing facilities and what those inspections entail.

Since the adoption of the cannabis zoning and business regulations in 2017, the manufacturing processing has evolved and continues to evolve so that these businesses can extract the purest form of THC to make their cannabis products more profitable. These manufacturing processes often involve the use of volatile chemicals for cannabis extraction processes, some that the EPA has determined to be dangerous and result in acute and long-term health risks when inhaled. The recent fire that occurred at Thinc Cubed, a Type 7 manufacturer, revealed the volatility of these chemicals and the effort involved to put out that fire. Other manufacturing processes infuse by hand or machine cannabis extract into a food product (e.g. gummies, chocolate, pill) or cannabis flower to be smoked without prescribed food safety or sanitation guidance.

The Riverside County Department of Environmental Health does not require an initial or annual health inspection or provide guidance/best practices for sanitation related to cannabis manufacturing/infusion process, nor do they consider the business as having a “commercial kitchen”. Instead, any contaminated product should be identified when the “batch” of cannabis product is tested by a third-party laboratory. Some local health departments in other states require a food handler certification for employees involved in the manufacturing/infusion process and establish mandatory sanitation requirements for cannabis manufacturing facilities that include:

- 1) Providing a separate handwashing sink.
- 2) Mop water and wastewater may NOT be dumped in the hand washing sink or outside. Wastewater must be disposed of in a designated mop sink or floor sink in accordance with the local wastewater rules and regulations.
- 3) Washing of hands in designated handwashing sink prior to donning new gloves and in between glove changes.
- 4) An EPA-registered sanitizer, which commonly includes quaternary ammonium or chlorine, should be used for sanitizing all equipment and utensils that come into contact with plant material. The sanitizer should be of the proper concentration according to the manufacturer’s label. A food-grade sanitizing agent shall be utilized at all times during edible production.
- 5) If using a hydrocarbon extraction machine, conduct a sanitizing procedure of the machine at least once a day and between different plant material. Machines should routinely be taken apart to wash, rinse and sanitize. If conducting solventless extractions, all equipment utilized in the process shall be sanitized as required, at least once a day, and in between batches of plant material.
- 6) All equipment and utensils that contact edible ingredients, plant material, and/ or food-contact surfaces should be constructed of a food grade material, be smooth and non-absorbent, and be easy to clean.
- 7) Handle all plant material with gloved hands or clean and sanitized equipment such as tongs. Gloves should be changed between tasks and when gloves are contaminated. Disposable gloves are single-use items, which shall be disposed of after being removed.
- 8) Avoid storing plant material or edible products in warm, moist or extreme conditions. Edible products should be stored six inches above ground or in clean, waterproof

containers. Cannabis products should be stored in a manner that protects them from contamination.

The CA DCC stated to staff that they place the responsibility on the local jurisdiction to ensure cannabis businesses comply with State law and City ordinances. The table below is a summary of inspection responsibilities by regulatory agency and dedicated staff.

Agency	Responsibility	Staffing
California Department of Cannabis Control (CA DCC)	Conducts initial inspection for cultivation and manufacturing; more complaint based. Does not conduct retail inspections.	Three dedicated inspectors covering Riverside, San Diego, Imperial, Orange, and San Bernardino Counties
Riverside County Fire	Only conducts the initial inspection when business opens. Not required by State to conduct annual inspection.	No dedicated staff but have experienced, knowledgeable fire safety-combustible and cannabis compliance inspectors through the Fire Marshall's Office
Riverside County Environmental Health	HazMat Team only inspects for chemical and hazardous materials.	Two inspectors assigned to Palm Desert area for inspections.
City of Palm Desert	Compliance with CUP conditions, cannabis regulations, building plans	No dedicated staff, currently using management analyst, principal planner, and code compliance staff for inspections and permitting.

Cannabis Taxes Collected

The City relies on the cannabis business owner to remit their tax payment on a month basis based upon the gross receipts they report to the City. Due to the confidentiality associated with the cannabis industry, it is difficult for staff to confirm whether the gross receipts are consistent with what is reported to the State. Recently, staff was able to enroll through the DCC the ability to access the California Cannabis Track-and-Trace System also known as Metrc. However, State law requires that information and reports obtained be considered privileged and exempt from public records. Outlined below are the cannabis manufacturing businesses that shows when the City issued their regulatory permit/business license and the manufacturing taxes paid.

Business	State License Issued (YR)	Cannabis Manuf. Taxes Paid (FY)
JW Brands	2019	2019 - 2024: \$0
P&S Ventures	2019	2019 - 2024: \$0
Thinc Cubed	2023	2023: \$0 2024: \$24,680.65 (Mar-Oct '23)
Libra*	2019	2019 - 2024: \$0
West Coast Cannabis Club (Melanie)*	2019	2019 - 2021: \$0 2022: \$713.02 2023: \$952.50 2024: \$114.50 (Jul-Nov)

*Microbusiness

As shown in the table above, a total of only \$26,460.02 in cannabis manufacturing taxes has been remitted to the City. Over this four-year period (2019-2023) the majority (93%) of the manufacturing taxes paid were by Thinc Cubed and their payment included a 25% penalty on the delinquent amount. This payment was a result of staff notifying them that they had not paid any taxes since opening during the review of their annual regulatory permit. While the information obtained from Metrc is confidential, it appears that “manufacturing” activity occurred for the cannabis manufacturing businesses listed above beginning with the year the license was issued. From 2019 to 2021 no taxes were remitted to the City, and it was not until 2022 that the City received \$713.02 for that year.

Issues to Consider

1. There is no cap on cannabis manufacturing businesses or microbusinesses.
2. Microbusinesses have been allowed through a CUP, but components of the business are prohibited, i.e. retail operation prohibited in the Service Industrial zone and manufacturing and distribution are prohibited in Planned Commercial zones.
3. Inspection and safety of cannabis manufacturing business ultimately falls on the City.
4. The Riverside County Department of Public Health refuses to issue a policy or be involved in the manufacturing process, including infusion of products.
5. Staff has safety and sanitation concerns with the operation of these manufacturing business after learning that Riverside County Environmental Health does not get involved in licensing or inspecting manufacturing facilities, especially those businesses that make infused products for consumption.
6. The DCC has three inspectors assigned to five counties and can neither be proactive nor inspect each business annually.
7. The State exempts cannabis manufacturing businesses from an annual fire inspection.
8. Staff has concerns with the continued use of volatile chemicals in manufacturing after learning that there are no required annual inspections, and that the responsibility is on the City.
9. Except for the late tax payment by Thinc Cubed in October, very little cannabis manufacturing has taken place.
10. The City does not charge an annual fee for Cannabis Regulatory Permits.

Options to Consider

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 - b. Add Cannabis Microbusiness as a use that could be permitted through a Conditional Use Permit (CUP) in Service Industrial only with the following use limitations:
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 - iii. Manufacturing is limited to packaging and labeling.
 - c. Update/clarify any inconsistent code sections.

- d. Establish an annual fee of \$2,760 for cannabis regulatory permits for Type P Manufacturing, Microbusinesses, and Distribution businesses to cover the cost of semi-annual inspections; or
2. Increase staffing to ensure commercial cannabis manufacturing businesses and microbusinesses are compliant with City and State regulations.
 - a. Limit the number of cannabis manufacturing businesses to two (2).
 - b. Add Cannabis Microbusiness as a use that could be permitted through a Conditional Use Permit (CUP) in SI with the following use limitations:
 - i. Limited to one (1) business.
 - ii. No retail storefront, delivery only [Note: cannabis retail is prohibited in SI].
 - c. Require employees to obtain a Riverside County Food Handler Certificate.
 - d. Establish mandatory sanitation requirements for cannabis manufacturing facilities as included above.
 - e. Add an additional Code Compliance Officer II position to manage the cannabis inspection program. Annual Cost (salary/benefits): \$120,000+.
 - f. Send Building and Safety staff to train on cannabis plan review and enforcement. Annual Cost: \$1,500.
 - g. Contract with Riverside County Fire to conduct quarterly inspections of the five (5) existing facilities at a cost of \$545 per inspection. Cost: \$10,900+ annually.
 - h. Estimated annual cost: \$132,400.
 - i. 2024 Manufacturing Tax Revenue: \$24,795.15 (includes 2023 back taxes)
 - ii. 2023 Manufacturing Tax Revenue: \$952.50
 - iii. 2022 Manufacturing Tax Revenue: \$713.02
 - i. Establish an annual renewal fee of \$6,240 for manufacturing and microbusiness cannabis regulatory permits to cover the costs of quarterly inspections and a portion of the additional Code Compliance Officer II position; annual revenue projected at \$31,200 (\$20,300 city staff & \$10,900 fire inspections).
 - j. Establish an annual fee of \$2,760 for cannabis regulatory permits for Cannabis Distribution businesses to cover the cost of semi-annual inspections.
 - k. Update/clarify any inconsistent code sections.

Staff Recommendation

Based on the additional costs for inspections and the amount of oversight that is placed on the city, staff recommends Option 1.

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- d. Establish an annual fee of \$2,760 for cannabis regulatory permits for Type P Manufacturing, Microbusinesses, and Distribution businesses to cover the cost of semi-annual inspections.

Legal Review:

This report has been reviewed by the City Attorney's office.

FINANCIAL IMPACT:

With Option 1 there would be a loss in cannabis manufacturing tax revenue; however, it is difficult to determine the exact amount due to lack of information available and minimal taxes remitted by the businesses. Option 2 would require a budget amendment and the projected new annual regulatory permit fee revenue of \$31,200 coupled with the manufacturing taxes collected would not offset the annual cost of \$132,400.