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Date: December 4, 2015

To: Mayor & City Council

**From: Patrick H. West,
City Manager**

**Subject: Medical Marijuana
Ordinance Recommendations**

**Comments: Supplemental
Information related to Agenda
Item #H-2 on the December 8,
2015 City Council Agenda**



Date: December 4, 2015
To: Mayor and Members of the City Council
From: Patrick H. West, City Manager *T.M.*
Subject: Medical Marijuana Ordinance Recommendations

At the September 22, 2015 meeting, City Council approved a motion that directed the City Attorney's Office to draft a revised medical marijuana ordinance. The ordinance has been prepared by the City Attorney's Office in order to comply with the recently adopted Medical Marijuana Regulation and Safety Act (MMRSA), as well as the terms contained in the City Council motion.

Timing of Ordinance Implementation

If City Council passes this ordinance, the Administration will begin immediate implementation; however, it will take significant time for a business to complete the Conditional Use Permit (CUP) and construction process. It is expected that, at best, it could take up to a year before approved and licensed businesses would be able to open. The tentative timeline is described below, which assumes the first reading of the Ordinance on December 8th.

February 2016	Design of Application Process will be completed
March 2016	CUP Applications will be due
October 2016	CUP process completed*
December 2016	Plan Check process completed
As needed	Permitting and construction process conducted
December 2016 (approximately)	Earliest Dispensary Open Date

* If appeals are filed, the timeline for those applications could be delayed

Fiscal Impact Analysis of Ordinance

Using the main terms of the draft revised ordinance, the Financial Management Department (FM) worked with City departments and an independent consultant to calculate the estimated fiscal impact of the potential medical marijuana ordinance on the City, as a whole. City Departments were asked to identify their operational requirements needed to regulate and enforce the revised medical marijuana ordinance. Departments initially identified a need of \$5 million in annual on-going costs and \$1.1 million in one-time costs.

The maximum revenue that the City is projected to receive under full operations and at the highest level of authorized taxes (10% gross receipts / \$50 per sq ft of cultivation) is \$3.0 million, which includes a 100% cost recovery regulatory fee of about \$83,600 for each of the nine licensed locations. The taxes include the gross receipts tax, a square footage tax, sales tax and a regulatory fee charged to the sanctioned businesses.

Since we are facing an estimated shortfall of \$5.1 million in the General Fund in FY 17, it is important that the medical marijuana regulatory program not add to that shortfall. Therefore, even though departments initially indicated that they require \$5 million in resources, departments have been asked to reduce their costs to \$3.0 million, assuming City Council authorizes the 10% gross receipts tax and a \$50 per sq. for cultivation, and the ordinance is adopted as drafted. At this expenditure level, once stabilized, estimated revenues from medical marijuana should cover the authorized costs. In order to meet the \$3.0 million budget, departments' requests for resources were scaled back and a new approach to enforcement is being proposed.

While most of the costs related to sanctioned businesses won't start until after they are in operation, costs related to unsanctioned business could start right away. Therefore, there are one-time costs and ramp-up costs in FY 16, which are expected to be about \$1.6 million, and no revenue is expected to be available to offset the start-up costs. FY 17 may also have a shortfall due to timing of start-up for sanctioned businesses and the associated revenue. Eventually, costs should balance with revenues; however, all projections are very rough estimates and it is not clear what impact the start-up of State regulation will have.

Approach to Enforcement

In the past, the Police Department took the lead in identifying unsanctioned businesses, conducting search warrants, arresting operators and assisting in the closure of the unsanctioned businesses. This approach required a significant amount of Police resources that diverted Police from their core mission. Ultimately, despite these aggressive tools, this approach proved less effective than desired, as businesses would often reopen a few days later. It often took months or longer to close down an unsanctioned business.

Given this experience, staff is now recommending a cross-departmental team-based enforcement approach to deal with unsanctioned businesses. This new team-based approach will be led by the City Manager's Office and will include staff from Development Services (Building Inspections and Code Enforcement), Financial Management (Business Licensing), Fire (Plan Check), Health and Human Services (Environmental Health and Food Safety Inspection), and the Police Department. While this approach will be less costly, the tools available to close down an unsanctioned business will be less aggressive than the enforcement efforts of the past, but likely less effective in the shorter term. This approach will use civil and misdemeanor citations, and departments will track their costs in order to establish liens against the property owner. Ultimately, red tagging the operation, where applicable, and/or a tax sale of the properties due to unpaid liens, could be the tools used. This approach could take longer than the previous approach, but it will be less expensive and will limit the diversion of police resources.

If the proposed ordinance is adopted, the hiring process for the new staff required for this cross-departmental team will begin immediately; however, as it will take time for staff to be hired through the Civil Service process, trained, and deployed, any early enforcement efforts related to unsanctioned businesses that occur before the hiring process is completed will require a diversion of existing staff resources. Past history indicates that, once an ordinance is approved, unsanctioned businesses will begin to surface and the costs related to the enforcement efforts will begin. The new enforcement model will be put into place as needed using existing staff. It is expected that this will cause some disruption of operations. The short-term issues may include less code enforcement, lower business license enforcement

and collection efforts, and fewer police resources for other priority activities. The Council will be updated periodically on what level of diversion is occurring.

Conclusion

Immediate action will be taken to implement a medical marijuana ordinance as directed by City Council. This will include having an application process ready as soon as possible, addressing unsanctioned medical marijuana businesses using the new enforcement model, processing applications, and hiring staff, and physically making the necessary security arrangements to receive large amounts of cash. It is expected that the first sanctioned businesses can be in operation in approximately one year.

A budgetary shortfall in FY 16 is expected of approximately \$1.6 million to be funded from FY 15 and FY 16 year-end surplus as needed. The potential FY 17 shortfall will be covered from any FY 16 surplus. The program and its costs and revenues will be periodically reviewed so that adjustments can be made as necessary.

The attached report contains the full fiscal impact analysis for estimated revenues and expenses. Once the program is implemented, the Administration will track costs and revenues and adjust where necessary. In order to avoid an increase to the General Fund shortfall in FY 17, the maximum tax rates of 10% for gross receipts and \$50 for cultivation square footage, along with the new enforcement model, is recommended. Any changes by City Council to this ordinance, the tax rates, or the enforcement model will require a revised fiscal impact analysis.

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Attachment A: Fiscal Impact Analysis of Draft Medical Marijuana Ordinance

cc. Charles Parkin City Attorney
Douglas P. Haubert, City Prosecutor
Laura L. Doud, City Auditor
Tom Modica, Assistant City Manager
Arturo Sanchez, Deputy City Manager
All Department Directors

**ATTACHMENT A:
FISCAL IMPACT ANALYSIS OF DRAFT MEDICAL MARIJUANA ORDINANCE**

It is important to note that the information contained in this fiscal analysis was based on the ordinance as written by the City Attorney for the December 8, 2015 City Council Meeting. Should City Council request amendments to the ordinance, the fiscal impact may also need to be updated to account for those changes.

As stated in earlier reports, the City does not currently have the resources to successfully implement and manage a medical marijuana ordinance. Additional personnel and/or enhanced overtime will be necessary in several departments, including Police, Fire, City Attorney, City Prosecutor, Development Services, Financial Management, Health and City Manager's Office. There will be some revenue resulting from the implementation of a new ordinance, including business license taxes, the local sales tax and fees.

This represents the best distribution of costs given the budget established by the City Manager. However, costs are uncertain and will be tracked after the ordinance is implemented. If costs are understated, it will require either additional resources or diversion of existing resources. Revenues are also highly uncertain and will be closely monitored.

Regulatory/Enforcement Costs

Departmental cost estimates have been updated to account for changes to the draft ordinance made by the City Attorney's Office following passage by the state of MMRSA and City Council's motion. Most significant for the fiscal impact, these changes include the proposed reduction in the number of sanctioned dispensaries from 18 to 9, the allowance for medical marijuana deliveries by licensed businesses, and the elimination of the requirement that all marijuana sold by dispensaries be cultivated within city limits. In addition, Departments were directed to cost out a new cross-departmental approach to the closing of unsanctioned businesses, as opposed to earlier Police Department driven efforts to close down illegal dispensaries.

Departmental cost estimates were based primarily on Long Beach's experience in the past with medical marijuana regulation, adjusting for regulatory changes made through the current draft ordinance. As stated earlier, any changes City Council chooses to make to the City Attorney draft ordinance may materially affect cost and staffing requirements. For instance, either increasing or decreasing the number of permitted dispensary sites from the current limit of nine will require Departments to revisit their staffing needs. Similarly, requiring that all dispensaries be vertically integrated to ensure they are supplied by local cultivation centers will further impact cost estimates. In addition, it is expected that any regulatory program that is instituted will need to be regularly reviewed for changes.

For the purposes of estimating costs, departments were instructed to assume a ratio of 6:1 unsanctioned to sanctioned businesses, given the reduced level of sanctioned businesses permitted by the ordinance. This is a reasonable assumption given the experience found in other cities which ranged from 3:1 to 7:1. While departments were instructed to assume two sanctioned businesses would also contain cultivation, if cultivation were banned, there would

not be a significant decrease in the costs to enforce, since it is likely that unsanctioned cultivation facilities would still exist based on Long Beach's past experience.

Cost estimates include both requests for new staff and the redirection of existing staff to medical marijuana regulation activities. Because the ordinance would allow for a new industry within the City of Long Beach with externalities specific to the industry, the regulatory work could not be covered by existing staff, while still maintaining normal levels of service to other residents and businesses.

City Manager

The City Manager's Office manages medical marijuana regulatory programs in other California cities, as it is a complex regulatory program that requires direction and coordination with a multitude of departments. This position also provides the City Council and community with a central point of contact for medical marijuana issues, and will direct and coordinate interdepartmental efforts, and lead the work of the cross-departmental enforcement team. In addition, the City Manager's Office will be involved in active policy coordination and oversight. Because of the evolving nature of California legislation on this industry, and the impacts of both sanctioned and unsanctioned businesses on City resources, it is prudent for senior staff in the City Manager's Office to be involved on an ongoing basis.

Table 1: City Manager Costs

City Manager Operational Requirements	FY 16 Ramp-Up Cost	Annual Cost
• 1.0 FTE - Assistant to the City Manager	\$ 86,131	\$ 148,000
• 0.30 FTE - Administrative Aide	\$ 15,741	\$ 27,048
Total	\$ 101,872	\$ 175,048

City Manager One-Time Requirements	One-Time Cost
• (None)	\$ -
Total	\$ -

City Attorney

Since 2010, the City Attorney has dedicated significant resources to tasks relating to medical marijuana regulation. The City Attorney has provided legal advice and support in writing and interpreting City ordinances, relevant state and federal legislation and case law related directly to medical marijuana. The City Attorney has conducted numerous medical marijuana related administrative hearings and has handled an unprecedented amount of medical marijuana related litigation.

The City Attorney expects that significant legal staff time will be required in the future because of the evolving nature of the industry. The State recently enacted the Medical Marijuana Regulatory and Safety Act (MMRSA). As the State implements new regulations in support of MMRSA, it is anticipated that significant legal staff time will be needed to insure that the City's medical marijuana providers are fully compliant with all City and State regulations. Additionally, a large amount of staff time will be required to initiate and defend medical marijuana litigation and administrative proceedings. For these reasons, the City Attorney's

Office will continue to be significantly involved in the legal issues surrounding medical marijuana.

Table 2: City Attorney Costs

City Attorney Operational Requirements	FY 16 Ramp-Up Cost	Annual Cost
• 2.0 FTE - Deputy City Attorney	\$ -	\$ 420,000
• 2.0 FTE - Legal Assistant I - IV	\$ -	\$ 255,000
• Misc. Operating Expense (Internal Support, Materials & Supplies, Overhead, etc)	\$ -	\$ 20,000
Total	\$ -	\$ 695,000

City Attorney One-Time Requirements	One-Time Cost
• Office Equipment & Furnishing	\$ 45,000
• Outside Legal Council - (Needed until positions can be filled, cost dependant on number of lawsuits filed)	\$ 350,000
Total	\$ 395,000

City Prosecutor

The City Prosecutor expects to be involved in criminal litigation of licensing, due process, state and federal law pre-emption, and other issues relating to medical marijuana. The City Prosecutor has been significantly involved in medical marijuana litigation since 2010 and has prosecuted more than 700 individuals. This does not include the medical marijuana cases that were rejected for lack of evidence. In addition, the City Prosecutor has been involved in discussions with law enforcement outside of the courtroom regarding the ordinance. It is expected that all of these activities will continue under a new ordinance. The actual number of prosecutions will be monitored after the ordinance takes effect and, should additional staffing or resources be required, the Department will request a budget enhancement at a later date.

Table 3: City Prosecutor Costs

City Prosecutor Operational Requirements	FY 16 Ramp-Up Cost	Annual Cost
• 1.5 FTE - Prosecutor	\$ 135,847	\$ 191,231
• 1.0 FTE - Paralegal	\$ 76,721	\$ 108,000
Total	\$ 212,569	\$ 299,231

City Prosecutor One-Time Requirements	One-Time Cost
• (None)	\$ -
Total	\$ -

Development Services

Development Services will be involved in the permitting of sanctioned businesses and the inspection of both sanctioned and unsanctioned facilities. It anticipates the Planning processes (the CUP application and its renewal) and the Building plan check, permitting and inspection processes for sanctioned businesses will be covered by existing resources and

fees. Additional resources will be needed to train Building Plan Check and Inspection staff on issues and concerns specific to dispensaries and cultivation facilities, and to do follow-up inspections to ensure ongoing compliance.

Beyond the initial entitlement and construction phase, staff will be expected to respond to issues arising from illegal or unsanctioned business operations. Staff will be informed of illegal construction improvements or the illegal operation of a business through complaints. As part of the enforcement response team, Code Enforcement and Building Inspection staff will be required to investigate and issue citations, as necessary, for any violations of Building and Safety codes or other City regulations, including zoning code violations (i.e. not getting a CUP), and any unpermitted changes to the plumbing, electrical and mechanical systems of the building. If an inspection reveals that the business is operating illegally or that changes to the building have caused a hazardous situation and the owners/operators refuse to restore the building in a permissible manner or to obtain permits, staff will coordinate with other departments and agencies to initiate enforcement and monitoring penalties. Entry to illegal businesses will be difficult, requiring numerous return visits. Upon entry, if violations are found, numerous visits will be required to obtain compliance. Despite these efforts, it is likely that compliance for building or zoning code violations will be exceedingly difficult to achieve because the relatively minimal penalty assessed through the Administrative Citation process far outweighs the profit of running this type of business.

Table 4: Development Services Costs

Development Services Operational Requirements	FY 16 Ramp-Up Cost	Annual Cost
• 1.0 FTE - Principal Building Inspector	\$ 48,117	\$ 145,543
• 3.0 FTE - Building Inspector - Code	\$ 117,033	\$ 354,000
• 2.0 FTE - Building Inspector - Building	\$ 78,022	\$ 236,000
• 1.0 FTE - Clerk Typist III	\$ 25,221	\$ 76,288
• Misc. Operating Expense (Internal Support, Materials & Supplies, Overhead, etc)	\$ -	\$ 147,315
Total	\$ 268,392	\$ 959,146

Development Services One-Time Requirements	One-Time Cost
• Quarterly Inspections of Legal Dispensary Facilities	\$ 19,511
• Training	\$ 28,144
• New Vehicles	\$ 192,000
Total	\$ 239,655

Financial Management

The additional sanctioned businesses are not expected to materially increase workload for Business License Inspectors, but significant contractual costs are expected for outside audits for compliance with cash controls/reporting and for audits to help ensure the accuracy of the self-reporting of taxes. Commercial Services (cashiering) will receive and count taxes paid by the sanctioned medical marijuana businesses. Because tax payments are expected to be made entirely in cash and are expected to be relatively large, the Commercial Services Bureau will require additional staff, security and equipment.

Unsanctioned businesses are expected to create a substantial workload for Business License Inspectors for citations and associated follow-up. The Business Services Bureau (licensing) will issue business licenses to sanctioned medical marijuana businesses and cite unsanctioned businesses that are brought to its attention. The Bureau is not expected to actively seek to identify unsanctioned business, but it is likely that some will be identified during normal testing and sweeps for unlicensed businesses. Additional inspectors and associated support are expected to be required based on historical workloads. At this time, it is not envisioned that unsanctioned businesses will voluntarily pay taxes; however, if this is the case, it could impact the level of staffing and equipment needed in Commercial Services.

Table 5: Financial Management Costs

Financial Management Operational Requirements	FY 16 Ramp-Up Cost	Annual Cost
• 1.0 FTE - License Inspector	\$ 29,754	\$ 90,000
	\$ 26,448	\$ 80,000
• 1.0 FTE - Customer Service Rep/Assistant Admin Analyst		
• 1.00 FTE - Cashier	\$ -	\$ 80,000
• 1.00 FTE - Special Services Officer	\$ -	\$ 107,000
• Contract Auditor	\$ -	\$ 100,000
• Armored Car Service	\$ -	\$ 16,400
• Misc. Operating Cost	\$ 2,369	\$ 3,000
• Business License Inspector Vehicle	\$ 6,639	\$ 10,000
Total	\$ 65,210	\$ 486,400

Financial Management One-Time Requirements	One-Time Cost
• Vehicle purchase for inspectors	\$ 36,100
• Cashiering equipment	\$ 19,600
• Reinforcement of cashiering facilities	\$ 37,500
• Video security cameras	\$ 39,600
Total	\$ 132,800

Fire

The Fire Department anticipates that it will require an additional Plan Checker II to assist in the review and inspection of both sanctioned and unsanctioned facilities. The Fire Department will be expected to review plans and inspect legal and illegal businesses for structural, fire, and other hazards. The Fire Department will issue red tags for businesses operating in hazardous facilities, as it has done in the past. The additional FTE will allow for the approval and periodic inspection of sanctioned facilities and the inspection and closure of unsanctioned facilities.

Table 6: Fire Costs

Fire Operational Requirements	FY 16 Ramp-Up Cost	Annual Cost
• 1.00 FTE - Fire Plan Checker II/Inspector	\$ 21,178	\$ 129,181
• 0.20 FTE - Deputy Fire Marshal	\$ 26,492	\$ 35,517
• Fleet Annual Costs	\$ 4,475	\$ 6,000
• Technology Costs	\$ 2,685	\$ 3,600
Total	\$ 54,831	\$ 174,298

Fire One-Time Requirements	One-Time Cost
• New Vehicle	\$ 35,000
• Uniforms	\$ 600
Total	\$ 35,600

Health & Human Services

The Health Department anticipates inspecting any medical marijuana facility engaging in the cultivation of marijuana and in the production and sale of medical marijuana infused food products. The Health Department currently charges a permit fee for both hazardous waste and food safety inspections. Inspections of this nature for licensed facilities would be covered under current charges. As part of the inspection process, Health Department staff could also verify medical marijuana testing certificates.

Additional unsanctioned cultivation facilities are expected. The Health Department anticipates being involved in the oversight of environmental hazard clean-ups that could arise at these facilities. These clean-ups are performed at a substantial cost in contractor fees and City resources. The need for hazardous waste clean-up is unpredictable in nature, as is the ability to recoup the cost of clean-up from violators. Therefore, clean-up expense will be regularly revisited and budget will be requested as events occur.

Table 7: Health & Human Services Costs

Health & Human Services Operational Requirements	FY 16 Ramp-Up Cost	Annual Cost
• 0.25 FTE - Environmental Health Specialist	\$ -	\$ 32,415
• 0.25 FTE - Haz Mat Specialist (Inspections)	\$ -	\$ 35,250
• 0.30 FTE - Haz Mat Specialist (Clean-up)	\$ 13,984	\$ 42,300
• 0.15 FTE - Manager of Environmental Health	\$ 15,457	\$ 20,722
• On-going Training	\$ -	\$ 2,500
Total	\$ 29,441	\$ 133,187

Health & Human Services One-Time Requirements	One-Time Cost
• Staff Training	\$ 15,000
• System Upgrades- Envision - Forms	\$ 15,000
• Plan Check -EHS III	\$ 33,080
Total	\$ 63,080

Police

While it is anticipated that sanctioned businesses and unsanctioned medical marijuana businesses will create additional work for the Police Department, the cross-departmental team-based approach will require fewer resources than a Police Department driven process. The Police Department will require 2.5 Police Officers to accompany Financial Management and Development Services staff to address complaints, identify unsanctioned businesses, and help ensure the safety of City personnel during inspections. The allocation of 2.5 Police Officers to a cross-departmental team will ensure year-round presence of generally two police officers during normal City business hours to assist with business license and building compliance checks.

The Police Department anticipates additional workload necessitated by the need to track, analyze, and manage data related to unsanctioned and sanctioned medical marijuana businesses. It is estimated that \$10,000 in overtime will be required to perform data entry and analysis.

If, instead of the team-based approach, the Police Department-driven approach was used, the Police Department would require a full-time 11-person team, which would cost \$1.6 million.

Table 8: Police Costs

Police Operational Requirements	FY 16 Ramp-Up Cost	Annual Cost
• 2.50 FTE - Police Officer	\$ 118,024	\$ 356,998
• Overtime - Clerk Typist III	\$ 3,306	\$ 10,000
• Disposable Clothing for Sworn Officers	\$ 248	\$ 750
• Technology/Radio Costs	\$ 2,667	\$ 8,068
Total	\$ 124,245	\$ 375,816

Police One-Time Requirements	One-Time Cost
• (None)	\$ -
Total	\$ -

Total Costs

The total estimated costs to implement the proposed ordinance, as currently drafted, are as follows:

Table 9: Total Estimated Costs

Total Operational Requirements	FY 16 Ramp-Up Cost	Annual Cost (FY 17 +)
Total	\$ 856,560	\$ 3,298,126

Total One-Time Requirements	FY 16 One-Time Cost
Total	\$ 866,135

However, not all of these costs will require additional General Fund appropriations due to the fact that a portion of the operational needs detailed above will be handled using existing staff

and/or resources. For instance, Departmental overhead, technology service charges, training, fleet maintenance, and fractions of management staff time costs will be absorbed within existing department budgets and staffing levels. Therefore, the table shown below provides a summary of the budgetary impact of the proposed ordinance, and the amount that the City will be requesting in increased appropriation to regulate the medical marijuana industry beginning in FY 16:

Table 10: Total Unbudgeted Costs

Total Operational Requirements	FY 16 Ramp-Up Cost	Annual Cost (FY 17+)
Total Budgetary Impact	\$ 797,248	\$ 2,994,461

Total One-Time Requirements	FY 16 One-Time Cost
Total Budgetary Impact	\$ 770,400

Revenues

The rapid evolution of the medical marijuana industry, the recent adoption of Medical Marijuana Regulation and Safety Act and the potential legalization of retail marijuana, make forecasting revenue from taxation extremely difficult. The City of Long Beach is not alone in this challenge. Even states that have legalized the recreational use of marijuana have found accurately forecasting tax revenue a difficult task. In Colorado, cannabis tax revenue came in 42% lower than projected in the first fiscal year of retail marijuana. The State of Washington decided not to include any cannabis tax revenue for the first year of retail legalization, and Alaska decided not to even conduct a revenue forecast due to the lack of data.

Internal factors that impact accurate revenue projections include: the level of enforcement against unsanctioned collectives and delivery services; the business experience and acumen of the collective operators; and the amount of regulatory restrictions placed on the collectives' business practices. External factors that the City does not have control over include: the price of medical marijuana; increases or decreases in patient demand; new Federal or State regulations; and competition from collectives in adjacent cities.

Given the above factors and without historical tax revenue data from the City of Long Beach, the Financial Management Department engaged a consultant experienced in the regulation of medical marijuana to develop revenue projections based on the potential Long Beach ordinance. The consultant had access to sales tax data on over 800 active registered accounts in California related to the retail sale of medical marijuana. Using this dataset, the consultant created a model to estimate a range of revenue projections for the City's gross receipts business license tax, cultivation square footage business license tax, and local sales tax. As stated earlier, any changes City Council chooses to make to the City Attorney draft ordinance may materially affect revenues.

Gross Receipts Business License Tax

The City of Long Beach's initial Business License Tax rate of six percent (6%) is applied to the projected gross receipts in the table below in order to come up with the tax revenue forecast. These figures were derived by analyzing the gross receipt sales tax data of all active dispensaries located in Los Angeles County and surrounding areas.

Table 11: Estimated Gross Receipts Business License Tax

Capture Rate	Low	Medium	High
Estimated Gross Receipts	\$ 11,727,900	\$ 17,692,461	\$ 26,820,900
Gross Receipts Tax Rate	6.0%	6.0%	6.0%
Gross Receipts Tax	\$ 703,674	\$ 1,061,548	\$ 1,609,254

In order to generate the high capture rate of \$1,609,254, each of the nine dispensaries would need to generate an average of approximately \$3 million in gross receipts. This would likely require that dispensaries carry a wide variety of products to capture market share, maintain the ability to freely deliver marijuana inside and outside of city limits, and face limited competition through the successful elimination of unsanctioned dispensaries in the City.

A medium capture rate of \$1,061,548 would require each dispensary to generate, on average, approximately \$2 million in gross receipts. This is based on the average of established City of Los Angeles medical marijuana dispensaries and assumes deliveries are allowed but limited, and that competition from unsanctioned businesses will take some market share.

The low capture rate of \$703,674 in revenue would require each dispensary to generate, on average, \$1.3 million in gross receipts and assumes no delivery outside the city, plus intense competition from unsanctioned businesses.

Local Sales Tax Revenues

The sale of medical marijuana is subject to the State Sales Tax, with 1%, or \$0.01 of every \$1.00 in sales going to the City. The tax is applied to gross receipts, which have been projected using the same methodologies as those outlined in the section above. Assuming the potential Collectives are fully compliant in collecting and remitting the Sales Tax to the California State Board of Equalization, the table below represents the estimated Sales Tax that the City will receive.

Table 12: Estimated Local Sales Tax

Capture Rate	Low	Medium	High
Estimated Gross Receipts	\$ 11,727,900	\$ 17,692,461	\$ 26,820,900
Sales Tax Rate	1.0%	1.0%	1.0%
Sales Tax	\$ 117,279	\$ 176,925	\$ 268,209

Cultivation Square Footage Business License Tax

Under the proposed Ordinance, the maximum amount of square footage ("sq. ft.") allowed for cultivation is 5,000 sq. ft. per collective. For purposes of revenue estimates, the figures below assume that two (2) of the nine (9) dispensaries choose to have combined cultivation facilities. The current ordinance provides for a maximum allowance of 5,000 sq. ft. of cultivation space for each operator, which means the total cultivation space eligible would be 10,000 sq. ft. Applying the City of Long Beach's initial Business License Tax of \$15 per sq. ft., the maximum amount of Business License Tax this could generate per year would be \$150,000.

However, the likelihood of having two (2) Collectives operating cultivation facilities at maximum capacity is problematic due to zoning requirements and who is awarded the cultivation permits. It is difficult to predict the true characteristics and scale of the potential collective operators in the City. As a result, it would be safe to estimate that the total canopy square footage most likely to get permitted would be approximately 75% percent of the maximum under consideration which would be 7,500/2 (3,750) sq. ft. Therefore, the square footage business tax revenue projection recommended for budgetary purposes for the first year of implementation should be \$112,500 until actual leases and permits have been approved. If fewer or greater number of dispensaries contain cultivation, the revenue estimates will vary.

Table 13: Estimated Cultivation Square Footage Business License Tax

	Total Sq. Ft.	No. of Sites
Large Cultivation Site	5,000	1
Medium Cultivation Site	2,500	1
Total	7,500	2
Tax Rate per sq. ft.	\$15	
Total Tax	\$112,500	

Total Tax Revenues

Although these projections have been developed based on the best available evidence, the nature of the medical marijuana industry makes accurate revenue forecasting difficult. The projections below should be interpreted as rough estimates. If the City Council decides to pass a regulatory ordinance, actual revenue may vary significantly from this estimate. The revenues below assume a level of 6% on gross receipts from dispensaries and a \$15 per square foot business tax applied to cultivation facilities, and also include the City's 1% share of sales tax on all sales from dispensaries.

Table 14: Estimated Total Revenues at Initial Tax Rates

Capture Rate	Low	Medium	High
Gross Receipts Tax (6%)	\$ 703,674	\$ 1,061,548	\$ 1,609,254
Sales Tax (1%)	\$ 117,279	\$ 176,925	\$ 268,209
Cultivation Sq. Ft. Tax (\$15)	\$ 112,500	\$ 112,500	\$ 112,500
Total Revenues	\$ 933,453	\$ 1,350,972	\$ 1,989,963

Total Tax Revenues with Maximum Business License Rate

The City of Long Beach Municipal Code (LBMC) Section 3.80.261.8.B.1 states that every Marijuana Business shall pay business tax at a rate *up to* ten percent (10%) of Gross Receipts. The tax shall be initially set at a rate of six percent (6%). LBMC Section 3.80.261.8.3 further imposes a minimum business tax of \$15 to a maximum tax of \$50 per square foot for each "cultivation facility."

Due to the projected shortfall in funding for medical marijuana enforcement costs relative to expected revenues under the current business license rates of 6% gross receipts for dispensaries and \$15 per square foot for cultivation, staff recommends that City Council take

action to increase the business license rates to the maximum allowable level. Should City Council choose to do this, staff estimates that total revenues could increase up to the level presented in the table below:

Table 15: Estimated Total Revenues at Maximum Tax Rates

Capture Rate	Low	Medium	High
Gross Receipts Tax (10%)	\$ 1,172,790	\$ 1,769,246	\$ 2,682,090
Sales Tax (1%)	\$ 117,279	\$ 176,925	\$ 268,209
Cultivation Sq. Ft. Tax (\$50)	\$ 375,000	\$ 375,000	\$ 375,000
Total Revenues	\$ 1,665,069	\$ 2,321,171	\$ 3,325,299

Based on the provisions of the current ordinance, the City's enforcement model and the likely existence of unsanctioned businesses, the medium capture rate is assumed to be the most likely case and will be used for the remainder of the projection summary.

Medical Marijuana Related Fees

In addition to the expected tax revenues detailed above, the City will charge CUP, plan check, and other inspection fees. This will allow the City to recover costs associated with existing staff time involved in application review and approval. Other California cities also charge medical marijuana businesses an annual regulatory fee, allowing them to recover the costs associated with regulating medical marijuana. The City of Oakland and City of San Jose have developed annual regulatory fees that achieve nearly 100% cost recovery of expenses associated with medical marijuana regulation of their permitted businesses. The City of Oakland charges medical marijuana collectives an annual operating fee of \$60,000. The City of San Jose charges \$71,961.

The draft ordinance provides for the City to charge an annual regulatory fee, in addition to the CUP application and renewal fee, to recover the costs associated with regulation and enforcement of this industry. The City of Long Beach currently does not engage in the active regulation of medical marijuana, and the additional service of this regulation and the protection of permitted businesses and residents would entail additional costs to the City.

Any regulatory fee would need to comply with California Propositions 218 and 26, which require any fee to be imposed in an amount necessary to carry out the purpose and provisions of a regulation and to not exceed the costs of providing the service. The regulatory fee may not be used for an unrelated purpose. Alternatively, the City could recover costs associated with regulation and enforcement by charging medical marijuana businesses piecemeal for individual regulatory actions. It is suggested that a general regulatory fee covering as much of the regulatory and enforcement costs as feasible would be the best approach for having the least adverse impact on City services. It is important to note that this fee would not cover the costs of addressing unsanctioned businesses. The exact amount of the fee would be dependent on the ordinance requirements and the City services provided to enforce the ordinance. If City Council approved this ordinance, staff would work to develop the exact fee, and City Council approval via resolution would be required at a later date.

The Department of Financial Management worked with other City Departments to estimate the percentage of medical marijuana costs that could appropriately be charged to sanctioned

businesses through an annual regulatory fee. The calculation excludes any costs associated with unsanctioned businesses, as well as those costs that will be recouped through the existing fee structure established by the City. Based on this calculation, staff estimates that the City could collect an additional \$747,537 in fee revenues through a new regulatory fee charged to sanctioned businesses for operating medical facilities within the city. Assuming nine (9) dispensaries are permitted to operate in the city, this would translate to an \$83,060 annual fee per dispensary to recoup the cost to the City for regulating this new industry. The table below outlines the expected annual fee revenues, and the amount that would need to be charged to each dispensary to achieve the total amount.

Table 16: Estimated Regulatory Fee Revenue

	Total	Fee Per Dispensary
Estimated Regulatory Fee Revenues	\$ 747,537	\$ 83,060

Fiscal Impact Summary

As the revenue generated from using the initial tax rates would lead to a \$900,000 shortfall, it is recommended that City Council set the business license tax rates to the maximum allowable level. The projection below assumes the maximum tax rates and that the earliest dispensary start date would not occur until FY 17. Therefore, any new revenues associated with the medical marijuana industry would not be realized until FY 17 at the earliest. Should City Council approve the medical marijuana ordinance, staff will address the projected FY 16 shortfall using FY 15 one-time year-end General Fund surplus. If the year-end surplus is not enough to cover the shortfall, staff will utilize any FY 16 surplus to cover the remaining ramp-up and one-time costs. For FY 17, the revenues should cover the costs with a modest surplus; however, if they do not come in as anticipated staff would use any FY 16 surplus to cover the difference. This would leave the projected General Fund shortfall unchanged at \$5.1 million.

Table 17: Estimated Fiscal Impact at Maximum Tax Rates

Projected Medical Marijuana Expense and Revenues		
At <u>Maximum</u> Business License Tax Rates (10% gross receipts/\$50 per sq ft cultivation)		
	<u>FY 16</u>	<u>FY 17</u>
Revenues	<u>Ramp Up</u>	<u>Annual</u>
Gross Receipts Tax Revenue (at 10%)	\$ -	\$ 1,769,246
Cultivation Square Footage Tax Revenue (at \$50)	\$ -	\$ 375,000
Sales Tax Revenue (1%)	\$ -	\$ 176,925
Regulatory Fee	\$ -	\$ 747,537
Total	\$ -	\$ 3,068,708
	<u>FY 16</u>	<u>FY 17*</u>
Unbudgeted Expenditures	<u>Ramp Up</u>	<u>Annual</u>
Ongoing Department Costs	\$ 797,248	\$ 2,994,461
One-Time Department Costs	\$ 770,400	\$ -
Total	\$ 1,567,648	\$ 2,994,461
Total Estimated Surplus/(Shortfall)	\$ (1,567,648)	\$ 74,247

During the September 22, 2015 meeting, City Council also expressed interest in dedicating 5 to 10 percent of medical marijuana tax revenues to support parks and after-school programs. In response, the City Attorney clarified that any medical marijuana tax revenues would be collected as a general tax and, therefore, could not be restricted to a specific purpose. City Council then asked staff to report back on a possible process to allocate medical marijuana tax revenues of 5 to 10 percent to support parks and after school programs. At this point, all funds are needed for enforcement. If this changes and medical marijuana revenues exceed costs in a particular year, City Council can allocate a portion of the surplus to fund park and after-school programs in the following year through the budget process.