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**City Council**

**MEETING DATE: 7/26/2017**

**TITLE:**  
**Sale of Marijuana Clone Plants by Dispensaries**

**FROM:**  
Charlie McClendon, City Manager

**RECOMMENDATION:**  
This item is presented for information, discussion and direction only.

**BACKGROUND:**

A policy question has arisen regarding whether and under what circumstances licensed dispensaries in Cathedral City may sell marijuana clones to customers and at what point does possession of clones indicate that a cultivation license may be required. Councilmember Carnevale requested a discussion of the topic so that staff may provide clarity to the licensed dispensaries in the City.

**DISCUSSION:**

Staff consulted with the Cathedral City Attorney's office on this question and also with special counsel Vicente Sederberg. Following is a paraphrase of the feedback received:

The State statutes and proposed regulations shed some light on this subject without fully clarifying things. Their analysis indicated that a clone would fall under the definition of "cannabis." However, the inquiry doesn't end there. The critical question is really about which State license type can engage in which activities.

There are several types of cultivation licenses under the State regulatory scheme, including a license for "nurseries." A nursery license type can propagate and sell clones and immature plants but is not allowed to grow plants to maturity. According to Jordan, a nursery may sell its clones, seeds and immature plants to other cultivation licensees. A non-nursery cultivation licensee may produce clones for use at its own facility but cannot transfer those clones to another cultivation licensee. No cultivation licensees are authorized to sell to end customers (only other licensed businesses).

Separately, under the State regulations a "retailer" licensee (the equivalent of a City dispensary license) is authorized to sell cannabis and cannabis products to customers but is not allowed to

"cultivate" cannabis. The State defines cultivation as "the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis." Since cannabis is defined to include plants, their opinion is that retailers can sell clones to customers. A review of the statutes and proposed regulations did not uncover any prohibition on the sale of clones by retailers.

Therefore, it appears that under the State regulations clones must be cultivated by a licensed cultivation facility, but may be sold to the public by a licensed retailer. Though the State has not expressly addressed this issue, it appears that the State would not consider the mere act of keeping alive clones that are being offered for immediate sale to a customer to be "cultivation." These clones should never exceed the standards for an immature plant (approximately 8") nor should they produce any buds. As such, their opinion is that a retail business would not be required to obtain a cultivation license to simply possess a clone and sell the clone to a customer. Further, a retail license holder should be purchasing the clones from a nursery or other licensed cultivation facility. These clones should be considered and treated like any other cannabis product available for sale to a customer and tracked similarly to an edible (each clone is a single unit) within a licensee's inventory tracking system.

Unfortunately, this issue is not explicitly addressed in statute and the response is limited to their interpretation of the law. Although the interpretation fits within the language of the statutes and cannabis industry regulations, the statutes do not explicitly state that a retail license can sell clones nor does it prohibit the sale. Since this is a common industry practice, it seems that the Legislature would have explicitly prohibited the practice if it intended to impose such a restriction.

In Colorado, dispensaries may sell clones without obtaining a cultivation license. However, they would have to purchase the clones from a licensed facility and could not produce the clones themselves. Further, the clones would have to be less than 8 inches tall or wide; at which point they would become plants and a full cultivation license is needed.

As the City's regulations utilize the State's definitions, it appears that a code amendment is not needed to allow dispensaries to sell clones, this can just be clarified in the Administrative Regulations.

**FISCAL IMPACT:**

There is no fiscal impact to the City.

**ATTACHMENTS:**

None