



## City Council Report

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Sacramento, CA 95814

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**File ID:** 2017-01412

October 24, 2017

**Consent Item 16**

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**Title:** Ordinance Amending Sections in Chapter 5.150 of the Sacramento City Code Relating to Cannabis Manufacturing Businesses (Passed for Publication 10/17/2017; Published 10/20/2017)

**Location:** Citywide

**Recommendation:** Pass an Ordinance amending sections in chapter 5.150 of the Sacramento City Code relating to cannabis manufacturing businesses.

**Contact:** Joe Devlin, Chief of Cannabis Policy and Enforcement, (916) 808-4772; Zarah Cruz, Program Specialist, (916) 808-8925, Office of Cannabis Policy and Enforcement, Department of Finance; Steve Itagaki, Senior Deputy City Attorney, (916) 808-5760, Office of the City Attorney

**Presenter:** None

**Attachments:**

1-Description/Analysis

2-Ordinance (Clean)

3-Ordinance (Redline)

## Description/Analysis

**Issue Detail:** On April 4, 2017, the City Council adopted Ordinance No. 2017-0031 relating to cannabis manufacturing businesses. The ordinance provides the regulations for manufacturing and specifically prohibits the use of volatile solvents. Ethanol, even though a grain alcohol, is classified as a volatile solvent.

Through research, meeting with manufacturers, and a visit to out-of-state cannabis manufacturing facilities that utilize ethanol in their processes, staff has determined that ethanol is a widely accepted method in cannabis manufacturing and can be used safely as part of the manufacturing process. This finding is supported by the City Fire Marshal.

The Law and Legislation Committee asked staff to draft an ordinance allowing the use of ethanol in cannabis manufacturing for City Council consideration.

The City's cannabis manufacturing ordinance also provides the regulations for all aspects of manufacturing, from extraction to production of edibles or topicals, to packaging and labeling. The Business Operating Permit (BOP) fee for a manufacturing business is currently \$30,900.

Through subsequent discussions with stakeholders, staff has determined that the current manufacturing permit is a one-size-fits-all permit that doesn't accurately reflect the needs of the industry. While larger manufacturers intend to be involved in all aspects of the manufacturing process, some manufacturers intend to focus only on creating products that are infused with cannabis, and some are only interested in packaging and labeling. Given the variation in activity and size that has become evident in the manufacturing sector, the one-size-fits-all BOP fee is too costly for the smaller manufacturers and makes it difficult, particularly for small businesses, to participate in the industry.

Additionally, staff has determined that the State of California, Department of Public Health, will be issuing manufacturing licenses and implementing a tiered system of permitting to accommodate the different manufacturing activities and sizes of business. On August 22, 2017, the Law and Legislation Committee authorized staff to draft an ordinance to provide for tiered manufacturing permits.

To this end, staff is recommending that the City Council consider and pass the attached ordinance (Attachment No. 2) amending Title 5 which will:

1. Allow the use of ethanol in cannabis manufacturing;
2. Create a tiered permit system according to manufacturing activity:

- a. Type 1 for nonvolatile manufacturing (all aspects)
- b. Type N for production (of edibles, topicals, and other products)
- c. Type P for packaging and labeling

**Policy Considerations:** The City's current manufacturing ordinance does not allow the use of ethanol in cannabis manufacturing. However, staff and the Fire Marshal have since determined that ethanol can be used safely in cannabis manufacturing. The proposed ordinance will amend Title 5 to exempt ethanol from the solvents that are not permitted in cannabis manufacturing.

If approved, the City will accept applications from manufacturers that use ethanol, both in extraction and non-extraction processes. All CUP applications submitted by businesses that intend to use ethanol will be individually evaluated by the Fire Marshall for safety prior to issuing an approval.

The proposed amendment to the manufacturing regulations will also add a tiered manufacturing structure to provide manufacturers who only perform a specific manufacturing activity at a certain level of economic output to apply for a specific type (activity) of permit. The fees associated with each permit type and class will be established by a fee schedule to be submitted to the Budget and Audit Committee on November 7, 2017 and subsequently for City Council adoption on November 21, 2017.

**Environmental Considerations:** This action is not a project that is subject to CEQA because it does not have the potential for causing a significant effect on the environment. (CEQA Guidelines §15061(b)(3).)

**Sustainability:** Not applicable.

**Commission/Committee Action:** On August 22, 2017, the Law and Legislation Committee authorized staff to draft an ordinance allowing the use of ethanol in cannabis manufacturing and to create a tiered system of manufacturing permits to allow more businesses the opportunity to participate in the cannabis industry.

**Rationale for Recommendation:** Over the last two years, the City has taken steps to reasonably regulate cannabis in the City of Sacramento. The City Council has adopted policies for cultivation, manufacturing and lab testing, in addition to regulations for dispensaries, which had been in place as early as 2010. Policies are also currently being developed for distribution, delivery-only dispensaries, as well as Adult Use retail for permitted dispensaries in the light of Adult Use retail becoming legal on January 1, 2018.

The proposed ordinance will reflect new/additional information relative to the cannabis industry and will encourage legal entry into the market and regulatory compliance. In addition, it will also create an opportunity for smaller operators, such as those involved only in a certain type of manufacturing activity (producing edibles and topicals only, or packaging and labeling only) or those making less than \$100,000 in gross receipts to apply for a permit.

The tiered manufacturing component of the proposed ordinance is a step towards the goal of promoting equity by creating market conditions that support the development of small businesses. In addition to the proposed amendments to Title 5, the City Council is also asked to consider Title 17 amendments (submitted under a different agenda item) waiving CUP requirements for manufacturers with less than \$100,000 in gross receipts.

**Financial Considerations:** There are currently nine applications for manufacturing BOPs. The proposed amendment will increase the opportunity for additional manufacturers – such as those using ethanol, as well as those that only perform a specific type of manufacturing activity. All cannabis businesses are required to pay a four percent Business Operations Tax (BOT). The increase in the number of manufacturers should translate in an increased annual cannabis related BOT. Over the last two fiscal years, the 30 dispensaries in the city, have contributed an average of \$4.6 million to the General Fund through their annual BOT. This number is expected to increase with the addition of other types of cannabis permits.

**Local Business Enterprise (LBE):** Not applicable.

## ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTIONS 5.150.020, 5.150.790, AND  
5.150.800 OF THE SACRAMENTO CITY CODE, RELATING TO  
CANNABIS MANUFACTURING BUSINESSES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

### SECTION 1.

A. The definition of “volatile solvent” in section 5.150.020 of the Sacramento City Code is amended to read as follows:

“Volatile solvent” means a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. “Volatile solvent” does not include ethanol when used in a manner that will not create explosive or ignitable mixtures, as approved by the fire chief or designee.

B. Except as amended by subsection A above, all provisions of section 5.150.020 remain unchanged and in full effect.

### SECTION 2.

Section 5.150.790 of the Sacramento City Code is amended to read as follows:

5.150.790 Cannabis manufacturing permit required.

A. No person shall operate a cannabis manufacturing business without a valid cannabis manufacturing permit issued pursuant to this article or inconsistently with the limitations of the permit issued, as described in subsection B below.

B. The types of cannabis manufacturing permits issued pursuant to this article include the following:

1. Type 1, for a business involving all aspects of a cannabis manufacturing business, including the extraction of substances from a cannabis plant and the activities allowed with a Type N and Type P permit as described below.

2. Type N, for a business involving the production and preparation of cannabis products (such as infusing cannabis extracts or concentrates into edibles and topicals) and the activities allowed with a Type P permit as described below. A business

holding a Type N permit cannot engage in the extraction of substances from a cannabis plant.

3. Type P, for a business involving only the packaging and labeling of cannabis or cannabis products. A business holding a Type P permit cannot engage in the extraction of substances from a cannabis plant, or the production and preparation of cannabis products.

### SECTION 3.

Section 5.150.800 of the Sacramento City Code is amended to read as follows:

5.150.800 Cannabis manufacturing permit program fee.

The cannabis manufacturing permit program fee is established and imposed. The city council shall establish by resolution the amount of the fee, and any related penalties. The fee and penalties may be established at various amounts based upon the type of permit and the gross receipts of the business.

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BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

#### SECTION 1.

A. The definition of “volatile solvent” in section 5.150.020 of the Sacramento City Code is amended to read as follows:

“Volatile solvent” ~~has the same meaning as in California Health and Safety Code section 11362.3~~ means a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. “Volatile solvent” does not include ethanol when used in a manner that will not create explosive or ignitable mixtures, as approved by the fire chief or designee.

B. Except as amended by subsection A above, all provisions of section 5.150.020 remain unchanged and in full effect.

#### SECTION 2.

Section 5.150.790 of the Sacramento City Code is amended to read as follows:

##### **5.150.790 Cannabis manufacturing permit required.**

A. No person shall operate a cannabis manufacturing business without a valid cannabis manufacturing permit issued pursuant to this article or inconsistently with the limitations of the permit issued, as described in subsection B below.

B. The types of cannabis manufacturing permits issued pursuant to this article include the following:

1. Type 1, for a business involving all aspects of a cannabis manufacturing business, including the extraction of substances from a cannabis plant and the activities allowed with a Type N and Type P permit as described below.

2. Type N, for a business involving the production and preparation of cannabis products (such as infusing cannabis extracts or concentrates into edibles and topicals) and the activities allowed with a Type P permit as described below. A business

holding a Type N permit cannot engage in the extraction of substances from a cannabis plant.

3. Type P, for a business involving only the packaging and labeling of cannabis or cannabis products. A business holding a Type P permit cannot engage in the extraction of substances from a cannabis plant, or the production and preparation of cannabis products.

### SECTION 3.

Section 5.150.800 of the Sacramento City Code is amended to read as follows:

#### **5.150.800 Cannabis manufacturing permit program fee.**

The cannabis manufacturing permit program fee is established and imposed. The city council shall establish by resolution the amount of the ~~cannabis manufacturing permit program~~ fee, and any related penalties. The fee and penalties may be established at various amounts based upon the type of permit and the gross receipts of the business.