



CITY of CALABASAS

CITY COUNCIL AGENDA REPORT

DATE: JUNE 17, 2020

TO: HONORABLE MAYOR AND COUNCILMEMBERS

**FROM: RAY TAYLOR, INTERIM CITY MANAGER
SCOTT H. HOWARD, CONTRACT CITY ATTORNEY
MATTHEW T. SUMMERS, ASSISTANT CITY ATTORNEY
COLANTUONO HIGHSMITH & WHATLEY, PC**

**SUBJECT: DISCUSSION AND DIRECTION REGARDING PROPOSED CANNABIS
BUSINESS GENERAL TAX**

MEETING

DATE: JUNE 24, 2020

SUMMARY RECOMMENDATION:

Staff recommends the City Council consider a proposed cannabis business gross receipts tax, and if desired, direct staff to prepare a Resolution submitting the tax to the voters, allowing a tax to be in place in the event that commercial cannabis businesses are ever permitted in the City.

REPORT:

Background: On November 8, 2016, the Control, Regulate, & Tax Adult Use of Marijuana Act was approved by California voters with the passage of Proposition 64. The AUMA permits local jurisdictions to regulate and/or ban adult use cannabis cultivation, distribution and delivery, transportation, manufacturing, testing laboratories, dispensaries, and microbusiness facilities.

Thereafter, the State legislature passed the Medicinal and Adult Use Cannabis Regulation & Safety Act, which created a comprehensive state licensing and regulatory framework for the cultivation, manufacturing, testing laboratories,

distribution, retail (storefront and non-storefront), and microbusinesses of both adult and medicinal use of cannabis.

No Recommended Change in Existing Prohibition of Cannabis Businesses. Under Business and Professions Code section 26200, part of Prop. 64, the City Council retains the power to decide whether or not to allow commercial cannabis businesses in the City. The City currently prohibits all commercial cannabis businesses. (Calabasas Municipal Code sections 8.13.030 and 17.12.125.) At this time, staff does not recommend that the City Council amend these sections to allow commercial cannabis businesses.

Instead, staff recommends that the City Council consider and provide direction as to a proposed cannabis business gross receipts general tax, which, if approved by the City's voters, would then be in place if the Legislature ever adopts a law requiring all cities in California to allow commercial cannabis businesses. Several legislators have proposed legislation that would require all cities to allow commercial cannabis businesses, on various terms and conditions, in each of the last two years. To date, all such bills have failed. Staff recommends the Council consider and provide direction on a proposed cannabis tax, to ensure a tax would be in place, if approved by the voters, if such legislation ever succeeds.

Proposed Tax: Staff has prepared a draft cannabis tax measure to be placed on the November 2020 ballot. If approved by a majority of the voters, this measure would add Article 7, Cannabis Business General Tax to Title 3, Chapter 56 of the Calabasas Municipal Code and would allow for a tax on commercial cannabis businesses to raise revenue for general fund purposes. If the Council determines to move forward with this proposed tax, staff will prepare an analysis estimating the annual revenue that could be generated, were the tax to pass and the state to adopt legislation forcing the City to allow commercial cannabis businesses.

The proposed draft ordinance would impose a tax on the privilege of conducting the following activities within the City's jurisdiction: cultivating, transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling, or distributing cannabis or cannabis products by commercial cannabis businesses in the City. The tax would be imposed on gross receipts of commercial cannabis business up to a maximum of ten percent (10%), of the business' gross receipts. The City Council would have the power, by resolution, to implement a lower tax rate than the maximum rate of ten percent or establish or establish differing tax rates for each of different categories of cannabis business activities. The City Council could, by resolution, also decrease or increase any such tax rate from time to time, provided that the tax rate did not exceed the ten percent maximum adopted by the voters.

The City Manager, in consultation with the Chief Financial Officer and City Attorney, would be responsible for adopting administrative policies to promulgate rules, regulations, and procedures to implement and administer the tax to ensure the efficient and timely collection. The City Manager would also be responsible for organizing an independent audit of the cannabis taxes to verify that tax revenues have been properly collected and expended in accordance with will of the voters.

Council consideration of the policy choices inherent in adopting a cannabis tax requires weighing the pros and cons of such a proposal. Adopting a cannabis business tax and setting tax rates on commercial cannabis activity could result in increased revenue for the stated purposes of the measure: public safety, roads and transportation, and parks and recreation. It could also serve to mitigate the impacts of allowing commercial cannabis activity and by making commercial cannabis business owners registered tax-paying businesses, it could increase accountability and compliance with the City's laws, to the extent not preempted by the state. Potential drawbacks in imposing a tax are that the tax may not raise the projected revenue and may encourage cannabis sales to be conducted outside the legal, regulated, and taxed market.

Procedural Aspects: To place a general tax on the November 2020 ballot, the Council must consider the matter at a noticed public hearing and adopt a resolution submitting the matter to voters on or before August 7, 2020. This would have to occur at a special meeting sometime in July. A general tax requires approval of 50% plus one of the voters voting at the election. A general tax must be considered at a City general election, unless the Council unanimously declares a fiscal emergency. A 2/3 vote of the City Council is required to submit a general tax to the voters. (Gov't Code, § 53724, subd. (b).)

Alternatively, the Council could propose a special tax, which would require approval of 2/3 of the voters voting at the election, and can be considered on any election date. A majority vote of the City Council is required to submit a special tax to the voters. (Gov't Code, § 50077.)

Summary Recommendation: Staff recommends that the Council consider a proposed draft cannabis businesses gross receipts tax, to be in place if approved by the voters in case the state adopts legislation requiring the City to allow commercial cannabis businesses, and provide direction whether to return with a resolution to place the tax on the November 2020 ballot.

FISCAL IMPACT:

The cost to add this proposed tax on the ballot for the City's November 3, 2020, General Municipal Election would be minimal compared to holding a Special Election. Current estimate for the November 3 Election is \$100,000.

ATTACHMENT:

Draft Ordinance No. 2020-384