



CITY of CALABASAS

CITY COUNCIL AGENDA REPORT

DATE: JULY 8, 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: ADOPTION OF RESOLUTION NO. 2020-1693, CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, FOR THE SUBMISSION TO THE VOTERS OF A PROPOSED ORDINANCE IMPOSING A CANNABIS BUSINESS GENERAL TAX. THE PROPOSED TAX IS EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PER CEQA GUIDELINES, TITLE 24 CAL. CODE OF REGS., SECTION 15378, SUBD. (B)(4).

MEETING

DATE: JULY 15, 2020

SUMMARY RECOMMENDATION:

Staff recommends the City Council adopt Resolution No. 2020-1693 submitting a proposed cannabis businesses gross receipts general tax to the voters at the November 3, 2020 General Election. [Requires a 4/5 vote of all City Council Members.]

REPORT:

Background: On November 8, 2016, the Control, Regulate, & Tax Adult Use of Marijuana Act ("AUMA") 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 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.

General Cannabis Business Tax. Staff recommends the City Council consider submitting a proposed general cannabis business gross receipts tax to the voters at the November 3, 2020 general election. If approved by a majority of the City's voters at that election, the proceeds of the proposed general tax on gross receipts of cannabis businesses may be spent on any lawful City purpose.

Tax Structure and Rate: If approved by the voters, the tax 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. This measure would impose a gross receipts tax on the privilege of conducting the following activities within the City's jurisdiction: transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling, delivering, distributing, or testing 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. The tax would raise a limited amount of revenue unless and until the state legislature legalizes cannabis businesses everywhere in the state.

If adopted, the tax would apply immediately to cannabis delivery businesses that deliver to customers within the City, an updated point that staff has confirmed since the Council's last consideration of this matter. If adopted and if the state legislature requires all cities to allow cannabis dispensaries, then the tax would apply to such dispensaries and would be expected to generate significant additional revenue.

The proposed measure seeks voter approval for a maximum tax of ten percent. If the City Council would like to, it can amend the proposed maximum tax rate up until 88 days before the election. Once approved, the City Council would have the power to implement a lower tax rate than the maximum rate of ten percent and/or establish differing tax rates for each of different categories of cannabis business activities.

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. With respect to delivery, it is in the intention of the City Manager and staff to send tax-due notice letters to all known cannabis dispensaries advertising in the City and to all known cannabis dispensaries within 25 miles that deliver to the City, putting them on notice of their obligation to pay the Calabasas cannabis taxes on their deliveries into the City, if the tax passes.

Ballot Label for Cannabis Tax Measure: The ballot label is the description of the proposed tax that is stated on the ballot and included in the voter information guides. State law requires the ballot label to include the type, rate, duration, and estimated revenue from the proposed tax. (Elections Code § 13119.) The ballot label must also be neutral and no more than 75 words. Staff recommends that the City Council closely review the proposed ballot label, as this is the language in the ballot itself reviewed by all voters. The proposed ballot label has 71 words and reads as follows:

Shall the measure imposing a City of Calabasas cannabis business tax of up to 10% of gross receipts of cannabis businesses operating in the City, including deliveries, raising approximately \$10,000 each year until voters decide otherwise, with additional revenue expected if the state or City allow cannabis dispensaries to operate in the City, to fund general City services, including public safety, roads and transportation, and parks and recreation purposes, be adopted?

Election Process and Timing: To be on the November 2020 ballot, the Council would need to adopt the Resolution and submit the ballot measure to the Los Angeles County Registrar of Voters 88 days before the date of the general election – August

7, 2020. Should the Council wish to pull the measure off the ballot after submitting it, it must do so by August 12, 2020 or 83 days before the election.

Staff has evaluated the possibility of an uncontested election for the City Council. Under Elections Code section 10229, if two or fewer persons are nominated by the end of the nomination period for the two City Council seats up for election, then the City Council may cancel the election, appoint the nominated persons, and if less nominees than available seats, appoint any eligible voter, or else may allow the election to proceed. If two or fewer persons are nominated for the two City Council seats up for election, the window to make this decision is very short, opening five days after the close of nominations (August 7, 2020 if both incumbents file nomination papers or August 12, 2020 if any incumbent does not file to run) and closing 75 days before the election, here August 20, 2020.

However, there is an exception to this rule — Elections Code section 10229, subdivision (c) provides that a City election may not be cancelled if a City measure has qualified for the ballot. If the Council is interested in retaining this option, staff has developed a conditional effective date option for the resolution [Option 2 for Section 9]: providing that this resolution only takes effect if, at the applicable close of nominations, three or more candidates have been nominated for the two City Council seats up for election. Under this optional approach, if two or fewer candidates are nominated, then the tax would not be placed on the ballot and the Council could consider, if it wanted, cancelling the election and appointing the nominees. If instead three or more candidates are nominated, then the tax would be placed on the ballot and the Council election would proceed as usual. If the Council is not inclined to take this approach, then staff recommends the standard effective date [Option 1 for Section 9], which would place this tax on the ballot and which would prevent cancelling the election.

FISCAL IMPACT:

Passage of the cannabis tax measure will result in increased revenue from the tax on gross receipts, initially no more than \$10,000 from taxes on deliveries into the City, and potentially significantly greater amounts if cannabis businesses are permitted to physically locate and operate within the City. If a storefront dispensary were to operate in the City, staff estimates that it would result in up to \$300,000 in annual revenue, per dispensary, based on an estimated gross receipts of \$3 million for the store and a 10 percent tax rate. These revenues may be spent on any lawful City purpose as approved by the City Council, as the proposed tax is a general tax.

With respect to actual election itself, staff estimates that based on costs incurred during the March 3, 2020, election, estimated cost for the November election and printing of a supplemental voter information guide will be approximately over \$103,000, which is about \$3,000 higher than the \$100,000 budgeted amount.

RECOMMENDATION:

Staff recommends that the Council adopt the Resolution No. 2020-1693, submitting the proposed cannabis businesses general tax to the voters.

ATTACHMENT:

Resolution No. 2020-1693

-Its Exhibit A, Proposed Cannabis Tax Ordinance