



CITY OF POMONA COUNCIL REPORT

August 6, 2018

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted by: Onyx Jones, Finance Director/City Treasurer

Subject: **ADOPT A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, SUBMITTING A CANNABIS BUSINESS TAX MEASURE TO THE CITY OF POMONA'S QUALIFIED ELECTORS AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2018, AND AUTHORIZING OTHER NECESSARY ACTIONS AND DOCUMENTS FOR BALLOT PLACEMENT**

OVERVIEW

Recommendation – That the City Council:

1. Adopt the Attached Resolution:
 - A. Submitting a Cannabis Business Tax Measure (Ordinance at Attachment “A” to the Resolution) to the City’s qualified electors at the November 6, 2018 General Election;
 - C. Requesting the assistance of the County of Los Angeles Registrar in connection with that election and requesting consolidation of that election with any other election held on that date;
 - D. Directing the City Attorney to prepare an impartial analysis for the proposed measure; and
 - E. Directing the City Clerk to set forth the timeline and process for filing written arguments and rebuttals.

Fiscal Impact – If Council gives direction to place a revenue measure on the November 2018 Ballot, there will be an election cost estimated to be less than \$12,000 which is currently budgeted in the FY 2019 Budget. If the actual election cost is more than the estimate, the budget will be amended during the FY 2019 Mid-Year budget process.

There are currently no permitted land uses of commercial cannabis within the City’s boundaries. Revenue from a cannabis tax measure would be dependent upon the extent to which the City Council authorizes retail, distribution, testing facilities, manufacturing and/or cultivation in the future. If allowed, the City could collect a projected \$400K - \$500K in tax

revenue annually. However, revenues may fluctuate depending on variances in wholesale prices, competition from other cities, and market demand. Only a small portion of this annual amount would be collected in the first year of implementation.

The City currently prohibits cannabis related commercial activities while bearing the financial burden of attempting to shut down illegal cannabis commercial activities. Closure of an illegal business requires law enforcement, code enforcement, as well as legal expenses. Over the past 3 years the cost to close illegal businesses is approximately \$320,000. It is not known what the annual regulation and enforcement costs would become if commercial cannabis uses are eventually allowed. This is to say, the proposed tax revenue may be sufficient to cover commercial cannabis related enforcement costs, or may result in a revenue stream to fund City services, or may be insufficient to cover enforcement/regulation costs.

The City has been advised by HDL, the City's sales tax consultant, that the cannabis tax rates proposed in Table 1 are reasonable given the current state of taxation and the cannabis industry.

Previous Related Action – On July 16, 2018, City Council voted by majority vote to give Staff and the City Attorney direction to return to the August 6, 2018 Council Meeting and present the necessary documents to place a Cannabis Business Tax before the voters of the City of Pomona in the November 2018 Election.

May 14, 2018, during the City's annual Budget Study Session, Staff was able to present the final Phase II of the 10 Year Fiscal Sustainability Analysis which included a very detailed written report from Urban Futures Incorporated (UFI), the City's financial advisor, set forth the current financial situation of the City of Pomona, and made recommendations of various strategies to be taken immediately to preserve vital City services. In UFI's report they indicated that if no action is taken by the City, the City of Pomona would be cash insolvent, service insolvent and budget insolvent by FY 2021.

On May 7, 2018, UFI presented Council with a power point presentation that updated the Ten-Year Fiscal Sustainability Plan based on FY 2019 Budget projections. UFI also included specific recommendations for Council to consider that could generate additional revenues for the General Fund and methods to streamline and reduce cost.

On December 11, 2017, City Council reviewed and discussed Phase I of the Ten-Year Fiscal Sustainability Plan presented by UFI.

When the City Council adopted the FY 2017-18 Operating Budget there was significant discussion of the critical need for the City to develop a long-term financial plan. To that end, the City Council approved a professional services agreement with UFI on August 7, 2017 to draft a financial plan.

EXECUTIVE SUMMARY

During the July 16, 2018 City Council meeting, City Council directed staff and the City Attorney to bring back a proposed ordinance and necessary documents to place a Cannabis Business Tax measure in the November 2018 election for the voters to determine whether they desire to approve such a tax. This action does not change the current land use prohibition in place by Council Ordinance, but would allow for a future tax if an ordinance or state law was to be amended.

DISCUSSION

The passage of Proposition 64 in November 2016 legalized adult recreational use of cannabis and provided authority for the State and local governments to tax commercial cannabis related businesses. The City's current Municipal Code expressly prohibits all personal cannabis outdoor cultivation, all nonmedical commercial cannabis cultivation, uses and services, and smoking and ingesting cannabis or cannabis products in public places within the City of Pomona.

A tax measure alone would not permit commercial cannabis activities in the City. The approval of commercial cannabis activity in the City would need to be a separate policy action of the City Council at a future date. With the possibility of the State removing Cities' authority related to cannabis deliveries with SB 1302, there is concern that this could be the first of many proposed pieces of legislation that would require cities to allow for cannabis in the community. In order to prepare for that possibility, the proposed tax measure, should it be passed by voters, would be ready for implementation.

The tax as proposed, based on the advice of HdL Companies, does not exceed the 30% level from cultivation to consumer that tends to be the maximum amount that consumers are willing to pay before being driven to the black market. Should the City's cannabis business tax measure pass, and Council is interested in legalizing certain cannabis commercial uses in the community, a separate action of the City Council would be required and a separate ordinance would be drafted.

Staff is proposing the Cannabis Business Tax Ordinance with the following provisions:

1. A general tax allows the flexibility for City Council to direct spending of the tax proceeds through the normal budgetary process for services funded in the General Fund.
2. Taxation would be based on cultivation canopy space and gross receipts for manufacturing, distribution, testing facilities, dispensaries, deliveries and retail sales.

A general tax contains no restrictions on its appropriation and is available for any general governmental purpose, to fund general municipal expenses such as public safety, infrastructure, street improvements, and programs for youth, etc. Currently, to place a general tax measure on the ballot requires two thirds vote (5 votes) of the City Council and a simple majority (50 percent +1 vote) approval of the voters. A General Tax may only appear on the ballot in the year when Council Member elections are held.

By adopting the attached resolution, the City Council would be approving language placing a Cannabis Business Tax Ordinance before the voters which is in the attached Resolution and will

submit the ordinance as a ballot measure for voter approval at the November 2018 election.¹ This tax is a general tax requiring approval by a majority of voters voting on the ballot measure.

Tax Ordinance

After research and coordination with HdL Companies, the proposed Ordinance (Attachment “A” of Resolution) establishes taxes on cannabis cultivation based on square footage and gross receipts for all other cannabis activities. Table 1 provides the recommended initial tax rate and maximum tax rate for each business activity. Voters will be voting on the maximum rates; however, City Council has the discretion to periodically set the tax anywhere from zero to the maximum amount. The ordinance also includes all cannabis business activities licensed by the State of California. This allows the City to expand future cannabis business activity in the City without the need for another ballot measure. Finally, this Ordinance also provides the City the ability to collect tax from businesses operating illegally.

Business Activity	Initial Tax	Maximum Tax
Dispensary/Delivery/Retail Sales	4.0%	6.0%
Testing Facility	1.0%	2.5%
Distribution	2.0%	3.0%
Manufacturing	2.5%	4.0%
Cultivation - Artificial Lighting	\$7 per square foot of canopy space	\$10 per square foot of canopy space
Cultivation - Artificial and Natural Lighting	\$4 per square foot of canopy space	\$7 per square foot of canopy space
Cultivation - No Artificial Lighting	\$2 per square foot of canopy space	\$4 per square foot of canopy space
Cultivation - Nursery	\$1 per square foot of canopy space	\$2 per square foot of canopy space

Table 1

¹ Contained within the previously submitted July 16, 2018 agenda report, HdL had recommended that the resolution calling for the election should be passed by a 2/3 vote of the City Council (5 votes). While this is the language found in Government Code Section 53724, there is a case which has interpreted this Code Section, *Traders Sports, Inc v. City of San Leandro*, 93 Cal. App. 4th 37 (2001), which found that the 2/3rds vote required by the Government Code does not apply to Charter Cities, provided the Charter allows for a majority vote by the City Council to place the measure before the voters. The Pomona City Charter at Section 507 reads “Except in cases where a greater number of votes is required by any other provision of this Charter, a majority vote of the total membership of the Council shall be required for the adoption of any ordinance or resolution.” In the *Trader Sports, Inc.* case, the City of San Leandro had a Charter provision specifically allowing City initiatives to be placed on the ballot with a majority vote of the City Council, the Pomona City Charter does not specifically address initiatives, but discusses the adoption of ordinances or resolutions in general. Since the Charter does allow for a majority vote of the total membership (4 of 7) to adopt a resolution and it is by resolution that the City Council must approve the call for the sales tax measure, the vote required to call for the sales tax initiative election and to place the tax ordinances before the voters should be 4 affirmative votes of the City Council. **However, certainly a safer approach would be to have the City Council call for the election with 5 affirmative votes.**

Ballot Measure Language

Staff is proposing the ballot measure language below for consideration. The text cannot exceed 75 words, not including the title. The language proposed below is 69 words:

CANNABIS BUSINESS TAX MEASURE To fund City services such as police/ fire protection, crime prevention, City roads and recreation, and other general services, shall the City tax cannabis (marijuana) businesses at annual rates up to \$10.00 per canopy square foot for cultivation, and up to 6% of gross receipts for all other cannabis businesses, which is expected to generate an estimated \$400,000 to \$500,000 annually, until repealed by the voters?	YES	
	NO	

If approved by Council, all necessary documents will be due to Los Angeles County by August 10, 2018. Council also understands that City resources may not be used to advocate or fundraise for the passage of this tax. Educational outreach may be done, but no advocacy.

Attachment: Resolution of the City Council of the City of Pomona, California, Submitting a Cannabis Business Tax Measure to the City of Pomona's Qualified Electors at the General Municipal Election to be Held on Tuesday, November 6, 2018, and Authorizing Related Actions Including Directing The City Attorney To Prepare An Impartial Analysis Of The Measure And Authorizing Arguments And Rebuttals On The Measure, with Attachment "A" – Cannabis Business License Tax Ordinance