



CITY COUNCIL AGENDA STATEMENT



July 24, 2018

File ID: 18-0235

TITLE

- A. ORDINANCE OF THE CITY OF CHULA VISTA ADDING CHAPTER 5.21, "CANNABIS BUSINESS TAX," TO TITLE 5 OF THE CHULA VISTA MUNICIPAL CODE TO ESTABLISH A TAX ON CANNABIS BUSINESS ACTIVITY
- B. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA: (A) AMENDING RESOLUTION NO. 2018-128 CALLING A SPECIAL ELECTION TO BE HELD ON NOVEMBER 6, 2018; (B) ORDERING SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY A MEASURE SEEKING APPROVAL OF A GENERAL BUSINESS LICENSE TAX ON CANNABIS BUSINESS ACTIVITY IN THE CITY; (C) AUTHORIZING THE MAYOR TO SUBMIT BALLOT ARGUMENTS IN FAVOR OF THE MEASURE; AND (D) DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE

RECOMMENDED ACTION

Council place the ordinance on first reading, and adopt the resolution.

SUMMARY

Following City Council approval of a cannabis ordinance in March 2018, staff has prepared a ballot measure for City Council consideration for placement on the November 2018 ballot to impose a tax on cannabis business activity in the City ("Cannabis Tax"). The Cannabis Tax is a general tax which, if approved by a simple majority of the voters, can be spent for any lawful purpose of the city.

ENVIRONMENTAL REVIEW

The proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity qualifies for an exemption pursuant to State CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning); Section 15301 (Existing Facilities); Section 15303 (New Construction or Conversion of Small Structures); and Section 15061(b)(3), because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Thus, no further environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

The Adult Use of Marijuana Act (AUMA), adopted by the voters of the State of California in November 2016, decriminalized non-medicinal cannabis and established a regulatory system for non-medical cannabis businesses in California. In June of 2017 the Medicinal and Adult-Use and Safety Act (MAUCRSA), enacted by the California State Legislature established a comprehensive set of laws regulating both individual and commercial medicinal and non-medicinal cannabis activity throughout the state of California.

Under California Business and Professional Code section 26200(a)(1), local jurisdictions are authorized to either permit and regulate or prohibit the operation of cannabis businesses within their boundaries. In an effort to mitigate the negative impacts brought by unregulated cannabis businesses, the City upon voter approval of a tax desires to permit, license, and fully regulate commercial cannabis activity.

The City of Chula Vista has experienced the negative impacts and secondary effects associated with the operation of unlawful cannabis businesses within its corporate boundaries. After considerable public debate and evaluation of the pros and cons of allowing commercial cannabis business activity in the City, the Council directed staff to prepare an ordinance which would regulate, permit and license commercial cannabis activity in the City. (“Cannabis Licensing Ordinance”).

In March 2018, the City Council approved the Cannabis Licensing Ordinance (Ordinance No. 18-3418; Chula Vista Municipal Code chapter 5.19). The legal effectiveness of the Cannabis Licensing Ordinance was made expressly contingent upon the City’s adoption of a business license tax on commercial cannabis business activity. Accordingly, staff has prepared a ballot measure for City Council consideration for placement on the November 2018 ballot. The proposed measure would adopt an ordinance which would establish a five percent, up to a maximum of fifteen percent, tax on the gross receipts of cannabis businesses; and a ten dollar per square foot, up to a maximum of twenty-five dollars per square foot, for space dedicated to cannabis cultivation. The proposed measure contemplates a general tax and, thus, requires approval by a simple majority (50% plus 1 of those casting ballots). If approved, the tax proceeds can be spent for any lawful general government purposes..

Some key provisions of the provisions of the ordinance are set forth below:

1. Establishes a 5-15% gross receipts tax on all cannabis business, except commercial cannabis cultivation;
2. Establishes a tax of \$10-\$25 per square foot of canopy on commercial cannabis cultivation businesses, with a CPI inflator;
3. Allows the Council to adjust the tax rates within the specified ranges, without further approval from the voters;
4. Requires businesses to register with the City prior beginning operation, and to pay a registration fee to cover the City’s costs of implementing the tax, and other provisions of the chapter;
5. Provides that payment of the tax does not authorized the activity (chapter 5.19 sets forth the types of cannabis activities that are allowed in the City) and that commercial cannabis activities are taxable, even if they are being conducted without having complied with all laws and regulations;

6. Requires remittance of amounts due monthly for gross receipts taxes, and quarterly for commercial cultivation canopy taxes, with interest and penalties for failure to timely remit;
7. Specifies that violation of the chapter is a misdemeanor.

If approved by the voters, the measure will become effective ten days after certification of the election results (approximately early December 2018).

In January 2018, the City engaged TrueNorth Research to conduct a public opinion survey to identify how voter support is affected by a potential ballot measure to tax cannabis business in Chula Vista. The survey results showed that 66% percent of voters supported a tax on cannabis activities.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Councilmember, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. Securing funding supports economic vitality.

CURRENT-YEAR FISCAL IMPACT

None. The estimated cost of placing the sales tax measure on the November ballot is approximately \$70,000. The cost will vary depending on the number of items on the ballot. The cost was included in the F/Y 19 budget.

ONGOING FISCAL IMPACT

If the ballot measure is approved by the voters, it would generate approximately \$6 million annually. If the measure is approved by the voters, the City could begin permitting in 2019. The actual tax revenue will depend on how many businesses are permitted and when they are fully operational.

ATTACHMENTS

None

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