

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: DAVID GUHIN, DIRECTOR
PLANNING AND ECONOMIC DEVELOPMENT

SUBJECT: RESOLUTION TO (1) DECLARE A FISCAL EMERGENCY AS A RESULT OF THE RECENT PASSAGE OF CALIFORNIA STATE PROPOSITION 64 (ADULT USE OF MARIJUANA ACT); (2) ORDER A BALLOT SUBMISSION TO SANTA ROSA VOTERS OF AN ORDINANCE AMENDING CHAPTER 6-04 OF THE SANTA ROSA CITY CODE AND ADDING CHAPTER 6-10 OF THE SANTA ROSA CITY CODE TO AUTHORIZE THE CITY TO IMPOSE A BUSINESS TAX ON CANNABIS BUSINESSES; (3) APPROVE BALLOT LANGUAGE; (4) PERMIT THE FILING OF REBUTTAL ARGUMENTS; (5) DIRECT THE CITY ATTORNEY TO PROVIDE AN IMPARITAL ANALYSIS; AND (6) PROVIDE DIRECTION REGARDING BALLOT ARGUMENTS IN SUPPORT OF THE MEASURE.

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Planning and Economic Development and Finance Departments that the Council adopt a resolution to (1) unanimously declare a fiscal emergency as a result of the recent passage of Proposition 64 (the Adult Use of Marijuana Act), (2) order a ballot submission to Santa Rosa voters at a special election on March 7, 2017, of an ordinance amending chapter 6-04 of the Santa Rosa City Code and adding chapter 6-10 of the Santa Rosa City Code to authorize the City to impose a business tax on cannabis businesses, (3) approve ballot language, (4) permit the filing of rebuttal arguments, (5) direct the City Attorney to provide an impartial analysis and (6) provide direction regarding ballot arguments in support of the measure.

EXECUTIVE SUMMARY

On November 8, 2016, the California State election passed ballot measure Proposition 64, known as "the Adult Use of Marijuana Act." Proposition 64 brings businesses that support adult recreational cannabis use into a regulated market, and allows the City of

ADOPTION OF AUTHORIZATION TO IMPOSE CANNABIS TAXATION
PAGE 2 OF 5

Santa Rosa to enact local regulations on such businesses in addition to the regulations that will be imposed by the state.

With the passing of Proposition 64, the City will incur substantial costs to regulate newly-legalized cannabis businesses, including considering, adopting and enforcing regulations, administering associated business permits, providing for business inspections, supporting public safety, protecting the environment, and providing education to the industry and community. The City's current business tax ordinance, which applies to all businesses operating in Santa Rosa, does not allow the City to impose a high enough tax on cannabis businesses to generate the necessary financial resources to support the unique needs of this emerging industry. In light of the imminent financial burdens on the City caused by the cannabis industry and the passage of Proposition 64, Staff recommends the Council declare a fiscal emergency.

In order to pay for the expected costs of authorizing and regulating cannabis businesses, staff also recommends that the Council submit an ordinance to the voters that would authorize the Council to impose a local business tax on the cannabis industry at rates high enough to cover the costs to the City of allowing this emerging industry to operate in Santa Rosa. The proposed tax is not a sales tax and would not be imposed directly on cannabis users or consumers.

The declaration of a fiscal emergency requires a unanimous vote of all members of the City Council who are in attendance for this item. Doing so will allow the City to bring the proposed ballot measure to the voters at the March 7, 2017 election – when the County of Sonoma is expected to submit its own cannabis business tax measure to County voters – as a general tax measure requiring approval by only a simple majority of the City's voters. Without such a unanimous declaration of fiscal emergency, the City must wait until the next City General Election in November 2018 to submit a tax measure requiring approval of only a simple majority of voters.

BACKGROUND

On November 8, 2016, the California State election passed ballot measure Proposition 64, known as "the Adult Use of Marijuana Act." Proposition 64 legalized adult recreational use of cannabis and brings businesses that support that use into a regulated market. Proposition 64, like state laws regulating medical cannabis, allows the City of Santa Rosa to enact local regulations on the cannabis industry in addition to the regulations that will be imposed by the state.

With the passing of Proposition 64, the City of Santa Rosa anticipates incurring substantial costs associated with the newly-legalized cannabis industry. Expenditures are estimated to be a total of at least \$900,000 annually, including:

- \$250,000: Code Enforcement of City business regulations
- \$200,000: Policy development and administration
- \$150,000: Legal support and oversight

ADOPTION OF AUTHORIZATION TO IMPOSE CANNABIS TAXATION
PAGE 3 OF 5

- \$150,000: Public Safety
- \$150,000: Non-recoverable permit, planning and inspection costs

The City cannot recover its full costs of allowing the cannabis industry to operate in Santa Rosa under the City's current general business tax provisions because the general business tax is capped at \$3,000. Such a low business tax would not generate adequate resources to support the unique needs of the cannabis industry. A cannabis industry specific business tax is needed to ensure that general fund resources used for other critical City services will not be exhausted as a result of allowing this emerging industry to operate in Santa Rosa.

Staff recommends all Council members in attendance for this item vote unanimously to declare a fiscal state of emergency based on the passage of Proposition 64. By doing so, the Council may submit the proposed ballot measure to the voters at the March 7, 2017 election -- the same election the County of Sonoma is considering submitting its own cannabis business tax measure to County voters -- as a general tax measure requiring approval by only a simple majority of voters. Without such a unanimous declaration, the Council must wait until the next City General Election in November 2018 to submit a tax measure requiring approval of only a simple majority of voters.

The Planning and Economic Development and Finance Department staff also recommend that Council, by resolution, submit the proposed measure to the voters at the March 7, 2017 election. If adopted by the voters, the proposed ordinance would authorize the Council to impose a cannabis-specific tax, rather than the City's existing general business tax, on cannabis-related businesses -- including commercial cultivators, nurseries, transporters, distributors, testing labs, manufacturers, dispensaries and delivery providers.

The proposed measure will be printed on the ballot as follows:

"Shall an ordinance be adopted authorizing a cannabis business tax in the City of Santa Rosa on cultivation up to \$38 per square foot (annually adjusted by CPI) or 10% of gross receipts, and on other cannabis businesses up to 10% on gross receipts, to maintain financial stability for city services such as addressing cannabis industry impacts, public safety, affordable housing, and youth programs, with all funds subject to audits and staying local, generating undetermined revenue until repealed?"

If adopted by the voters, the proposed ordinance would authorize the City Council to impose a business tax on commercial cannabis cultivators of either up to a maximum of rate \$38 per square foot of cultivation space increased by the most recent change in the annual Consumer Price Index, or up to 10% on gross receipts, as the Council may choose. The proposed ordinance would also authorize the Council to impose a business tax on all other cannabis businesses of up to 10% of gross receipts. However, the City recognizes the volatility of the newly-legalized cannabis market, and staff will propose limited initial tax rates to balance the financial need of the City to support this

ADOPTION OF AUTHORIZATION TO IMPOSE CANNABIS TAXATION
PAGE 4 OF 5

industry and the viability of the industry itself. With the uncertainty of the evolving industry both at the local and state level, it is recommended that Council retain flexibility to ensure a sustainable and responsible approach to management of cannabis in our community. Under the proposed ballot measure, Council will be able to adjust tax rates at any time as the market takes shape, not to exceed the maximum rates authorized by the voters.

The proposed ordinance to be submitted to the voters also amends the General Business Tax chapter of the Santa Rosa City Code to make clear that cannabis businesses subject to a cannabis industry tax will need not also pay the city's general business tax. Staff anticipates bringing a proposal to the City Council in January 2017 with a recommended preliminary tax rate to inform the voters of the City's intention prior to the March Special Election.

Under the proposed measure, Council would have the authority to adjust tax rates at any time by resolution. The proposed measure permits Council the discretion to set different tax rates for businesses supporting medical cannabis use than the rates set for businesses supporting adult recreational cannabis use in addition to setting a tax rate for some business types and not others. The City will work with industry stakeholders and residents to develop a successful financial and policy framework for setting and adjusting the cannabis business tax rate within the limits set by the voters.

The City recognizes businesses will be bearing many initial costs as they adjust to the new legal environment and adhere to State of California regulations. As such, imposed tax rates are intended to secure funding for the needs of the community, while not overburdening the market. In coming years, tracking and tracing industry trends will provide crucial data on gross revenues generated at various points in the supply chain. As a result, the ability to adjust tax rates will be valuable as better information confirms where the industry can support different levels of taxation.

Finally, to give the Council the ability to makes future changes to the implementation and enforcement provisions of its business tax provisions, or respond to changes in state law governing the businesses operating in Santa Rosa, without putting additional measures on the ballot, the proposed ordinance gives the Council the authority to adopt, by ordinance, limited changes to the both the cannabis industry tax provisions and the general business tax provisions so long as no changes are made to the tax rates authorized by the voters.

FISCAL IMPACT

Currently, all costs listed above that the City will incur in connection with adopting, implementing and enforcing regulations for the cannabis industry in Santa Rosa will be funded by the General Fund. As stated above, staff estimates these costs to be at least \$900,000 annually. Should the proposed ballot be submitted to the voters and approved, the City Council would have authority to shift those costs to the cannabis businesses operating in the City.

ADOPTION OF AUTHORIZATION TO IMPOSE CANNABIS TAXATION
PAGE 5 OF 5

According to the County of Sonoma, based on the 89,728 currently registered voters in Santa Rosa, the proposed ballot measure will cost the City approximately \$400,000, or \$4.50 per registered voter. The County informs City staff that this cost estimate is the same regardless of whether the City's tax measure proceeds at a March 2017 or June 2017 election, and regardless of the number of proposed measures on the ballot. Costs of the election are not included in the current FY 2016-17 adopted budget and will need to be appropriated in order for this election to go forward in March or June.

ENVIRONMENTAL IMPACT

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

The Medical Cannabis Policy Subcommittee has held thirteen public meetings over the last year to provide input regarding shifting regulations, statewide legalization, drafting ordinances and interim policies. It is the Subcommittee's recommendation that the Council submit the proposed ballot measure to the voters to authorize the Council to impose a business tax on the cannabis industry.

NOTIFICATION

ATTACHMENTS

- Ordinance
- Resolution

CONTACT

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