



DATE: October 30, 2017
TO: Mayor and City Council
FROM: Finance Director and City Attorney
SUBJECT Discussion Regarding Measure EE Cannabis Tax Rate

RECOMMENDATION

That the City Council provides feedback and direction regarding imposition of the Measure EE Cannabis Tax rate.

BACKGROUND

On November 8, 2016, the voters of the City of Hayward approved Measure EE authorizing the City Council to enact an ordinance imposing a general tax of up to 15% of gross sales of medicinal cannabis and adult use cannabis and products derived therefrom. This tax is in addition to any other taxes imposed by the City of Hayward or the State of California.

Prop. 64 and its trailer legislation established two distinct state taxes on the cannabis industry. A cultivation tax will be imposed on all harvested cannabis that enters the commercial market at the rate of \$9.25/dry weight ounce for flowers and \$2.75/dry weight ounce for leaves. The state will also impose an excise tax on cannabis and cannabis products sold in California at the rate of 15% of the average market price of any retail sale by a cannabis retailer.

On the same date that Prop. 64 was approved, the voters of Hayward approved Measure EE authorizing the City to impose a local tax not exceeding fifteen percent (15%) of gross sales of adult use of recreational and medical cannabis. The tax may be applied to the cultivation, distribution, manufacturing, business-to-business sales, as well as retail sales.

During previous meetings, there has been general interest from the Council in the cannabis tax rates of neighboring jurisdictions. The tax rates are as follows:

- Berkeley – 2.5% (medical marijuana), 10% recreational contingent on passage of Prop. 19 during 2010 election.*
- Campbell – 7% with maximum rate of 15%.
- Oakland – 5% (medical marijuana), 10% recreational contingent on passage of Prop. 19 during 2010 election.

- Pacifica – 6% initial rate with maximum rate of 10%.
- Pittsburg – 10%
- San Jose – 10%
- San Leandro – 6% through June 2019, 7% beginning July 1, 2019, and 8% on July 1, 2021.
- Santa Cruz – 7% initial rate with maximum rate of 10%.
- Santa Rosa – 8%
- Union City – Ballot measure anticipated in 2018.
- Vallejo – 10%

Each community imposes its respective cannabis tax on a broad range of commercial cannabis activities encompassing retail sales, manufacturing and cultivation, among other related activities. However, there may be variations with respect to specific implementation in each jurisdiction based on the specific language of the respective ballot measures and ordinances adopted in each community.

**Because State Proposition 19 did not pass, these jurisdictions do not have a definitive tax on recreational use cannabis.*

DISCUSSION

Tonight, staff is seeking policy direction from the Council with respect to the following items:

- The rate at which the Measure EE approved cannabis tax will be imposed.
 - Rate to be imposed on adult use (recreational) cannabis
 - Rate to be imposed on medical use cannabis
- On which transactions/operations the Measure EE tax should be imposed
 - Cultivation
 - Distribution
 - Manufacturing
 - Business-to-Business sales
 - Retail Sales

More specifically, staff seeks direction from the Council as to which transactions at each operational stage of the commercial chain should be taxed and how operators with multiple permits within the City are to be taxed. With direction on these key factors, staff can develop and implement administrative practices, policy and rules & regulations.

STRATEGIC INITIATIVES

This agenda item relates to the following Council Policies:

Economic Development Strategic Plan:

ED-1.6 Advances and Specialized Manufacturing. The City shall encourage the establishment and expansion of advanced and specialized manufacturing businesses to counter declining employment trends in traditional industrial manufacturing.

ED-1.11 Local Serving Retail. The City shall encourage the establishment and expansion of commercial businesses that increase local spending within Hayward and provide needed goods and services to residents and businesses.

ED-3.2 Fast Growing Industries. The City shall monitor industry and market trends to identify fast-growing industries, and coordinate with local businesses within those industries to proactively assist with potential business expansion plans.

ED-3.3 Buy Local. The City shall encourage residents, local businesses, colleges, trade schools and community organizations to purchase goods and services from other local businesses to support local jobs and to recirculate within the local economy.

ED-1.4 Emerging and Growing Business Sectors. The City shall establish business attraction efforts that focus on small and medium-sized businesses with emerging and growing business sectors.

ED-6.7 Business Incentives. The City shall provide business incentives to attract, expand, and retain businesses that offer high-quality jobs, generate local sales tax revenue, and/or provide needed goods or services to residents.

General Plan 2040:

LU-5.6 Adaptive Reuse, Renovation or Redevelopment. The City shall support the adaptive reuse, renovation or redevelopment of community and regional shopping centers that are no longer viable due to changing market conditions, demographics, or retail trends. The City shall consider alternative land uses if market conditions limit the feasibility of commercial uses.

PFS-1.4 Development Fair Share. The City shall, through a combination of improvement fees and other funding mechanisms, ensure that new development pays its fair share of providing new public facilities and services and/or the costs of expanding/upgrading existing facilities and services impacted by new development.

PFS-2.9 Financial Planning for Sustainability. The City shall continue to maintain and implement its financial plan, which provides a plan for City goal setting in the budget process in implementing its policies, priorities and programs.

FISCAL IMPACT

On October 14, 2017, the Council held a Fiscal Sustainability Workshop in which it considered strategies and options to shape the City's long-term fiscal future. One of the strategies presented and discussed in the session and staff report for this meeting were possible revenues generated from the cannabis tax approved by Measure EE. The City partnered with Management Partners to research many of the strategies presented; Management Partners estimated gross annual tax receipts of approximately \$2.1 million. This amount was calculated on a per capita number from San Jose (gross tax receipts/the number of residents), which came up with \$9.02 per capita. Related to the City of Hayward, staff multiplied \$9.02 by the number of residents and then multiplied the per capita by 1.5 to recognize the difference in rates (as presented at 15%). Staff estimates these revenues to be between \$1 and \$3 million annually depending on the tax rate applied, number of businesses, how the tax is applied, and which types of operations the tax will apply to.

PUBLIC CONTACT

The Council held work sessions regarding cannabis businesses in Hayward in March and July 2017 and introduced ordinances establishing a local regulatory framework for cannabis businesses on October 17, 2017.

NEXT STEPS

Upon direction from Council as to the tax rate to be imposed, staff will prepare a resolution and ordinance codifying Measure EE which includes the tax specific rate to be imposed.

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Recommended by: Dustin Claussen, Finance Director
Michael S. Lawson, City Attorney

Approved by:



Kelly McAdoo, City Manager