



CITY OF HAYWARD

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Cover Memo

File #: LB 16-087, **Version:** 1

DATE: July 19, 2016

TO: Mayor and City Council

FROM: City Attorney

SUBJECT

Submission of Cannabis Tax Measure to Hayward Voters on November 8, 2016

RECOMMENDATION

That the Council adopts the attached resolution submitting a general tax measure regarding adult use of recreational cannabis and medical cannabis to Hayward voters on November 8, 2016, and calling a special municipal election to be consolidated with the statewide presidential election on said date.

SUMMARY

On June 14, 2016, the City Council conducted a work session regarding possible impacts associated with the adult use of cannabis initiative measure that voters would likely vote on at the November 8, 2016 statewide presidential election ballot. The June 14, 2016 report can be found here [WS 16-040 <https://hayward.legistar.com/LegislationDetail.aspx?ID=2748728&GUID=C5FCD958-A5AF-4056-AA05-737C39D8171E&Options=&Search=>](https://hayward.legistar.com/LegislationDetail.aspx?ID=2748728&GUID=C5FCD958-A5AF-4056-AA05-737C39D8171E&Options=&Search=>). The Council referred to its Budget and Finance Committee the question of whether a municipal tax on adult use of cannabis and medical use of cannabis should also be submitted to Hayward voters on November 8.

The Committee met on July 6, 2016 and discussed possible tax options. The July 6, 2016 report can be found here [RPT 16-080 <https://hayward.legistar.com/LegislationDetail.aspx?ID=2774802&GUID=851115E8-B48E-4BD9-876E-575E1CC675E4&Options=&Search=>](https://hayward.legistar.com/LegislationDetail.aspx?ID=2774802&GUID=851115E8-B48E-4BD9-876E-575E1CC675E4&Options=&Search=>). The Committee was advised that the initiative measure has in fact qualified for the November 8, 2016 election and is designated as Proposition 64. After extensive discussion, the Committee recommended that Council adopt a resolution submitting a tax measure to Hayward voters at the November 8, 2016 statewide presidential election.

A resolution has been prepared (ATTACHMENT I), calling a special municipal election on November 8, 2016, to be consolidated with the statewide presidential election. The proposed resolution contains findings necessary to submit a tax measure at an election other than the regular general municipal election, pursuant to California Constitution Article XIII C (Proposition 218), along with the ballot question, pursuant to the California Elections Code. The resolution also sets forth steps to be taken by the City Clerk, in conjunction with the Alameda County Registrar of Voters, and the City Attorney

regarding an impartial analysis of the proposed tax measure. This resolution requires unanimous approval of the Council.

DISCUSSION

The proposed tax measure to be considered by Hayward voters on November 8, 2016 would establish maximum City tax rates of 15 percent on adult use of cannabis and medical cannabis, in the event Proposition 64 passes and further if the Council decides to allow adult use of cannabis and medical cannabis to be sold in Hayward. Even if Proposition 64 passes and the City's tax rates are approved by voters, the Council would retain the right to prohibit sales of both adult use cannabis and medical cannabis.

In the attached proposed resolution, here is the ballot question Hayward voters would vote on:

“TO CLOSE ON-GOING DEFICITS AND ASSURE LOCAL CONTROL, SHALL THE CITY OF HAYWARD BE AUTHORIZED TO ENACT A TAX ORDINANCE NOT EXCEEDING 15% OF GROSS SALES OF ADULT USE OF RECREATIONAL AND MEDICAL CANNABIS, INCLUDING CULTIVATION, DISTRIBUTION, MANUFACTURING, OF SUCH CANNABIS, AND BUSINESS-TO-BUSINESS SALES, IF THE CITY PERMITS SUCH SALES AND PROPOSITION 64 IS ENACTED ON NOVEMBER 8, 2016, INCLUDING ANY OTHER TAXES IMPOSED BY THE CITY OF HAYWARD OR THE STATE OF CALIFORNIA?”

The proposed tax measure would authorize the Council to enact appropriate regulations, subject to the maximum tax rates approved by Hayward voters, if the decision is made to allow such sales. Under California Constitution Article XIII C, the Council could adopt tax rates lower than 15 percent. By establishing City tax rates, Hayward would avoid any claims of preemption that might arise because Proposition 64 establishes tax rates and other charges that will apply to businesses licensed by the various state regulatory agencies to be created by Proposition 64.

If Proposition 64 passes in the November election, the Council could then consider the following questions and policy issues regarding whether to allow sales of adult use of cannabis or medical cannabis within the City of Hayward:

- What land use policies would apply to retail sales of adult use cannabis - such as sales in commercially-zoned districts, manufacturing in industrially-zoned districts, distance separation restrictions, proximity to schools or alcohol retailers?
- The extent to which non-retail commercial operations would be permitted - such as cultivation, distribution, business to business sales, delivery services, processing of cannabis-related edible products
- Law enforcement impacts related to security and crime - such hours of operation, lighting, security guards, ownership information, business formation records
- Whether a limited number of sellers or commercial businesses would be established, via lottery or

other selection criteria

FISCAL IMPACT

Given that adult use of cannabis has not been legal in California, there is virtually no reliable data on the amount of revenue that might be generated by allowing adult use sales or manufacturing. To the extent medical cannabis sales have been permitted in local jurisdictions, it is difficult, if not disingenuous, to draw comparisons for the purpose of projecting revenue from retail sales or business-to-business transactions. Although the City would be able to charge administrative fees for processing regulatory or land use applications, mandatory inspections by law enforcement and related City regulatory functions, it is unknown whether the revenue that might be generated by taxes on such operations would be sufficient to off-set any negative consequences of approving such operations.

A special municipal election consolidated with the statewide presidential election on November 8, 2016 would cost approximately \$258,000, as determined by the City Clerk in consultation with the Alameda County Registrar of Voters, based on 62,668 registered voters at this time. Because the deadline for registration of voters is October 24, 2016 for the November 8, 2016 election, the special election costs could exceed \$258,000 depending on the final number of registered voters. ATTACHMENT II to this report, from the City Clerk, is a draft of key dates and deadlines after July 19, 2016 necessary to place the measure on the November 2016 ballot.

Prepared by: Michael Lawson, City Attorney

Approved by:



Fran David, City Manager

Attachments:

Attachment I
Attachment II

Resolution
City Clerk's draft of key dates and deadlines
after July 19, 2016