



CITY OF HAYWARD

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Cover Memo

File #: RPT 16-080, **Version:** 1

DATE: July 6, 2016

TO: Council Budget and Finance Committee

FROM: City Manager and City Attorney

SUBJECT

Consider Possible Cannabis Taxes

BACKGROUND

During its June 14, 2016 work session, the City Council discussed possible policy and revenue considerations related to the statewide recreational cannabis measure proposed for the November 2016 ballot: [Proposition 64 <http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf?>](http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf?>). The Council referred the matter to the Budget and Finance Committee for additional discussion of potential City tax measures that might be added to the November 8, 2016 ballot (See Related File: [WS 16-040 <https://hayward.legistar.com/LegislationDetail.aspx?ID=2748728&GUID=C5FCD958-A5AF-4056-AA05-737C39D8171E>](https://hayward.legistar.com/LegislationDetail.aspx?ID=2748728&GUID=C5FCD958-A5AF-4056-AA05-737C39D8171E>)). Of the four options presented in the previous staff report, the Council was inclined to place a revenue measure on the November 2016 ballot in an attempt to preserve local taxation options. The Council deferred any discussion or decision on land use regulations and/or restrictions on marijuana pending the outcome of the November election.

Not surprisingly, the recreational cannabis initiative measure has qualified for the November 8, 2016 statewide election, so local policy and tax questions are now even more time-sensitive. The time sensitivity for Hayward is driven by three factors. First, while the Proposition is explicit about State taxation (See [Section 7, page 43 <http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf?>](http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf?>) of the Proposition), it is less clear about options for local taxation, particularly those of cities, after passage of the Measure, so local policy and tax questions may now be time-sensitive: those local taxes in place prior to the passage of the Statewide initiative may be in a stronger position. Second, the Alameda County Registrar of Voters (ROV) must receive all required election materials from the City no later than August 5, in order to qualify for the November 8 ballot. And finally, the Council typically recesses after the last regular meeting in July (July 19) until mid-September.

DISCUSSION

As mentioned in the Background section, the preparation of a tax measure for the November 2016 ballot is the most immediate time sensitive action that the City must take related to the legal cultivation, manufacturing, distribution, and retailing of cannabis authorized under Proposition 64. Assuming the Council ultimately desires to allow supply chain activities of recreational and/or medical cannabis if the November ballot measure passes, staff would likely recommend an approach that would restrict the

number of cultivation operations, manufacturers, distributors, and retailers similar to the Council's policy regarding alcohol and tobacco retailers. As with alcohol establishments, it would not be prudent to allow an unlimited number of retailers and production facilities to locate in Hayward. It would also be prudent to restrict the number of non-retail commercial production facilities in Hayward. In the case of both medical cannabis retailers and recreational use retailers, the City would have to develop land use policies that would permit such retail operations. The City would also be required to develop land use policies for commercial production facilities.

Following the November vote, staff will bring back recommendations and options related to land use restrictions, permitting and enforcement fees for both recreational and medicinal marijuana. These recommendations would be developed based on the results of the initiative vote amongst Hayward voters and could be further informed by local polling if the Council wishes to pursue this option as discussed during the June 14 work session. Land use restrictions and permitting and enforcement fees would not require a vote of Hayward residents and can be developed and adopted after the November election.

The revenue measure to be considered by the Budget & Finance Committee and ultimately the City Council could impose a tax on all parts of the supply chain for both recreational and medical cannabis as a source of General Fund revenue (some cities/counties tax medical cannabis sales; some do not). Only Hayward voters can approve general taxes or special purpose taxes, though the City could charge permitting fees without voter approval. A Hayward tax would be conditioned upon voter approval of the initiative measure; if the initiative measure fails, the Hayward tax would not go into effect. For reference on how Proposition 64 approaches State taxation of the supply chain, please refer to [Proposition 64](http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf?>) [<http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf?>](http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf?>), Section 34011 and 34012, pages 41-43.)

There are two important timing considerations affecting a possible Hayward tax measure:

1. While the Proposition is explicit about State taxation (See [Section 7, page 43](http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf?>) [<http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf?>](http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf?>) of the Proposition), it is less clear about options for local taxation, particularly those of cities, after passage of the Measure, so local policy and tax questions may now be time-sensitive: those local taxes in place prior to the passage of the Statewide initiative may be in a stronger position. It is possible that if Hayward voters do not enact or authorize the enactment of local taxes on November 8, the opportunity to do so in the near future may be extremely limited.
2. The restrictive language in Proposition 218 -- a General Tax measure must typically appear on the ballot at the same time as the election for Mayor and Council. A General Tax measure could appear on the November 8 ballot, which is not an election at which the positions of Mayor and Council are on the ballot, if the Council unanimously agrees by resolution to submit the tax to Hayward voters.

Attached are sample ballot questions Hayward voters might consider in the format permitted by the state Elections Code (Attachment I). The key decisions for the Committee include review of the draft ballot questions and discussion of a proposed tax rate to be included in the question.

These sample ballot questions only address taxes, as required by Proposition 218. These ballot questions need not address the City's regulatory authority to impose fees to process or inspect facilities (per

Proposition 26) or to impose land use/zoning requirements or restrictions.

Staff will continue to work on or tweak potential ballot questions for distribution before or at the committee meeting. If the Committee recommends Council action, probably at the July 19, 2016 regular meeting, staff will also prepare the resolution calling the special election, requesting consolidation with the general statewide election, along with services from the Registrar of Voters.

Staff will also continue to review revenue projections based on a limited number of supply chain facilities formally approved throughout the State, as discussed in the fiscal impact section of this report. Most, if not all, currently existing local/municipal taxes apply only to retail sales.

FISCAL AND ECONOMIC IMPACT

There is very little reliable data to determine how much revenue would be generated by a local general tax on recreational cannabis. Extrapolations from the states of Colorado, Washington, Oregon, and Alaska cannot be validly made because it is too early to determine how these models are working. This observation is particularly true where the states have decided to restrict the number of retailers, based on lotteries, proximity to schools, alcohol retailers, or land use restrictions (e.g., distance separations between retailers).

For example, the City of Davis projected \$200,000 annually based on a ten percent gross receipts general tax, which passed on June 7, 2016, but it is not clear if the measure restricts the number of retailers or non-retail commercial businesses. The population of Davis is 67,000. The Davis ordinance also does not apply throughout the supply chain as Proposition 64 does; and as staff recommends any Hayward Ordinances or taxes do.

The election materials for Sacramento's proposed ten percent special tax on the June 7 ballot do not indicate projected revenues. Nor does the Sacramento measure indicate if the number of retailers or non-retail commercial businesses would have been restricted. This measure ultimately did not pass. The population of Sacramento is 480,000.

The election materials for Alturas's proposed general tax, which passed on June 7, do not indicate projected revenues, based on a ten percent gross receipts tax, nor is it clear if the number of retailers or non-retail commercial businesses would be limited. The population of Alturas is 2,700.

As to medical cannabis retailers, some cities/counties have decided to impose local taxes, while other cities/counties have declined to impose taxes. Consequently, there is little reliable data from which to draw conclusions about the revenue benefits of medical cannabis retailers to the City.

Regardless of the amount of money generated from a potential tax on marijuana within Hayward, there will likely be public safety impacts to the community if marijuana is legalized and if supply chain and retail sales facilities are allowed. If a ten percent gross receipts tax was adopted by Hayward voters and it generated \$200,000 (similar to what was predicted by the City of Davis), this revenue would help to offset any general community impacts resulting from the legalization of marijuana.

Pending the results of the election, the Council may choose to impose land use regulations and permitting requirements on cultivation, manufacturing, distribution, and sales facilities. The Council could also

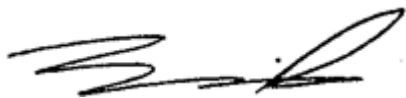
impose fees for these permits to cover costs related to the permitting and inspection process. If local taxes on cannabis supply chain activities are adopted by Hayward voters, payment of the taxes would be above and beyond any fees paid by growers, manufacturers, distributors, or retailers to establish sales or distribution facilities in the community.

Special Election Costs

After consulting with the ROV, the City Clerk advises that the cost of a special election consolidated with the November 8 statewide election is approximately \$258,000. This is a rough estimate. The City Clerk will have more precise costs after receiving the ROV's invoice for the June 7, 2016 general municipal election.

Prepared and Recommended by: Fran David, City Manager
Michael Lawson, City Attorney

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Sample Ballot Questions