



Staff Report

File #: REPORT 22-0455, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council Regular Meeting of July 26, 2022

CONSIDERATION OF PLACING A MEASURE ON THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION BALLOT ASKING VOTERS TO APPROVE A LOCAL BUSINESS TAX ON CANNABIS BUSINESSES OPERATING WITHIN THE CITY OF HERMOSA BEACH SHOULD CANNABIS BUSINESSES BE ALLOWED TO OPERATE IN THE CITY

(City Manager Suja Lowenthal)

Recommended Action:

Staff recommends City Council:

1. Consider adding a measure to add Chapter 3.44 to Title 3 (Revenue and Finance) of the Hermosa Beach Municipal Code, establishing a tax on cannabis businesses operating within the City of Hermosa Beach to November 8, 2022 General Municipal Election and select one or more argument writer(s) in favor of this measure should a determination be made to submit this measure to the voters;
2. Adopt a resolution calling for the placement of a measure on the ballot for the November 8, 2022 General Municipal Election for the submission to the qualified voters of an ordinance adding Chapter 3.44 to Title 3 (Revenue and Finance) of the Hermosa Beach Municipal Code, establishing a tax on cannabis businesses operating within the City of Hermosa Beach and requesting the Board of Supervisors render the election consolidation services adopted in Resolution No. 22-7317 for this measure **(Attachment 1)**; and
3. Adopt a resolution setting priorities for filing a written argument and rebuttal argument regarding a proposed ordinance adding Chapter 3.44 to Title 3 (Revenue and Finance) of the Hermosa Beach Municipal Code, establishing a tax on cannabis businesses operating within the City of Hermosa Beach to be submitted to voters at the General Municipal Election to be held Tuesday, November 8, 2022, and directing City Attorney to prepare the impartial analysis **(Attachment 2)**.

The Resolution to place the Cannabis Tax measure on the ballot must be approved by a two-thirds (2/3) vote of the membership of the City Council (4 affirmative votes) to pass.

Executive Summary:

Cannabis businesses are currently prohibited in Hermosa Beach. An initiative has qualified for the November 8, 2022 ballot that would allow retail cannabis in the City. Also, the Council has indicated

an interest in considering an amendment to the Hermosa Beach Municipal Code to allow delivery into the City of cannabis from businesses located outside the City.

If the initiative passes or the Council allows delivery at any time in the future, the resulting cannabis operations would be subject to the City's existing business tax and State sales tax. Most cities in California that allow cannabis business operations impose a separate cannabis business tax on those businesses. Under Proposition 218, a new tax must be approved by a majority of the voters voting at a regular municipal election. If approved, and cannabis business were allowed to operate in the City either through the initiative measure passing or through City Council action in the future, this tax would ensure these businesses pay its fair share for City services, including the City services prioritized by residents including preventing thefts and property crimes, supporting public safety and 911 emergency response, recruiting and retaining well-trained police officers, protecting coastal waters and beaches from pollution, supporting safe schools, and keeping parks and public areas clean and safe.

The City Council has the opportunity to ask the voters whether to impose a cannabis tax, up to 15 percent, at the November 8, 2022 General Municipal Election, which would take effect only if cannabis sale is allowed in the City either by way of the initiative or through delivery. The next available election at which a tax may be placed on the ballot is November 2024.

Background:

Current State law allows qualified patients and their caregivers to cultivate and possess cannabis for personal use in order to treat certain medical conditions. It also allows the personal possession and use of recreational cannabis. However, cities retain their authority to reasonably regulate the business of cultivating, processing, and selling cannabis and related products. The sale of cannabis for any purpose is currently prohibited in the City of Hermosa Beach.

On November 17, 2021, the Hermosa Beach City Clerk received a petition from the cannabis industry for the purposes of adopting an initiative that would repeal Hermosa Beach's existing ban on all commercial cannabis business operations and allow commercial cannabis operations in the City (**Attachment 5**). The initiative measure does not include a tax on cannabis. At City Council's regular meeting on November 23, 2021, Mayor Detoy requested, and a unanimous vote of the City Council supported, directing staff to place on the next regular session agenda an item addressing the City's options.

At its December 14, 2021 meeting, City Council directed the City Manager to form an Advisory Group to explore policy issues and provide City Council with input on whether the City's current ban on cannabis business operations should be modified. The group held a total of six public meetings and at its sixth and final meeting on March 29, 2022, the Cannabis Advisory Group arrived at its final input and recommendations regarding whether the City's current ban on cannabis business operations should be modified. With all nine members present, the group unanimously agreed that it was

opposed to the cannabis industry initiative and the group's final report and recommendations were presented to the City Council at its April 12, 2022 meeting.

At its March 22, 2022 meeting, the City Clerk reported to the Council that the initiative petition had acquired sufficient signatures to qualify for the ballot. The City Council opted not to adopt the initiative by ordinance but as required by law, to instead submit the ordinance, without alteration, to the voters in the November 8, 2022 Municipal Election.

At its May 24, 2022 meeting, the City Council voted to oppose the industry-sponsored initiative. Council also directed staff to bring to Council for its consideration an ordinance allowing delivery of cannabis from outside the City and a measure that would impose a tax on cannabis businesses, should they be permitted in the City. State law requires any new local taxes to be approved by the voters (Proposition 218).

Past Council Actions

Meeting Date	Description
November 23, 2021 (Regular Meeting)	Under Future Agenda Items, Mayor Detoy requested City Council consider directing staff to place on the December 14, 2021 agenda an item addressing the City's options in light of the cannabis industry initiative filed with the City Clerk. The request was supported by a unanimous vote of the City Council.
December 14, 2021 (Regular Meeting)	City Council directed the City Manager to form an Advisory Group, subject to the Brown Act, to explore policy issues and provide City Council with input on whether the City's current ban on cannabis business operations should be modified.
March 22, 2022 (Regular Meeting)	City Council opted not to adopt the cannabis industry initiative by ordinance and instead submit the ordinance, without alteration, to the voters in the November 8, 2022 Municipal Election.
April 12, 2022 (Regular Meeting)	City Council received and discussed the final report and recommendations of the Cannabis Advisory Group.

May 24, 2022 (Regular Meeting)	City Council action to oppose the cannabis industry-sponsored initiative filed with the City Clerk on November 17, 2021. Council also directed staff to bring to Council for its consideration an ordinance allowing delivery of cannabis from outside the City and a measure that would impose a tax on cannabis businesses, should they be permitted in the City.
--------------------------------	---

Discussion:

Under the City's current business tax scheme, a cannabis business operating in the City would pay an annual tax of (i) \$218 per year if the sales were under \$250,000 or (ii) \$1 per \$1,000 in gross receipts up to a maximum tax of \$8,000 if sales exceed \$250,000. A business located outside the City, but delivering cannabis within the City, would pay an annual flat tax of \$218 per delivery vehicle.

Many cities that allow cannabis business operations have enacted a tax specifically directed at cannabis businesses. Such a tax would produce considerably more revenue for the City than application alone of the City's existing generic business tax. By way of example, if two cannabis retail stores operated in the City, and delivery is allowed from outside the City, a maximum 15 percent tax would be estimated to produce \$1,050,000-\$2,250,000 in revenue.

The attached resolutions propose placing a measure on the ballot that would establish a maximum 15 percent general tax on cannabis businesses operating in the City of Hermosa Beach, should such businesses be allowed to open. The tax would only take effect if the industry initiative passes in The General Municipal Election in November or if the Council were to adopt an ordinance allowing cannabis delivery from outside the City. In those circumstances, if adopted, the tax would automatically apply to such businesses.

The measure is written broadly-applying to both the "wholesale" and "retail" ends of businesses, but only applies if a specific type of business is actually allowed to operate in the City. It would impose a tax on both medical and recreational cannabis businesses. This measure is solely a taxing measure -it does not allow any type of cannabis business to operate in the City. It creates a tax on businesses that are not currently allowed and may or may not be allowed in the future.

The proposed measure would:

- Establish a maximum 15 percent gross receipts tax on all cannabis businesses operating within the City. "Gross receipts" is defined broadly to cover any money, in-kind contributions, exchange of property, or any other items of value received by the business for cannabis cultivation, processing, manufacture, delivery, distribution, storing, or sale. "Gross receipts" are taken from the "top of the ledger", meaning they are calculated before the business takes any deductions for material and operational costs or losses to the business; and

- Establish an additional tax with a maximum rate of twenty dollars (\$20.00) per square foot rate of space utilized in connection with the cultivation/processing of cannabis or cannabis-infused products (such as tinctures, oils, concentrates, creams, candies and “medibles”). This would include “grow rooms”, space where cannabis is harvested and dried, “lab” space where cannabis is tested for quality control, the “factory floor” where cannabis is processed and manufactured into cannabis-infused products, packaging and labeling areas, and areas used for distribution and transport.

The above rates are maximum rates. The measure would permit the City Council to adjust tax rates up or down, by ordinance, provided no rate exceeds the maximum without future voter approval. The proposed maximum tax rate of 15 percent represents the highest amount that staff would recommend City Council consider.

As an alternative, Council may wish to consider proposing the lower maximum amount of 10 percent, which was the amount tested in the recently conducted community survey completed in May 2022. The Hermosa Beach Community Survey found that overall, 40 percent of respondents strongly support, and 25 percent somewhat support, a gross receipts tax of up to 10 percent on cannabis businesses within the City. Voter support for a higher maximum rate may vary.

The measure proposes general taxes which would be deposited in the City’s General Fund and may be spent for any City program. The taxes are intended to be collected monthly. The measure contains detailed rules with respect to collection, administration, enforcement and refund procedures for the taxes. The measure also expressly provides that it will apply to any cannabis business that is now permitted in the City, or that may be allowed in the future.

Pursuant to Proposition 218 (California Constitution, Article XIII C), all general taxes which are imposed, extended or increased must be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election. As such, the Council is not being asked to adopt the proposed measure. Instead, staff requests that the Council consider adopting the two resolutions attached to this report in order to place the measure on the November 8, 2022 ballot so that Hermosa Beach voters can decide.

Attachment 1 is the principal resolution which calls the election to place the measure on the November 8, 2022 ballot. Under California Proposition 218, the upcoming November 8, 2022 Municipal General Election is an appropriate date to place a local tax measure on the ballot. The second resolution sets deadlines and rules for how and when interested persons may submit arguments for or against the proposed measure. Pursuant to Proposition 62, a two-thirds vote of the membership of the City Council is required to adopt the first resolution (4 affirmative votes).

Staff recommends that Council consider whether to place a cannabis tax on the November 8, 2022

ballot or instead await the outcome of the vote on the initiative. Should the Council not place the tax on the November 8, 2022 ballot and hereafter legalize delivery of cannabis into the City, the earliest opportunity to impose a tax on delivery would be November, 2024.

Argument in Favor and Against

The City Clerk will accept arguments in favor of and against the proposed measure by **Tuesday, August 9, 2022, at 6 p.m.** Each argument is limited to 300 words and will be titled “Argument in Favor of Measure ___” and “Argument Against Measure ___” in the Official Sample Ballot Booklet submitted to voters. Please email cityclerk@hermosabeach.gov or submit a hard copy (**Attachment 3**) by the deadline.

Per California Elections Code Section 9282 and 9287, the City Council has priority to and may authorize one or two members of the City Council to author the Argument in Favor. Should the City Council choose not to authorize one or two members of the City Council to author the Argument in Favor and more than one argument is submitted (in favor or against) to the Elections Official, the Elections Official will select an argument in accordance with California Elections Code Section 9287.

Rebuttals to Arguments in Favor and Against

When the arguments are submitted, the Elections Official shall send a copy of the Argument in Favor to the authors of the Argument Against and the Argument Against to the authors of the Argument in Favor, along with a copy of the impartial analysis. An argument author may authorize another person to sign the rebuttal to the opposing argument using the form provided by the Elections Official (**Attachment 4**) and in accordance with California Elections Code Section 9285. Rebuttals to the Arguments in Favor and Against are due by **Tuesday, August 23, 2022, at 6 p.m.** and are limited to 250 words.

Consolidation with Los Angeles County

At its July 14, 2022 meeting, the City Council approved Resolution No. 22-7317 to consolidate the City of Hermosa Beach General Municipal Election with the Statewide General Election to be held on November 8, 2022. Approving the staff recommendation will allow Los Angeles County to carry out all consolidation services outlined in Resolution No. 22-7317 for this measure.

General Plan Consistency:

This report and associated recommendation have been evaluated for their consistency with the City's General Plan. Relevant Policies are listed below:

Governance Element

Goal 1. A high degree of transparency and integrity in the decision-making process.

Policy:

- **1.1 Open Meetings.** Maintain the community's trust by holding meetings in which decisions are being made, that are open and available for all community members to attend, participate, or view remotely.

Goal 2. The Community is active and engaged in decision-making processes.

Policy:

- **2.3 Public participation guidelines.** Establish parameters and guidelines to ensure public participation is promoted through diverse methods

Fiscal Impact:

Fiscal impacts associated with adding pages in the Official Sample Ballot pertaining to all measures being considered by the Council have been included in the budgeted total cost of the upcoming November 8, 2022 General Municipal Election of \$110,000 in FY 2022-23. No additional cost to the budgeted total is expected from including this measure on the ballot.

If approved at a maximum 15 percent, and if cannabis sales are permitted in the City, the cannabis business tax is estimated to generate approximately \$1,050,000-\$2,250,000 in additional annual General Fund revenues.

Attachments:

1. Resolution (Cannabis Tax)-Add to Ballot & Consolidate
2. Resolution (Cannabis Tax)-Argument, Rebuttal & Impartial Analysis
3. Argument and Rebuttal Form
4. Authorization for Another Person to sign Rebuttal Argument Form
5. Initiative submitted to City Clerk on November 17, 2021
6. Link to November 23, 2021 City Council Agenda
7. Link to December 14, 2021 City Council Staff Report
8. Link to March 22, 2022 City Council Staff Report
9. Link to April 12, 2022 City Council Staff Report
10. Link to May 24, 2022 City Council Staff Report

Respectfully Submitted by: Mike Jenkins, City Attorney

Noted for Fiscal Impact: Viki Copeland, Finance Director

Legal Review: Mike Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager