

City of Hesperia

STAFF REPORT



DATE: July 17, 2018

TO: Mayor and City Council

FROM: Nils Bentsen, City Manager

BY: Eric Dunn, City Attorney

SUBJECT: Consideration to call a Municipal Election to Present a Cannabis Business Tax Measure to the Voters and Approve Required Actions for Consolidating the Election with the Statewide Election on November 6, 2018

RECOMMENDED ACTION

It is recommended that the City Council consider adopting Resolution No. 2018-46 entitled:

“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY A MEASURE RELATING TO ESTABLISHMENT OF A CANNABIS BUSINESS TAX AND REQUESTING THAT THE COUNTY OF SAN BERNARDINO CONSOLIDATE THE ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 6, 2018, AND CONDUCT THE ELECTION ON THE CITY’S BEHALF”

BACKGROUND

The City provides for a cannabis regulatory program pursuant to Hesperia Municipal Code Chapter 5.50 (Business Licenses and Regulations) and Title 16 (Development Code). The program establishes certain limitations on personal cannabis cultivation and prohibits commercial cannabis activities, with the sole exception of medical cannabis delivery operations under state license classification M-9 (Non-Storefront). M-9 businesses may operate in the City subject to issuance of a City regulatory permit and compliance with the operating requirements applicable to such business.

On June 19, the City Council directed staff to prepare a Cannabis Business Tax ordinance for consideration to send to the voters at the regular election to be held on November 6, 2018.

Staff and the City Attorney’s office have prepared a draft tax ordinance along with the resolution required to place the measure on the November 6, 2018 ballot. If approved by a majority of voters voting in the election, the ordinance would add a new Chapter 3.18 to the Municipal Code for a Cannabis Business Tax.

NOTE: The Cannabis Business Tax Measure is only a tax measure and will not expand or alter the list of authorized cannabis businesses.

The deadline for the City Council to place such a measure on the ballot is August 10, 2018. A two-thirds vote of all members of the City Council is required to pass the resolution to place the

measure on the ballot. (Gov't Code § 53724(b).) The proposed tax measure will generate revenue, deposited in the general fund, available for any general governmental purpose. Thus the taxes are considered "general taxes." Under Proposition 218, the levy of a new general tax must be approved by a majority of voters. (Cal. Const. art. XIII C, § 2(b).)

ISSUES/ANALYSIS

The attached resolution would place the Cannabis Business Tax ordinance before Hesperia voters on the November 6, 2018 general election ballot. The resolution stipulates the requirements, actions and obligations of the City of Hesperia and San Bernardino County Election Officials. The resolution (a) calls the election on the cannabis tax measure, (b) authorizes the filing of and establishes the dates for arguments, rebuttals and the City Attorney impartial analysis, (c) requests the County to consolidate the election and describes the relative responsibilities, and (d) approves the form of the ordinance which will be considered by the voters.

The ballot measure question to be submitted to the voters is as follows:

MEASURE ____, CANNABIS BUSINESS TAX

Shall the measure establishing a permanent tax of up to 6% of revenues on all commercial cannabis businesses, excepting cultivation, and a tax of up to \$15 per square foot of space used for commercial cannabis cultivation per fiscal year as may be increased annually by increases in the consumer price index, to raise approximately \$154,000 annually to be spent for unrestricted general revenue purposes, including public safety services and public works improvements, be adopted?	Yes
	No

Pursuant to Elections Code Section 13119, the ballot measure must be neutral and include the estimated amount of money to be raised annually. As noted above, the only cannabis activity currently allowed in Hesperia is medical cannabis delivery under state license classification M-9 (Non-Storefront). As of the drafting of this report the City has received 11 applications which are in the review process, but no licenses have been issued yet. Thus, it is difficult to predict the revenue that may be generated by the tax measure. For purposes of Elections Code Section 13119, the ballot question assumes a gross revenue of \$4,400,000 from 11 dispensaries, taxed at 3.5% (the midpoint between 1% and 6%), equaling \$154,000 in estimated tax revenue. If other cannabis activities are allowed in the future the tax revenue would increase.

The Ordinance to be considered by the voters is entitled:

AN ORDINANCE OF THE PEOPLE OF THE CITY OF
HESPERIA, CALIFORNIA APPROVING A TAX ON CANNABIS
COMMERCIAL ACTIVITIES BY ADDING CHAPTER 3.18
(CANNABIS BUSINESS TAX) TO TITLE 3 (REVENUE AND
FINANCE) OF THE HESPERIA MUNICIPAL CODE

The proposed ordinance includes the following points:

1. As described above, the only cannabis activity currently allowed in Hesperia is medical cannabis delivery under state license classification M-9 (Non-Storefront). Notwithstanding that limitation, the proposed tax measure would apply to all types of commercial cannabis businesses, including cultivation, retail, distribution, delivery, and manufacture. If the City Council (or City voters by initiative) expand the allowed cannabis activities in the future, those uses will be subject to the tax if the measure is passed by the voters.
2. The Non-Cultivation tax rate is a minimum of one percent (1%) and a maximum of six percent (6%) of gross receipts from the business operation. The actual tax rate will be set by the City Council between the minimum and maximum. The tax will be collected on a term determined by the finance director (either monthly, quarterly or annually).
3. The Cultivation tax rate is a maximum of fifteen dollars (\$15) per square foot per year for space utilized as cultivation area. The actual tax rate will be set by the City Council. While this is an annual tax, it will be collected on a term determined by the finance director (either monthly, quarterly or annually). This rate is increased annually by CPI.
4. Penalties are set at up to 25% and interest of 1% per month on past due payments.
5. The City Council may by resolution or ordinance establish the actual tax rate at any rate up to the maximum. For the Non-Cultivation tax, the rate may not be established below the minimum. Any increase in the maximum tax rates, or a decrease in the minimum tax rate for Non-Cultivation, must be approved by the voters at a general election.
6. The ordinance establishes time periods for refunds and/or challenging decisions of the tax administrator. It also provides for a method of appeals.
7. The ordinance allows for prosecution as a misdemeanor for failure to comply.

FISCAL IMPACT

As noted above, the only cannabis activity currently allowed in Hesperia is medical cannabis delivery under state license classification M-9 (Non-Storefront). As of the drafting of this report the City has received 11 applications which are in the review process, but no licenses have been issued yet. Thus, it is difficult to predict the revenue that may be generated by the tax measure. For purposes of Elections Code Section 13119, the ballot question assumes a gross revenue of \$4,400,000 from 11 dispensaries, taxed at 3.5% (the midpoint between 1% and 6%), equaling \$154,000 in estimated tax revenue. If other cannabis activities are allowed in the future, the tax revenue would increase.

ALTERNATIVES

1. Approve Resolution No. 2018-46
2. Provide alternative direction to staff.

ATTACHMENTS

1. Resolution No. 2018-46 (with Ordinance attached).