

**CITY OF ALBANY  
CITY COUNCIL AGENDA  
STAFF REPORT**

Agenda Date: May 17, 2010  
Reviewed by: BP

**SUBJECT:** Ballot measure to establish a business license tax for cannabis businesses

**REPORT BY:** Beth Pollard, City Administrator

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**STAFF RECOMMENDATION**

That Council direct staff to prepare an ordinance and ballot language for Council to present to the voters on the November 2, 2010 general municipal election to establish a business license tax for cannabis businesses.

**BACKGROUND**

In 1996, California voters approved Proposition 215, which allows people to use marijuana under certain circumstances for medical reasons. In November, 2006, 54% of Albany voters supported an advisory ballot measure to allow a medical marijuana dispensary to be located in Albany. Subsequently, the City Council approved Ordinance No. 07-01, allowing one dispensary in Albany, subject to restrictions on physical location, approval of a use permit, and other regulations. No medical marijuana dispensary has been located to date in Albany, although there has been interest from dispensary operators in establishing a location in the city.

This spring, a statewide measure qualified for the November 2010 ballot that would legalize the cultivation and sale of cannabis for non-medical purposes.

In July, 2009, the City of Oakland became the first city the nation where voters chose to levy a tax on medical marijuana dispensaries. The tax approved was a 1.8 percent tax on the gross receipts of licensed dispensaries in the city. The Oakland City Auditor reported that gross receipts from Oakland's four dispensaries in calendar year 2008 was \$19.6 million, leading to the auditor's estimated calculation of more than \$300,000 in annual business license tax revenue from the four dispensaries.

The City of Berkeley is considering placing a cannabis business license tax on the November 2010 ballot along the lines of the Oakland tax. The estimated annual revenue to Berkeley from such a tax on its three medical marijuana dispensaries is \$333,000.

Other cities in California that are considering a cannabis tax include San Jose and Sacramento.

## **DISCUSSION**

Attached is a draft language for amendment to the business license section of the municipal code providing for taxation of cannabis businesses that mirrors what has been proposed in the City of Berkeley. The tax rate is \$18 per thousand dollars of gross receipts for every for-profit cannabis business (i.e. 1.8%) and a rate of \$10 per square foot for a cannabis business operating as a nonprofit corporation. This tax requires majority voter approval.

The definition of a cannabis business includes the activity as specified by the city's municipal code provisions for medical marijuana dispensaries, as well cannabis business activity that may be authorized by state or federal law. Therefore this tax would apply if/when a medical marijuana dispensary is approved by the City of Albany for location within the city limits under the existing ordinance, as well as other types of cannabis business activity that may be allowed in the future by the state or federal government.

## **ANALYSIS**

While Albany does not currently have a medical marijuana dispensary, there is the potential for one to locate in the city. By establishing the tax before one opens, it allows a potential operator to account for the tax in his/her business plan. As other adjacent communities enact the tax, it places the potential Albany business on a level playing field with neighboring communities.

One of the principles behind business license taxation is a recognition that business activity relies on city services to operate and therefore should share, along with property owners and residents, in funding the costs of those services. The tax proposal for cannabis business recognizes that such activity will use city services; based on reports from other cities, the need for public safety services may be higher than many other types of business activity.

The City Council has previously indicated interest in exploring transitioning to a gross receipts structure for businesses located in Albany. The City does not currently have the resources to develop and implement an overall change in the business license ordinance to gross receipts, but it has been identified as a goal for the future. By starting with one such business, the city would gain experience to help inform a gradual or full transition to an all gross receipts tax structure.

The revenue gained from the tax would also assist in financial support for general city services. As a general services tax measure, a simple majority vote would be needed for approval.

Reasons to not place the measure on the ballot include a concern that taxing cannabis implies sanctioning of its use and/or that it is not appropriate to tax a medical related substance. There is scientific data that marijuana use is detrimental to persons' health, it is a federally prohibited substance, and there is criminal behavior associated with its production and sale. The question can fairly be asked as to whether the City should financially benefit from any transactions related to cannabis.

The counter arguments are that the existing state and city laws already authorize a medical marijuana dispensary, that less than a two percent tax rate is modest, that medical marijuana dispensaries generate a fair amount of business activity and profit, and that such business activity should pay its fair share of the cost of city services.

If Council wishes to pursue placement of a cannabis business license tax on the November ballot, staff will conduct additional analysis on a recommended format and rate for the tax, and return with a draft ordinance and ballot language.

### **SUSTAINABILITY IMPACT**

None other than potentially generating resources that could contribute to the City's fiscal and environmental sustainability.

### **FINANCIAL IMPACT**

There is a minor incremental cost to placing a measure on the ballot, related to additional pages of ballot pamphlet printing.

Unless or until a medical marijuana or other lawful cannabis business is located in Albany, there is no fiscal impact from passage of such a ballot measure. If a business were to open in Albany with an approved tax in place, the revenue to the city would depend on the type of dispensary, tax structure, and rate. Based on the gross receipts of the dispensaries in Oakland and Berkeley, tax revenue could be up to approximately \$100,000 on a for-profit business, or \$20,000 for a 2,000 square foot non-profit dispensary using the draft Berkeley language.

Absent passage of the ballot measure, a dispensary would likely fall under the general provisions of the business license and would currently be taxed at the rate of \$239.00 as a base and \$49.00 per employee, subject to annual cost of living adjustment.

### **Attachment**

Draft language