



ADMINISTRATIVE REPORT

File #: 18-043

Meeting Date: 2/5/2018

Report Prepared by: Kim Espinosa, Planning Manager, Development Services Department

SUBJECT: Options for Cannabis Tax Measure

REPORT IN BRIEF

The City Council will receive an overview of the options for a cannabis tax measure.

RECOMMENDATION

Provide input and direction to staff on the various cannabis tax options and timing to allow for the preparation of a tax ordinance.

ALTERNATIVES

Not applicable

AUTHORITY

Section 20,44,170(O)(6) of the recently adopted Ordinance No. 2480 calls for additional cannabis-specific gross receipts, excise, cultivation, or any other tax approved by the voters of Merced.

CITY COUNCIL PRIORITIES

On March 29, 2017, the City Council held a study session on priorities and medical marijuana regulations were listed under "City Administration-Current Projects."

DISCUSSION

At the City Council meeting, City staff and SCI Consulting will present information about options for a cannabis tax measure. The City Council will then be asked to provide direction to staff for preparation of an ordinance and the possible timing of proposing a cannabis tax measure for consideration by the voters.

IMPACT ON CITY RESOURCES

At the meeting, the City Council will receive information about potential revenue generated by a cannabis tax and the steps that staff are taking to test the timing and viability of the cannabis tax measure and a draft ordinance related to the proposed options.

ATTACHMENTS

1. Draft Ordinance

ORDINANCE NO. XXXX

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF MERCED, CALIFORNIA,
ADDING CHAPTER XXXX TO THE CITY OF MERCED MUNICIPAL CODE,
APPROVING AND IMPLEMENTING A COMMERCIAL CANNABIS BUSINESS TAX**

THE PEOPLE OF CITY OF MERCED ORDAIN:

SECTION 1. Special Tax.

The Commercial Cannabis Business Tax is enacted solely to raise revenue for specific governmental purposes for the City of Merced and not for purposes of regulation or of raising revenues for regulatory purposes. All of the proceeds from the tax imposed by this Chapter shall be used exclusively to maintain local police and fire protection services such as protecting and maintaining 9-1-1 emergency response times; maintaining neighborhood based policing; reducing illegal dumping, neighborhood crime and fire risks; addressing homelessness to keep public areas safe and secure for all residents; and retaining skilled police officers and firefighters, and cannot be spent for any other purpose. .

SECTION 2. Purpose.

A. To ensure that the cannabis industry will pay its fair share for the right to conduct business within our city by imposing a tax on the privilege of cultivating, manufacturing, processing, storing, laboratory testing, labeling, packaging, transporting, distributing, delivering, or sale of adult-use or medicinal cannabis or adult-use or medicinal cannabis products by commercial cannabis businesses in the City of Merced, pursuant to the state Medicinal and Adult-Use Cannabis Regulation and Safety Act, or other enabling legislation. As a Business License Tax, no users or medical patients who are not commercial cannabis businesses will pay this tax. These revenues will remain locally-controlled and are not subject to seizure by the State. All revenues are required to be spent in the City of Merced to maintain or enhance local police and fire services, and preserve the City's long-term financial stability.

SECTION 3. City of Merced Municipal Code Chapter XXXX is hereby repealed and replaced by Chapter XXXX to read:

COMMERCIAL CANNABIS BUSINESS TAX

- X.XX.XXX Imposition of Tax.
- X.XX.XXX Definitions.
- X.XX.XXX Payment Obligation.
- X.XX.XXX Remittance.
- X.XX.XXX Payment of Tax Does Not Authorize Unlawful Business or Activity.
- X.XX.XXX Modification, Repeal or Amendment.
- X.XX.XXX Administration.

X.XX.XXX Imposition of Tax.

A. Tax on Commercial Cannabis Cultivation:

1. Every person engaged in commercial cannabis cultivation in the city limits of the City of Merced shall pay an annual commercial cannabis business tax of up to \$25.00 per square foot or a 10% on gross receipts cultivation area.
2. Notwithstanding the maximum tax rate established by this ordinance, the City Council may at its discretion, at any time by resolution, implement a lower tax rate for all persons engaged in commercial cannabis cultivation within the City of Merced city limits for different categories of commercial cannabis cultivation subject to the maximum rate established in subsection (A)(1). The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in subsection (A)(1).
3. Pursuant to subsection (A), the commercial cannabis business tax on commercial cannabis cultivation is to be initially imposed as follows:

Cultivation Area (s/f) - Indoor		Rate per s/f
Commercial A - Specialty Indoor	0 - 5000	\$7.00
Commercial B - Small Indoor	5,000 - 10,000	\$10.00
Commercial C - Medium Indoor	10,000 - 22,000	\$15.00
Commercial D - Large Indoor	over 22,000	\$20.00

Or

Cultivation Area (s/f) - Indoor		% of Gross Receipts
Commercial A - Specialty Indoor	0 - 5000	4%
Commercial B - Small Indoor	5,000 - 10,000	6%
Commercial C - Medium Indoor	10,000 - 22,000	8%
Commercial D - Large Indoor	over 22,000	10%

B. Tax on Commercial Cannabis Nurseries:

1. Every person engaged in commercial cannabis nurseries in the city limits of the City of Merced shall pay an annual commercial cannabis business tax at a rate of \$4.00 per square foot of nursery area.
2. Notwithstanding the maximum tax rate established by this ordinance, the City Council may at its discretion, at any time by resolution, implement a lower tax rate for all persons engaged in commercial cannabis nurseries within the City of Merced city limits subject to the maximum rate established in subsection (B)(1). The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in subsection (B)(1).
3. Pursuant to subsection (B), the commercial cannabis business tax on commercial cannabis nurseries are to be initially imposed at the following rate:

Operator	Rate per s/f
Nurseries	\$0.50

C. Tax on Commercial Cannabis Manufacturing:

1. Every person engaged in commercial cannabis manufacturing in the city limits of the City of Merced shall pay an annual commercial cannabis business tax at a rate of \$25.00 per square foot of manufacturing area.
2. Notwithstanding the maximum tax rate established by this ordinance, the City Council may at its discretion, at any time by resolution, implement a lower tax rate for all persons engaged in commercial cannabis manufacturing within the City of Merced city limits subject to the maximum rate established in subsection (C)(1). The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in subsection (C)(1).
3. Pursuant to subsection (C), the commercial cannabis business tax on commercial cannabis manufacturing is to be initially imposed at the following rate:

Operator	Rate per s/f
Manufacturing	\$7.00

D. Tax on Commercial Cannabis Distribution:

1. Every person engaged in commercial cannabis distribution in the city limits of the City of Merced shall pay an annual commercial cannabis business tax at a rate of up to \$5.00 per square foot of building and a 10% on gross receipts.
2. Notwithstanding the maximum tax rate established by this ordinance, the City Council may at its discretion, at any time by resolution, implement a lower tax rate for all persons engaged in commercial cannabis distribution within the City of Merced city limits subject to the maximum rate established in subsection (D)(1). The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in subsection (D)(1).
3. Pursuant to subsection (D), the commercial cannabis business tax on commercial cannabis distribution is to be initially imposed as follows:

Operator	Rate per s/f
Distribution	\$1.00

And

Operator	% of Gross Receipts
Distribution	2%

E. Tax on Commercial Cannabis Retail:

1. Every person engaged in commercial cannabis retail in the city limits of the City of Merced shall pay an annual commercial cannabis business tax at a rate of up to 10% on gross receipts for adult-use retail and a rate of up 7% on gross receipts for medicinal retail.

2. Notwithstanding the maximum tax rate established by this ordinance, the City Council may at its discretion, at any time by resolution, implement a lower tax rate for all persons engaged in commercial cannabis retail within the City of Merced city limits subject to the maximum rate established in subsection (E)(1). The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in subsection (E)(1).
3. Pursuant to subsection (E), the commercial cannabis business tax on commercial cannabis retail is to be initially imposed at the following rates:

Operator	% of Gross Receipts
Medicinal Retail	4%
Adult-use Retail	7%

F. Tax on Commercial Cannabis Testing:

4. Every person engaged in commercial cannabis testing in the city limits of the City of Merced shall pay an annual commercial cannabis business tax at a rate of \$1.00 per square foot of building area.
5. Notwithstanding the maximum tax rate established by this ordinance, the City Council may at its discretion, at any time by resolution, implement a lower tax rate for all persons engaged in commercial cannabis testing within the City of Merced city limits subject to the maximum rate established in subsection (F)(1). The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in subsection (F)(1).
6. Pursuant to subsection (F), the commercial cannabis business tax on commercial cannabis manufacturing is to be initially imposed at the following rate:

Operator	Rate per s/f
Testing	\$0.25

X.XX.XXX Definitions.

For the purposes of this Chapter.

A. "Business tax" or "Commercial Cannabis Business Tax" means the tax due pursuant to this Chapter for engaging in lawful commercial cannabis business in the City of Merced.

B. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin and as defined in Business

and Professions code 19300.5(f). For purposes of this Section the terms Cannabis and Marijuana shall have the same meaning.

C. "Commercial cannabis business" means any commercial business activity relating to cannabis, including but not limited to cultivating, manufacturing, processing, storing, laboratory testing, labeling, packaging, transporting, distributing, delivering, or sale of cannabis, medicinal cannabis or a cannabis or medicinal cannabis product, except as related Business and Professions Code Section 19319, and as they may be amended or Health and Safety Code Sections 11362.1 through 11362.45 and as they may be amended.

D. "Canopy area" means all premises that contains mature plants at any point in time; including all of the space within the boundaries. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation or

D. "Cultivation area" means all portions of the premises deducting therefrom driveways, sidewalks, landscaping, vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the commercial cannabis business (such as a janitorial closet).

E. "Gross receipts" means the total amount actually received or receivable from all cannabis sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit is allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares, or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized. Included in "gross receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of the material used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever.

F. "Manufacturing area" means the entire premises utilized for production, preparation, propagation, storage or compounding of manufactured cannabis or cannabis products, directly or indirectly, by non-volatile extraction methods not deducting for unutilized portions of the premises.

G. "Nursery area" means the entire premises utilized for production of clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis not deducting for unutilized portions of the premises.

J. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

X.XX.XXX Payment Obligation.

Any entity subject to this chapter must pay the full tax imposed by this Chapter regardless of any rebate, exemption, incentive, or other reduction set forth elsewhere in this Code, except as required by California or Federal Law. Failure to pay the taxes required by this

Section within thirty (30) days after the due date shall be subject to the following penalties, interest charges, and assessments:

- A. A penalty in the sum equal to twenty-five percent (25%) of the total amount due; and
- B. If the tax remains unpaid, an additional penalty equal to ten percent (10%) shall be added on the first day of each calendar month following the month of the imposition of the twenty-five percent (25%) penalty if the tax remains unpaid.

X.XX.XXX Remittance.

The taxes imposed by this chapter shall be remitted directly to the City quarterly as set forth in this Chapter. The tax due shall be no less than the quarterly installment due, but the taxpayer may at anytime pay the tax due for the entire fiscal year. Each business shall pay on or before the last day of the month following the close of each calendar quarter.

X.XX.XXX Payment of Tax Does Not Authorize Unlawful Business or Activity.

The payment of any commercial cannabis business tax required under the provisions of this Chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal matter. Nothing in this section implies or authorizes that any activity connected with the distribution or possession of cannabis is legal unless authorized by California and Federal Law. Nothing in this section shall be applied or construed as authorizing the sale of cannabis.

X.XX.XXX Modification, Repeal or Amendment.

The voters expressly authorize the City Council to amend, modify, change, revise, or appeal any provision in this Chapter as the City Council deems in the best interest of the City without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment to Section X.XX.XXX that would increase the rate of any Tax levied pursuant to this Chapter above the maximum rates established by this Chapter.

The City Council may impose any tax authorized by this Chapter at a lower rate and may establish exemptions, incentives, or other reductions, and interest charges for failure to pay the tax in a timely manner, as otherwise allowed by California law. No action by the Council under this Section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax rates specified in this Chapter.

X.XX.XXX Administration.

A. The City manager or the City manager's designee shall promulgate rules, regulations, and procedures to implement and administer this Chapter to ensure the efficient and timely collection of the tax imposed by this Chapter.

B. Independent Citizens Oversight: By law, funds from this measure can only be spent on local police, fire protection, and public safety services, and not for any other purpose. To ensure that funds are spent as promised to voters:

- 1) The City shall issue annual independent audits on proceeds raised by this measure.

- 2) A Citizens' Oversight Committee shall be formed to review the revenues and expenditures generated and spent. Said Committee shall consist of X members. Nominees shall be appointed by [whatever process you want, here]. Elected officials at any level of government and employees of the City are ineligible to serve as members of the Committee. Members so appointed shall serve without compensation for a term of [whatever you want, here].

The Committee shall [meet however frequently you wish] to review the revenues and expenditures generated and spent under this Chapter, and provide its findings to the City Council [however often you want, here]. Unless modified by City Council Resolution, the Committee shall not have any function, power, or authority other than those expressly provided herein.

SECTION 4. This Ordinance shall become effective upon adoption by two-thirds majority of the voters casting votes at the special election on June 5, 2018.

SECTION 5. The City Clerk shall publish this ordinance as required by applicable law. Upon approval by the voters, the City Clerk shall certify the passage of this ordinance by the voters, and cause the ordinance to be codified in the City of Merced Municipal Code.

PASSED, APPROVED, AND ADOPTED BY THE PEOPLE OF THE CITY OF MERCED AT THE SPECIAL MUNICIPAL ELECTION HELD THE ____ DAY OF _____ 2018.