



## City Council Agenda Item

**City Council Meeting Date:** June 1, 2021

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Jim Throop, City Manager  
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Jeff Malawy, City Attorney  
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**SUBJECT:** Discussion and Direction Regarding Possible Changes to the Commercial Cannabis Taxes Imposed by the City of Lompoc; Consideration of Adoption of Resolutions to Place before City Voters, at Either a Separate Mail-in Only Election on August 31, 2021, or the November 8, 2022, General Municipal Election Consolidated with the Statewide General Election, a Ballot Measure Changing City's Tax on Cannabis Manufacturing and Distribution Operators and Other Cannabis Tax Definitions/Regulations; Declaration of Fiscal Emergency; Call of Election; Direction for Impartial Analysis and Ballot Arguments for Measure; Appropriation of Funds to Pay for the Election

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### **Recommendation:**

Staff recommends the City Council determine which tiered tax structure on cannabis manufacturing and distribution to place in a ballot measure before the voters, and then:

- 1) Adopt Resolution No. 6414(21) (Attachment 1), declaring a fiscal emergency, pursuant to article XIII C section 2(B) of the California constitution; and
- 2) If Resolution No. 6414(21) (Attachment 1) is adopted by an affirmative vote of all five Council Members, then also adopt Resolution No. 6415(21) (Attachment 2) (by a vote of at least four Council Members), which:
  - a. proposes and orders the submission to the qualified electorate of the City of Lompoc a tiered tax structure on cannabis manufacturing and distribution operators for General Fund purposes and changes to other cannabis tax regulations/definitions (Measure) at a special municipal mail-in only election to be held on August 31, 2021,
  - b. calls that special municipal mail-in only election for August 31, 2021,
  - c. directs the City Clerk, as the City elections official, to conduct that election; and

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- d. authorizes City payment for elections services needed by the City Clerk;  
or
- 3) If Resolution No. 6414(21) (Attachment 1) is not adopted by a unanimous vote, then adopt Resolution No. 6416(21) (Attachment 3) by a vote of at least four Council Members, which proposes the Measure and directs staff include the Measure for submission to the qualified electorate at the City of Lompoc General Municipal Election to be held on November 8, 2022, when that election is called in 2022; and
  - 4) If either Resolution No. 6415(21) (Attachment 2) or Resolution No. 6416(21) (Attachment 3) is adopted by a vote of four Council Members, then adopt Resolution No. 6417(21) (Attachment 4) directing the City Attorney to draft the impartial analysis and setting ballot arguments; and
  - 5) If Resolution No. 6415(21) (Attachment 2) is adopted, then adopt Resolution No. 6418(21) (Attachment 5) appropriating funds to pay for the special mail-in only election to be held on August 31, 2021; and
  - 6) Finally, if Resolution No. 6415(21) (Attachment 2) or Resolution No. 6416(21) (Attachment 3) is adopted, then staff recommends the City Attorney read aloud the title of the Measure at the City Council meeting, and the City Council make a motion to waive further reading of the ordinance. The title is:

An Ordinance of the People of the City of Lompoc, County of Santa Barbara, State of California, Amending Certain Provisions of Chapter 3.50 (Cannabis Taxes) of the Lompoc Municipal Code to (i) Impose Tiered Taxes on Cannabis Manufacturing and Distribution Operators, (ii) Change How All Cannabis Taxes are Calculated and (iii) Allow Those Taxes to be Shown on Customer Receipts

**Background:**

At the City Council meeting of May 18, 2021, a majority of the City Council directed staff to present a staff report and related documents to provide the City Council the opportunity to place a Measure on an upcoming election ballot for a tiered tax structure on cannabis manufacturing and distribution and changes to other cannabis tax regulations.

The City Council requested staff to return with options for a tiered tax structure. The City Manager has developed two options based on City Council's motion, and the City Attorney has prepared the necessary documents for the City Council to choose a tier structure for the Measure and place the Measure on either an August 31, 2021, special mail-in only election (requiring five Council Member yes votes) or on the general municipal election of November 8, 2022 (requiring four Council Member yes votes).

To hold an election on the August 31, 2021, date, the City Council must call the election by June 4, 2021. (Elections Code section 9222.)

**Discussion:**

**1. RESOLUTION DECLARING A FISCAL EMERGENCY (ATTACHMENT 1).**

Pursuant to Proposition 218, usually an election to impose a general tax must be consolidated with the City's regularly scheduled general municipal election, meaning when Council Members are on the ballot (Cal. Const. Art. 13C, § 2(b)). The City's next regular municipal election will be held on November 8, 2022.

The State Constitution also provides, "in cases of emergency declared by a unanimous vote of the governing body," a general tax measure may be placed on a special election ballot (Cal. Const. article 13C, § 2(b)). The next special election date established by state law is August 31, 2021. An election held on that date must be a mail-in only election. To place the Measure on the August 31, 2021, ballot, the City Council must unanimously adopt facts and findings in a resolution declaring the emergency. The required facts and findings that support the declaration of a fiscal emergency are found in the "Whereas" clauses of Attachment 1.

Importantly, the fiscal emergency resolution is a condition precedent to the City Council actions related to calling a special election discussed in this report. If the fiscal emergency resolution does not pass unanimously, then no further action can be taken to place the Measure on a special election ballot.

Therefore, also included in this report is a discussion about placing the Measure on the next general municipal election to be held on November 8, 2022. That action would require an affirmative vote of four City Council Members.<sup>1</sup>

**2. RESOLUTION CALLING FOR A SPECIAL ELECTION, PLACING THE MEASURE ON THE BALLOT FOR AUGUST 31, 2021, MAIL-IN ONLY ELECTION (ATTACHMENT 2).**

If there is a unanimous vote by the City Council to approve the declaration of a fiscal emergency (Attachment 1), then the City Council may adopt the resolution calling for the special mail-in only election (see Attachment 2). The resolution calling for the special election and placing the Measure on the ballot requires four "yes" votes of the City Council (Cal. Const. Art. 13C, § 2(b) and Gov't Code § 53724(b); Revenue and Tax Code §7285.9).

The resolution calling for the special election shall include the text of the proposed ordinance to be considered for adoption by the voters. Attached as Exhibit "A" to Attachment 2 is the proposed ordinance related to the changes in the City's cannabis

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<sup>1</sup> Because the City's existing cannabis taxes are considered general taxes, this staff report only discusses the various options for calling elections that are applicable to general taxes, as opposed to special taxes. If a majority of the City Council wants to discuss the option of calling a special election for a special cannabis tax, that election may be called with an affirmative vote of three Council Members, but it would require 66.67% of the voters to pass and the tax revenues generated must be restricted for particular City purposes.

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taxes imposed on manufacturing and distribution operations, as well as two other regulations.

With regard to the taxes established by the Measure two options are suggested. In no order of preference, one is a flat tax and the other a graduated system, on annual gross income as follows:

Option 1 – Flat Tax

Under \$2M	\$25,000
\$2M – under \$5M	\$50,000
\$5M – under \$10M	\$125,000
\$10M – under \$15M	\$250,000
\$15M – under \$25M	\$375,000
\$25M – under \$35M	\$625,000
\$35M – under \$50M	\$875,000
\$50M – under \$75M	\$1,250,000
\$75M – under \$100M	\$1,875,000
\$100M – under \$200M	\$2,500,000
\$200M – under \$300M	\$5,000,000
\$300M – under \$400M	\$7,500,000
\$400M – under \$500M	\$10,000,000
\$500M – under \$600M	\$12,500,000
\$600M – under \$700M	\$15,000,000
\$700M – under \$800M	\$17,500,000
\$800M – under \$900M	\$20,000,000
\$900M and over	\$22,500,000

Option 2 – Graduated tax:

\$10M or under	1.0%
>\$10M to \$25M	1.5%
>\$25M to \$40M	2.0%

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>\$40M to \$55M	2.5%
>\$55M	3.0%

The City Council is requested to select which option is to be included in the Measure or some other tax schedule and Exhibit A would be amended to include that.

Those taxes could be used for General Fund expenditures, including but not limited to public safety services, City infrastructure needs, other quality of life programs, and basic operational costs and mandates imposed upon the City. Based on current manufacturing/distribution operations licensed in the City: (i) Option 1 is currently estimated to generate approximately \$975,000 annually; and (ii) Option 2 is estimated to currently generate approximately \$1,575,000 annually. These estimates would increase should additional businesses commence operations.

In addition, the Measure would amend the City's cannabis regulations/definitions, to (i) change how all cannabis taxes are calculated, by no longer requiring state and local sales taxes be included in that calculation, (ii) tax manufacturing and distribution based on the taxed amounts, as newly defined, rather than net income, (iii) allow the City cannabis taxes to be shown on customer's receipt, (iv) modify the definition of "manufacturing and distribution" and (v) add definitions for "cultivation" and "taxed amount."

As required by law, Attachment 2 also includes the actual ballot question language to be presented to voters with respect to the Measure. The City Council is requested to provide changes to that question, if any are desired, prior to adoption of Attachment 2. In making any changes, the City Council is reminded the question must:

- 1) be 75 words maximum (Elections Code § 9051.)
- 2) use the phrase: "Shall the measure (stating the nature thereof) be adopted?" (Elections Code § 13119(a));
- 3) include an estimate of annual revenues to be generated (Elections Code 13119(b));
- 4) state the rate of the tax—in this case, the tiered system described above (Elections Code § 13119(b));
- 5) state the duration of tax, or "sunset" date of the tax—in this case stating there is no sunset, (Elections Code § 13119(b)); and
- 6) "be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure" (Elections Code § 13119(c)).

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If the City Council selects a tax schedule different than that proposed by Option 1 or 2, then staff would amend the ballot question to describe the estimated taxes that would be generated by the revised tax schedule ultimately approved by the City Council.

In addition to calling the election, approving the language of the measure, setting the ballot question, and submitting the Measure to the City's electorate, Attachment 2 also proposes to direct the City Clerk to conduct the mail-in only election.

**3. RESOLUTION DIRECTING STAFF TO INCLUDE THE MEASURE ON THE BALLOT FOR THE NOVEMBER 8, 2022, GENERAL ELECTION (ATTACHMENT 3).**

If there is not a unanimous vote by the City Council to approve the declaration of a fiscal emergency (Attachment 1) or not at least four affirmative votes to call the special mail-in only election for August 31, 2021 (Attachment 2), then the City Council may, with four affirmative votes, direct staff to include the Measure on the November 8, 2022, general municipal election (Attachment 3). If Attachment 3 is adopted, then unless that resolution is rescinded by the vote of three City Council Members, the Measure will be added to the ballot when the November 8, 2022, election is called.

**4. RESOLUTION DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS AND SETTING BALLOT ARGUMENTS (ATTACHMENT 4).**

If Attachment 2 or 3 is adopted, then the City Council must also adopt a resolution (i) directing the City Attorney to draft an impartial analysis of the Measure for the ballot, and (ii) setting priorities for written arguments on the ballot Measure. This can be found in Resolution No. 6417(21) (Attachment 4).

Whenever a municipal ballot measure is authorized, State law provides the City Council shall direct the City Attorney to prepare an impartial analysis, and State law provides for the filing of written arguments for and against a measure. A resolution setting the City Attorney's impartial analysis and preparation of ballot arguments is also requested by the Santa Barbara County Elections Department as part of their direction with respect to administering a consolidated election. The City Council may also provide for rebuttal arguments to be filed with the elections official.

By adopting Attachment 4, the City Council is directing the City Attorney to prepare an impartial analysis of the Measure. The impartial analysis shall be filed within 15 days after its adoption or by the date set by the City Clerk for the filing of primary arguments, whichever is later.

Attachment 4 also authorizes Members of the City Council, collectively or individually, or any individual Lompoc voter or association of Lompoc citizens, to file written arguments in favor of, or against, the Measure, and to change the argument until and including the date fixed by the City Clerk after which no arguments for or against the Measure may be

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submitted to the City Clerk. The City Clerk shall follow Elections Code sections 9281 through 9287 in determining the printing of all arguments in favor and against.

With regard to ballot arguments, two points bear emphasis:

- 1) Rebuttal arguments are not legally required. If the City Council does *not* wish to authorize rebuttal arguments on the ballot, then Sections 6 and 7 of Attachment 4 should be deleted by majority vote of the City Council.
- 2) In terms of ballot arguments, the City Council has the option of (i) collectively, at a duly noticed public meeting, crafting a ballot argument, or (ii) designating not-more-than two City Council Members to craft the ballot argument, or (iii) not designating any Council Member to craft the ballot argument, thus leaving individual Council Members the option of submitting an argument. In the event of option (iii), the City Council should know, if the City Clerk receives multiple ballot arguments from multiple City Council Members, then the City Clerk would first pick only those arguments that comport with the requirements of law, and then resort to using a random method (i.e., “drawing straws”) to choose among the legally-compliant arguments. If no City Council Member submits an argument, then the City Clerk will select legally compliant arguments submitted by members of the public, in order of priority listed in Elections Code 9287.

#### **5. RESOLUTION APPROPRIATING FUNDING FOR THE SPECIAL MAIL-IN ONLY ELECTION (ATTACHMENT 5).**

The City Clerk’s Office requires a budget appropriation of \$70,000 in Account 110CCE-534150 – Clerk – Elections. The August 31, 2021, special mail-in only election has been estimated to cost the City approximately that amount, including the hiring of four temporary assistants and consultant firm(s) to work with the City Clerk in conducting that election. That estimate does not include anything for any possible educational outreach on the ballot measure the City Council may desire. The funding for this ballot measure will need to be from the General Fund reserves. The reserves are estimated to have a balance of approximately **\$1.3 Million** at the end of FY 2020-21. Adoption of Resolution No. 6418(21) (Attachment 5) appropriates those funds for that use. That resolution is to be adopted only if Attachments 1, 2 and 4 are also adopted. If Attachment 3 is adopted, then a resolution similar to Attachment 4 will be presented when the City Council calls the November 8, 2022, general municipal election.

#### **Fiscal Impact:**

To date, the amount of revenue the City has received in annual revenues from its cannabis taxes was \$126,252 in 2019, \$983,513 in 2020 and \$1,296,033 in 2021 year-to-date (YTD), with an estimated total of \$1,575,000 for 2021. Of those amounts, dispensary operations accounted for all the cannabis revenue in 2019 (there were no other types of businesses operating), \$923,513 in 2020 and \$1,161,117 YTD, and manufacturing and distribution accounted for \$60,000 in 2020 and \$75,000 YTD.

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If the tax measure is to be a mail-in only election on August 31, 2021, then the cost would be approximately \$70,000, including hiring four temporary employees for two weeks; but that does not include an amount for any possible educational outreach on the ballot measure. If the tax measure is to be on the next general municipal election, November 8, 2022, then that cost would be about \$60,000, most of which would be spent for the Mayoral and Council Member elections, regardless of a cannabis ballot measure.

In terms of what a modified cannabis tax for manufacturing and distribution operations would bring to the City, currently the cannabis flat tax on those operations is \$15,000 if net income is less than \$2,000,000 and \$30,000.00 if net income is \$2,000,000 or more. That current flat tax has raised \$60,000 annually in revenue to the General Fund. If the proposed new flat tax is adopted by the voters, then that would generate an estimated \$975,000 annually, based only on currently operating businesses. If the proposed graduated tax schedule is adopted by the voters, then that would generate an estimated \$1,575,000, annually, again based only on currently operating businesses.

Expanding on this hypothetical example, the City currently has applications for 10 manufacturing companies, 12 distribution companies, and 4 processing companies, for a total of 26 companies, which would currently be taxed under the City's existing cannabis tax rates. If an assumption was made that each company grossed \$9 Million per year, which is not unheard of earnings potential, then that equates to \$234,000,000 in total gross business revenue. Under either proposed tier structure, that would generate around \$2 million to \$3 million in General Fund revenue. This, again, is just an illustrative example.

**Conclusion:**

Adoption of Attachments 1, 2, 4 and 5 or Attachment 3 would facilitate allowing voters to decide on the proposed new cannabis taxing structure for manufacturing and distribution operations, as well as not including state and local sales taxes when those taxes are calculated, allowing the City's cannabis taxes to be shown on customer receipts and amending or adding related definitions.

Respectfully submitted,



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Jim Throop, City Manager

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Jeff Malawy, City Attorney

- Attachments: 1) Resolution No. 6414(21)  
2) Resolution No. 6415(21)  
3) Resolution No. 6416(21)  
4) Resolution No. 6417(21)  
5) Resolution No. 6418(21)