



City Council Agenda Item

City Council Meeting Date: July 6, 2021

TO: Honorable Mayor and Members of the City Council

FROM: Jim Throop, City Manager
j_throop@ci.lompoc.ca.us

Jeff Malawy, City Attorney
jmalawy@awattorneys.com

SUBJECT: Discussion and Direction Regarding Rescheduling the Special Municipal Election set for August 31, 2021, for 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 Municipal Election on November 2, 2021, or a Municipal Election Consolidated with the Statewide Primary Election on June 7, 2022, 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

Recommendation:

Staff recommends the City Council reschedule, from August 31, 2021, to November 2, 2021, or June 7, 2022, a special municipal election for the voters to decide whether to approve proposed changes to the City's cannabis tax regulations, and then:

- 1) Adopt Resolution No. 6432(21) (Attachment 1), declaring a fiscal emergency, pursuant to article XIII C section 2(B) of the California constitution and rescinding Resolution No. 6414(21); and
- 2) If Resolution No. 6432(21) (Attachment 1) is adopted by an affirmative vote of all five Council Members, then also adopt Resolution No. 6433(21) (Attachment 2) (by a vote of at least four Council Members), which:
 - a. rescinds Resolution No. 6415(21) and 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 election to be held on November 2, 2021, or June 7, 2022,

July 6, 2021

Ballot Measure for Changes to Cannabis Tax and Two Regulations

Page 2 of 6

- b. calls that special municipal election for November 2, 2021, or June 7, 2022,
 - c. requests the Santa Barbara County Board of Supervisors to direct the County Elections Department to conduct that election for the City;
 - d. authorizes City payment for elections services rendered by the County needed to conduct that election; and
- 3) If Resolution No. 6433 (Attachment 2) is adopted by a vote of four Council Members, then adopt Resolution No. 6434(21) (Attachment 3) rescinding Resolution No. 6417(21) and directing the City Attorney to draft the impartial analysis and setting ballot arguments; and
- 4) If Resolution No. 6433(21) (Attachment 2) is adopted by a vote of four Council Members, then adopt Resolution No. 6435(21) (Attachment 4) rescinding Resolution No. 6418(21) and appropriating funds to pay for the special municipal election to be held on November 2, 2021, or June 7, 2022; and
- 5) Finally, if Resolution No. 6433(21) (Attachment 2) is adopted by a vote of four Council Members, 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 June 1, 2021, a unanimous vote of the City Council adopted Resolution No. 6414(21), 6415(21), 6417(21) and 6418(21) to schedule August 31, 2021, as the election date for a ballot measure for a tiered tax structure on cannabis manufacturing and distribution and changes to other cannabis tax regulations.

Subsequent to those actions, one of the select and necessary consultants the City would have used for the August 31, 2021, election has told the City Clerk they are no longer available because they have already contracted with the County of Santa Barbara to assist with the recall election of Governor Newsom during the same time period. There are no other consultants available to provide the needed services, nor is staff able to provide those services in-house. City elections have always been conducted by the County Elections Department, which also is not available to conduct a special election for the City on August 31, 2021.

If the proposed changes for the cannabis taxes are to be presented to the voters for approval or disapproval, then the City Council must select another date for the election.

July 6, 2021

Ballot Measure for Changes to Cannabis Tax and Two Regulations

Page 3 of 6

The next legally available and convenient dates are November 2, 2021, or June 7, 2022.¹ The former would not be consolidated with any other county-wide election, since none are scheduled. The latter could be consolidated with a statewide primary election.

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)). To place the Measure on the ballot for either November 2, 2021, or June 7, 2022, 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.²

2. Resolution Calling For a Special Election, Placing the Measure on the Ballot at Either a November 2, 2021, or June 7, 2022, 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 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

¹ April 12, 2022, and May 3, 2022, are also legally available, but it would be more cost effective to hold a June 7, 2022, election as it can be consolidated with the statewide primary.

² Because the City's existing cannabis taxes are considered general taxes and the City Council's actions on June 1, 2021, approved placing a general tax on the ballot, 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 an 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.

July 6, 2021

Ballot Measure for Changes to Cannabis Tax and Two Regulations

Page 4 of 6

taxes imposed on manufacturing and distribution operations, as well as two other regulations, as approved by a unanimous City Council at June 1, 2021, meeting.

That approval was for the following tax rates for those operations:

\$10M or under	0.5%
>\$10M to \$25M	1.0%
>\$25M to \$40M	1.5%
>\$40M to \$55M	2.0%
>\$55M	2.5%

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, those rates are estimated to currently generate approximately \$1,200,000 annually. Those 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 a 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 unanimously approved ballot question language to be presented to voters with respect to the Measure.

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 request the County Board of Supervisors to direct the County Election Board to conduct the election.

3. Resolution Directing the City Attorney to Prepare an Impartial Analysis and Setting Ballot Arguments (Attachment 3).

If Attachment 2 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. 6434(21) (Attachment 3).

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 an election they conduct.

July 6, 2021

Ballot Measure for Changes to Cannabis Tax and Two Regulations

Page 5 of 6

By adopting Attachment 3, 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 3, similar to Resolution No. 6418(21) previously adopted unanimously by the City Council, authorizes Mayor Osborne and Mayor Pro Tem Vega, 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 submitted to the City Clerk, and does not provide for rebuttal arguments. The City Clerk shall follow Elections Code sections 9281 through 9287 in determining the printing of all arguments in favor and against.

4. Resolution Appropriating Funding for the Special Election (Attachment 4).

Depending on which date the City Council reschedules the election for the voters to decide whether to approve the changes to the City's cannabis tax regulations, the City Clerk's Office requires a budget appropriation, for Account 110CCE-534150 – Clerk – Elections, of \$250,000 for the November 2, 2021, date or \$70,000 for the June 7, 2022, date. That estimate does not include funding 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 Fiscal Year (FY) 2020-21. Adoption of Resolution No. 6435(21) (Attachment 4) appropriates those funds for that use. That resolution is to be adopted only if Attachments 1, 2 and 3 are also adopted.

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.

If the tax measure is scheduled for November 2, 2021, then the cost would be approximately \$250,000, because the County is not conducting a county-wide election on that date. That amount does not include an amount for any possible educational outreach on the ballot measure. If the tax measure is to be on the statewide primary election date of June 7, 2022, then that cost would be about \$70,000.

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

July 6, 2021

Ballot Measure for Changes to Cannabis Tax and Two Regulations

Page 6 of 6

proposed graduated tax schedule is adopted by the voters, then that would generate an estimated \$1,200,000 annually, 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 \$11 Million per year, which is not an unheard of earnings potential, then that equates to \$286,000,000 in total gross business revenue. Under the proposed ballot measure, that would generate \$2,860,000 in General Fund revenue. This, again, is just an illustrative example.

Conclusion:

Adoption of Attachments 1, 2, 3 and 4 would reschedule the previously approved election to allow 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,

Jim Throop, City Manager



Jeff Malawy, City Attorney

Attachments: 1) Resolution No. 6432(21)
2) Resolution No. 6433(21)
3) Resolution No. 6434(21)
4) Resolution No. 6435(21)