



## City Council Agenda Item

**City Council Meeting Date:** July 5, 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 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 a Special Municipal Election Consolidated with the Statewide California Gubernatorial Recall Election on September 14, 2021, 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 and Request to Consolidate with the September 14, 2021 Statewide Election; Direction for Impartial Analysis and Ballot Arguments for Measure

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### **Recommendation:**

Staff recommends the City Council adopt the following resolutions, which will move the currently scheduled August 31, 2021 special municipal election to September 14, 2021 to be consolidated with the statewide California Gubernatorial Recall Election, for the voters to decide whether to approve proposed changes to the City's cannabis tax regulations:

- 1) Adopt Resolution No. 6437(21) (Attachment 1), declaring a fiscal emergency, pursuant to article XIII C section 2(B) of the California Constitution; and
- 2) If Resolution No. 6437 (21) (Attachment 1) is adopted by an affirmative vote of all five Council Members, then also adopt Resolution No. 6438(21) (Attachment 2) (by a vote of at least four Council Members) , which:
  - a. issues a call to consolidate the special municipal election, previously scheduled for August 31, 2021, with the statewide California Gubernatorial Recall Election to be held on September 14, 2021;
  - b. 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 the special municipal

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- election to be held on September 14, 2021;
  - 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. 6438(21) (Attachment 2) is adopted by a vote of four Council Members, then adopt Resolution No. 6439(21) (Attachment 3) directing the City Attorney to draft an impartial analysis; and
- 4) Finally, if Resolution No. 6438(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:**

On June 1, 2021, a unanimous vote of the City Council called an August 31, 2021 special municipal election and placed a measure on the ballot that would establish a tiered tax structure on cannabis manufacturing and distribution and changes to other cannabis tax regulations.

One week ago, on Monday, June 28, 2021, the state legislature adopted and the Governor signed Senate Bill 152 into law. Senate Bill 152 adds Section 1605(f) to the California Elections Code, which reads as follows:

“Notwithstanding any other law, if the Lieutenant Governor issues a proclamation calling a gubernatorial recall election, a district, city, or other political subdivision that previously called a special local election that has not yet been conducted for the submission of any question, proposition, or office to be filled may call that special local election to be consolidated with the gubernatorial recall election if all of the following conditions are met:

- (1) The special local election was called prior to June 15, 2021.
- (2) The original date on which the special local election was called is not more than 30 days before and not more than 30 days after the date of the gubernatorial recall election.
- (3) The call to consolidate the special local election with the gubernatorial recall election is issued within **four days** from the date of issuance of the Lieutenant Governor's proclamation.”

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On Thursday, July 1, 2021, the Lieutenant Governor issued a proclamation calling the statewide California Gubernatorial Recall Election to be held on September 14, 2021.

Lompoc's August 31, 2021 special municipal election is not more than 30 days before the September 14, 2021 gubernatorial recall election, and the City Council called Lompoc's election prior to June 15, 2021. Therefore, the City Council may issue a call to consolidate Lompoc's special municipal election with the September 14, 2021 California Gubernatorial Recall Election, if the City Council does so by July 5, 2021.

Consolidating the special municipal election with the gubernatorial recall election will result in a cost savings for the City and will be conducted more easily and efficiently, as it will be conducted by the County Elections Department. Lompoc city elections have always been conducted by the County Elections Department, which was not available to conduct the August 31, 2021 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 a date prior to November 8, 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.

#### **2. RESOLUTION ISSUING A CALL TO CONSOLIDATE THE SPECIAL MUNICIPAL ELECTION, PREVIOUSLY CALLED TO BE HELD ON AUGUST 31, 2021, WITH THE STATEWIDE CALIFORNIA GUBERNATORIAL RECALL ELECTION TO BE HELD ON SEPTEMBER 14, 2021, AND PLACING THE MEASURE ON THE BALLOT AT THAT SEPTEMBER 14, 2021 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 issuing a call to consolidate the special municipal election previously called for August 31, 2021 with the statewide California Gubernatorial Recall Election on September 14, 2021, and placing the Measure on the ballot at the September 14, 2021 election (Attachment 2).

That resolution 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).

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The resolution includes 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 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. 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 unanimously approved ballot question language to be presented to voters with respect to the Measure.

In addition to issuing the call to consolidate the election, approving the language of the measure, setting the ballot question, and submitting the Measure to the City's electorate, Attachment 2 also requests the County Board of Supervisors to consent and agree to consolidate the special municipal election with the statewide gubernatorial recall election.

### **3. RESOLUTION DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS (ATTACHMENT 3).**

If Attachment 2 is adopted, then the City Council may also adopt a resolution directing the City Attorney to draft an impartial analysis of the Measure for the ballot pamphlet. This can be found in Resolution No. 6439(21) (Attachment 3).

#### **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-

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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 September 14, 2021 and consolidated with the gubernatorial recall election, then the cost would be approximately \$65,000. That amount does not include any possible educational outreach on the ballot measure. The August 31, 2021 election was estimated to cost 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 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 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, and 3 would reschedule the previously called election to September 14, 2021, 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/*

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Jim Throop, City Manager



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Jeff Malawy, City Attorney

- Attachments: 1) Resolution No. 6437(21) – Fiscal Emergency Resolution  
2) Resolution No. 6438(21) – Resolution Issuing Call to Consolidate  
3) Resolution No. 6439(21) – Resolution Directing Impartial Analysis