



Legislation Text

File #: 10-0784, **Version:** 1

Recommendation to conduct a hearing on the proposed levy of the Marijuana Business License Tax, receive supporting documentation into the record, conclude the hearing; adopt a finding of emergency; and adopt resolution calling for an election on November 2, 2010, for the purpose of authorizing such a tax. (Citywide)

July 6, 2010, City Council approved setting a public hearing on August 3, 2010 to consider placing a ballot measure on the November 2010 general election for a business license tax on medical marijuana collectives, other marijuana businesses and marijuana cultivation sites. The primary purpose of this tax is to help address the projected \$18.5 million General Fund deficit in Fiscal Year 2011 (FY 11) and subsequent projected deficits in FY 12 and FY 13 that will occur as labor costs continue to rise while revenue remains sluggish. Without additional revenue, the City's ability to continue providing core services such as police, fire, parks and recreation, library, public works and infrastructure improvements will diminish over time.

On March 23, 2010, the City Council endorsed a five-pronged approach to balance the City's budget in FY 11. A critical component of this five-pronged approach is the creation of new revenue. In researching initiatives that could increase the City's revenues, it was discovered that other California cities, including Sacramento, Berkeley and Oakland, are all bringing forward ballot measures to initiate, increase or expand their business license taxes with respect to medical marijuana and other marijuana establishments that will arise if Proposition 19 passes and marijuana is legalized. Since the City Council meeting on July 6, 2010, an additional two California cities have brought forth potential ballot measures related to marijuana businesses to their City Councils including San Jose and Albany. This increasing list of cities shows that the potential of taxation is being considered as a solution to maintaining core services in an ever-challenging fiscal and economic environment. Please also note that the State is currently proposing a medical marijuana tax similar to the tax on tobacco (SBx6 16 (Calderon) - Taxation: Marijuana), and it is only a matter of time before other taxing entities, such as Counties consider exercising their taxing authority to develop similar measures to address their staggering deficits and increase revenues. If the City does not act in a timely and proactive manner, the County and State taxing authorities will benefit from the revenue generated from marijuana businesses in Long Beach, leaving the City with all of the costs associated with regulating and overseeing these businesses and limited revenue generating opportunities.

Business License Tax

The City's local taxing authority related to businesses is the Business License Tax (BL T), which is grouped into different categories of taxation based on business classifications. Currently, there are over 34 separate business types that are charged business license taxes within the City generating over \$11 million in General Fund revenue annually.

Staff recommends a unique business assignment for medical marijuana collectives and for marijuana businesses that may arise through the voter approval of Proposition 19. These are unique

businesses that do not fully suit any existing business classification and will require considerable staff time and resources to oversee and regulate consistent with City and other legal requirements.

It should be made clear that the City's intent is to tax marijuana businesses and not patients. This is not a tax on the sale or transaction; this is a tax on the business. There is a substantive difference. All businesses operating in Long Beach (with the exception of religious or charitable organizations) must obtain a business license to operate within the City, including pharmacies, supermarkets, day care centers, attorney's offices, dentists, doctor's offices, nursing homes, restaurants and bars, and many more. Many of these businesses currently support or treat individuals suffering from medical illnesses, including those mentioned above; however, they must remit business license taxes annually in order to operate within the City. Some have argued that a tax on collectives will diminish a qualified patient's access to medical marijuana; however, that does not appear to be the case in Oakland, the City with the longest track record of taxing collectives. In fact, their Measure Z Committee, who represents Oakland's Medical Marijuana Community, has worked with the City of Oakland on its November 2010 ballot measure.

In addition, comparisons have been made between medical marijuana collectives and pharmacies. First, please be advised that there are over 70 pharmacies in the City of Long Beach, all providing medicine and unregulated over-the-counter drugs to residents. Pharmacies must pay a business license tax to operate in the City of Long Beach. However, these two entities are quite distinct, both by the legal foundation that establishes the regulatory framework for each (e.g., pharmaceutical product manufacturing, distribution, and research and development vs. medical marijuana cultivation and distribution) and by the significant differences in the manner in which they are regulated. Pharmaceutical companies are closely regulated by the Federal Drug Administration (FDA) and the Drug Enforcement Agency (DEA) in terms of how they function and the products that are allowed to be supplied to the public. Medical marijuana collectives are regulated by the State in terms of how they function, but there are absolutely no regulations in place regarding the quality or safety of the marijuana product. While our Ordinance requires that collectives test the safety of their products in a certified laboratory, there are no uniform guidelines for this testing.

More specifically, pharmacies distribute medicine by certified pharmacists based on prescriptions from certified medical doctors. The prescription products administered are scientifically tested by professionally recognized and regulated laboratories, approved for distribution upon research and validation by the FDA, and subjected to rigorous continued federal regulation and law by the DEA and the FDA. In contrast, collectives are not required to adhere to these stringent regulatory practices and product quality is not regulated by State or federal agencies, standards, and/or the law. Additionally, for prescription drugs, safety protocols are in place to alert and protect consumers of possible product contamination or defect, which results in the ability to recall products should they present health or safety concerns for consumers; such is not the case for medical marijuana products or patients. In the case of Collectives, members of the Collective come together to grow their own marijuana and provide marijuana to other members of the Collective. It is unclear how or whether testing of the product(s) was performed to ensure its quality or safety. Comparisons of medical marijuana products or collectives to prescriptions or pharmacy practices or operations are incomplete and inaccurate.

Please also note that small collectives, those with less than four members, are not regulated under the City's Medical Marijuana ordinance and will not be subject to a business license tax under this proposal.

Proposition 19

Proposition 19 is a California ballot proposition on the November 2, 2010 Statewide ballot. It legalizes the non-medical (recreational) use of marijuana, allows local governments to regulate these activities, permits local governments to impose and collect marijuana-related taxes, including excise taxes, and authorizes various criminal and civil penalties.

Demand for legally obtained marijuana will likely rise if recreational marijuana is legalized. The question is whether Long Beach customers will purchase the marijuana from Long Beach businesses and pay a tax to the City of Long Beach, or from surrounding cities and pay taxes to those cities, thereby increasing revenue into their Citywide coffers. Please note however, if the City Council decides to permit the sale of recreational marijuana or the creation of businesses licensed for onsite marijuana consumption, the City will have substantial regulatory responsibilities and costs. Additional resources will be needed for the Police Department to ensure proper oversight of these new businesses. Additional staffing may be needed to inspect and regulate the new businesses, manage and audit the tax payments.

In considering the size and depth of the required resources, it should be noted that a recent Rand Study cautions that legalization of recreational marijuana could dramatically impact anticipated revenues, since the cost to produce marijuana is relatively inexpensive, inevitably resulting in an increase in supply and, therefore, a reduction in cost. Hence, an initial tax should be set at a higher rate to ensure, at a minimum, adequate cost recovery, in addition to additional revenue to support other City programs.

Other Cities

Per the request of the City Council on July 6, a chart that compares California cities that currently have a business license tax on collectives or are considering a November 2010 ballot measure has been attached (Attachment A). Information has been included regarding their current taxing methodology and proposed taxing plans. Please note that these cities are still discussing their tax measures, and the chart may not reflect the most recent decisions.

In reviewing this chart, many factors affect the total revenue stream to offset costs from the proposed ballot measures and ordinance changes. Some cities are proposing substantial annual registration fees in addition to taxes. Some cities have limited the number of collectives resulting in lower administrative costs and lower tax rates. Other cities have proposed substantial penalties to reduce the amount of effort to regulate non-conforming businesses.

The chart shows that Long Beach's proposal reflects the general trend in charging 10 percent for marijuana businesses that will arise from the passage of Proposition 19. Of all the cities proposing ballot measures, Oakland has the only experience we can use to assess the City's costs for medical marijuana. Oakland originally limited their number of dispensaries to four, although they are proposing to increase this number to six as well as add four large cultivation sites (totaling 450,000 square feet). Oakland is estimating their staffing requirements for these ten sites to be more than \$1,000,000 per year. To offset their costs, Oakland is increasing their annual permit fees from a tiered rate to a flat \$60,000 per year for each collective and \$211,000 for each cultivation site; the total annual registration fees alone for the 10 locations would be \$1,204,000 annually. In addition, Oakland

has a measure on the November ballot to raise the business license taxes for medical marijuana and marijuana businesses to 4 percent from the existing 1.8 percent. Long Beach will likely have between 30 to 35 medical marijuana collectives, approximately eight times the number of collectives in Oakland. While this allows the collectives to better serve their members throughout the 50 square miles of Long Beach, it also significantly increases the City's costs and the impact on the community. In light of Oakland's experience with actual costs, the proposed five percent rate for collectives appears to be relatively conservative. Other cities appear to be willing to subsidize medical marijuana through lower rates, but given our budget challenges, Long Beach can ill afford to do so.

Proposed Business License Tax Rate

The proposed ordinance includes several definitions including business type and gross receipts as well as establishes the tax rates for the distinct marijuana related businesses.

It is recommended the following Business License Tax rates be placed on the November 2, 2010 ballot:

Business Type	Tax Rate	Per
Medical Marijuana Collective	5%	Gross Receipts
Marijuana Business	10%	Gross Receipts
Cultivation Facility or Grow Site	\$25.00	Square Foot
Non Profit Medical Marijuana Collective	\$5.00	Square Foot
Non Profit Marijuana Business	\$10.00	Square Foot

By State law, certain types of Non Profits can only be charged a business license tax based on square footage. In order to apply a business license tax fairly to all marijuana businesses, a tax rate per square foot has been identified.

A minimum \$1,000 Business License Tax will be applied to all Marijuana Businesses. If gross receipts or square footage charges exceed \$1,000, then the higher amount will be due.

The City's current business license taxing structure is adjusted annually by the Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange County area. Since the majority of tax revenues from the Marijuana Business License Tax will be from gross receipts, it is recommended these tax rates are adjusted annually based on the CPI.

Please be advised that the City Council may impose the tax authorized by this Section at a lower rate, and may establish an exemption for Marijuana Businesses whose gross receipts are below a certain amount. Staff recommends the exemption be applied to Marijuana Businesses with gross receipts below \$8,000. The City Council may adopt different rates and exemption levels for Medical and Non-Medical Marijuana Businesses. No action by the City Council under this recommendation shall prevent it from subsequently increasing the tax rate for any type of Marijuana Business to the maximum allowed or from modifying or eliminating any exemption.

Requirement for Voter Approval

Proposition 218 requires all local governments, including charter cities, to obtain majority voter approval for new or increased taxes. The adoption of a "general tax" must generally be considered on a ballot where one or more of the local legislators is up for election or reelection. An exception to this

general rule occurs when the local elected body declares a fiscal emergency. As such, a fiscal emergency would need to be declared and is hereby recommended to add this "general tax" measure to the November 2010 ballot. A general tax measure is recommended as it provides the City with the most flexibility in addressing its current fiscal challenges and requires a lower voter approval threshold for passage.

Below is the recommended ballot language:

To protect public safety services such as 911 emergency response, police and fire, as well as essential quality of life programs like parks, libraries, public works and infrastructure, should the City of Long Beach impose a 10 percent tax on recreational marijuana businesses, if legalized, a 5 percent tax on existing medical marijuana businesses, with a \$25 tax on cultivation sites per square foot, with an annual CPI adjustment?

An alternative is a "Special" or Dedicated Tax measure which does not require a unanimous declaration of fiscal emergency by the City Council, but requires a much higher voter approval threshold at 66.7 percent of the vote. This option is not recommended, as it would be more difficult to achieve and would limit the City's flexibility regarding the use of the funds. However, attached please find the ordinance and resolution that would be required to place a special tax on the November 2, 2010 ballot.

Fiscal Emergency Declaration

Pursuant to Section 2(b) of California Constitution Article XIIC, it is recommended that the City Council hereby unanimously declare the existence of an emergency in that there are imminent financial risks and dangers to the public welfare and the City's financial ability to provide essential municipal services without disruption, such that a special election is necessary to address such risks and dangers before the next regularly scheduled municipal election for members of the City Council on April 10, 2012.

This letter was reviewed by Assistant City Attorney Michael Mais on July 22, 2010 and Budget and Performance Management Bureau Manager David Wodynski on July 15, 2010.

City Council action on August 3, 2010 is needed to place a measure on the November 2, 2010 ballot.

The potential impact to the General Fund from this Business License Tax remains difficult to determine. Variables such as the total number of collectives permitted, the aggregate of gross receipts, the size of the cultivation facilities, the passage of Proposition 19, the establishment of recreational marijuana businesses, and the price of marijuana will all directly impact the revenue derived by the proposed tax, and other currently unknown factors. What is known, however, is that the City will retain 100 percent of all revenue derived from a Business License Tax. Unlike property taxes and sales taxes, business license taxes accrue entirely to the City without any diversion for a State or county share; hence, 100 percent of the proceeds from these taxes will benefit the General Fund and the critical services it supports. It is important to note that if Proposition 19 passes, efforts by the State and County to tax marijuana will start to divert revenue away from the City's coffers, even when it will be levied on Long Beach based businesses. Given all the unknowns, the City will monitor the revenues from the proposed tax and exercise caution in the projection of these revenues.

Approve recommendation.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH CALLING AN ELECTION TO BE HELD NOVEMBER 2,2010 FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF THE CITY OF LONG BEACH AN ORDINANCE AMENDING CHAPTER 3.80 OF THE LONG BEACH MUNICIPAL CODE, RELATING TO A MARIJUANA BUSINESS LICENSE GENERAL TAX

OR

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH CALLING AN ELECTION TO BE HELD NOVEMBER 2,2010 FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF THE CITY OF LONG BEACH AN ORDINANCE AMENDING CHAPTER 3.80 OF THE LONG BEACH MUNICIPAL CODE, RELATING TO A MARIJUANA BUSINESS LICENSE SPECIAL TAX

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APPROVED:

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