

**Meeting Date:** 7/12/2016

**Report Type:** Staff/Discussion

**Report ID:** 2016-00697

**Title: Ordinance: Nonmedical Marijuana Business Operations Tax Measure**

**Location:** Citywide

**Recommendation:** 1) Review an Ordinance setting the Business Operations Tax rate for nonmedical marijuana retail businesses effective upon voter approval; 2) review a Resolution approving ballot measure text for placement on the November 8, 2016, ballot; and 3) pass a Motion forwarding the Ordinance and Resolution to City Council for approval.

**Contact:** Brad Wasson, Revenue Manager, (916) 808-5844, Department of Finance

**Presenter:** Brad Wasson, Revenue Manager, (916) 808-5844, Department of Finance

**Department:** Finance

**Division:** Revenue Administration

**Dept ID:** 06001211

**Attachments:**

- 1-Description/Analysis
- 2-Draft Ordinance (Redline)
- 3-Draft Ordinance (Clean)
- 4-Resolution

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**City Attorney Review**

Approved as to Form  
Steve Itagaki  
6/30/2016 10:35:48 AM

**Approvals/Acknowledgements**

Department Director or Designee: Leyne Milstein - 6/27/2016 5:08:59 PM

## **Description/Analysis**

**Issue Detail:** In November 2016, California voters will vote on a ballot measure to legalize use of nonmedical marijuana. In order to prepare for the potential increase in marijuana-related businesses, staff recommends presenting local voters with the opportunity to establish a Business Operations Tax (BOT) rate for nonmedical marijuana retail businesses within the city.

The proposed ordinance would require nonmedical marijuana retail businesses to pay a higher tax rate than medical marijuana dispensaries, at a minimum rate of four and a maximum rate 10 percent of gross receipts, with City Council discretion to lower or raise tax rates up to the maximum.

Similar ballot initiatives have been successful in the past. In 2010, voters in Sacramento, Oakland, and Berkeley passed local measures to tax nonmedical marijuana dependent on passage of the proposed State measure (Proposition 19). In June, the City of Davis passed a 2016 ballot measure to tax marijuana businesses at not more than 10 percent of annual gross receipts. Cities within states already permitting nonmedical marijuana (e.g., Colorado, Oregon) have local tax rates ranging from three to seven percent.

**Policy Considerations:** Updating the City's BOT requires majority voter approval. The General Fund revenues derived from a tax on nonmedical marijuana will be used to fund essential City services such as police, fire protection, park maintenance and youth recreation programs.

### **Environmental Considerations:**

**California Environmental Quality Act (CEQA):** This report concerns administrative activities and government fiscal activities that do not constitute a "project" as defined by the CEQA Guidelines Sections 15378(b)(2) and 15378(b)(4) and are not subject to the provisions of CEQA (CEQA Guidelines 15060(c)(3)).

**Commission/Committee Action:** Not applicable.

**Rationale for Recommendation:** The proposed ordinance will place the City in a position to react quickly in the event that a ballot measure to allow nonmedical marijuana is approved by California voters in November and will result in needed revenue for the City's General Fund.

**Financial Considerations:** The City's existing BOT rate of four percent applies to the operation of medical marijuana dispensaries and would include the sale of recreational marijuana if approved at the State level. However, if the sale of recreational marijuana is approved statewide by voters, the City should have a mechanism in place to increase the BOT

related to the sale of recreational marijuana to more than four percent. The City of Sacramento currently has 30 medical marijuana dispensaries who have a BOT rate of four percent (4%). In fiscal year (FY) 2014/15, the City collected \$2.86 million in tax revenue and through April of FY2015/16, \$3.7 million has been collected. Estimating the revenue associated with a nonmedical marijuana tax measure is difficult. The difficulty is due in part to the uncertainty related to the number of retail businesses that may be permitted in the city in the future; the sales associated with such businesses; and the potential market variability of the products.

**Local Business Enterprise (LBE):** Not applicable.

**ORDINANCE NO. 2016-xxx**

Adopted by the Sacramento City Council

July \_\_, 2016

**AN ORDINANCE AMENDING SECTION 3.08.205 OF, AND ADDING SECTION 3.08.208 TO, THE SACRAMENTO CITY CODE RELATING TO MARIJUANA BUSINESS OPERATIONS TAXES**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

**SECTION 1**

Section 3.08.205 of the Sacramento City Code is amended to read as follows:

**3.08.205 Marijuana businesses.**

A. ~~Except as provided in section 3.08.208, E~~every person engaged in a marijuana business shall pay an annual business operations tax as follows:

1. On and after July 1, 2011, four percent of each dollar of gross receipts for the reporting period.
2. Notwithstanding the tax rate imposed in subsection ~~A.1(A)(1)~~, the city council may, in its discretion, at any time by resolution, implement any lower tax rate it deems appropriate, and may at any time by resolution increase ~~such the~~ tax rate ~~from time to time, not to exceed up to~~ the maximum rate established under subsection ~~A.1(A)(1)~~.

B. For purposes of this section, the following terms have the following meanings:

“Gross receipts” has the meaning as defined in ~~S~~section 3.08.020, as it pertains to the marijuana business’ reporting period, and includes receipts from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products, goods, or services sold or provided by the marijuana business.

“Marijuana” ~~or “Cannabis”~~ has the same meaning as “cannabis” as defined in California Business and Professions Code section 19300.5. ~~Health and Safety Code Section 11018.~~

“Marijuana business” means a business activity including, but not limited to, planting, cultivating, ~~ion~~, harvesting, transporting, manufacturing, compounding, converting, processing, testing preparing, storing, packaging, providing, distributing, delivering, dispensing, or selling ~~wholesale and/or retail sales of~~ marijuana. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent, or temporary, where marijuana is made available, sold, given, distributed, or otherwise

provided in accordance with California Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the California Health and Safety Code (~~commencing with section 11362.7~~Health and Safety Code Section 11362.7 et seq.). A marijuana business includes, but is not limited to, medical marijuana “cooperatives” and “collectives” that are established as not-~~for~~-profit businesses.

“Reporting period” means a year, quarter, or calendar month, as determined by the administrator.

C. The provisions of ~~s~~Section 3.08.210 do not apply to any marijuana business. Every marijuana business not having a fixed place of business within the city that engages in business within the city shall pay a business operations tax calculated pursuant to subsection A.

## **SECTION 2**

Section 3.08.208 is added to the Sacramento City Code to read as follows:

### **3.08.208 Nonmedical marijuana retail businesses.**

A. Every person engaged in a nonmedical marijuana retail business shall pay an annual business operations tax as follows:

1. On and after July 1, 2017, 10% of each dollar of gross receipts for the reporting period.

2. Notwithstanding the tax rate imposed in subsection A.1, the city council may, in its discretion, at any time by resolution, implement any lower tax rate it deems appropriate, and at any time by resolution increase the tax rate up to the maximum rate established under subsection A.1.

B. For purposes of this section, the following terms have the following meanings:

“Gross receipts” has the meaning as defined in section 3.08.020, as it pertains to the nonmedical marijuana retail business’ reporting period, and includes receipts from the sale of nonmedical marijuana, medical marijuana, and any other products, goods, or services provided.

“Marijuana” has the same meaning as “cannabis” as defined in California Business and Professions Code section 19300.5.

“Nonmedical marijuana” includes all marijuana that is sold in a manner that is not in accordance with California Health and Safety Code section 11362.5 and Article 2.5 of

Chapter 6 of Division 10 of the California Health and Safety Code (commencing with section 11362.7).

“Nonmedical marijuana retail business” means a business involving the retail sales of nonmedical marijuana.

“Reporting period” means a year, quarter, or calendar month, as determined by the administrator.

C. This section controls over section 3.08.205 and any other provision in this article that would impose a business operations tax on nonmedical marijuana retail businesses.

D. The provisions of section 3.08.210 do not apply to a nonmedical marijuana retail business. Every marijuana business not having a fixed place of business within the city that engages in business within the city shall pay a business operations tax calculated pursuant to subsection A.

### **SECTION 3**

This ordinance takes effect on July 1, 2017, but only if approved by a majority of the voters of the City of Sacramento voting in an election held before December 1, 2016.

### **SECTION 4**

Adoption of this ordinance does not affect any administrative or civil prosecutions or proceedings brought or to be brought to enforce the provisions of chapter 3.08 as they existed prior to the effective date of this ordinance. The provisions of chapter 3.08, as they exist prior to the effective date of this ordinance, shall continue to be operative and effective with regard to any obligations or acts occurring prior to the effective date of this ordinance.

Adopted by the City of Sacramento City Council on \_\_\_\_\_ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

\_\_\_\_\_  
MAYOR

Attest:

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City Clerk

Passed for Publication:

Published:

Effective:

ORDINANCE NO. 2016-xxx

Adopted by the Sacramento City Council

July \_\_, 2016

AN ORDINANCE AMENDING SECTION 3.08.205 OF, AND ADDING SECTION 3.08.208 TO, THE SACRAMENTO CITY CODE RELATING TO MARIJUANA BUSINESS OPERATIONS TAXES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

Section 3.08.205 of the Sacramento City Code is amended to read as follows:

3.08.205 Marijuana businesses.

A. Except as provided in section 3.08.208, every person engaged in a marijuana business shall pay an annual business operations tax as follows:

1. On and after July 1, 2011, four percent of each dollar of gross receipts for the reporting period.
2. Notwithstanding the tax rate imposed in subsection A.1, the city council may, in its discretion, at any time by resolution, implement any lower tax rate it deems appropriate, and may at any time by resolution increase the tax rate up to the maximum rate established under subsection A.1.

B. For purposes of this section, the following terms have the following meanings:

“Gross receipts” has the meaning as defined in section 3.08.020, as it pertains to the marijuana business’ reporting period, and includes receipts from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products, goods, or services sold or provided by the marijuana business.

“Marijuana” has the same meaning as “cannabis” as defined in California Business and Professions Code section 19300.5.

“Marijuana business” means a business activity including, but not limited to, planting, cultivating, harvesting, transporting, manufacturing, compounding, converting, processing, testing preparing, storing, packaging, providing, distributing, delivering, dispensing, or selling marijuana. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent, or temporary, where marijuana is made available, sold, given, distributed, or otherwise provided in

accordance with California Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the California Health and Safety Code (commencing with section 11362.7). A marijuana business includes, but is not limited to, medical marijuana “cooperatives” and “collectives” that are established as not-for-profit businesses.

“Reporting period” means a year, quarter, or calendar month, as determined by the administrator.

C. The provisions of section 3.08.210 do not apply to any marijuana business. Every marijuana business not having a fixed place of business within the city that engages in business within the city shall pay a business operations tax calculated pursuant to subsection A.

## SECTION 2

Section 3.08.208 is added to the Sacramento City Code to read as follows:

3.08.208 Nonmedical marijuana retail businesses.

A. Every person engaged in a nonmedical marijuana retail business shall pay an annual business operations tax as follows:

1. On and after July 1, 2017, 10% of each dollar of gross receipts for the reporting period.
2. Notwithstanding the tax rate imposed in subsection A.1, the city council may, in its discretion, at any time by resolution, implement any lower tax rate it deems appropriate, and at any time by resolution increase the tax rate up to the maximum rate established under subsection A.1.

B. For purposes of this section, the following terms have the following meanings:

“Gross receipts” has the meaning as defined in section 3.08.020, as it pertains to the nonmedical marijuana retail business’ reporting period, and includes receipts from the sale of nonmedical marijuana, medical marijuana, and any other products, goods, or services provided.

“Marijuana” has the same meaning as “cannabis” as defined in California Business and Professions Code section 19300.5.

“Nonmedical marijuana” includes all marijuana that is sold in a manner that is not in accordance with California Health and Safety Code section 11362.5 and Article 2.5 of

Chapter 6 of Division 10 of the California Health and Safety Code (commencing with section 11362.7).

“Nonmedical marijuana retail business” means a business involving the retail sales of nonmedical marijuana.

“Reporting period” means a year, quarter, or calendar month, as determined by the administrator.

C. This section controls over section 3.08.205 and any other provision in this article that would impose a business operations tax on nonmedical marijuana retail businesses.

D. The provisions of section 3.08.210 do not apply to a nonmedical marijuana retail business. Every marijuana business not having a fixed place of business within the city that engages in business within the city shall pay a business operations tax calculated pursuant to subsection A.

### SECTION 3

This ordinance takes effect on July 1, 2017, but only if approved by a majority of the voters of the City of Sacramento voting in an election held before December 1, 2016.

### SECTION 4

Adoption of this ordinance does not affect any administrative or civil prosecutions or proceedings brought or to be brought to enforce the provisions of chapter 3.08 as they existed prior to the effective date of this ordinance. The provisions of chapter 3.08, as they exist prior to the effective date of this ordinance, shall continue to be operative and effective with regard to any obligations or acts occurring prior to the effective date of this ordinance.

Adopted by the City of Sacramento City Council on \_\_\_\_\_ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

\_\_\_\_\_  
MAYOR

Attest:

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City Clerk

Passed for Publication:

Published:

Effective:

**RESOLUTION NO.**

Adopted by the Sacramento City Council

**APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS IN A QUESTION RELATING TO A BUSINESS OPERATIONS TAX RATE ON NONMEDICAL MARIJUANA RETAIL BUSINESSES, TO BE INCLUDED WITH THE GENERAL MUNICIPAL ELECTION OF NOVEMBER 8, 2016.**

**BACKGROUND**

- A. The City of Sacramento has established a business operations tax rate of four percent on marijuana businesses.
- B. The City desires to set the business operations tax for nonmedical retail marijuana businesses at a minimum of four and a maximum of 10 percent of gross receipts, with City Council discretion to lower or raise tax rates up to the maximum.
- C. Updating the business operations tax requires voter approval under the California Constitution.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

Section 1. The City Council approves for submittal to the voters at the November 8, 2016 General Municipal Election the following question:

**Business Operations Tax on Nonmedical Marijuana.** To help preserve essential services like fire, police, and 911 emergency response, shall the City of Sacramento's business operations tax be updated by taxing retail businesses engaged in nonmedical marijuana transactions at a maximum rate of 10% of gross receipts, generating revenues potentially in the millions of dollars annually, with City Council discretion to lower tax rates or raise tax rates to the maximum?