

**Meeting Date:** 7/19/2016

**Report Type:** Staff/Discussion

**Report ID:** 2016-00698

**Title: Ordinance: Nonmedical Marijuana Business Operations Tax Measure [in lieu of Pass for Publication the Ordinance will be published in its entirety within 10 days after adoption as required by Sacramento City Charter section 32(d)]**

**Location:** Citywide

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

**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-Ordinance (Redline)
- 3-Ordinance (Clean)
- 4-Resolution

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**City Attorney Review**

Approved as to Form  
Michael W. Voss  
7/12/2016 11:48:20 AM

**Approvals/Acknowledgements**

Department Director or Designee: Leyne Milstein - 7/5/2016 2:49:48 PM

## Description/Analysis

**Issue Detail:** In November 2016, California voters will vote on the California Marijuana Legalization Initiative, Proposition 64, to legalize use of nonmedical marijuana and hemp under state law and enact a 15 percent sales tax and a cultivation tax of \$9.25/ounce for flowers and \$2.75/ounce for leaves, with exceptions for qualifying medical marijuana sales and cultivation.

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 2016, the City of Davis passed a ballot measure to tax marijuana businesses at not more than 10 percent of annual gross receipts and Los Angeles County voters will decide on a 10% BOT on marijuana businesses in November 2016 with proceeds to pay for homeless services. Cities within states already permitting nonmedical marijuana (e.g., Colorado, Oregon) have local tax rates ranging from three to seven percent. States already permitting nonmedical marijuana have the following statewide tax rates: Oregon, 25%; Colorado, 12.9%; and Washington, 37%.

The City's timeline to implement this measure is uncertain as it is dependent on state regulatory requirements that do not yet exist. Staff believes that implementation will be streamlined, given our existing medical marijuana regulatory framework.

**Policy Considerations:** Updating the City's BOT requires majority voter approval. Council has the authority to immediately set the rate at any level, including maintaining the current four percent rate. If this measure is on the ballot, staff will return to Council with recommendation for criteria for changing the rate. 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:** The Law and Legislation Committee considered this item at their meeting on July 12, 2016. The Committee voted 3-1 to not move the item forward to City Council. At the July 12, 2016 City Council meeting, Councilmember Harris requested this item be brought to City Council at the next meeting.

**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 nonmedical marijuana if approved at the state level. However, if the sale of nonmedical marijuana is approved statewide by voters, the City should have a mechanism in place to increase the BOT related to the sale of nonmedical marijuana to more than four percent.

Based on presentations by the states of Colorado, Washington and Oregon at the National League of Cities annual conference in a series of lessons learned presentations, it appears that Washington’s tax rate did indeed contribute to a continued black market, whereas representatives from Colorado expressed that the current rates are not enough to support the services associated with legalization of recreational marijuana. To date it appears that the tax rates in Oregon are sufficient to support services and are not contributing to a black market. As such, flexibility to increase the City’s rate to 10% appears to be reasonable.

The City of Sacramento currently has 30 medical marijuana dispensaries that have a BOT rate of four percent. In fiscal year (FY) 2014/15, the City collected \$2.86 million in tax revenue. Through April of FY2015/16, \$3.7 million has been collected. Estimating the revenue associated with a nonmedical marijuana tax measure is

difficult, due in part to the uncertainty related to the number of retail businesses that may be permitted within the city; the sales associated with such businesses; future state regulatory requirements; and the potential market variability of the products. The chart below provides revenue estimates based on the annual BOT of \$4 million collected for the sale of medical marijuana at the City's currently permitted dispensaries:

Proposed Tax Rate	50% of \$4 million	100% of \$4 million
	50%	100%
4%	\$2,000,000	\$4,000,000
6%	\$3,000,000	\$6,000,000
8%	\$4,000,000	\$8,000,000
10%	\$5,000,000	\$10,000,000

**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 s 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 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?