



CITY COUNCIL AGENDA REPORT

Meeting Date: June 6, 2019

From: Clay Holstine, City Manager

Subject: Resolution Calling for a Special Municipal Election to be Consolidated With the General Election on November 5, 2019 Establishing a Business License Tax on Cannabis Businesses

Community Goal/Result

Fiscally Prudent
Economic Development

Purpose

Provide a tax revenue which will further diversify the tax base of the City of Brisbane, while encouraging new businesses to locate in the City.

Recommendation

Adopt Resolution 2019-29 calling for the election and establishing other election procedures in connection with the voters' consideration of a business license tax on cannabis businesses within the City.

Background

In 2015, the California legislature enacted the Medical Cannabis Regulation and Safety Act (MCRSA) which established a state licensing framework for medicinal cannabis businesses. In 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA), legalizing adult recreational use of cannabis and requiring state regulation of adult recreational cannabis businesses. In 2017, the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) was enacted, repealing the MCRSA) but incorporating certain licensing provisions from that Act, and created a single regulatory scheme for both medical and non-medical cannabis. Taken together, these laws allow local regulation of cannabis businesses, and the Brisbane City Council recently adopted a new ordinance to authorize and regulate a limited number of cannabis testing laboratories, medical cannabis infused product manufacturers, and medical cannabis delivery businesses within the City.

These laws also permit a local agency to impose a business license tax (an excise tax) on such businesses. The Council 's ad hoc Cannabis subcommittee has discussed proposing such a tax on these businesses, in various amount of up to 5% of the gross receipts of the business. For example, retail cannabis businesses, including delivery businesses, would be taxes up to five percent of their gross receipts; manufacturing,

4%; and distribution and testing, 2%. Although it is not anticipated that other types of cannabis businesses will locate in Brisbane, the Ordinance also has a “catch all” provision so that if other such businesses do locate in the City, there will be a business license tax (up to 6% of the gross receipts) in place without having to return to the voters.

Because this a new, general tax, the proceeds of which may be used for any legitimate governmental purpose, such tax must first be approved by 2/3 (four votes) of the City Council and then approved by a majority of the voters who vote at an election at which Council members are being elected. That election will occur in November 2019.

Accordingly, at the request of the Council’s ad hoc Cannabis subcommittee, staff has placed this matter on the Council’s June 6, 2019 agenda for its consideration.

Discussion

If approved by the voters, this measure would authorize the City Council to impose a special excise tax on the gross receipts of City-licensed cannabis businesses, in lieu of the business license tax imposed on other Brisbane businesses. The measure sets a maximum cannabis business tax rate of six percent (6%) of the business’ gross receipts. Subject to this maximum, the City Council would be authorized to establish the exact rate by resolution without further voter approval, and to set different tax rates for different types of cannabis businesses. The City Council may decrease or increase the tax rates, up to the maximum rate, as often as every two years. As legal cannabis businesses are new, the City anticipates that it may take some time for the revenues from the cannabis business tax to reach their estimated potential of approximately \$300,000 per year.

Each cannabis business would be required to register with the City and obtain a Certificate of Registration, then to submit a tax return for every calendar quarter and pay the taxes owing at that time. The Finance Department would be authorized to audit the records of any cannabis business in the City. Businesses will be subject to penalties and interest on delinquent payments.

Because this tax is for general municipal purposes, under Proposition 218, adopted by the voters in 1996, establishing a tax is subject to approval by a majority of the voters voting on the proposed increase at a regularly scheduled election at which members of the Brisbane City Council are elected. The next regularly scheduled election for Council members is November 5, 2019.

The attached resolution calls for a special election to be consolidated with the municipal election on November 5, 2019 to establish a business license tax of up to 6% on cannabis businesses. If a majority of the voters voting on the ballot measure approve it, it will go into effect.

The attached resolution also outlines the procedures for drafting and submitting arguments, rebuttals and an impartial analysis and establishes time frames for so doing as follows:

Arguments in favor or against: August 15, 2019

Rebuttal arguments: August 25, 2019

Impartial Analysis: August 25, 2019

The attached resolution authorizes a Council committee to draft the “Argument for” the ballot measure. All five of the Council may sign the Argument or the committee members and three members of the community, as chosen by the committee could sign the Argument. The resolution also authorizes a separate Council committee to draft a “Rebuttal” argument in the event there is an argument against the measure. Again, all five Council members could sign the Rebuttal or the committee members, along with three members of the community could sign. The resolution also authorizes the City Attorney to draft an impartial analysis of the measure.

Fiscal Impact

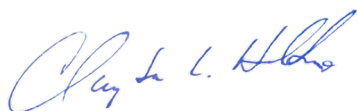
If this ballot measure is approved, the City will receive additional revenue for general municipal purposes. Because this type of business is new to Brisbane, it is difficult to estimate what additional revenues the City will receive.

Measure of Success

If the voters approve the Ordinance, City revenues will increase but it cannot be predicted at this time what that increase will be. Whatever revenues are received will be used for general municipal purposes.

Attachments:

1. Resolution 2019-29 calling for a Special Election on November 5, 2019 to allow the voters to decide whether to establish a business license tax on cannabis businesses.



Clay Holstine, City Manager



Stuart Schillinger, Administrative Services

Attachment 1

RESOLUTION 2019-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE, CALIFORNIA CALLING A SPECIAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE GENERAL ELECTION ON NOVEMBER 5, 2019, FOR SUBMISSION TO THE VOTERS OF A PROPOSED ORDINANCE TO ESTABLISH A BUSINESS LICENSE TAX ON CANNABIS BUSINESSES

WHEREAS, the City has established a business license tax, as set forth in Chapter 3.____ of the Brisbane Municipal Code, and ; and

WHEREAS, the City Council desires to place a ballot measure before the voters at the November 5, 2019 election to establish a business license tax on cannabis businesses in order to provide additional revenue for general municipal expenses; and

WHEREAS, a business license tax on cannabis businesses is a general tax and any establishing such tax is subject to approve of a majority of the voters voting upon the tax at a regularly-scheduled election at which members of the Brisbane City Council will be elected; and

WHEREAS, November 5, 2019 is the next regularly scheduled election at which members of the Brisbane City Council will be elected and it is desirable to consolidate this special election with that general election.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRISBANE, CALIFORNIA, AS FOLLOWS:

SECTION 1. ELECTION CALLED

The City Council of the City of Brisbane hereby calls a special municipal election, to be consolidated with the general election on Tuesday, November 5, 2019, at which there shall be submitted for approval by the voters of the City of Brisbane a proposed ordinance amending Chapter 5.20 of the Brisbane Municipal Code by adding Section 5.20.025 to Chapter 5.20 of the Brisbane Municipal Code to establish a business license tax on cannabis businesses

SECTION 2. FULL TEXT OF PROPOSED ORDINANCE

The complete text of the proposed ordinance shall read as follows:

See Exhibit A, attached hereto and incorporated herein by reference.

A. TEXT OF BALLOT MEASURE

The proposed ordinance to establish a business license tax on cannabis businesses shall be presented for approval by the voters as the following ballot measure:

To pay for general municipal expenses, shall the City establish a business license tax on cannabis businesses in the City in the amount of up to six percent (6%) of the gross receipts of such businesses?

The ballot measure shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure, as provided in California Election Code Section 13116.

SECTION 3. REQUEST TO CONSOLIDATE, CONDUCT ELECTION AND CANVASS RETURNS

The Board of Supervisors of the County of San Mateo is hereby requested to authorize the County Clerk;/Registrar of Voters to render all services necessary and proper for the conduct of the special municipal election called by the Resolution. Pursuant to California Elections Code Section 10403, the City Council hereby requests that the San Mateo County Board of Supervisors consolidate that election with the election to be held on November 5, 2019, and order the special municipal election to be conducted by the Registrar of Voters. The San Mateo County Elections Department is authorized to canvass the returns of the special election.

The City Clerk's Office is authorized, instructed and directed to work with the County Elections Division as needed in order to properly and lawfully conduct the election. The ballots to be used in the election shall be in the form and content as required by law. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 5: PUBLICATION OF MEASURE

The City Clerk's Office is directed to cause notice of the measure to be published once in accordance with Section 12111 of the State Elections Code.

SECTION 6: REQUIRED VOTER APPROVAL AND EFFECTIVE DATE

If a majority of the voters voting upon the ballot measure vote in its favor, the proposed ordinance shall become a valid and binding ordinance of the City of Brisbane. The ordinance shall be considered as adopted on the date that the vote is declared by the City Council and shall go into effect on that date or such other date as may be specified by the City Council.

SECTION 7: PROCEDURE FOR ARGUMENTS AND REBUTTALS

As provided in Elections Code, section 9285, the City Council authorizes, on behalf of the City Council, a committee of the City Council to file a written Argument For the measure, and a committee of the City Council to file a Rebuttal argument (should an Argument Against the measure be filed) and other Council members may sign such Argument/Rebuttal. Any individual voter who is eligible to vote on the measure or bona fide association of citizens or combination of voters and associations may also submit a written argument for or against the measure. Such argument, whether For or Against, shall not exceed 300 words and be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers, in accordance with Article 4, Chapter 3, Division 9 of the Election Code of the State of California. Primary arguments For or Against the measure must be submitted to the City

Clerk by August 15, 2019. The Rebuttal arguments must be submitted to the City Clerk by August 25, 2019 and shall not exceed 250 words.

SECTION 8: IMPARTIAL ANALYSIS

Pursuant to Elections Code Section 9280, the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney, and directs the City Attorney to prepare an impartial analysis of the measure showing the effect of the measure on existing law and the operation of the measure. The analysis shall be printed preceding the arguments For and Against the measure. The analysis shall not exceed 500 words in length. The impartial analysis shall be filed by the date set by this resolution for the filing of primary arguments.

SECTION 9: FULL TEXT OF ORDINANCE

The full text of the Ordinance shall be printed in the Voter Information Pamphlet.

SECTION 10: CONDUCT OF ELECTION

The election on said ballot measure shall be consolidated with the general municipal election to be held on November 5, 2019.

SECTION 11. CEQA

The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code Sections 21000 et seq., "CEQA," and 14 Cal Code Reg. Sections 15000 et seq., "CEQA Guidelines"). The tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action or actions. As such, under CEQA Guidelines Section 15378(b)(4) the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project. Therefore, Guidelines Section 15060 review under CEQA is not required.

SECTION 12: PASSAGE OF THIS RESOLUTION

This business license tax is a general tax requiring the approval of a majority of qualified electors casting votes. This Resolution must be approved by a two-thirds vote of the Council.

Madison Davis, Mayor

I hereby certify that the foregoing Resolution No. 2019-29 was duly and regularly adopted at the meeting of the Brisbane City Council on June 6, 2019 by the following vote:

AYES: Councilmembers

NOES:

ABSENT:

Ingrid Padilla, City Clerk

Exhibit A
ORDINANCE NO. _____

An ordinance amending the City of Brisbane Municipal Code by adding Section 5.20.025 to Chapter 5.20 of the Brisbane Municipal Code concerning a cannabis business license tax.

WHEREAS, on November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Cannabis Act (AUMA), which legalized the possession, use, and cultivation of non-medical cannabis for those who are 21 years of age or older and established a state system to regulate commercial cannabis activity; and

WHEREAS, on June 27, 2017, then Governor Jerry Brown signed into law Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which repealed the Medical Cannabis Regulation and Safety Act (MCRSA), incorporated certain licensing provisions from MCRSA, and created a single regulatory scheme for both medical and non-medical cannabis; and

WHEREAS, subject to certain exceptions, MAUCRSA generally establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of cannabis, including cannabis products, and to tax the commercial growth and retail sale of cannabis; and

WHEREAS, the City Council desires to impose a cannabis business license tax for the privilege of operating within the City; and

WHEREAS, revenues from a cannabis business tax would be for unrestricted general revenue purposes, placed into the City's general fund and be used for any legitimate government purpose; and

WHEREAS, Article XIIC, section 2(b) of the California Constitution requires that any general tax for unrestricted general revenue purposes, such as a business license tax, must be submitted to and approved by a majority vote of the voters voting on the issue of imposing any general tax; and

WHEREAS, the tax imposed by this Ordinance is an excise tax on the privilege of conducting business within the City and will only become effective if approved by a majority of the City's voters at the November 5, 2019 municipal election; and

WHEREAS, based on all of the information presented at the June 6, 2019 City Council meeting, both written and oral, including without limitation the staff reports, minutes, and other relevant materials (hereafter the "Record"), the City Council finds that under CEQA Guidelines 15060(c)(2) and 15378(b)(4), this tax does not constitute a project under CEQA and therefore review under CEQA is not required.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRISBANE, SUBJECT TO VOTER APPROVAL, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals.

The City Council of Brisbane, subject to voter approval, finds that all Recitals are true and correct and are incorporated herein by reference.

SECTION 2. Amendments

Chapter 5.20 of the Brisbane Municipal Code is hereby amended to add Section 5.20.025 Cannabis Business to read as follows:

Section 5.20.025 Cannabis Business.

- A. “Cannabis business” means a person issued a cannabis operator permit pursuant to Chapter 17.33.
- B. The license tax is as follows and may be adjusted by City Council by resolution or ordinance:
 - 1. One percent of gross receipts and up to two percent of gross receipts for commercial cannabis testing operations.
 - 2. One percent of gross receipts and up to two percent of gross receipts for commercial cannabis distribution operations.
 - 3. One percent of gross receipts and up to four percent of gross receipts for commercial cannabis manufacturing operations.
 - 4. One percent of gross receipts and up to five percent of gross receipts for commercial cannabis retail operations.
 - 5. One percent of gross receipts and up to six percent of gross receipts for a commercial cannabis business not otherwise included in this subsection B.
- C. The license tax imposed is an excise tax and not a sales and use tax and is in addition to any other fees required under the Brisbane Municipal Code.
- D. The payment of a tax required under this section, and its acceptance by the City, shall not entitle any person to engage in any cannabis business unless the person has complied with all of the requirements of Chapter 17.33 and all other applicable state or local laws. No tax paid under this Section shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any state or local laws.

- E. Commercial cannabis businesses operating unlawfully in the City are subject to the license taxes under this section, in addition to any applicable penalties or fines under local and state laws.

SECTION 3. Compliance with the California Environmental Quality Act

The approval of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). This ordinance imposes a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the ordinance is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the City would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

SECTION 4. Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 5. Effective Date of Tax

If this ordinance is approved by a majority of the voters voting on the issue at the November 5, 2019 election, pursuant to Elections Code Section 9217, this ordinance shall be considered adopted on that date and the tax shall become effective January 1, 2020, or no sooner than 10 days after the City Council certifies the results of the election, whichever occurs later.

SECTION 6. Voter Approval Required

This ordinance shall only become operative if the tax imposed is approved by a simple majority of voters voting on the question at the November 5, 2019 election.