DATE: July 24, 2018

SUBJECT: Council Consideration And Possible Action Related To Options For Writing Arguments, In Favor Of Or Against And Rebuttal Arguments, For The Cannabis Business Tax Ballot Measure (Pursuant To Chapter 3, Article 4 Of The California Elections Code) To Be Submitted To The Voters At The November 6, 2018 General Municipal Election

ISSUING DEPARTMENT: City Clerk

SUMMARY:

Council consideration and possible action related to options for writing arguments, in favor of or against and rebuttal arguments, for the cannabis business tax ballot measure (pursuant to Chapter 3, Article 4 of the California Elections Code) to be submitted to the voters at the November 6, 2018 General Municipal Election.

The following options are available for consideration for the primary argument:

1.) Authorize the entire Council to submit and sign an argument at the August 14th Council meeting (a quorum of Councilmembers would be subject to the Ralph M. Brown Act, any discussion of the matter or signing of the argument must be held as a public meeting);

2.) Authorize one or two Councilmembers (i.e. Cannabis Subcommittee) to submit and sign an argument; or

3.) Authorize none of the Councilmembers to submit an argument.

The following options are available for consideration for the rebuttal argument:

1.) Authorize the entire Council to submit and sign a rebuttal argument (a quorum of Councilmembers would be subject to the Ralph M. Brown Act, any discussion of the matter or signing of the argument must be held as a public meeting and due to the submittal deadline of the County of San Diego Registrar of Voters Office, a special meeting would need to be scheduled);

2.) Authorize one or two Councilmembers (i.e. Cannabis Subcommittee) to submit and sign a rebuttal argument; or

3.) Authorize none of the Councilmembers to submit a rebuttal argument.
Recommendation:

Staff recommends the Council select one of the above options for the primary argument and rebuttal argument and direct staff accordingly, and adopt the attached resolution to reflect the final form of Council’s decision.

Fiscal Impact:

Administration costs for the proposed ballot arguments are included in the FY 2018/19 budget.

BACKGROUND:

At its July 10, 2018 meeting, Council approved unanimously a resolution to be submitted to the voters at the General Municipal Election on November 6, 2018 a measure relating to imposing a cannabis business tax. Council also authorized the writing of arguments, rebuttals, and directed the City Attorney to write a related impartial analysis.

Resolution No. 2018-067 has been submitted to the County of San Diego Registrar of Voters Office by the City Clerk and is included as Attachment “B”.

DISCUSSION:

Staff recommends that Council discuss the question of submitting arguments and writing assignments at this time. This would provide Councilmembers chosen to write arguments sufficient preparation time and provide staff sufficient time to take the necessary steps to submit the arguments to the County of San Diego Registrar of Voters Office.

As noted above, Council may choose not to submit any arguments. However, if it does choose to submit an argument, the argument must be no more than 300 words and may not be signed by more than five persons. The argument must also be accompanied by the printed name(s) and signature(s) of the submitting author(s), in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California.

If Council chooses to submit a rebuttal argument, the rebuttal argument must be no more than 250 words and may not be signed by more than five persons. The rebuttal argument must also be accompanied by the printed name(s) and signature(s) of the submitting author(s), in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California.
Arguments in favor of or against the measure are due at the County of San Diego Registrar of Voters Office by August 17, 2018. Rebuttal arguments are due at the Registrar of Voters Office by August 22, 2018. Taking into account the submittal deadlines of the County of San Diego Registrar of Voters Office, the following deadlines have been set for arguments for and against the City Measure and rebuttal arguments:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 15 at 5:30 p.m.</td>
<td>Last day to submit ballot arguments in favor of or against ballot measure to City Clerk</td>
</tr>
<tr>
<td>August 20 at 5:30 p.m.</td>
<td>Last day to submit rebuttal arguments to City Clerk</td>
</tr>
</tbody>
</table>

In addition to the selected Councilmembers, any other qualified voter may submit arguments for and against one or both measures. If more than one argument is received for a position on one or both measures, then the City Clerk shall select which argument will be published, in accordance with the priorities stated in Elections Code § 9287 (Attachment “C”), as listed below:

1.) The City Council, or any member or members of the Council authorized by the City Council;
2.) The bona fide sponsor of the measure;
3.) Bona Fide associations of citizens; and
4.) Individual voters eligible to vote on the measure.

Reviewed by: Yvonne Garrett
City Manager

Respectfully submitted by: Megan Wiegelman, CMC
City Clerk

Exhibits:

Attachment A: Resolution No. 2018-067
Attachment B: Elections Code § 9287
Attachment C: Draft Resolution
RESOLUTION NO. 2018-067

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA MESA, CALIFORNIA APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS OF THE CITY IMPOSING A CANNABIS BUSINESS TAX; REQUESTING THE ASSISTANCE OF THE COUNTY OF SAN DIEGO IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE

WHEREAS, Sections 37101 and 37100.5 of the California Government Code authorize the City to levy a license tax, for revenue purposes, upon business transacted in the City;

WHEREAS, A tax subject to the vote requirements prescribed by California Government Code Section 53723 or Section 53724 shall be proposed by an ordinance or resolution of the legislative body of the local government;

WHEREAS, cannabis businesses will create additional demands upon City services, and the City does not currently impose any taxes upon cannabis businesses, aside from generally applicable municipal taxes;

WHEREAS, the City Council desires to seek to impose a supplemental license tax upon cannabis businesses, to be known as the "Cannabis Business Tax";

WHEREAS, the Cannabis Business Tax may only be imposed with voter approval; and

WHEREAS, the City Council desires to submit a Cannabis Business Tax measure to the voters of the City at the General Municipal Election to be held on Tuesday, November 6, 2018, and to be consolidated with any other election to be held on that date.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LA MESA AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Election. The City Council hereby calls a General Municipal Election for Tuesday November 6, 2018 (the "Election") and orders, pursuant to Section 9222 of the Elections Code, that the Tax Ordinance be submitted to the voters at that election.

Section 3. Ballot Question. The question submitted by Section 3 of this Resolution shall appear on the ballot as follows:

| To fund general municipal expenses including police and fire, roads, and recreation; shall the City tax cannabis businesses at annual rates not to exceed $10.00 per canopy square foot for cultivation and 6% of gross receipts for all other businesses, generating an estimated $1,500,000 to $2,000,000 annually; authorize the City Council to implement this tax by resolution or ordinance; and levy this tax until repealed by the voters or the City Council? |
|---|---|
| YES | NO |

ATTACHMENT A
Section 4. Approval. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority of those casting ballots on the measure.

Section 5. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of San Diego County is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 6. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 7. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County Clerk to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 8. Filing with County. The City Clerk shall file a certified copy of this Resolution with the County Clerk.

Section 9. Type of Tax and Authority. The purpose of this Cannabis Business Tax is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon Cannabis Businesses that engage in business in the City. The Cannabis Business Tax is levied based upon business gross receipts. It is not a sales and use tax, a tax upon income, or a tax upon real property. The Cannabis Business Tax is a general tax enacted solely for general governmental purposes of the City and not for specific purposes. All proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and be available for any legal municipal purpose.

Section 10. The Cannabis Business Tax Rate
A. Beginning January 1, 2019, there is imposed a Cannabis Business Tax on every person who engages in the business of cannabis operations in the City of La Mesa, whether operating lawfully with an authorized permit or unlawfully, including but not limited to:
   (1) commercial cannabis cultivation (indoor and nursery);
   (2) cannabis manufacturing, processing, or microbusiness (non-retail);
   (3) retail sales of cannabis as a retailer (dispensary), non-store front retailer (delivery), or microbusiness (retail sales);
   (4) operation of a testing laboratory for cannabis or cannabis products;
   (5) operation of a cannabis distribution business; or
   (6) any other type of cannabis business not described in Section 10 (A) (1-5).

B. The initial and maximum rates of the Cannabis Business Tax shall be as follows:
   (1) commercial cannabis cultivation (indoor): initially $7 per square foot of canopy space not to exceed $10 per square foot of canopy space;
   (2) commercial cannabis cultivation (nursery): initially $1 per square foot of canopy space not to exceed $10 per square foot of canopy space;
   (3) cannabis manufacturing, processing, or microbusiness (non-retail): initially 2.5 percent of gross receipts not to exceed 6 percent of gross receipts;
   (4) retail sales of cannabis as a retailer (dispensary), non-store front retailer (delivery, or microbusiness (retail sales): initially zero percent for medicinal and 4 percent for adult-use not to
C. The City Council may, by resolution or ordinance, annually adjust the rate of the Cannabis Business Tax. However, in no event may the City Council set any adjusted rate that exceeds the maximum rates set in Section 10 (B).

D. The City Council may, by resolution or ordinance, annually adjust the rate of the Cannabis Business Tax on retail sales to a customer with a valid California Department of Public Health Medical Marijuana Identification card. The rate may be different than the rate established in Section 10 (C), however, in no event may the City Council set a rate that exceeds the maximum rate set in Section 10 (B). The Initial Rate shall be zero percent.

E. The city shall levy this tax until repealed by the voters or the City Council.

Section 11. Method of Collection of Tax

A. The cannabis business tax imposed by this Chapter shall be paid, in arrears, on a quarterly basis. For commercial cannabis cultivation, the tax due for each calendar quarter shall be based on the square footage of the business's canopy space during the quarter and the rate shall be twenty-five percent (25%) of the applicable annual rate. For all other cannabis businesses activities, the tax due for each calendar quarter shall be based on the gross receipts for the quarter.

B. Each person owing cannabis business tax for a calendar quarter shall, no later than the last day of the month following the close of the calendar quarter, file with the Tax Administrator a statement of the tax owed for that calendar quarter and the basis for calculating that tax. The Tax Administrator may require that the statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar quarter shall be due and payable on that same date that the statement for the calendar quarter is due.

C. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar quarters up to the calendar quarter during which cessation occurred.

D. The Tax Administrator may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure collection of the tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

1. For purposes of this section, the square feet of canopy space for a business shall mean all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site. The plant canopy does not need to be contiguous on any premise in determining the total square footage which will be subject to tax. Further, the
square feet of canopy space for a business shall be rebuttably presumed to be no less than the maximum square footage of canopy allowed by the business’s City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be excluded from taxation unless the Tax Administrator is informed in writing, prior to the period for which the space will not be used, that such space will not be used.

Section 12. Effective Date. This Resolution shall be effective pursuant to State law.

Section 13. Severability If any provision of this measure should be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

Section 14. Analysis and Argument. The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

PASSED AND ADOPTED at a Regular meeting of the City Council of the City of La Mesa, California, held the 10th day of July 2018, by the following vote, to wit:

AYES: Councilmembers Alessio, Baber, McWhirter, Parent and Mayor Arapostathis

NOES: None

ABSENT: None

CERTIFICATE OF CITY CLERK

I, MEGAN WIEGELMAN, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and exact copy of Resolution No. 2018-067, duly passed and adopted by the City Council of said City on the date and by the vote therein recited.

MEGAN WIEGELMAN, CMC, City Clerk

(SEAL OF CITY)
State of California

ELECTIONS CODE

Section 9287

9287. If more than one argument for or more than one argument against any city measure is submitted to the city elections official within the time prescribed, he or she shall select one of the arguments in favor and one of the arguments against the measure for printing and distribution to the voters. In selecting the argument, the city elections official shall give preference and priority, in the order named, to the arguments of the following:

(a) The legislative body, or member or members of the legislative body authorized by that body.
(b) The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
(c) Bona fide associations of citizens.
(d) Individual voters who are eligible to vote on the measure.
(e) In order to enable the city elections official to determine whether it qualifies as a bona fide association of citizens, an organization or association submitting an argument for or against a city measure shall submit with its argument a copy of one of the following:
   (1) Its articles of incorporation, articles of association, partnership documents, bylaws, or similar documents.
   (2) Letterhead containing the name of the organization and its principal officers.
   (3) If the organization or association is a primarily formed committee established to support or oppose the measure, its statement of organization filed pursuant to Section 84101 of the Government Code.
(f) In selecting an argument from among bona fide associations of citizens, the city elections official shall not consider the type of documentation submitted pursuant to subdivision (b) or the form of the association.

(Amended by Stats. 2017, Ch. 75, Sec. 3. (SB 665) Effective January 1, 2018.)
RESOLUTION NO. 2018-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA MESA, CALIFORNIA, SETTING PRIORITIES FOR FILING WRITTEN ARGUMENTS REGARDING THE CANNABIS BUSINESS TAX MEASURE SCHEDULED FOR THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION

WHEREAS, a General Municipal Election is to be held in the City of La Mesa, California, on November 6, 2018, at which there will be submitted to the voters the following measure:

To fund general municipal expenses including police and fire, roads, and recreation; shall the City tax cannabis businesses at annual rates not to exceed $10.00 per canopy square foot for cultivation and 6% of gross receipts for all other businesses, generating an estimated $1,500,000 to $2,000,000 annually; authorize the City Council to implement this tax by resolution or ordinance; and levy this tax until repealed by the voters or the City Council?

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LA MESA, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The City Council determines that the priorities for selection of direct arguments for printing shall be those described in Elections Code Section 9287. That the City Council authorizes the following member(s) of its body

______________________ (Mayor In Favor)
______________________ (Councilmember In Favor)
______________________ (Councilmember In Favor)
______________________ (Councilmember In Favor)
______________________ (Councilmember In Favor)

to file a written argument not exceeding 300 words regarding the City measure as specified above, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the City measure may be submitted to the City Clerk.

SECTION 2. The author or a majority of the authors of an argument relating to a city measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument. That the City Council authorizes the following member(s) of its body

ATTACHMENT C
to file a rebuttal argument not exceeding 250 words accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California.

SECTION 3. That arguments for and against said measure may be filed in accordance with applicable provisions of the law. In the event that the City Council does not authorize the Council as a body or any individual member of the Council to file a written argument or any rebuttal argument for or against the measure, the City Clerk shall consider other arguments and rebuttal arguments filed by bona fide associations or individual residents who are eligible to vote in accordance with Elections Code Sections 9282, 9285 and 9287. Pursuant to Section 9285 of the California Elections Code, the provisions of which are hereby adopted, when the City Clerk has selected the arguments for and against the measure which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The rebuttal arguments shall be filed with the City Clerk not more than ten (10) days after the final date for filing direct arguments. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut. The text of the measure shall be printed on the ballot in the voter information portion of the sample ballot.

SECTION 4. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED at a Regular meeting of the City Council of the City of La Mesa, California, held the 24th day of July 2018, by the following vote, to wit:

AYES:

NOES:

ABSENT:
CERTIFICATE OF CITY CLERK

I, MEGAN WIEGELMAN, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and exact copy of Resolution No. 2018-___, duly passed and adopted by the City Council of said City on the date and by the vote therein recited.

MEGAN WIEGELMAN, CMC, City Clerk

(SEAL OF CITY)