



**DATE:** June 26, 2018

**CATEGORY:** Unfinished Business

**DEPT.:** City Manager's Office/  
City Clerk's Office/  
City Attorney's Office

**TITLE:** **Consideration of Two Council-Initiated Ballot Measures Regarding Cannabis Gross Receipts Tax and the Business License Tax**

### **RECOMMENDATION**

1. Adopt a Resolution and Order of the City Council of the City of Mountain View Calling a General Municipal Election and Ordering Consolidation with the Statewide General Election for the Purpose of Submitting to the Voters Two Ballot Measures and Authorizing the City Clerk to Contract with the County of Santa Clara for Services to be Performed in Connection with the Statewide General Election to be Held on Tuesday, November 6, 2018, and Related Actions, to be read in title only, further reading waived (Attachment 1 to the Council report).
2. Adopt a Resolution of the City Council of the City of Mountain View Regarding the Use of Revenue Generated by the Business License Tax Measure, to be read in title only, further reading waived (Attachment 2 to the Council report).
3. Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure.
4. Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write the argument.
5. Determine whether to print the full text of the ordinance in the voter pamphlet.
6. Direct the City Clerk and the City Attorney to take all necessary actions to submit the proposed ballot measure to the voters.

## **BACKGROUND**

On December 5, 2017, the City Council directed staff to explore three possible measures for the 2018 ballot: (1) taxation of cannabis; (2) an increase in the Transient Occupancy Tax (TOT); and (3) an employer tax (restructuring the Business License). On January 23, 2018, the City Council adopted a Work Plan to explore all three potential measures for the November 2018 ballot. A three-member Ad Hoc Council Subcommittee on Revenue Measures (Subcommittee) was appointed to serve in an advisory role to staff in implementing the Work Plan. The Subcommittee met six times since its formation, focused primarily on community outreach and its recommendations for restructuring the City's Business License Tax (BL Tax).

Since February 2018, there were over 20 meetings with stakeholders and members of the community. In March 2018, the City conducted a public opinion poll to test the community's support for the three revenue measures. Two additional polls were conducted on-line: one by the City and one by the Chamber of Commerce. The City Council received an update on April 17, 2018 on the revenue measures and the results of the public opinion poll and directed staff to continue to explore:

- 2 percent or 4 percent increase in the TOT.
- Up to 9 percent tax on the retail sales of cannabis.
- Restructuring of the BL Tax with a revenue target of up to \$10 million.

At the June 5, 2018, City Council meeting, after hearing public comment and discussing the issue, Council provided direction regarding key parameters of restructuring the BL Tax and to prepare the necessary legislation to allow the City Council to place both the cannabis gross receipts tax and the BL Tax measures on the ballot at their June 26, 2018 meeting. Council was no longer interested in pursuing a TOT increase. The City Council also directed staff to poll residents regarding the BL Tax and cannabis tax measures. Attachment 3 is the June 5 staff report.

## **ANALYSIS**

### Survey Update

Fairbanks, Maslin, Maullin & Metz (FM3) Research conducted a follow-up survey of 923 voters in Mountain View likely to cast ballots in the November 2018 elections. Interviews were conducted online, on landlines, and on cellphones between June 11 and

19, 2018. The margin of sampling error associated with the data is plus or minus 4.0 percent at the 95 percent confidence interval; margins of error for population subgroups are higher. The poll tested the community's support for two potential general-purpose measures on the November 2018 ballot: (1) up to 9 percent tax on the retail sales of cannabis; and (2) BL Tax. The survey tested specific ballot language, support for structural elements of the BL Tax measure and pro-and-con arguments, and support for multiple measures on the ballot. The survey found that:

1. More than three in five voters offer initial support for the employer tax (62 percent).
  - a. Support for the measure is motivated by the sense that businesses should pay their fair share, while opposition is driven by concerns about hurting local businesses and general opposition to taxes.
  - b. Levying a lower tax for smaller businesses and levying a higher tax for larger businesses are the most appealing elements of the measure.
  - c. In March 2018, 67 percent of voters indicated they would be willing to back the proposed measure; however, at the time, the question was purely conceptual and did not yet describe tax impacts.
2. After positive messaging, support for the employer tax grows to 64 percent and after criticisms 60 percent of voters say they will vote "yes" on the measure.
3. Seven in 10 voters are willing to back the cannabis tax (71 percent) and fewer than one-quarter are opposed (23 percent).
  - a. Voter support for the cannabis tax mirrors that of March 2018, when 70 percent indicated they would vote "yes" (potential ballot language was tested in both surveys).
4. Having the two measures on the ballot together does not appear likely to harm their viability. Fifty-nine percent (59%) would be willing to back the BL Tax with both measures on the ballot, and 70 percent say they would vote "yes" on the cannabis measure in that context.

FM3 will be at the June 26 meeting and present the poll results in greater detail.

## Statewide Initiative Implications

A ballot measure entitled “Tax Fairness, Transparency and Accountability Act,” sponsored in large part by the California Business Roundtable and the American Beverage Association, is circulating for the November election.

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

***EXPANDS REQUIREMENT FOR SUPERMAJORITY APPROVAL TO ENACT NEW LOCAL GOVERNMENT REVENUE MEASURES. INITIATIVE CONSTITUTIONAL AMENDMENT.*** *For local governments, requires two-thirds approval of electorate to raise new taxes or governing body to raise new fees. Requires that local laws enacting new taxes specify how revenues can be spent. Heightens legal threshold for local governments to prove that fees passed without two-thirds voter approval are not taxes. Invalidates local taxes imposed in 2018, unless taxes meet criteria adopted by this measure. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Potentially substantial decrease in annual local revenues, depending upon future actions of local governing bodies, voters, and the courts.*

The initiative requires specific wording be included in ballot measures and ours have been drafted to meet the requirement. If enacted, it would require even general-purpose taxes to receive a two-thirds vote. The League of California Cities has come out in opposition to the initiative.

## **Overview of Proposed Ballot Measures**

### **BL Tax**

Mountain View’s BL Tax is \$30 for most businesses, and the rates have not changed since 1954. If adjusted for inflation, it would be approximately \$275 today. Mountain View has an interesting business community, size-wise, with 87 percent of businesses reporting 10 or fewer employees and 97 percent reporting 50 or fewer employees. Only seven companies report more than 1,000 employees.

### Description of the Proposed Tax Structure

Since February 2018, the Subcommittee evaluated approximately two dozen different revenue models for restructuring the City's BL Tax. On June 5, Council unanimously approved a model with the following features:

- Three base business registration fees for up to 50 employees.
- Maximum per-employee incremental rate of \$150 for over 5,000 employees.
- \$5,000 gross revenue required before tax is due.
- Qualified nonprofit organizations are exempt from the tax.
- Tax calculated based on average employee count from last four quarters as submitted to the State.
- Out-of-town businesses pay the same incremental tax rate based on number of employees, but prorated based on the average number of days working in the City in a calendar year (similar to San Jose).
- Authority for a CPI adjustment, subject to the annual fee resolution.
- Tax effective in 2020 for the smaller businesses subject to the flat "registration fee"; larger companies would phase in from 2020 to 2022.

The model, and total/average cost to businesses of various sizes, is summarized in the two charts below. It is estimated to generate \$6.1 million, based on self-reported employment of 64,000.

Consideration of Two Council-Initiated Ballot Measures Regarding  
Cannabis Gross Receipts Tax and the Business License Tax  
June 26, 2018  
Page 6 of 11

<b>Business License Revenue Final Model</b>							<b>Range</b>	
		<b># Businesses</b>	<b># Employees</b>	<b>%</b>	<b>Incremental Tax/Fee</b>	<b>Estimated Revenue</b>	<b>Low</b>	<b>High</b>
<b>Range</b>								
1	Base Rate - \$100	1,990	1,990	3.1%	0	\$199,000	\$100	\$100
2-25	Base Rate - \$200	1,461	9,381	14.6%	0	\$292,200	\$200	\$200
26-50	Base Rate - \$400	95	3,467	5.4%	0	\$38,000	\$400	\$400
51-500	Base Rate + Employee Count	104	13,055	20.2%	\$75	\$630,725	\$475	\$34,150
501-1,000	Base Rate + Employee Count	4	2,901	4.5%	\$100	\$226,700	\$34,250	\$84,150
1,001-5,000	Base Rate + Employee Count	6	10,324	16.0%	\$125	\$1,045,400	\$84,275	\$584,150
5,001+	Base Rate + Employee Count	1	23,324	36.2%	\$150	\$3,332,750	\$584,300	No Cap <sup>(1)</sup>
<b>Out of Area<sup>(2)</sup></b>	Base Rate - \$200	1,724			\$200	\$344,800	\$200	\$200
<b>Total MV Businesses &amp; Employees</b>		<b>3,661</b>	<b>64,442</b>	<b>100%</b>		<b>6,109,575</b>		
1. Largest company would pay \$3.3M.								
2. This is an estimate based on a flat fee. Staff recommends a new model for out of town businesses based on the number of employees and days worked in Mountain View, like San Jose (which will generate more revenue).								

<b>COST TO EMPLOYERS FOR POTENTIAL BL TAX</b>		
<b>No. of Employees</b>	<b>Total Cost</b>	<b>Average per Employee</b>
1	\$100	\$100
2	\$200	\$100
26	\$400	\$15
51	\$475	\$9
101	\$4,225	\$42
251	\$15,475	\$62
501	\$34,250	\$68
1,001	\$84,275	\$84
5,001	\$584,300	\$117
<b>Total</b>	<b>\$6,109,575</b>	

Ballot Question

Shall the measure to fund critical City needs such as reducing traffic congestion, enhancing bicycle-/pedestrian-friendly routes, providing housing affordable for a range of incomes/homeless services, by imposing a business license tax of 9 dollars to 117 dollars per employee on average, with larger companies paying more per employee, generating about 6 million dollars yearly for unrestricted general revenue purposes, until ended by voters, with independent yearly audits, be adopted?	YES	NO
--	-----	----

Based on Council direction, an ordinance has been drafted to be proposed to the voters on November 6, 2018 (Attachment 4).

For this ordinance to be adopted by the voters, a majority vote is required (pending the outcome of the potential Statewide initiative). The ordinance is considered adopted upon the date the vote on the measure is declared by the legislative body. The ordinance would then go into effect 10 days after the date the City Council certifies the results of the November 6, 2018 election. However, as the BL Tax will be phased in over time, the existing Business License Ordinance will remain in effect and will not be repealed until October 2019, when the new BL Tax would become effective, to ensure no gap in the taxation occurs.

Resolution Establishing Spending Priorities

At the June 5 meeting, the City Council indicated that, while the BL Tax would be a general-purpose tax, the Council would like the bulk of the funds dedicated to transportation and directed staff to prepare a resolution stating as such. Attachment 2 is a draft for Council’s consideration, indicating that 80 percent of the funds would be for transportation and 10 percent would be for affordable housing, with the remaining 10 percent for general governmental purposes.

**Cannabis Gross Receipts Business Tax**

Staff is currently drafting an ordinance to amend the Zoning Code to permit retail and nonretail cannabis land uses in the City of Mountain View. It is anticipated that this ordinance will be brought back to the City Council for its consideration in October of this year. If the cannabis gross receipts tax is adopted by the voters, it would not take effect until the later of the City Council’s certification of the election results (likely

December) or when the ordinance regulating the cannabis related land use becomes effective.

The ordinance allows the City Council to impose a tax of up to 9 percent of the gross receipts of cannabis businesses in Mountain View. Under the ordinance, the City Council is granted the authority to increase or decrease the tax up to 9 percent and also to impose a different tax on medical and recreational cannabis should that be desired in the future. While the City Council would have the ability to modify the tax rate so long as it does not exceed 9 percent, the ordinance could only be modified by City of Mountain View voters.

Ballot Question

Shall the measure to maintain and protect essential public safety services, including 9-1-1, police and fire protection, emergency medical response; reduce traffic congestion and repair roads; and provide other critical City services, including library, park maintenance, senior services, by levying a tax of up to 9 percent on gross receipts of cannabis businesses, providing about 1 million dollars per year, for unrestricted general revenue purposes, until ended by voters, with independent yearly audits, be adopted?	YES	NO
--	-----	----

Based on Council direction, an ordinance has been drafted to be proposed to the voters on November 6, 2018 (Attachment 5).

Ballot Arguments and Impartial Analysis

*Ballot Arguments*

Elections Code Section 9282(b) provides that when a measure is placed on the ballot by the City Council, written arguments for and against the measure may be filed by the following: the City Council or any member or members of the Council authorized by the Council; any individual voter who is eligible to vote on the measure; a bona fide association of citizens; or any combination of voters and associations.

As such, the Council may authorize the City Council or any member or members of the City Council to submit an argument in favor of the ordinance. Elections Code Section 9287(a) provides that if more than one argument for or against any City measure is submitted, the City elections official (City Clerk) shall give preference and priority in



the following order: (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.

If the Council decides to either submit an argument in favor of the ballot measure or authorize certain members to submit an argument, then, pursuant to Elections Code Section 9287(a), that argument will be given preference over any other argument submitted in favor of the ballot measure. If the Council chooses not to submit an argument, the City Clerk will follow the priorities described in Elections Code Section 9287(a) in selecting an argument to be printed in the Sample Ballot.

In accordance with the Elections Code, the City Clerk has set the ballot measurement argument deadlines as follows:

Argument:	July 10, 2018
End of 10-Day Public Inspection:	July 20, 2018
Rebuttal:	July 20, 2018
End of 10-Day Public Inspection:	July 30, 2018
Impartial Analysis (City Attorney):	August 8, 2018
End of 10-Day Public Inspection:	August 18, 2018

If the City Council places a question on the ballot, the Council may file a written argument for or against the measure. The arguments would be included in the voter pamphlet. Staff requests guidance whether the Council wishes to draft the language of the argument and select the authors/signers of an argument and/or rebuttal. It is suggested this could be delegated to the Mayor to lead.

#### *Impartial Analysis*

The City Council may direct the City Attorney to prepare an impartial analysis of the ballot measure. If drafted, the impartial analysis would be included in the voter pamphlet.

#### Whether Full Text of Ordinance Should Be Included in Voter Pamphlet

Printing the full text of the ordinance in the voter pamphlet is not required. The Council has the option of directing the full text of the ordinance to be printed in the voter pamphlet or including a statement following the impartial analysis that the full

text is available by calling the elections official's office (City Clerk's Office) and requesting a copy at no cost. The text of the ordinance will also be posted on the City website.

In 2016, when the Council placed a measure on the ballot, the full ordinances were not included; just a summary and a link to the full ordinance.

### **FISCAL IMPACT**

The County Registrar of Voters has provided a preliminary estimate of \$73,912 per measure to cover the cost of election if the City Council decides to submit an ordinance to the voters. In addition, the County Registrar of Voters estimates the cost of printing is \$6,562 per page for the ordinances.

On June 19, 2018, the Council adopted the Fiscal Year 2018-19 Budget, which included \$250,000 for placing the measures on the ballot and other costs related to the revenue measures.

### **CONCLUSION**

As directed by the Council, staff has prepared draft ordinances for both the cannabis gross receipts tax and the BL Tax for the City Council to consider for submittal to the voters as Council-initiated ballot measures on November 6, 2018. If the Council decides to submit either ballot measure to the voters, direction is needed regarding ballot arguments and an impartial analysis. After placing any measures on the ballot, the City cannot use public resources other than to provide factual information regarding these measures.

### **ALTERNATIVES**

1. Submit one or no measures to the voters.
2. Make minor wording changes to one or both of the ballot measures and submit to voters.
3. Modify the methodology of the BL Tax.
4. Provide other direction.

## **PUBLIC NOTICING**

The meeting agenda and Council report have been posted on the City's website and announced on Channel 26 cable television. Notices have been sent to the Chamber of Commerce and other interested parties, and the meeting was promoted using social media.

Prepared by:

Lisa Natusch  
City Clerk

Jannie L. Quinn  
City Attorney

Daniel H. Rich  
City Manager

LN-JLQ-DHR/2/CAM  
614-06-26-18CR-E

- Attachments:
1. Resolution Placing Two Measures on the Ballot
  2. Resolution on Spending Priorities
  3. June 5, 2018 Council Report
  4. Business Registration and License Tax Ordinance
  5. Cannabis Tax Ordinance