



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Julia H. Cooper

SUBJECT: SEE BELOW

DATE: December 5, 2011

Approved

Date

12/15/11

SUBJECT: CONSIDERATION OF INCREASING THE MARIJUANA BUSINESS TAX RATE FROM 7% TO 10% OF GROSS RECEIPTS

RECOMMENDATION

- (a) Consider increasing the Marijuana Business Tax rate from 7% of gross receipts to 10% of gross receipts, as allowed under Measure U; and
- (b) Direct staff to prepare an ordinance to implement the increased Marijuana Business Tax rate, effective March 1, 2012, for Council consideration at a public hearing on January 24, 2012.

OUTCOME

If an increase to the Marijuana Business Tax rate from 7% to 10% of gross receipts goes forward, it could generate additional General Fund revenues. These additional funds could be set aside in a reserve to cover potential election costs. The Citizens Coalition for Patient Care Committee turned in more than 50,000 signatures for a referendum of the City's medical marijuana regulatory ordinance. If qualified, the referendum would launch an election to repeal the City's regulatory framework.

BACKGROUND

On November 2, 2010, the citizens of San José voted to approve Measure U, which enacted the Marijuana Business Tax provisions in Chapter 4.66 of the Municipal Code (the "Code"). Measure U allows the City of San José ("the City") to impose a business tax on all marijuana businesses conducting business within the City at a maximum monthly rate up to 10% of gross receipts, as defined by Chapter 4.66 of the Code. On December 13, 2010, the City's monthly

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Marijuana Business Tax rate was set by the Council at 7% of gross receipts. Beginning March 1, 2011, any person engaged in marijuana business in the City is required to prepare a tax return to the Director of Finance identifying the total gross receipts, the amount of tax owing for the preceding calendar month, and pay a Marijuana Business Tax of 7% of gross receipts to the City.

ANALYSIS

On November 9, 2011, the Rules and Open Government Committee (the "Rules Committee") directed City staff to return to the Council on January 24, 2012, with an ordinance for consideration that would increase the Marijuana Business Tax rate from 7% to 10% of gross receipts. In order to provide public notice of the proposed increase, the Rules Committee scheduled a public meeting for January 10, 2012, and a public hearing in advance of the Council taking action on the proposed increase, as well as providing newspaper notice and other notice requirements as set forth in the Brown Act.

The proposed ordinance increasing the Marijuana Business Tax rate from 7% to 10% of gross receipts will be posted to the City's agenda webpage in advance of the January 24, 2012, public hearing which is the same date the Council will consider amending Chapter 4.66 of the Code to increase the rate from 7% to 10% of gross receipts.

Under the City Charter, an ordinance implementing a tax increase takes effect immediately upon its adoption by the Council unless the Council directs a later effective date. Staff recommends that the ordinance implementing the increased Marijuana Business Tax Rate take effect on March 1, 2012, to allow for time to notify the known marijuana businesses and update the City's billing system.

The FY 2011-2012 Adopted Operating Budget estimated \$2,500,000 to be generated by the 7% tax. Based on an average monthly collection trend of approximately \$320,000, tax receipts are tracking to exceed this estimate. With the proposed tax rate increase from 7% to 10% of gross receipts, the City estimates that the total average monthly collections will increase to approximately \$450,000.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

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- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach). **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item does not meet the above criteria requiring additional notification; however, it will be posted on the City's Council Agenda Website for the January 10, 2012, Council Meeting.

COST IMPLICATIONS

Consistent with the direction approved on November 9, 2011, by the Rules Committee, should the rate increase be approved on January 24, 2012, budget actions will be recommended to the Council for consideration at year-end to 1) recognize additional revenues based on actual experience; and, 2) establish an offsetting reserve to provide funding for the direct and indirect expenses related to an election with the additional revenue generated by the tax increase. As noted in the Mayor's memorandum to the Rules Committee on November 9, 2011, "the Citizens Coalition for Patient Care Committee recently turned in more than 50,000 signatures for a referendum of the City's regulatory ordinance. If qualified, the referendum would launch an expensive election to repeal the regulatory framework that the City Council approved."

COORDINATION

This item has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

CEQA

Not a project, File No. PP10-067(a), Increase to rate without changes to, or expansion of services.

/s/

JULIA H. COOPER

Acting Director, Finance Department

For additional information, please contact Wendy Sollazzi, Revenue Management Division Manager at 408-535-7005.