



Council Agenda Report

From: Thomas Frutchey, City Manager
Kimberly Hood, Interim City Attorney

Subject: Introduce an Ordinance Amending Section 3.22.010 of Title 3 of the Paso Robles Municipal Code to Setting Cannabis Business Tax Rates; Provide Direction Regarding Review of Cannabis Business Types and Regulations

Date: October 20, 2020

Facts

1. Under the California Constitution, article XIII C, section 2(b) (“Proposition 218”) and Government Code section 53723, the City cannot impose, extend, or increase any general tax unless that tax is first approved by a majority vote of City voters.
2. On November 6, 2018, City voters approved Measure I-18, which enacted Ordinance No. 1066 N.S. to establish a tax on cannabis-related activities as a general tax by adding Chapter 3.22 to the Paso Robles Municipal Code (“Code”).
3. Under Code section 3.22.010, all cannabis businesses operating within the City shall be charged a cannabis business tax up to a maximum tax rate as follows: a cultivation tax rate of twenty dollars (\$20) per square foot of space utilized in connection with the cultivation of cannabis; a gross receipts tax of up to ten percent (10%) for cannabis delivery businesses; a gross receipts tax of fifteen percent (15%) for all cannabis manufacturing, testing, and distribution; and a gross receipts tax of ten percent (10%) for retailers.
4. The voter-approved ordinance establishes only the permissible maximum rates that may be imposed on cannabis businesses. The City Council must adopt an ordinance or resolution to set the tax rates applied to cannabis businesses, up to the maximum rates allowed under Code section 3.22.010. Once set, the City Council may at any time adjust the rates higher or lower, so long as the rates do not exceed the maximum allowable rate established in Code section 3.22.010. Any tax rate increase exceeding the maximum allowable rates must be approved by a majority vote of City voters.
5. Dubs Green Garden is the only licensed cannabis delivery service based in the City. The City’s Zoning Code (Code Chapter 21.33) currently authorizes only medical cannabis delivery businesses in the Riverside Corridor (RC) and the C-3 district, subject to the granting of a conditional use permit. All other commercial cannabis businesses, including storefront cannabis retail dispensaries, are prohibited, although the owners of several dispensaries in other cities have indicated their interest in opening facilities in Paso.
6. Staff has prepared the attached ordinance, adding a new section (c) to Code section 3.22.010 in order to set the cannabis tax rates at the maximum allowable rates. If at a future date new types of cannabis businesses are permitted in the City, the City Council may adjust the applicable tax rates downward.
7. Staff is also requesting direction on initiating a review of the City’s existing cannabis regulations and exploring options for allowing new/additional types of cannabis businesses. If there is interest in conducting a review of options, Staff would return to the Council at a future date for more detailed community discussion.

Options

1. Take no action;
2. Introduce the ordinance establishing the cannabis tax rates at the maximum allowable rates; or
3. Provide alternative direction to staff.

Analysis and Conclusions

Cannabis Tax Rates. The Ordinance would impose cannabis business tax rates at the maximum allowable rates approved by voters in November 2018 with the approval of Measure I-18. At this time, only medical cannabis delivery businesses (delivery only, no storefront) are permitted in the City. Setting the rates will not mean prohibited businesses are allowed to operate; only if and when those types of businesses are authorized in the City will those rates apply.

Alternatively, the Council could decide to set the tax rates at a lower level. Some jurisdictions in California have set tax rates at the maximum allowable, while others have set the rates at lower levels to incentivize new business and/or remain regionally competitive. Cities in Colorado, Oregon, and elsewhere in California that have set the rates too high have seen a rise in underground and black-market operations, designed to avoid the tax. Both the City of San Luis Obispo and the City of Grover Beach currently authorize numerous types of cannabis businesses and impose cannabis tax rates lower than Paso's maximum rates. As applicable to retail delivery, SLO's rate is currently set at 6% of gross receipts; Grover Beach's rate for retail is 5% of maximum rates.

As stated above, once the full analysis is completed, the Council can reduce the rates, if desired. It will be easier to lower the rates in the future, if desired, than to raise them. Since Dubs has been operating without an implemented tax, this should not present a hardship.

Once the tax rates are set, tax payments would be collected quarterly, becoming due 30 days after the end of a quarter. This Ordinance provides notice to cannabis businesses of the penalties and interest that would be assessed if cannabis businesses fail to timely remit quarterly tax payments to the City.

Direction Regarding Review of Options for Cannabis Businesses. Staff is also requesting direction on initiating a review of the City's existing cannabis regulations and explore options for allowing new/additional types of cannabis businesses.

Key issues for future discussion would need to include what types of businesses to allow (e.g., storefront retailers, manufacturers, distributors, testing facilities, etc.), where to allow them, the number to be allowed, and the desired land use entitlements and review process. Any potential change to allow additional or new types of cannabis businesses, or to expand the permissible locations for cannabis businesses, will require Zoning Code amendments and thus must first go through the Planning Commission. Typically, there is first a land use and zoning component to allow cannabis businesses (Zoning Ordinance) to address the preliminary issues. Some options may include allowing a limited number of retail cannabis businesses subject in select zones and conditionally permitting manufacturing cannabis businesses in select zones.

Depending on whether and what types of businesses are allowed, the second step in the process would be establishing a non-zoning regulatory component (Regulatory Ordinance) to address issues such as licensing, security, and other "good neighbor" and "community benefit" policies related to cannabis business operation. Grover Beach, Morro Bay, and the City of San Luis Obispo have recently gone through similar processes to allow different types of cannabis businesses, and can likely be used as templates.

Since cannabis sales are still prohibited under federal law, banks have traditionally not been willing or able to work with cannabis dispensaries. Thus, cities who licensed such facilities shortly after the passage of Proposition 64 in 2016, were required to implement special procedures to handle cash deliveries of taxes owed. Cities have implemented a variety of mechanisms. Determining what is best for Paso would also be part of the needed analysis.

Based on direction from the Council, Staff would return to the Council at a future date for more detailed community discussion and direction.

Fiscal Impact

The ballot question for Measure I-18 estimated that the cannabis business tax on cannabis-related activities would generate approximately \$15,000 annually. The estimate was low, because at the time no cannabis businesses were authorized in the City except limited deliveries from medical cooperatives/collectives, At this time, Dubs Green Garden is the only licensed cannabis business in town, and thus the only business that will be subject to the rates set by Council.

The cannabis business tax is designed to raise revenue for the City's General Fund and can be used for any governmental purpose. By policy, the Council could also direct an amount equivalent to part or all cannabis-related revenues to specific purposes.

Recommendation

1. Introduce for First Reading by title only, an Ordinance of the City Council of the City of El Paso de Robles Amending Section 3.22.010 of Title 3 of the Paso Robles Municipal Code and Setting Cannabis Business Tax Rates; and
2. Provide direction to staff regarding review of cannabis business types and regulations.

Attachments

1. Ordinance No. XXXX N.S. – Amending Section 3.22.010 and Setting Cannabis Business Tax Rates

Attachment 1

ORDINANCE NO. XXXX N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES AMENDING
SECTION 3.22.010 OF TITLE 3 OF THE PASO ROBLES MUNICIPAL CODE AND
SETTING CANNABIS BUSINESS TAX RATES

WHEREAS, under the California Constitution, article XIII C, section 2(b) (“Proposition 218”) and Government Code section 53723, no local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote; and,

WHEREAS, on November 6, 2018, voters approved Measure I-18, which authorized the City of El Paso de Robles (the “City”) to adopt an ordinance adding Chapter 3.22 to the Paso Robles Municipal Code and enact a tax on cannabis businesses as a general tax; and,

WHEREAS, Paso Robles Municipal Code (“Municipal Code”) section 3.22.010 establishes maximum cannabis business tax rates that the City may impose on cannabis businesses as follows: twenty dollars (\$20.00) per square foot for cultivation; ten percent (10%) of gross receipts for delivery; fifteen percent (15%) of gross receipts for manufacturing, testing and distribution; and ten percent (10%) for retailers; and,

WHEREAS, as allowed by Propositions 218 and Government Code section 53723, the City Council may impose up to the maximum tax rates approved by voters in Measure I-18 and set forth in Municipal Code section 3.22.050 without a vote of the people; and,

WHEREAS, the City Council desires to set the tax rates for cannabis businesses operating within the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The recitals set forth above are true and correct and are incorporated into this Ordinance by this reference.

Section 2. Section 3.22.010 of the Municipal Code is hereby amended in its entirety to read:

3.22.010 Imposition of Tax.

A. Every person engaged in operating or otherwise conducting a cannabis business within the City of El Paso de Robles, regardless of whether such business has a license or permit pursuant to Chapters 5.04, 21.33 or any other provision of this Code, shall pay the following cannabis business tax:

Attachment 1

1. Up to a maximum of twenty dollars per square foot of space utilized in connection with the cultivation of cannabis, subject to adjustment by the city council pursuant to Section 3.22.050.

2. Up to a maximum of ten cents for each one dollar of gross receipts, or a fractional part thereof, for cannabis delivery businesses and retailers, subject to adjustment by the city council pursuant to Section 3.22.050.

3. Up to a maximum of fifteen cents for each one dollar of gross receipts, or a fractional part thereof, for cannabis manufacturing, testing, and distribution businesses, subject to adjustment by the city council pursuant to Section 3.22.050.

4. Up to a maximum of ten cents for each one dollar of gross receipts, or a fractional part thereof, for cannabis retailers, subject to adjustment by the city council pursuant to Section 3.22.050.

B. The cannabis business tax rates are as follows:

1. Twenty dollars per square foot of space utilized in connection with the cultivation of cannabis.

2. Ten cents for each one dollar of gross receipts for cannabis delivery businesses and retailers.

3. Fifteen cents for each one dollar of gross receipts for cannabis manufacturing, testing, and distribution businesses.

4. Ten cents for each one dollar of gross receipts for cannabis retailers.

C. No cannabis business shall be deemed to be exempt from the payment of the taxes identified above by any other provision of this Code, unless expressly exempted under this chapter.

Section 3. The City Council therefore finds the proposed cannabis business tax rates are not subject to environmental review under the California Environmental Quality Act (“CEQA”). First, the proposed cannabis business tax rates, in and of themselves, do not have potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and therefore are not considered a “project” under CEQA. (Pub. Resources Code, § 21065; Cal. Code Regs., tit. 14, § 15378, subd. (a).) Second, the cannabis business tax rates are covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment; here, there is no possibility that the proposed cannabis business tax rates in and of themselves, may have a significant effect on the environment. (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3).) And third, the proposed cannabis business tax rates are considered a government funding mechanism that does not involve any commitment on behalf of the City to any specific project which may result in a potentially significant physical impact on the environment. (Cal. Code Regs., tit. 14, § 15378, subd. (b)(4).)

Attachment 1

Section 4. If any section, subsection, clause or phrase in this Ordinance or the application thereof to any person or circumstances is for any reason held invalid, the validity of the remainder of this Ordinance or the application of such provisions to other persons or circumstances shall not be affected thereby. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof to any person or circumstance be held invalid.

Section 5. The City Clerk shall certify to the adoption of this Ordinance and shall post or publish this Ordinance as required by law.

Section 6. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

INTRODUCED at a regular meeting of the City Council held on October 20, 2020, and passed and adopted by the City Council of the City of El Paso de Robles on the _____ day of _____, 2020 by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Steven W. Martin, Mayor

ATTEST:

Melissa Martin, Interim City Clerk