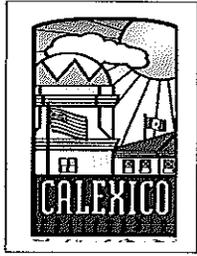


**AGENDA
ITEM**

8



AGENDA STAFF REPORT

DATE: October 2, 2019

TO: Mayor and Councilmembers

APPROVED BY: David Dale, City Manager *DD*

PREPARED BY: Carlos Campos & Jill Tremblay, City Attorney

SUBJECT: Approval of Resolution No. 2019-42 - A Resolution of the City Council of the City of Calexico, California, Revising Cannabis Cultivation Business Tax Rate

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Recommendation:

Adopt City Council Resolution No. 2019-42, revising cannabis cultivation business tax rate.

Background:

In July 2018, the City Council adopted Resolution No. 2018-61, which placed a general tax measure ("Measure K") on the November 2018 ballot. Measure K sought to 1) establish a maximum limit on how much the City could tax cannabis businesses, and 2) authorize the City Council to establish tax rates that did not exceed the maximum limit.

Voters overwhelmingly approved Measure K with nearly seventy four percent (74%) voting in favor of the proposed tax. Measure K included the following maximum limits on tax rates for cannabis businesses:

Business Type	Max. Amount allowed under Measure K
All cannabis business types including cultivation, manufacturing, distribution, testing, retail and delivery.	15% of gross receipts
	\$25 per square foot of space utilized

Maximum rates were set to ensure that the City had the opportunity to lower or raise the actual tax rate depending on the market for cannabis and cannabis products.

On January 9, 2019, the City Council initially adopted lower tax rates across the board, as follows:

Business Type	Existing Tax Rate
Cultivation	\$16 per square foot of space utilized
Manufacturing	3% of gross receipts
Distribution	No tax
Testing	No tax
Retail (incl. delivery and microbusinesses)	10% of gross receipts



Staff now proposes to revise and clarify the cannabis business tax rate for cultivation.

Discussion & Analysis:

Currently, there is a tax rate of sixteen dollars (\$16.00) per square foot of space utilized in connection with cannabis cultivation businesses. The tax rate applies to all cannabis cultivators, including industrial scale cultivators that house mostly mature plants, nurseries that typically sell immature plants and seeds, and all those in between.

At this time, staff is proposing to tax **only mature plants** at the rate of sixteen dollars (\$16.00) per fiscal year, per square foot of canopy space utilized. Immature plants would not be taxed at all.

A mature plant is a cannabis plant that is flowering, which means that the plant that has formed a mass of pistils measuring greater than one-half inch wide at its widest point. Canopy means all areas occupied by any portion of a mature cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site.

The purpose of the proposed tax rate change is to conform to State law and level the playing field for nurseries and other immature plant cultivators.

Cultivating mature cannabis plants is resource intensive and involves greater capital investment. Nursery uses, on the other hand, require lower levels of investment and are not as intensive. Mature plants are much more valuable than immature plants and generate significantly more revenue for cultivation businesses. As such, taxing mature plants and immature plants differently is appropriate.

Throughout the country, cultivation taxes typically apply to those who grow, harvest, plant, dry, cure, grade or trim mature cannabis plants. In other words, cultivation taxes apply to mature flowering plants at large cultivation facilities as opposed to small immature plants grown and sold at nurseries.

Under California state law, immature plants do not count towards cultivation square footage. Instead, the measurement for tax purposes is mature plant canopy. By not counting immature plants in the total canopy square footage, the City would allow local cultivators to stand on equal footing with the other farmers in the State, rather than be at a further economic disadvantage.

Cultivators that house both mature and immature plants should keep immature plants outside of their designated canopy. Immature plants can be moved from outside the designated canopy and later moved inside the canopy for flowering. Alternatively, a cultivator can rotate between multiple growing areas by notifying the City whenever a change of canopy designation is made.

With staff's proposal, the new cannabis tax rates would be as follows:

Business Type	Staff recommended rate
Cultivation of Mature Plants	\$16 per square foot of canopy space utilized
Manufacturing	3% of gross receipts*
Distribution	No tax*
Testing	No tax*
Retail (incl. delivery and microbusinesses)	10% of gross receipts*

* Staff proposes that these tax rates remain the same as initially set in January 2019.

Fiscal Impact:

Implementation of the proposed tax rates is estimated to generate up to \$700,000 in revenue annually from cannabis businesses which will be deposited into the general fund.

Attachment:

1. Resolution No. 2019-42 - A Resolution of the City Council of the City of Calexico, California, Revising Cannabis Cultivation Business Tax Rate.

RESOLUTION NO. 2019-42

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, REVISING CANNABIS CULTIVATION BUSINESS TAX RATE.

WHEREAS, on July 5, 2017 the City Council of the City of Calexico ("City Council") approved Ordinances 1177 and 1178, which allow commercial cannabis businesses, including cultivation, manufacturing, testing and research, and distribution, to operate within the City; and,

WHEREAS, on July 18, 2018 the City Council adopted Resolution No. 2018-61 calling for the placement of a General Tax Measure on the ballot for the November 6, 2018 General Municipal Election for the submission to qualified voters of a proposed ordinance establishing a tax on cannabis businesses operating within the City of Calexico ("Cannabis Tax Measure"); and,

WHEREAS, the Cannabis Tax Measure passed by a majority vote of the People on November 6, 2018; and,

WHEREAS, on December 5, 2018 the City Council approved Ordinances 1191 and 1192, which allow retail cannabis businesses to operate within the City; and,

WHEREAS, the Cannabis Tax Measure added Chapter 3.40 *Cannabis Business Tax* to the City of Calexico Municipal Code ("Municipal Code"); and,

WHEREAS, Municipal Code Chapter 3.40 provides that tax rates can be set at a maximum of (1) fifteen percent (15%) of gross receipts or fractional part thereof, generated by a cannabis business at wholesale or retail; and (2) twenty five dollars (\$25.00) per square foot of space utilized in connection with a cannabis business.

WHEREAS, as allowed by Proposition 218, Municipal Code Chapter 3.40 further provides that the City Council may impose the tax detailed above at a lower rate without a vote of the People; and,

WHEREAS, by Resolution No. 2019-01 the City Council set initial tax rates for cannabis businesses operating within the City at the following rates: Sixteen dollars (\$16) per square foot of space utilized in connection with cannabis cultivation businesses; Three (3) cents for each \$1.00 of gross receipts for cannabis manufacturing businesses; and Ten (10) cents for each \$1.00 of gross receipts for cannabis retail businesses.

WHEREAS, the City Council now wishes to, by Resolution, revise and clarify the tax rate for cannabis cultivation businesses that currently do and will operate within the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Calexico, as follows:

SECTION 1. Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. Definitions. Unless the context clearly indicates another meaning was intended, the following definitions shall apply to this Resolution:

A. "Cannabis" means all parts of the plant *Cannabis sativa Linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis.

B. "Cannabis product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

C. "Canopy" means all areas occupied by any portion of a mature cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site.

D. "Commercial cannabis business" means any commercial business activity relating to cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, and selling (wholesale and/or retail sales) of cannabis and any ancillary products and accessories in the City, whether or not carried on for gain or profit.

E. "Commercial cannabis business tax," or "business tax" means the tax due for engaging in commercial cannabis business in the City.

F. "Commercial cannabis cultivation" means cultivation conducted by, for, and as part of a commercial cannabis business.

G. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

H. "Engaged in business" means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate, franchise or other business powers, whether done as an owner, or by means of an officer, agent, manager, employee, or other representative, within the City, whether operating from a fixed location within the City or coming into the City from an outside location to engage in cannabis business activities. By way of example, a person shall be

deemed “engaged in cannabis business” within the City if such person or the person’s officer, agent, manager, employee, or other representative acting on behalf of such person:

1. Maintains a fixed place of cannabis business within the City;
2. Owns, leases or otherwise has the legal right to occupy real property within the City for cannabis business purposes;
3. Regularly maintains a stock of tangible personal property within the City in the ordinary course of cannabis business;
4. Performs work or renders cannabis business services to other cannabis businesses or to retail cannabis customers located within the City.

I. “Fiscal year” means July 1 through June 30 of the following calendar year.

J. “Flowering” means a cannabis plant that has formed a mass of pistils measuring greater than one-half-inch wide at its widest point.

K. “Gross receipts” means the total amount of monetary consideration actually received or receivable by a cannabis business for performance of any act or service in providing, at wholesale or retail, cannabis and/or cannabis products, for which a charge is made or credit allowed including, but not limited to: membership dues, the value of monetary and in-kind contributions, payments, reimbursement of fees for cultivation, processing, distribution, delivery, retail, storing, exchanging, processing, delivering, making available, or transmitting of cannabis or cannabis products, any payments made, and anything else of value obtained by a cannabis business. Included in “gross receipts” shall be all receipts, cash, credits, and property of any kind without deduction of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever.

L. “Immature plant” or “immature” means a cannabis plant that is not flowering.

M. “Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container, that holds a valid City permit.

N. “Mature plant” means a cannabis plant that is flowering.

O. “Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or

any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

P. "Retailer" means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

SECTION 3. Cannabis Business Tax Rates. Pursuant to Section 3.40.030 and 3.40.050 of the Calexico Municipal Code, the City Council of the City of Calexico hereby revises the tax rates for cannabis businesses as follows:

A. Cannabis Cultivation. Every person who is engaged in commercial cannabis cultivation of mature plants, as defined in this Resolution, in the City shall pay a commercial cannabis business tax. The tax rate, effective as of the date that this Resolution is adopted, shall be set at sixteen dollars (\$16.00) per fiscal year, per square foot of canopy space utilized for mature cannabis plants; and

B. Cannabis Manufacturing. Every person who is engaged in business as a manufacturer of commercial cannabis in the City shall pay a commercial cannabis business tax. The tax rate, effective as of the date that this Resolution is adopted, shall be set at three (3) cents for each \$1.00 of gross receipts for cannabis manufacturing businesses per fiscal year; and

C. Cannabis Retail. Every person engaged in business as a cannabis retailer in the City shall pay a commercial cannabis business tax. The tax rate, effective as of the date that this Resolution is adopted, shall be set at ten (10) cents for each \$1.00 of gross receipts for cannabis retail businesses per fiscal year.

SECTION 4. CEQA. The City Council hereby FINDS and DETERMINES that this Resolution relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, section 15378(b)(5).

SECTION 5. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 6. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Calexico, California, at a regular meeting held on this 2nd day of October, 2019.

AYES:

NOES:

ABSENT:

ABSTAIN:

Bill Hodge, Mayor

ATTEST:

Gabriela Garcia, City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney

State of California)
County of Imperial) s.s.
City of Calexico)

I, Gabriela T. Garcia, City Clerk of the City of Calexico do hereby certify the above Resolution No. 2019-42 was approved at a regular City Council meeting held on the 2nd day of October 2019, by the following vote to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Gabriela T. Garcia, City Clerk