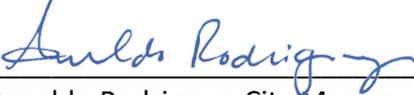


REPORT TO CITY COUNCIL

Approved by:


Arnaldo Rodriguez, City Manager

Council Meeting of: January 19, 2022

Agenda Number: D-1

SUBJECT:

Establishment of Cannabis Business Tax Rates

RECOMMENDATION:

Adopt the Resolution setting the Cannabis Business Tax rates for various types of commercial business permits

SUMMARY:

Historically, the City has prohibited cannabis businesses from operating within the City. However, with the evolving landscape surrounding the sale and use of cannabis in the State, the City Council (Council) directed staff to retain HdL, a leading subject matter expert, to begin the process of developing a regulatory ordinance to allow, permit, regulate and tax cannabis businesses, conducting a cost recovery fee study, and developing a cannabis tax ordinance and accompanying ballot measure to be placed on the November 3, 2020 election.

The approval of Measure R by the voters in November 2020 and subsequent approval of multiple ordinances and resolutions provided the Council authority to set and impose the Cannabis Business Tax. Council is being asked this evening to consider staff's recommendation and set a tax rate.

DISCUSSION:

As approved by voters, Measure R defined the maximum amounts that can be charged by a Cannabis Business License Tax. While the figures represent maximums, Council has the option to set lower rates for each type of cannabis activity. Additionally, Council may raise or lower the tax rate from time to time by resolution; however, the tax rate may not exceed the maximum rate authorized by voters.

In short, voters approved the following maximum tax rates:

- \$10 per canopy square foot for cultivation (adjustable for inflation)
- 6 percent gross receipts for retail businesses
- 4 percent for all other cannabis business activities

A review of nearby communities with established cannabis business tax rates shows that the current cannabis business tax rates range between 4 and 10 percent for retail. The lowest being the City of Fresno and the highest being Coalinga and Riverbank. For cultivation, it varies. Some communities charge a percent while other charges on a per square foot basis. Table 1 provides an overview of nearby communities.

Table 1: Cannabis Business Tax Rates of nearby communities ^{(1) (2) (3) (4) (5)}					
<i>Municipality</i>	<i>Retail</i>	<i>Cultivation ⁽⁶⁾</i>	<i>Distribution</i>	<i>Manufacturing</i>	<i>Testing</i>
California City	6%	\$7 sf	0.5%	1%	2%
Coalinga	10%	\$7 sf	Varies ⁽⁷⁾	Varies ⁽⁷⁾	Varies ⁽⁷⁾
City of Fresno	4%	\$6 sf	1%	4%	0%
Hanford	4%	\$10 sf	2%	2.5%	1%
Lemoore	5%	\$6 cf	tier system	\$15 sf	tier system
City of Merced	7%	\$7 sf or 4% GR	\$1 sf or 2% GR	\$7 sf	\$0.25 sf
Modesto	8%	2.5%	6%	4%	2.5%
Riverbank	10%	10%	10%	10%	10%
Turlock	5% GR or lump sum	\$10 sf	2.5%	\$10 sf	DA ⁽⁸⁾
Atwater	DA; voters approved max tax of \$.15 for every \$1.00 revenue				
Ceres	DA				
Gustine	DA & Operating Agreement				
Livingston	No tax established yet - reviewing/revising ordinance				
Mendota	DA				
Oakdale	DA				
Parlier	DA; calculation by square footage or alternative is 4% gross revenue				
⁽¹⁾ This table is not intended to be exhaustive, rather it provides an overview; data collected in December 2021 ⁽²⁾ SF: Square foot ⁽³⁾ CF: Cubic foot ⁽⁴⁾ GR: Gross Revenue ⁽⁵⁾ DA: Development Agreement; agreement that defines conditions ⁽⁶⁾ Cultivation varies by lighting type. For purposes of this table, included is exclusively artificial lighting. ⁽⁷⁾ \$25 sf for the first 3k sf, \$10 sf thereafter ⁽⁸⁾ No test labs; will establish when a business expresses interest					

In an effort to be competitive to neighboring cities', it is recommended that Council set the cannabis business tax rate to be on par with surrounding cities as outlined in Table 2.

Table 2: Recommended rates ^{(1) (2)}		
	<i>Maximum rate approved by voters</i>	<i>Recommended rate</i>
Commercial cannabis cultivation, including cultivation of industrial hemp		
A. Exclusively artificial lighting	\$10 sf	\$6 sf
B. Combination of natural and supplemental lighting (Section 6-4.04 Q of MMC)	\$7 sf	\$4 sf
C. No artificial lighting	\$4 sf	\$2 sf
D. Nursery	\$2 sf	\$1 sf
Testing laboratory for cannabis, cannabis products, industrial hemp and/or industrial hemp products	2% of gross receipts	1% of gross receipts
Retail sales of cannabis, cannabis products, industrial hemp, and/or industrial hemp products, including as a retailer (dispensary) or non-storefront retailer (retail delivery business), or microbusiness	6% of gross receipts	4% of gross receipts
Distribution of cannabis, cannabis products, industrial hemp and/or industrial hemp products	3% of gross receipts	2% of gross receipts
Manufacturing or processing of cannabis, cannabis products, industrial hemp and/or industrial hemp products, or any other type of cannabis business	4% of gross receipts	2% of gross receipts
⁽¹⁾ Annual tax rates specified above shall increase by the percentage increase in the Consumer Price Index ("CPI")		
⁽²⁾ Resolution would set rates through January 1, 2024		

The cannabis business tax rate would apply to all for-profit and non-profit businesses involved in commercial cannabis activities within the City, including delivering, dispensing, distributing, processing, manufacturing, selling, or testing. The tax would not be imposed on persons engaged only in personal cultivation for personal consumption in accordance with current State law.

FINANCIAL IMPACT:

It is anticipated that the new tax will result in discretionary revenue for the General Fund estimated between \$720,000 to \$1,080,000 annually once all the business operations are up in running for at least 12 months. Amounts were estimated analyzing data from other communities, tax rates, purchasing power, etc.

It is further noted that the costs associated with cannabis related work includes the following:

- Contract with HdL totaling \$30,000. It is noted that on September 1, 2021 Council approved an amendment to the City’s agreement with HdL where they will assist staff review applications and prepare reports for City consideration at a flat rate of \$5,900 per each.
- Cost to place the ballot measure on the November 3, 2020 election was approximately \$100,000.
- Various staff time and City Attorney fees.

Note that HdL contract cost may be recovered by fees from potential applicants should the City permit cannabis activities in the City.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

While not specifically addressed, the requested action is consistent with the Vision Madera 2025 Plan; Effective Government: Strategy 115. – Ensure sufficient economic resources to provide adequate City services and prepare for future growth.

ALTERNATIVES:

The Council may elect to not approve the resolution or may direct staff to return with additional information. Moreover, Council may suggest alternative rates to those outlined by staff in Table 2.

ATTACHMENTS:

1. Resolution

Resolution No. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA
ESTABLISHING CANNABIS BUSINESS TAX RATES FOR VARIOUS TYPES OF
COMMERCIAL CANNABIS BUSINESS PERMITS**

WHEREAS, on November 2, 2020, voters of the City of Madera approved Measure R in favor of establishing a cannabis business tax on cannabis and hemp businesses within the City if the City permits and regulates such businesses; and

WHEREAS, the cannabis business tax ordinance approved by the voters is codified in Chapter 4 to Title VI of the Madera Municipal Code; and

WHEREAS, on June 16, 2021, the City Council of the City of Madera adopted Ordinance No. 977 C.S. adding Chapter 5 to Title VI (Cannabis Businesses) to the Madera Municipal Code to establish a regulatory program requiring all commercial cannabis uses to obtain a commercial cannabis business permit issued by the City prior to commencing operation within the City; and

WHEREAS, Madera Municipal Code Section 6-4.05 provides that the Council may by resolution set cannabis business tax rates at annual rates not to exceed \$10.00 per canopy square foot for cultivation (adjustable for inflation), 6% gross receipts for retail businesses, and 4% for all other such businesses; and

WHEREAS, the Council wishes to implement the cannabis business tax at rates authorized under Madera Municipal Code Section 6-4.05.

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

- Section 1. The foregoing recitals are true and correct and incorporated by reference.
- Section 2. The City Council approves the cannabis business tax rates established by this Resolution.
- Section 3. The rate of the cannabis business tax shall be calculated as follows:
- A. For every person engaged in commercial cannabis cultivation, including cultivation of industrial hemp, in the City:
 - 1. Through January 1, 2024, the annual rate shall be:
 - a. Six dollars (\$6.00) per square foot of canopy space in a facility that uses exclusively artificial lighting.

- b. Four dollars (\$4.00) per square foot of canopy space in a facility that uses a combination of natural and supplemental lighting as defined in Section 6-4.04 Q of this chapter.
 - c. Two dollars (\$2.00) per square foot of canopy space in a facility that uses no artificial lighting.
 - d. One dollar (\$1.00) per square foot of canopy space for any nursery.
2. In accordance with Madera Municipal Code Section 6-4.05, on January 1, 2024, and on each January 1, thereafter, the annual tax rates specified above shall increase by the percentage increase in the Consumer Price Index (“CPI”) for consumers in the Western Region as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this resolution shall be made.
 3. For every person engaged in the operation of a testing laboratory for cannabis, cannabis products, industrial hemp and/or industrial hemp products s/he/it shall be subject to the tax rate not to exceed one percent (1%) of gross receipts.
 4. For every person engaged in retail sales of cannabis, cannabis products, industrial hemp, and/or industrial hemp products, including as a retailer (dispensary) or non-storefront retailer (retail delivery business), or microbusiness, s/he/it shall be subject to the tax rate not to exceed four percent (4%) of gross receipts.
 5. For every person engaged in distribution of cannabis, cannabis products, industrial hemp and/or industrial hemp products, s/he/it shall be subject to the tax rate not to exceed two percent (2%) of gross receipts.
 6. For every person engaged in manufacturing or processing of cannabis, cannabis products, industrial hemp and/or industrial hemp products, or any other type of cannabis business not described in Section 6-4.05 (C) (1), (2), (3), or (4) s/he/it shall be subject to the tax rate not to exceed two percent (2%) of gross receipts.

Section 3. The City Manager and Finance Director are authorized to establish administrative procedures as they deem necessary to facilitate the orderly and efficient implementation of the cannabis business tax which are consistent with this Resolution.

Section 4. This Resolution shall be effective upon adoption.