



City of Needles, California Request for City Council Action

☒ CITY COUNCIL ☐ NPUA

☒ Regular ☐ Special

Meeting Date: June 11, 2024

Title: Alternative Square Foot Tax for Cannabis Cultivation Businesses

Background: On November 6, 2012, City voters overwhelmingly (81% approval rate) passed Measure S, approving a tax on persons engaged in marijuana business in the City at a rate of up to 10% of gross receipts. Prior to the adoption of Measure S, the City was not collecting any revenue from retail sales of marijuana, while those businesses continued to benefit from their operations within the City. As a result, the City Council proposed, and the voters approved Measure S to bring much needed revenue to the City to help balance the budget and fund general City services like road paving, police, parks, and senior programs. On December 26, 2012, the Council adopted Ordinance No. 549-AC, setting the rate at 10%. The 10% rate has been in effect since that time.

Since the inception of Measure S, and consistent with the City's promises, the City has collected a significant amount in cannabis tax revenue. Last year, the City collected nearly \$1.74 million from Cultivation Facilities, alone. This has produced a steady growth of revenue for the City, improving its long-term financial sustainability. Cannabis revenues have also been instrumental in supporting various aspects of the community, contributing to both its growth and development, while providing funding for non-cannabis businesses through an economic development fund.

Nevertheless, the current methodology has proved difficult to implement and costly to manage, particularly with respect to Cultivation Facilities. For example, the current tax requires the businesses to identify their gross sales and the value of the products sold; however, the cannabis industry is a "cash-only" business with employees, materials, supplies, utilities, inventory, rent and other expenses paid in cash with no corresponding bank records against which financial audits normally occur. Further complicating this approach is the lack of availability of corresponding State tax data with which to compare the gross receipts reported to the State with the tax reported to the City. As a result, the City has expressed concerns that the current gross receipts tax may not be the most appropriate basis for the City's Cannabis Cultivation Facilities, which could lead either to underreporting of revenue and/or increasingly costly auditing expenses. Based on the above, staff was asked to look at alternative tax measures that may be adopted for Cannabis Cultivation in lieu of the current gross receipts tax.

A review of other local jurisdictions reveals a wide range of tax programs, most adopting some combination of gross receipts taxes, square foot taxes, and flat taxes. As for cultivation particularly, many jurisdictions have adopted a taxing methodology in which the cannabis business pays a tax based upon the square footage of their Cannabis cultivation area, or some similar measure, since the size of the facility more than any other factor determines the quantity of product grown and sold. In that regard, the City has commissioned a fiscal analysis in order to develop a tax based upon the square footage of cultivation area that would generate the same or similar amounts as the tax based upon gross receipts. Based thereon, staff recommends Council adopt an ordinance which does the following, subject to voter approval.

- Adopts an alternative (in lieu) tax on persons actively engaged in the business of Cannabis Cultivation in the City at a monthly rate of up to \$1.75 per square foot of Cannabis Cultivation Area or fraction thereof. The rate will be adjusted annually for CPI, but in no case more than 5% or less than 2%, starting on January 1 on the first year the tax is implemented, and each year thereafter.

- Provides that the Cannabis Square Foot tax shall not be imposed on any Cultivation Facilities unless and until the Council, by ordinance, takes action to set the rate not to exceed the amounts above.
- Provides that during the time this Square Foot Tax is imposed by Council approved ordinance, the enforcement of the percentage-based gross receipts tax shall be suspended as to Cannabis Cultivation, only. Nothing therein prevents or otherwise suspends the enforcement of the Marijuana Business Tax as to any other Cannabis Business in the City.

Accompanying the proposed ordinance are resolutions 1) calling for the election, 2) consolidating the election, and 3) if approved, setting priorities for arguments and impartial analysis.

Fiscal Impact: A monthly tax of up to \$1.75 per square foot of Cannabis Cultivation Area

Environmental Impact: N/A

Recommended Action: If the Council approves the ordinance, staff recommends the following:

1. MOVE to waive the first reading of **Ordinance No. 665-AC**, an Ordinance of the City of Needles, California, Adding Article IX (Cannabis Cultivation Square Foot Tax) to Chapter 20, of the Needles Municipal Code Establishing an Alternative Square Foot Tax on Cannabis Cultivation, subject to voter approval.
2. MOVE to waive reading and adopt **Resolution No. 2024-28**, A Resolution of the City Council of the City of Needles, California, Calling for and Giving Notice of the Holding of a General Municipal Election to Be Held on November 5, 2024, for the Election of Certain Officers as Required by the Provisions of the Charter, and for the Submission of a Proposed Measure that Would Establish an Alternative Square Foot Tax on Cannabis Cultivation in the City.
3. MOVE to waive reading and adopt **Resolution No. 2024-29**, a Resolution of the City Council of the City of Needles, California, Requesting the Board of Supervisors of the County of San Bernardino to Consolidate a General Municipal Election to be Held on November 5, 2024, with the Statewide General Election to be Held on the Date Pursuant to Section 10403 of the Elections Code.
4. MOVE to waive reading and adopt **Resolution No. 2024-30**, a Resolution of the City Council of Needles, California, Setting Priorities for Filing Written Argument(s) Regarding a City Measure and Directing the City Attorney to Prepare an Impartial Analysis.

Alternatively, if Council does not approve the ordinance, then staff recommends the following:

1. MOVE to waive reading and adopt **Resolution No. 2024-28A**, A Resolution of the City of Needles, California, Calling for the Holding of a General Municipal Election to Be Held on November 5, 2024, for the Election of Certain Officers as Required by the Provisions of the Charter.
2. MOVE to waive reading and adopt **Resolution No. 2024-29A**, A Resolution of the City Council of the City of Needles, California, Requesting the Board of Supervisors of the County of San Bernardino to Consolidate a General Municipal Election to be Held on Tuesday, November 5, 2024, With The Statewide General Election to be Held on the Date Pursuant to § 10403 of the Elections Code.

Submitted By: Patrick Martinez, City Manager

City Manager Approval: Patrick J. Martinez

Date: 6/5/2024

Other Department Approval (when required): _____

Date: _____

Approved: ☐

Not Approved: ☐

Tabled: ☐

Other: ☐

Agenda Item: _____